

LEG-C.5. CONSTRUCTION AGREEMENT
Updated April 2021

IOM office-specific Ref. No.	
IOM Project Code	

CONSTRUCTION AGREEMENT
between the
International Organization for Migration
and
[Name of the Contractor]

This Construction Agreement is entered into between the **International Organization for Migration**, an organization part of the United Nations system, Mission in [XXX], [Address of the Mission], represented by [Name, Title of Chief of Mission etc.] (hereinafter referred to as “**IOM**”), and **[Name of Contractor]**, of [address], in [country], represented by [Name, Title of the representative of the Contractor], (hereinafter referred to as the “**Contractor**”). IOM and the Contractor are also referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. Introduction and Integral Documents

- 1.1 IOM intends to engage the services of [company's name] for the construction of [name of project and project code/ WBS Element] located at [address] (the “**Works**”). The Works are what this Agreement requires the Contractor to construct, install and turn over to IOM, as defined in the plans, specifications and Bill of Quantities).
- 1.2 The following documents form part of this Agreement and are attached as Annexes: [add/delete as necessary]
- (a) **Annex A** - Detailed Instruction to Bidders dated [insert date], with annexed Scope of Work, Technical Specifications, Drawings, and General Conditions of Tender;
 - (b) **Annex B** - Bid Form including Contractor's firm and final proposal/bid dated [insert date], with detailed Bill of Quantities (“**BoQ**”) and unit cost;
 - (c) **Annex C** - Approved Work Schedule;
 - (d) **Annex D** - Accepted Notice of Award (“**NoA**”);
 - (e) **Annex E** - Payment Schedule; and
 - (f) **Annex F** – IOM Terms and Conditions for European Union Funded Service Type Agreements
- 1.3 Any other Project documentation, agreed and signed by both Parties during the implementation of this Agreement, shall form part of this Agreement.
- 1.4 All correspondence, instructions, notes and other communications relating in any way to the performance of this Agreement will be in the English language. The English language version of the Agreement will at all times be the version of the Agreement which binds the Parties.

Translations of the Agreement into languages other than English may be prepared for working purposes but will have no legally binding effect on the Parties.

- 1.5 If either Party finds any discrepancy or ambiguity in this Agreement, that Party must notify the other Party in writing. The Parties agree to consult with each other to attempt to resolve the discrepancy or ambiguity.
- 1.6 Unless otherwise advised by IOM in writing, all Project reports and other issues arising under this Agreement shall be addressed to IOM's designated Chief of Mission / authorized Agreement signatory.

2. Scope of Work

- 2.1 The Contractor shall furnish all the necessary materials, tools and equipment, labor, supervision, and other services, for the satisfactory and timely completion of the Works in accordance with this Agreement.
- 2.2 Only IOM may approve any changes, modifications, deviations, and substitutions, in the Scope of Work in accordance with Article 7 ("**Work Variation**").
- 2.3 IOM reserves the right to supply any materials, equipment, or resources, and to delete or reduce any work item, whether in whole or in part and update Annexes as necessary and a reduced Contract Price shall be agreed.

3. Contract Price

- 3.1 The total contract price (the "**Contract Price**") shall [currency code] [amount in numbers] ([amount in words]) only, inclusive of all applicable fees, taxes and permits that may be imposed by any Government entity in connection with the execution, completion, and turnover of the Works pursuant to this Agreement.
- 3.2 The Contract Price and unit cost as outlined in Annex B shall be binding and shall not be altered in any event. The Contract Price will be modified only in cases of IOM-approved Work Variations and IOM-supplied materials as outlined in Articles 2.2 and 2.3 of this Agreement and shall be reflected in writing.
- 3.3 The liability of IOM to the Contractor is STRICTLY LIMITED to the Contract Price outlined in Article 3.1, regardless of any increase in wage or labor cost or fluctuation in the cost of materials and equipment, occurring at any time. The Contractor shall be liable for its under-estimation of the requirements of this Agreement, inflation or currency devaluation, if any.

4. Manner of Payment

- 4.1 The Contract Price shall be paid in accordance with the following payment schedule
 - (a) (Applicable if an advance payment is made) IOM shall release an advance payment equivalent to [percentage] of the Contract Price in the amount of [currency] [insert amount in numbers] (amount in words and currency in words) within 7 (seven) calendar days from the Contractor's signature of this Agreement and Contractor's submission of and IOM's approval of the following items:

- i. Drawings and Technical Documents for Permit Purposes;
 - ii. Approved Detailed Construction and Workings Drawings;
 - iii. Work Schedule;
 - iv. List of Sub-Contractors and Suppliers (if applicable);
 - v. Unconditional Bank Guarantee equivalent to *[percentage to match advance payment]* percent of the Contract Price to guarantee the advance payment, if applicable;
 - vi. Performance Security if required under Article 9.
 - (b) IOM will pay the Contractor *[currency code] amount in numbers (amount in words)* on confirmation by IOM of satisfactory progress toward the completion of *(amount)% ([amount in words] per cent)* actual measured work as per Bill of Quantities at Annex B and logbook.
 - (c) IOM will pay the Contractor *[currency code] amount in numbers (amount in words)* after the completion of 100% (one hundred per cent) of the Works and inspection and provisional acceptance of the completed Works.
 - (d) The balance of 10% (ten per cent) of the total Contract Price in the amount of *[currency code] amount in numbers (amount in words)* will be held for 12 (twelve) months after provisional acceptance of the completed Works in accordance with Article 10 of this Agreement .
- 4.2 Payments for the Works will be done in installments in accordance with the Payment Schedule above in *[currency] ([currency code])* by *[bank transfer]* to the following bank account:
- Bank Name:
Bank Branch:
Bank Account Name:
Bank Account Number:
Swift Code:
IBAN Number:
- 4.3 The Contractor's Progress Claims shall be submitted to and certified by IOM's appointed Project Manager who will verify the value of the work done with regard to the value of the quantities of items completed in the Bill of Quantities. The Contractor shall submit all Progress Claims with the following attachments:
- (a) Updated Financial Statement of the Project;
 - (b) Statement of Completed Works;
 - (c) Progress Photos; and
 - (d) Contractor's Sales Invoice.
- 4.4 Within 7 (seven) calendar days of Contractor's submission of the Progress Claims and Statement of Completed Works and all required attachments to the Project Manager, the Project Manager shall evaluate the said Progress Claim(s). Evaluated and approved Progress Claims shall be due and payable within 10 (ten) working days from date of approval of Progress Claim. During this period of evaluation and processing of payments, the Contractor shall continue progress of the work in accordance with the Approved Work Schedule.

- 4.5 Any progress payment/s made by IOM does not imply nor signify acceptance of any portion of the accomplished work and does not waive IOM's right to enforce the Contractor's warranty as provided in Article 14.2 of this Agreement, nor to enforce penalties for delay.
- 4.6 The Contractor can only submit the final Progress Claim as per the Payment Schedule when the Contractor has satisfactorily completed and submitted:
- (a) All works, including Work Variation Orders, as stipulated in the annexed documents;
 - (b) Rectification of all reported non-conforming works;
 - (c) Completed demobilization and clean-up of site;
 - (d) Applicable materials and work test certificate/s;
 - (e) Approval duly signed by the Project Manager and by the Contractor's authorized representative that the Work is completed in accordance with drawings and specifications and in compliance with applicable laws, rules and regulations of the local and/or national government of the location where the Project is to be implemented.
- 4.7 A Certificate of Provisional Acceptance of completed Works shall be issued by IOM when each of the requirements under Article 4.6 have been fulfilled to its satisfaction.
- 4.8 A Certificate of Provisional Acceptance of terminated Works shall be issued by IOM if IOM terminates the contract in accordance with Article 26. This Certificate will indicate the Completion Rate as per Article 6.2 and the Contractor shall remain responsible for the rectification of non-conforming or defective portions of the Works in accordance with Article 14.2.
- 4.9 A Certificate of Final Acceptance shall be issued by IOM 12 (twelve) months after the date a Certificate of Provisional Acceptance of the completed or terminated Works is issued provided that any works required during the warranty period have been completed to its satisfaction.

5. Completion Period

- 5.1 The Contractor shall mobilize all necessary and appropriate resources and coordinate all work activities with IOM to ensure commencement of the Works on [insert date] and completion and turn-over of the Works to IOM by [insert date] ("Completion Date").
- 5.2 Where the Contractor is unable to complete the Works by the [Completion Date] date specified in Article 5.1, the Contractor may request a time extension in writing explaining the reasons for the delay.
- 5.3 IOM shall not approve requests for time extension for reasons such as but not limited to:
- (a) Project location, conditions and restrictions identified during time of tender and award of the Agreement;
 - (b) Normal weather and climatic conditions prevailing at the site location;
 - (c) Logistics, implementation, coordination problems and other reasons within the control of the Contractor;
 - (d) Financial, operational and labor difficulties of the Contractor or any of its sub-Contractor/s or supplier/s;
 - (e) Any required rectification of non-conforming work items; and
 - (f) Nature and condition of terrain.

- 5.4 IOM may revise the Completion Date as stated in Article 5.1 in response to the Contractor's request for time extension caused by any of the following:
- (a) Force Majeure as described in Article 16;
 - (b) Approved Work Variation Order/s requiring additional time for completion by the Contractor, as agreed between the Parties;
 - (c) IOM's failure to make timely payments for the Works completed to IOM's satisfaction;

Provided, the requested extension shall not exceed the duration of the work stoppage or delay caused by the foregoing.

- 5.5 If the Works are not completed by the Completion Date specified in Article 5.1 the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one per cent) of the total Contract Price for each day of delay until the whole Works are completed and accepted by IOM according to Article 4.7. IOM may, at its discretion, grant a conditional time extension whereby the Works are not considered to be in delay during the time extended, but in case of non-completion within the extended period, the calculation of liquidated damages for delay outlined herein shall be from the original completion date before extension. If the Agreement is terminated by either Party after the Completion Date due to non-completion of the Works, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one per cent) of the total Contract Price for each day from the Completion Date to the notice date of termination.

6. Work Schedule

- 6.1 Within the timeframe specified in the NoA and no later than the date of signature of this Agreement, the Contractor shall submit to IOM a work schedule (the "**Work Schedule**") showing the order and timing for all the activities in the Works.
- 6.2 The Contractor shall keep and update a daily logbook on all progress and matters relating to the Works in accordance with industry standards. The logbook shall be inspected and verified for accuracy, daily or at an interval designated by IOM, by a designated IOM staff or its authorized representatives. The logbook shall be the authoritative source of information for determining the extent of the Works completed (the "**Completion Rate**"). In case the Contractor fails to update the logbook properly with the required verification, IOM shall have the right to solely determine the Completion Rate which cannot be challenged by the Contractor.
- 6.3 The Contractor shall submit an updated Work Schedule as and when requested by IOM or its Project Manager.
- 6.4 The Contractor shall notify IOM through its Project Manager of any proposed change in the Work Schedule. Any change shall be subject to prior written approval by IOM. The Contractor shall also submit to the Project Manager for approval a revised schedule within 7 (seven) calendar days from the date of proposing the change.
- 6.5 If at any time IOM deems that Contractor's actual progress is inadequate to meet the requirements of this Agreement, IOM may notify the Contractor to take such steps as may be necessary to improve its progress. If after a reasonable period, as determined by IOM, the Contractor still does not improve its performance, IOM may require an increase in

Contractor's labour force, the number of shifts, workdays per week, overtime hours, amount of equipment, or require expedited shipment of equipment and materials, all at the Contractor's cost and without additional cost to IOM.

- 6.6 If at any time the Contractor's labor force is inactive due to unpaid wages, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one percent) of the total Contract Price for each day of work stoppage until the entire labor force resumes work on the Project. This penalty shall be applied independently of any other sanction or penalty allowed for in this Agreement.

7. Work Variation

- 7.1 At any time during the implementation and execution of this Project, IOM reserves the right to request any alteration in any aspect of the work, as deemed necessary or appropriate by IOM in the best interest of the Project.
- 7.2 Alterations and/or modifications, whether additive or deductive, shall be conveyed to the Contractor in the form of a work variation order (the "**Work Variation Order**") duly approved and signed by IOM or its authorized representative. The Contractor shall immediately implement any Work Variation Order issued by IOM.
- 7.3 All variations shall be included in an updated Work Schedule.
- 7.4 If any work in the Work Variation Order corresponds with an item description in the BoQ, the rate in the BoQ shall be used to calculate the value of the variation. In other cases, the cost of such Work Variation Order shall be evaluated and compensated as agreed between the Parties. IOM may request the Contractor to provide a quotation for the cost of the variation.

8. Bank Guarantee for Advance Payment (IF APPLICABLE)

- 8.1 The Contractor shall, within the timeframe specified in the NoA and no later than the date of signature of this Agreement, furnish IOM with an unconditional bank guarantee in the amount equivalent to [percentage] of the Contract Price (the "**Bank Guarantee**").
- 8.2 The Bank Guarantee shall be in a form and by a bank acceptable to IOM in an amount and currency equal to the advance payment.
- 8.3 The amount of the Bank Guarantee shall not be construed as the limit of the Contractor's liability to IOM in any event.
- 8.4 The Bank Guarantee shall be effective from the date of the release of cash advance as per Article 4.1 of this Agreement until the date of the provisional acceptance as per Articles 4.7 or 4.8.

9. Performance Security (Applicable where the contract price is over USD 300,000)

- 9.1 The Contractor shall, within the timeframe specified in the NoA, furnish IOM with a performance bond in the amount equivalent to 10% (ten percent) of the Contract Price, to be issued by a reputable bank or surety company in a form acceptable to IOM (the "**Performance Bond**").

- 9.2 The Performance Bond shall serve as the guarantee for the Contractor's faithful performance and compliance with the terms and conditions of this Agreement.
- 9.3 The amount of the Performance Bond shall not be construed as the limit of the Contractor's liability to IOM in any event.
- 9.4 The Performance Bond shall be effective from the date of commencement of the Works until the date of Provisional Acceptance as per Articles 4.7 or 4.8.

10. Retention

- 10.1 Upon issuance of the Certificate of Provisional Acceptance for completed Works as per Article 4.7, an amount equivalent to 10% (ten per cent) of the Contract Price shall be retained by IOM to be used for repairs or reconstruction of defective works due to poor workmanship and/or inferior quality of material used which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.
- 10.2 In case a Certificate of Provisional Acceptance for terminated Works has been issued as per Article 4.8, an amount equivalent to 10% (ten per cent) of the Contract Price corresponding to the Completion Rate as per Article 6.2 shall be retained by IOM to use for repairs and reconstruction of defective works due to poor workmanship and/or inferior quality of material used for which the Contractor was responsible under this Agreement which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.
- 10.3 The Contractor may, from the date of Provisional Acceptance and until the expiration of Retention period, request IOM to release the amount retained as per Article 10.1 or Article 10.2 by submitting an unconditional bank guarantee. Such bank guarantee shall be in a form and by a bank acceptable to IOM and in an amount and currency equal to the amount retained and effective until the expiration of Retention period.

11. Contractor's Responsibility

- 11.1 All government permits and licenses required for the execution of the Works under this Agreement shall be obtained prior to the commencement of the Works and paid for by the Contractor.
- 11.2 The Contractor shall comply with local and national building regulations imposed by appropriate government agencies, and shall keep IOM indemnified against all fines, penalties and losses incurred by reason of any breach of this clause.
- 11.3 The Contractor shall assume full responsibility for the Works under this Agreement until its final acceptance by IOM as per Article 4.9. The Contractor shall have entire control and supervision of the Works and services herein agreed upon and shall be solely liable for the salaries, wages and other employment benefits of all employees and sub-contractors. Should the Contractor breach this clause, IOM has the right to proceed against the Performance Bond or Bank Guarantee or to use the Retention Amount, without prejudice to demanding direct reimbursement from the Contractor in the event that the amount of the Performance Bond Bank Guarantee or Retention Amount is insufficient.
- 11.4 The Contractor shall be responsible for the safety of all activities on the site and for ensuring that relevant occupational health and safety laws and regulations are followed.

- 11.5 The Contractor shall be solely and fully accountable for ANY claim for losses, liabilities, injuries, or damages arising out of or in connection with the work done or to be performed under this Agreement including but not limited to any accident or injury of any of its employees or sub-contractors during the term of this Agreement , or for any injury to any person or damages or loss of properties arising from the construction or any act or omission of the Contractor or anyone in its employment, or its subcontractors.
- 11.6 The Contractor shall comply with local laws on wages and such other labor laws including all other laws, orders and regulations of any government authority in connection with the Works.
- 11.7 The Contractor shall at all times defend, indemnify, and hold harmless IOM, its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the Contractor or its employees, officers, agents or subcontractors, in the performance of this Agreement. IOM shall promptly notify the Contractor of any written claim, loss, or demand for which the Contractor is responsible under this clause.

12. Inspection of Works

- 12.1 IOM reserves the right for itself and its representatives to inspect the Works, while in progress, so as to give IOM the opportunity to reject the whole or any portion thereof, which in the opinion of IOM's representative is defective or substandard.
- 12.2 The Contractor shall allow the Project Manager and other IOM representatives to access to the work site at any time.

13. Insurance

- 13.1 Without limiting the Contractor's liability pursuant to Article 11 (Contractor's Responsibility), the following insurance cover is to be provided and maintained by the Contractor for the entire duration of this Agreement:
- (a) Third party liability for any one claim or series of claims arising out of any one accident or event;
 - (b) Workmen's compensation and/or employer's liability insurance which complies with applicable legislation;
 - (c) Automobile public liability and property damage insurance; and
 - (d) Cover against loss or damage to the Works and materials during the construction.
- 13.2 The amount of coverage for each type of insurance is to be in line with relevant industry standards and in an amount acceptable to IOM.
- 13.3 Policies and certificates of insurance are to be provided to IOM prior to the commencement of the Works.

14. Warranties

- 14.1 The Contractor represents and warrants that it is financially sound and duly licensed, with the adequate labor/human resources, equipment and tools, competence, expertise and skills

necessary to carry out fully and satisfactorily, within the stipulated completion period, the Works in accordance with this Agreement.

- 14.2 The Contractor guarantees and warrants the performance and completion of the design and construction work to the full and complete satisfaction of IOM. The Contractor remains responsible for the damages caused or identified within 12 (twelve) months from the date of IOM's Provisional Acceptance of the Works as per Articles 4.7 or 4.8, on account of defects in the construction, or the use of materials of inferior quality furnished by it, or due to any violation of the terms of the Agreement.
- 14.3 In case of any defect in workmanship or materials, which may become apparent in the course of construction, the Contractor shall, within 7 (seven) calendar days from IOM's demand, at Contractor's own cost and expense, remedy such portion of the Works done by the Contractor as in the opinion or judgment of IOM is unsound, incorrect or defective or not in accordance with the plans and specifications.
- 14.4 In case of Contractor's default, failure or refusal to carry out such order to remove and replace the unsound, incorrect or defective portion of the Works within 7 (seven) days as required by the previous clause, IOM may terminate this Agreement and/or engage the services of other persons to carry out the same. The Contractor shall bear all expenses arising there from or incidental thereto. IOM may require direct reimbursement for the cost of such action from the Contractor, deduct the expenses from any amount due to the Contractor, or deduct the amount from Performance Bond, the Bank Guarantee or the Retention Amount.
- 14.5 If any defects or imperfections are discovered by IOM and communicated to the Contractor after provisional acceptance but prior to final acceptance of the Works due to defective or improper workmanship and/or inferior quality of the material used, the Contractor shall immediately correct such defects within a period of 5 (five) days of receipt of written notice from IOM. Where the Contractor fails to act within this period, IOM may engage the services of a third party to correct the defect and hold the Contractor liable for the cost of such services. In such circumstances the Contractor shall reimburse IOM the cost of such repair, with interest at 2% (two per cent) per month from the time such expenses were incurred until fully reimbursed. The Performance Bond, Bank Guarantee and Retention, if not yet released at the time the said defects are found, may be used for this purpose.
- 14.6 The Contractor shall perform repair work with the utmost care and diligence to protect existing facilities and prevent damage thereto. In the event that damage to existing facilities is caused by such repairs, the Contractor shall repair such damage at its own expense and to IOM's satisfaction and acceptance.
- 14.7 The Contractor further warrants that:
- (a) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
 - (b) In all circumstances it shall act in the best interests of IOM;
 - (c) No official or employee of IOM or any third party has received from, will be offered by, or will receive from the Contractor any direct or indirect benefit arising from the Agreement or award thereof;
 - (d) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
 - (e) All materials used are new, legally sourced and fit for their particular purpose;

- (f) No asbestos or any other health hazard materials (lead paints etc.) will be used in the course of the construction;
- (g) The Contractor, its staff or shareholders have not previously been declared by IOM ineligible to be awarded agreements by IOM;
- (h) The Price specified in this Agreement shall constitute the sole remuneration in connection with this Agreement. The Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or the discharge of its obligations thereunder. The Contractor shall ensure that any subcontractors, as well as the officers, personnel and agents of either of them, similarly, shall not receive any such additional remuneration.
- (i) It shall respect the legal status, privileges and immunities of IOM as an intergovernmental organization, such as inviolability of documents and archive wherever it is located, exemption from taxation, immunity from legal process or national jurisdiction. In the event that the Contractor becomes aware of any situation where IOM's legal status, privileges or immunities are not fully respected, it shall immediately inform IOM.
- (j) It is not included in the most recent Consolidated United Nations Security Council Sanctions List nor is it the subject of any sanctions or other temporary suspension. The Contractor will disclose to IOM if it becomes subject to any sanction or temporary suspension during the term of this Agreement.
- (k) It must not employ, provide resources to, support, contract or otherwise deal with any person, entity or other group associated with terrorism as per the most recent Consolidated United Nations Security Council Sanctions List and all other applicable anti-terrorism legislation. If, during the term of this Agreement, the Contractor determines there are credible allegations that funds transferred to it in accordance with this Agreement have been used to provide support or assistance to individuals or entities associated with terrorism, it will inform IOM immediately who in consultation with the donors as appropriate, shall determine an appropriate response. The Contractor shall ensure that this requirement is included in all subcontracts.

14.8 The Contractor warrants that it shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any fraudulent, corrupt, discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child. The Contractor shall immediately inform IOM of any suspicion that the following practice may have occurred or exist:

- (a) a corrupt practice, defined as the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of IOM in the procurement process or in contract execution;
- (b) a fraudulent practice, defined as any act or omission, including a misrepresentation or concealment, that knowingly or recklessly misleads, or attempts to mislead, IOM in the procurement process or the execution of a contract, to obtain a financial gain or other benefit or to avoid an obligation or in such a way as to cause a detriment to IOM;
- (c) a collusive practice, defined as an undisclosed arrangement between two or more bidders designed to artificially alter the results of the tender process to obtain a financial gain or other benefit;
- (d) a coercive practice, defined as impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities, or affect the execution of a contract;

- (e) an obstructive practice, defined as (i) deliberately destroying, falsifying, altering or concealing of evidence material to IOM investigations, or making false statements to IOM investigators in order to materially impede a duly authorized investigation into allegations of fraudulent, corrupt, collusive, coercive or unethical practices; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (ii) acts intended to materially impede the exercise of IOM's contractual rights of access to information;
- (f) any other unethical practice contrary to the principles of efficiency and economy, equal opportunity and open competition, transparency in the process and adequate documentation, highest ethical standards in all procurement activities.

14.9 The Contractor further warrants that it shall:

- (a) Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement ("other personnel"). For the purpose of this Agreement, SEA shall include:
 1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favours or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
 2. Engaging in sexual activity with a person under the age of 18 ("child"), except if the child is legally married to the concerned employee or other personnel and is over the age of majority or consent both in the child's country of citizenship and in the country of citizenship of the concerned employee or other personnel.
- (b) Strongly discourage its employees or other personnel having sexual relationships with IOM beneficiaries.
- (c) Report timely to IOM any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
- (d) Ensure that the SEA provisions are included in all subcontracts.
- (e) Adhere to above commitments at all times.

14.10 The Contractor expressly acknowledges and agrees that breach by the Contractor, or by any of the Contractor's employees, contractors, subcontractors or agents, of any provision contained in Articles 14.7, 14.8, or 14.9 of this Agreement constitutes a material breach of this Agreement and shall entitle IOM to terminate this Agreement immediately on written notice without liability. In the event that IOM determines, whether through an investigation or otherwise, that such a breach has occurred then, in addition to its right to terminate the Agreement, IOM shall be entitled to recover from the Contractor all losses suffered by IOM in connection with such breach.

15. Assignment and Subcontracting

15.1 The Contractor shall not assign or subcontract the Agreement or any work under this Agreement in part or all, unless agreed upon in writing in advance by IOM. Any subcontract entered into by the Contractor without approval in writing by IOM may be cause for termination of the Agreement.

15.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Project may be assigned to a subcontractor. Notwithstanding the said written approval, the Contractor shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between the subcontractor and IOM. The Contractor shall include in an agreement with a subcontractor all provisions in this Agreement that are applicable to a subcontractor, including relevant Warranties and Special Provisions. The Contractor remains bound and liable thereunder and it shall be directly responsible to IOM for any faulty performance under the subcontract. The subcontractor shall have no cause of action against IOM for any breach of the sub-contract.

16. Force Majeure

Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by force majeure, which means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, blockade or embargo, strikes, Governmental or state restrictions, natural disaster, epidemic, public health crisis, and any other circumstances which are not caused by nor within the control of the affected Party.

As soon as possible after the occurrence of a force majeure event which impacts the ability of the affected Party to comply with its obligations under this Agreement, the affected Party will give notice and full details in writing to the other Party of the existence of the force majeure event and the likelihood of delay. On receipt of such notice, the unaffected Party shall take such action as it reasonably considers appropriate or necessary in the circumstances, including granting to the affected Party a reasonable extension of time in which to perform its obligations. During the period of force majeure, the affected Party shall take all reasonable steps to minimize damages and resume performance.

IOM shall be entitled without liability to suspend or terminate the Agreement if Contractor is unable to perform its obligations under the Agreement by reason of force majeure. In the event of such suspension or termination, the provisions of Article 26 (Termination) shall apply.

17. Intellectual Property

All intellectual property and other proprietary rights including, but not limited to, patents, copyrights, trademarks, and ownership of data resulting from the performance of the Services shall be vested in IOM, including, without any limitation, the rights to use, reproduce, adapt, publish and distribute any item or part thereof.

18. Independent Contractor

The Contractor, its employees and other personnel as well as its subcontractors and their personnel, if any, shall perform all Works under this Agreement as an independent contractor and not as an employee or agent of IOM.

19. Audit

The Contractor agrees to maintain records, in accordance with sound and generally accepted accounting procedures, of all direct and indirect costs of whatever nature involving transactions related to the provision of services under this Agreement. The Contractor shall make all such records

available to IOM or IOM's designated representative at all reasonable times until the expiration of 7 (seven) years after the date of final payment, for inspection, audit, or reproduction. On request, employees of the Contractor shall be available for interview.

20. Confidentiality

- 20.1 All information which comes into the Contractor's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Contractor shall not communicate such information to any third party without the prior written approval of IOM. The Contractor shall comply with IOM Data Protection Principles in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. This obligation shall survive the expiration or termination of this Agreement.
- 20.2 Notwithstanding the previous paragraph, IOM may disclose information related to this Agreement, such as the name of the Contractor and the value of the Agreement, the title of the contract/project, nature and purpose of the contract/project, name and locality/address of the Contractor and the amount of the contract/project to the extent as required by its Donor or in relation to IOM's commitment to any initiative for transparency and accountability of funding received by IOM in accordance with the policies, instructions and regulations of IOM.

21. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and received by the other Party at the following address:

International Organization for Migration (IOM)

Attn: [Name and title/position of IOM contact person]

[IOM's address]

Email: [IOM's email address]

[Full name of the Contractor]

Attn: [Name and title/position of the Contractor's contact person]

[Contractor's address]

Email: [Contractor's email address]

22. Dispute Resolution

- 22.1 Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.
- 22.2 In the event that the dispute, controversy or claim has not been resolved by negotiation within 3 (three) months of receipt of the notice from one party of the existence of such dispute, controversy or claim, either Party may request that the dispute, controversy or claim is resolved by conciliation by one conciliator in accordance with the UNCITRAL Conciliation Rules of 1980. Article 16 of the UNCITRAL Conciliation Rules does not apply.
- 22.3 In the event that such conciliation is unsuccessful, either Party may submit the dispute, controversy or claim to arbitration no later than 3 (three) months following the date of termination of conciliation proceedings as per Article 15 of the UNCITRAL Conciliation Rules.

The arbitration will be carried out in accordance with the 2010 UNCITRAL arbitration rules as adopted in 2013. The number of arbitrators shall be one and the language of arbitral proceedings shall be English, unless otherwise agreed by the Parties in writing. The arbitral tribunal shall have no authority to award punitive damages. The arbitral award will be final and binding.

- 22.4 The present Agreement as well as the arbitration agreement above shall be governed by the terms of the present Agreement and supplemented by internationally accepted general principles of law for the issues not covered by the Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction. Internationally accepted general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts. Dispute resolution shall be pursued confidentially by both Parties. This Article survives the expiration or termination of the present Agreement.

23. Use of IOM Name, Abbreviation and Emblem

The Contractor shall not be entitled to use the name, abbreviation or emblem of IOM without IOM's prior written authorisation. The Contractor acknowledges that use of the IOM name, abbreviation and emblem is strictly reserved for the official purposes of IOM and protected from unauthorized use by Article 6~~ter~~ of the Paris Convention for the Protection of Industrial Property, revised in Stockholm in 1967 (828 UNTS 305 (1972)).

24. Status of IOM

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration as an intergovernmental organization.

25. No Waiver Clause

IOM's failure to insist upon a strict performance of any of the terms and conditions of this Agreement shall not be deemed a relinquishment of any right or remedy that IOM may have, nor shall it be construed as a waiver of Contractor's subsequent breach of this Agreement which shall continue to be in full force and effect. No waiver by IOM of any of its rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by IOM.

26. Termination of Agreement

- 26.1 IOM may, at its option, terminate for convenience any of the work under this Agreement in whole or in part, at any time by 7 (seven) days written notice to Contractor. Such notice shall specify the Completion Rate upon termination as established by Article 6.2 and the effective date of termination. Upon receipt of such notice Contractor shall:
- (a) Immediately discontinue the Works on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities other than as may be required for completion of such portion of the Works that is not terminated;
 - (b) Promptly cancel upon terms satisfactory to IOM all purchase orders, subcontracts, rentals, or any other agreement existing for the performance of the terminated work, or assign those agreements as directed by IOM;

- (c) Assist IOM in the maintenance and protection of work in progress, plant, tools, equipment, property and materials acquired by Contractor or furnished by IOM under this Agreement;
- (d) Complete performance of such portion of the Works which are not terminated; and
- (e) Perform other related tasks, which IOM may reasonably instruct, in order to effect the termination of the work.

26.2 Upon termination as per the previous clause, as the sole right and remedy of Contractor, IOM shall pay in accordance with the following:

- (a) The Contract Price corresponding to the Works performed in accordance with this Agreement prior to the date of such notice of termination;
- (b) Costs corresponding to the portion of the Works thereafter performed as specified in such notice of termination, subject to IOM's acceptance of such work;
- (c) Reasonable and documented administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts, as agreed by IOM; and
- (d) Reasonable costs incurred in demobilization and the disposition of residual material and equipment, as agreed by IOM.

The Contractor shall submit within 7 (seven) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. IOM shall review the proposal, and negotiate an equitable adjustment of the Contract Price. Other amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days.

26.3 IOM may terminate this Agreement or any of the work under this Agreement at any time by immediate written notice to the Contractor, for causes which include but are not limited to:

- (a) The Contractor's violation of the terms and conditions of this Agreement;
- (b) Contractor's default, failure or refusal to carry out order to remove and replace the unsound, incorrect or defective portion of the Works as per Article 14.5;
- (c) Non-completion of the Works within the time agreed upon or the expiration of extension agreed upon, or delayed progress of the Works as stated in Article 6 or sub-standard work;
- (d) Institution of insolvency or receivership proceedings involving the Contractor;
- (e) If, in the judgment of IOM, the Contractor has engaged in corrupt or fraudulent practices in competing for and/or implementing the Agreement.

The written notice shall specify the Completion Rate as established by Article 6.2 upon termination, the effective date of termination, and any additional tasks that need to be performed including but not limited to those enumerated in Articles 26.1 and 26.2. Such termination shall be without prejudice to IOM's other rights and remedies in this Agreement, in law and in equity. Amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days from the date of IOM's request.

26.4 Where IOM terminates this Agreement as per Article 26.3 above, all materials, plant, equipment and works financed under this Agreement shall be deemed to be the property of IOM, and the Contractor shall be liable for all the direct replacement cost incurred to IOM for the completion of the Works. The Contractor shall pay IOM the required amount within 30 (thirty) days from receipt of an invoice from IOM. The direct replacement cost shall be the

difference between the remaining amount in Contract Price not paid to the Contractor upon termination including the retention amount (after the settlement of all remaining debts and obligations) and the actual cost spent by IOM for completion of the remainder of the Works plus overhead of 10% (ten per cent) for additional administrative efforts of IOM.

- 26.5 Upon any termination, the Contractor shall waive any claims for damages including loss of anticipated profits on account thereof.
- 26.6 IOM may suspend the Agreement at any time, in whole or in part. In the event of suspension of this Agreement, IOM will specify the scope of activities and/or deliverables that shall be suspended in writing. All other rights and obligations of this Agreement shall remain applicable during the period of suspension. IOM will notify the Contractor in writing when the suspension is lifted and may modify the completion date. The Contractor shall not be entitled to claim or receive any Service fee or costs incurred during the period of suspension of this Agreement.

27. Severability

If any part of this Agreement is found to be invalid or unenforceable, that part will be severed from this Agreement and the remainder of the Agreement shall remain in full force.

28. Entirety

This Agreement and its Annexes embody the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter of this Agreement.

29. Final Clauses

- 29.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 26.

- 29.2 Amendments may be made by mutual agreement in writing between the Parties.

30. Special Provisions (Optional)

Due to the requirements of the Donor financing the Project, the Contractor shall agree and accept the following provisions:

[Insert all donor requirements which must be flown down to IOM's implementing partners and subcontractors. In case of any doubt, please contact LEGContracts@iom.int]

Signed in duplicate in English, on the dates and at the places indicated below.

For and on behalf of
The International Organization for
Migration

Signature

For and on behalf of
[Name of Contractor]

Signature

Name:
Position:
Date:
Place:

Name:
Position:
Date:
Place:

Annex X [Title]

[Attach the Annex/es and label accordingly]

Guidance in Checklist Form on completing the template for
C.5. Construction Agreement

Updated April 2021

- ☐ The Construction Agreement follows the latest IOM C.5 Construction Agreement template and is without any deviations. For Amendments: The changes do not introduce any deviations to template.
- ☐ No work have taken place prior to signing the Agreement. For Amendments: The changes made under the Amendment shall apply only from the date of signing of the Amendment or later and the original Agreement (as amended previously, if at all) has not yet expired.
- ☐ All activities comply with IOM's Constitution, policies, regulations, rules, manuals, Guidance Notes and instructions from relevant thematic areas.
- ☐ The Contractor has been selected in compliance with IOM procurement rules.
- ☐ The authority of the person(s) signing on behalf of the other party to do so has been verified.
- Check:
- A. The Contractor is with a registered business entity; OR
- ☐ B. The Contractor is with an individual with a business license and GPSU approval was obtained.
- Specify: **Choose an item.**
- The name and dates/duration for the Project are exactly the same on:
- ☐ ☐ The Agreement; and
- ☐ ☐ All Annexes, including the Work Schedule, Bill of Quantities, Payment Schedule, as applicable.
- The Contract Price and all other amounts (e.g., instalment amounts):
- ☐ ☐ Is written correctly both in numbers and in words;
- ☐ ☐ Specifies the currency used; and,
- ☐ ☐ Corresponds to the Bill of Quantities and Payment Schedule list attached to the Agreement, if any.
- Check:
- A. The currency used in defining the contract price is the same currency as the one in which payment shall be made; or
- ☐ B. The currency used in the provision(s) defining the contract price is different from the currency to be paid to the other party, but the UN exchange rate at the date of payment is agreed.
- Specify: **Choose an item.**
- The total Contract Price is:
- ☐ A. Below or up to USD 200,000; OR
- ☐ B. Above USD 200,000 and GPSU approval was obtained.
- Specify: **Choose an item.**
- The total Contract Price is:
- A. Below or up to USD 300,000; OR
- ☐ B. Above USD 300,000 and a performance security in the amount of 10% of the total Contract Price has been provided by the Contractor. The performance security follows Form 19.28 in IN 168 Rev 2 and sent to LEG for review and approval.
- Specify: **Choose an item.**
- Check:
- ☐ A. There is no advance payment;
- ☐ B. The advance payment is not higher than USD 25,000;

- C. The advance payment is higher than USD 25,000, but a bank guarantee in the amount of the advance has been provided by the Contractor. The bank guarantee follows Form 19.29 in IN 168 Rev 2 and sent to LEG for review and approval;
- D. The advance payment is higher than USD 25,000, but approval has been granted by ACO for this specific Agreement; OR
- E. This Agreement is made in the context of an L1, L2 or L3 emergency project. The advance payment thresholds have been adhered to and the required authorizations have been obtained, following Article 8 of IN 168, Rev 2.

Specify: **Choose an item.**

Check:

- A. 10% of the Contract Price shall be retained for 12 months from the date of issuance of Provisional Acceptance; OR
- ☐ B. The retention amount and/or duration are different, but exceptional GPSU approval was obtained. The references to both in Article 10 and the payment schedule (Article 4.1) have been corrected, accordingly.

Specify: **Choose an item.**

Check:

- A. Standard warranty period of 1 year is included in the Agreement; OR
- ☐ B. Standard warranty period has been changed, but exceptional GPSU approval was obtained. The reference to this in Article 14.2 (Warranties) has been corrected.

Specify: **Choose an item.**

The Contract Price is to be paid either:

- A. By bank transfer to the *specific* bank account of the Contractor as indicated in Agreement. The bank account is not in the name of a third party or an individual, OR
- ☐ B. By a method other than bank transfer which has been approved in writing and in advance by TSY.

Check: **Choose an item.**

The Agreement is concluded in one of the following languages:

- A. IOM official language (English, French or Spanish); OR
- ☐ B. Bilingually (both language versions have identical content with at least one language being an official IOM language) and the language clause (i.e., IOM official language prevails in case of discrepancy) has been included.

Specify: **Choose an item.**

- ☐ The Agreement/Amendment is not backdated. The signature date shall always be the actual date of signature.
- ☐ There are no additional clauses which have not been approved by LEG specifically for the Agreement/Amendment.
- ☐ All Annexes referred to in the Agreement/Amendment, if any, are attached to the Agreement/Amendment and do not create additional obligations other than those contained in the Agreement itself.
- ☐ All Annexes are provided either in English, French or Spanish. In case Annexes in another language are attached, translations in one of the official languages are attached, contain a statement that they prevail in case of discrepancy over the version of the Annex in a non-official language and will be signed by the Contractor.

Check:

- ☐ A. There are no specific Donor requirements for this Agreement, the "Special Provisions" clause (Article 30) has been deleted and subsequent enumeration has been corrected;
- B. The Agreement is EU funded through PAGODA, Contribution or ECHO Agreement. The duration of this Agreement is within the authorized contracting period

specified by the EU funding agreement and the Annex for EU funded service agreements has been filled in, referenced in the Annex list and attached to the Agreement. Additionally, RO Brussels has been/will be informed about this Agreement prior to signing; OR

- C. The Agreement is funded by a non-EU donor whose flow down conditions have been added to the “Special Provisions” clause (Article 30) and these are not in violation of other terms of this Agreement

Select: **Choose an item.**