

REQUEST FOR PROPOSALS
(PROCUREMENT OF SERVICES)

SERVICES FOR
**DEVELOPMENT OF THE THEORY OF CHANGE FOR THE MIGRATION,
BUSINESS AND HUMAN RIGHTS (MBHR) ASIA PROGRAMME**

Prepared by



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REQUEST FOR PROPOSALS
RFP No.: P02/2023

Mission: *IOM Viet Nam, Sub-office in Ho Chi Minh city*

Project Name: *Migration, Business and Human Rights (MBHR) in Asia programme*

WBS: *LM.0331.VN20.54.02.001*

Title of Services: *Development of the Theory of Change for the Migration, Business and Human Rights (MBHR) Asia programme*

Request for Proposals

The International Organization for Migration (hereinafter called **IOM**) intends to hire Service Provider for the *Migration, Business and Human Rights (MBHR) Asia programme* for which this Request for Proposals (RFP) is issued.

IOM now invites Service Providers/ Consulting Firms to provide Technical and Financial Proposal for the following Services: *Development of the Theory of Change for the Migration, Business and Human Rights (MBHR) Asia programme*. More details on the services are provided in the attached Terms of Reference (TOR).

The bidder will be selected under a Quality –Cost Based Selection procedures described in this RFP.

The RFP includes the following documents:

- Section I. Instructions to Bidders
- Section II. Terms of Reference
- Section III. Scorecard for Applicants
- Section IV. Standard Form of Contract

The Proposals must be delivered by mail to IOM through hcmc@iom.int on or *before 23:59 Indochina Time on 6 March 2023*. No late proposal shall be accepted.

Women-owned companies are encouraged to bid. Preference will be given to equally technically qualified women-owned companies.

IOM reserves the right to accept or reject any proposal and to annul the selection process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to affected Bidders.

Bids Evaluation and Awards Committee
IOM Viet Nam sub-office in Ho Chi Minh city

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Section I - Instructions to Bidders

1. Introduction

- 1.1 Only eligible bidders may submit a Technical Proposal and Financial Proposal for the services required. The proposal shall be the basis for contract negotiations and ultimately for a signed contract with the selected Consultant Firm.
- 1.2 The bidder's costs of preparing the proposal and of negotiating the contract, including visit/s to the IOM, are not reimbursable as a direct cost of the assignment.
- 1.3 Bidders shall not be hired for any assignment that would be in conflict with their prior or current obligations to other procuring entities, or that may place them in a position of not being able to carry out the assignment in the best interest of the IOM.
- 1.4 IOM is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to contract award, without thereby incurring any liability to the Bidder.
- 1.5 IOM shall provide at no cost to the bidder the necessary inputs and facilities, and assist the bidder in obtaining licenses and permits needed to carry out the services and make available relevant project data and report (see Section II. Terms of reference).

2. Corrupt, Fraudulent, and Coercive Practices

- 2.1 IOM Policy requires that all IOM Staff, bidders, manufacturers, suppliers or distributors, observe the highest standard of ethics during the procurement and execution of all contracts. IOM shall reject any proposal put forward by bidders, or where applicable, terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. In pursuance of this policy, IOM defines for purposes of this paragraph the terms set forth below as follows:
 - Corrupt practice means the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of the Procuring/Contracting Entity in the procurement process or in contract execution;
 - Fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Procuring/Contracting Entity in the procurement process or the execution of a contract, to obtain a financial gain or other benefit to avoid an obligation;
 - Collusive practice is an undisclosed arrangement between two or more bidders designed to artificially alter the results of the tender procedure to obtain a financial gain or other benefit;
 - Coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities in a procurement process, or affect the execution of a contract

3. Conflict of Interest

3.1 All bidders found to have conflicting interests shall be disqualified to participate in the procurement at hand. A bidder may be considered to have conflicting interest under any of the circumstances set forth below:

- A Bidder has controlling shareholders in common with another Bidder;
- A Bidder receives or has received any direct or indirect subsidy from another Bidder;
- A Bidder has the same representative as that of another Bidder for purposes of this bid;
- A Bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the Bid of another or influence the decisions of the Mission/procuring Entity regarding this bidding process;
- A Bidder submits more than one bid in this bidding process;
- A Bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are subject of the bid.

4. Clarifications and Amendments to RFP Documents

- 4.1 At any time before the submission of the proposals, IOM may, for any reason, whether at its own initiative or in response to a clarification amend the RFP. Any amendment made will be made available to all short-listed Service Providers/ Consulting Firms who have acknowledged the Letter of Invitation.
- 4.2. Service Providers/ Consulting Firms may request for clarification(s) on any part of the RFP. The request must be sent in writing or by standard electronic means and submitted to IOM at the address indicated in the invitation at least *five (5) calendar days* before the set deadline for the submission and receipt of Proposals . IOM will respond in writing or by standard electronic means to the said request and this will be made available to all those who acknowledged the Letter of Invitation without identifying the source of the inquiry.

5. Preparation of the Proposal

- 5.1 A Bidder Proposal shall have two (2) components:
- a) the Technical Proposal, and
 - b) the Financial Proposal.
- 5.2 The Proposal, and all related correspondence exchanged by the bidders and IOM, shall be in *English*. All reports prepared by the contracted bidder shall be in *English*.
- 5.3 The Bidders are expected to examine in detail the documents constituting this Request for Proposal (RFP). Material deficiencies in providing the information requested may result in rejection of a proposal.

6. Technical Proposal

6.1 When preparing the Technical Proposal, Bidders must give particular attention to the following:

- a) If a Bidder deems that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other consultants or entities in a joint venture or sub-consultancy, as appropriate. Bidders may associate with the other consultants invited for this assignment or to enter into a joint venture with consultants not invited, only with the approval of IOM. In case of a joint venture, all partners shall be jointly and severally liable and shall indicate who will act as the leader of the joint venture.¹
- b) Proposed professional staff must, at a minimum, have the experience of at least *seven (7) years*, preferably working under conditions similar to those prevailing in the country of the assignment.

6.2 The Technical Proposal shall provide the following information:

- a) A brief description of the Service Providers/ Consulting Firms organization and an outline of recent experience on assignments of a similar nature.
- b) An understanding of the assignment, description of the approach and methodology to design the Theory of Change
- c) Confirmation of workplan or suggested alternative in line with indicative workplan set out in the Terms of Reference
- d) Detail of suggested team members if any and specific role in the evaluation
- e) Latest CVs for each suggested team member; Key information should include number of years working for the firm and degree of responsibility held in various assignments during the last seven years.

6.3 The technical proposal shall not include any financial information.

7. Financial Proposal

7.1 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the RFP.

7.2 The Financial proposal shall include all costs associated with the assignment. If appropriate, these costs should be broken down by activity. All items and activities described in the Technical proposal must be priced separately; activities and items in the Technical Proposal but not priced shall be assumed to be included in the prices of other activities or items.

7.3. Bidders shall express the price of their services in *USD*.

¹ This clause shall be included/revised as deemed necessary

- 7.4 The Financial Proposal shall be valid for *60 calendar days*. During this period, the Bidder is expected to keep available the professional staff for the assignment². IOM will make its best effort to complete negotiations and determine the award within the validity period. If IOM wishes to extend the validity period of the proposals, the Bidder has the right not to extend the validity of the proposals.

8. Submission, Receipt, and Opening of Proposals

- 8.1 Bidders may only submit one proposal. If a Bidder submits or participates in more than one proposal such proposal shall be disqualified.
- 8.2 The original Proposal (both Technical and Financial Proposals) shall be prepared in PDF format.
- 8.3 Proposals must be received by IOM at the place, date and time indicated in the invitation to submit proposal or any new place and date established by IOM. Any Proposal submitted by the bidder after the deadline for receipt of Proposals prescribed by IOM shall be declared “Late,” and shall not be considered by IOM.

9. Evaluation of Proposals

- 9.1 IOM will confirm receipt of proposals and if Bidders does not receive confirmation, then they should contact IOM to ensure that their proposal was received and accepted.
- 9.2 After the Proposals have been submitted, the Bidders that have submitted their Proposals are prohibited from making any kind of communication with IOM staff involved in the RFP. Any effort by the Bidders to influence IOM in the examination, evaluation, ranking of Proposal, and recommendation for the award of contract may result in the rejection of the Bidders Proposal.
- 9.3 Clarifications may be requested from IOM in writing during the evaluation process of proposals and Bidders are expected to provide a response within three (3) working days

10. Evaluation of Technical and Financial Proposals

- 10.1 The entire evaluation process, including the submission of the results and approval by the approving authority, shall be completed in not more than sixty (60) calendar day after the deadline for receipt of proposals.
- 10.2 IOM shall evaluate the Proposals on the basis of their responsiveness to the Terms of Reference, compliance to the requirements of the RFP and by using the evaluation scorecard (Section III). Financial proposals should be aligned with the current market rates. Each responsive proposal shall be given a score based on the

² For this purpose, the Mission may have the option to require short-listed Consultants a bid security.

score card. The highest scored proposals (3-5) will be considered as part of the shortlist.

- 10.3 A proposal shall be rejected at this stage if it does not respond to important aspects of the TOR.

11. Negotiations

- 11.1 The aim of the negotiation is to reach agreement on all points and sign a contract. The expected date and address for contract negotiation is *10 March 2023 at IOM Viet Nam sub-office in Ho Chi Minh city, 1B Pham Ngoc Thach, District 1, HCMC, Viet Nam.*
- 11.2 Negotiation will include: a) discussion and clarification of the Terms of Reference (TOR) and Scope of Services; b) Discussion and finalization of the methodology and work program proposed by the Bidder; c) Consideration of appropriateness of qualifications and pertinent compensation, number of man-months and the personnel to be assigned to the job, and schedule of activities (manning schedule); d) Discussion on the services, facilities and data, if any, to be provided by IOM; e) Discussion on the financial proposal submitted by the Bidder; and f) Provisions of the contract.
- 11.3 The financial negotiations will include clarification on the tax liability and the manner in which it will be reflected in the contract and will reflect the agreed technical modifications (if any) in the cost of the services. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates.
- 11.4 Having selected the Bidder on the basis of, among other things, an evaluation of proposed key professional staff, IOM expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, IOM shall require assurances that the experts shall be actually available. IOM will not consider substitutions during contract negotiation unless both parties agree that the undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that staff were referred in their proposal without confirming their availability the Bidder may be disqualified. Any proposed substitution shall have equivalent or better qualifications and experience than the original candidate.
- 11.5 All agreement in the negotiation will then be incorporated in the description of services and form part of the Contract.
- 11.6 The negotiations shall conclude with a review of the draft form of the Contract which forms part of this RFP (Section IV). If negotiations fail, IOM shall invite the second ranked Bidder to negotiate a contract. If negotiations still fail, the IOM shall repeat the process for the next-in-rank Bidders until the negotiation is successfully completed.

12. Award of Contract

12.1 The contract shall be awarded, through a notice of award, following negotiations and subsequent post-qualification to the Bidder with the Highest Rated Responsive Proposal within the available budget. Thereafter, the IOM shall promptly notify other Bidders on the shortlist that they were unsuccessful.

12.2 The Bidder is expected to commence the assignment on *15 March 2023*

13. Confidentiality

13.1 Information relating to the evaluation of proposals and recommendations concerning awards shall not be disclosed to the Bidder who submitted Proposals or to other persons not officially concerned with the process. The undue use by any Bidder of confidential information related to the process may result in the rejection of its Proposal and may be subject to the provisions of IOM's anti-fraud and corruption policy.

Section II - Terms of Reference

DEVELOPMENT OF THE THEORY OF CHANGE

Migration, Business and Human Rights (MBHR) Asia programme

Commissioned by: IOM Viet Nam Mission Office

Managed by: Elodie Jacoby, Monitoring, Evaluation, Accountability and Learning Officer, CREST, IOM Viet Nam

1. Background

Established in 1951, the International Organization for Migration (IOM) is the leading intergovernmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants.

The private sector is increasingly working towards making their supply chains exploitation-free, in line with the UN Guiding Principles on Business and Human Rights (UNGPs). In 2017, IOM launched the Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) programme which aimed to realize the potential of businesses to uphold the human and labour rights of migrant workers in their operations and supply chains to achieve the [United Nations \(UN\) Sustainable Development Goals](#) (SDG) (particularly targets 8.7 and 10.7) and the [Global Compact for Migration](#) (GCM). In 2018, IOM published a [multi-stakeholder theory of change for CREST](#) which was drafted in consultation with multiple stakeholders including IOM, UN agencies, private sector representatives and CSOs. The theory of change provided a representation of the ecosystem of the time and conveyed a problem analysis of governance gaps and structural barriers to the protection of migrant workers during recruitment and employment, outlining roles for governments, private sector buyers, employers, recruiters, civil society and international organizations. It was a useful diagnostic for the “state of play” at that time, with indications of what tangible policy, procedural, behavioural and attitudinal changes needed to be made in order to safeguard the rights of migrant workers in supply chains. In the same year, IOM launched the CREST Fashion programme aimed at upholding the rights of migrant workers, especially women, in apparel, textile, footwear and accessories industries. CREST and CREST Fashion combined were crucial in addressing priorities identified in the CREST TOC, with CREST initially focusing on private sector engagement, and CREST Fashion complementing this engagement with more policy-oriented work and direct migrant worker support.

In the subsequent years, IOM’s private sector portfolio has evolved and grown to encompass partnerships and projects across a range of economic sectors including electronics, agriculture, food and beverage, health, apparel and footwear, fishing and hospitality. Learnings from these projects, including CREST and CREST Fashion laid foundations for structuring IOM’s work in line with the three pillars of the UNGPs: “Protect, Respect and Remedy”.

Following on the success of these projects, IOM is launching an overarching Migration, Business and Human Rights programme (MBHR) in Asia which reflects the evolution from

partnerships with single companies towards working with industries, governments and civil society to enhance commitments and collaboration to mainstream migration in the business and human rights agenda as outlined by the UNGPs. IOM's MBHR Asia programme will strive to ensure that migrants are not left behind in the implementation of the "Protect, Respect and Remedy" framework of the UNGPs by governments and business:

a. Protect: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

b. Respect: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

c. Remedy: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

2. Scope of services

IOM is looking for a service provider to develop a theory of change for its MBHR Asia programming which is aligned with the three pillars of the UNGPs and all stages of the labour migration process. The theory of change would also provide strategic support in the implementation of the Global Compact for Migration and the Sustainable Development Goals. In addition, this strategic document would help ensure that IOM's activities are more strategically aligned with opportunities and challenges in the Asia-Pacific region. The proposed work will include:

- A document review of IOM's internal documents relevant to the MBHR in Asia portfolio;³
- A document review of external documents to ensure the theory of change reflects regional commitments and priorities including the UNGPs and 10-year Roadmap for the Next Decade of UNGPs, GCM SDGs, Bali Process, Colombo Process, Abu Dhabi Dialogue, Association of Southeast Asian Nations (ASEAN), Asian Development Bank (ADB) as well as partnerships and workplans with UN agencies;
- Interviews with key focal points from MBHR in Asia Taskforce and IOM's Labour Mobility and Social Inclusion (LMI) unit and representatives from key stakeholders such as UN agencies, CSOs and the private sector (maximum 8 interviews);
- Drafting of the MBHR Asia theory of change;
- Validation presentation with the MBHR Asia Taskforce;
- Final presentation to the MBHR Asia Taskforce.

³ [*IOM Private Sector Partnership Strategy 2023-2027, IOM Gender Equality Policy 2015-2019, IOM Standing Committee On Programmes And Finance: sustaining and scaling private sector engagement to protect migrant workers, IRIS Theory of Change, Global feasibility study on institutionalizing and scaling IOM's partnerships with the private sector \(internal\).*](#)

3. Deliverables

Deliverable 1: The MBHR Asia theory of change (maximum 10 pages) and include the following components:

- A situation analysis of the current state of play, including macro and micro analysis as well as internal and external factors;
- A succinct narrative and visual representation of IOM's MBHR Asia theory of change (output, outcome and objective level) aligned with the 3 pillars of the UNGPs, indicating assumptions as well as opportunities for intervention by IOM and in collaboration with its stakeholders (government, civil society, UN agencies and private sector partners);
- A set of outcome and output indicators under each UNGP Pillar to measure progress towards achieving the MBHR in Asia's objectives

Deliverable 1 would be finalized through a validation presentation and final presentation workshop.

Deliverable 2: Talking points and a PowerPoint presentation aimed at socializing the theory of change to private sector representatives (maximum 15 slides).

4. Time schedule

The assignment for the final theory of change is expected to complete by 07 April 2023. The work will be spread over 15 working days.

5. Budget

IOM expects the vendor to submit an all-inclusive budget for the assignment based on the their proposed methodology.

Section III – Scorecard for Applicants

Scorecard for Assessment of Consulting Firms for Development of the Theory of Change
0-5 (0 lowest to 5 highest) guide for scoring below

Criteria	Value	Score	Total
Technical (if a bid was submitted)			
The proposal indicates a comprehensive understanding of the assignment	5		
The proposed methodology and workplan is sufficient to meet the purpose of the assignment.	5		
Development team			
The consulting firm has specific technical knowledge of and is familiar with the methods and approaches needed to conduct the assignment.	5		
The competencies required for this assignment are met through members of the team	5		
The proposed development team is appropriate for the purpose and scope of the assignment.	5		
The consulting firm has strong experience in developing TOCs of a similar nature.	5		
Budget			
The budget proposal is realistic, reflects market rates and does not exceed available funds.	5		
Other			
The sample of written work provided demonstrates strong writing and analytic skills.	5		
The consulting firm provided relevant references and the references provided were positive.	5		
The consulting firm is available within the necessary time frame.	YES/NO		
The consulting firm team member(s) has relevant language skills.	YES/NO		
The consulting firm has relevant knowledge of IOM, migration and/or the United Nations system.	5		

Section IV – Pro-forma Contract

GPSU.SF.19.20

IOM office-specific Ref. No.:	
IOM Project Code:	

SERVICE AGREEMENT
Between
the International Organization for Migration
And
[Name of the Service Provider]
On
Development of the Theory of Change for the Migration, Business and Human Rights Asia
programme

This Service Agreement is entered into by the **International Organization for Migration**, a related organization of the United Nations, acting through its Mission in *Viet Nam, 304 Kim Ma, Ba Dinh district, Hanoi, Viet Nam*, represented by *Park Mihyung, Chief of Mission*, hereinafter referred to as “**IOM**,” and *[Name of the Service Provider]*, *[Address]*, represented by *[Name, Title of the representative of the Service Provider]*, hereinafter referred to as the “**Service Provider**.” IOM and the Service Provider are also referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. Introduction and Integral Documents

1.1. The Service Provider agrees to provide IOM with *the service to develop the Theory of Change for the Migration, Business and Human Rights (MBHR) Asia programme* in accordance with the terms and conditions of this Agreement and its Annexes, if any.

1.2. The following documents form an integral part of this Agreement:

- (a) *Annex A - Bid/Quotation Form*
- (b) *Annex B - Price Schedule*
- (c) *Annex C - Delivery Schedule and Terms of Reference*
- (d) *Annex D - Accepted Notice of Award (NOA)*

In the event of conflict between the provisions of any Annex and the terms of the main body of the Agreement, the latter shall prevail.

2. Services

2.1 The Service Provider agrees to provide to the IOM the following services (the “**Services**”):

- **Deliverable 1:** Development of the MBHR Asia theory of change (maximum 10 pages) and include the following components:

- A situation analysis of the current state of play;
- A succinct narrative and visual representation of IOM's MBHR in Asia theory of change (output, outcome and objective level) aligned with the 3 pillars of the UNGPs, indicating assumptions as well as opportunities for intervention by IOM and in collaboration with its stakeholders (government, civil society, UN agencies and private sector partners);
- A set of indicators to measure progress towards achieving the MBHR in Asia's objectives and align with global measurements

Deliverable 1 would be finalized through a validation presentation and final presentation workshop.

- **Deliverable 2:** Development of talking points and a PowerPoint presentation aimed at socializing the theory of change to private sector representatives (maximum 15 slides).
- 2.2 The Service Provider shall commence the provision of Services from *15 March 2023* and fully and satisfactorily complete them by *07 April 2023*.
- 2.3 The Service Provider agrees to provide the Services required under this Agreement in strict accordance with the specifications of this Article and any attached Annexes.

3. The Service Fee

- 3.1 In full consideration for the complete performance of the Services in accordance with the terms of the Agreement, the all-inclusive total price for the Services under this Agreement shall be [currency code] [amount in numbers] ([amount in words]) (the "Service Fee").
- 3.2 The Service Provider shall invoice IOM upon completion of all the Services. The invoice shall include: services provided.
- 3.3 The Service Fee shall become due 30 (thirty) days after IOM's receipt and approval of the invoice.
- 3.4 Payment shall be made in USD by bank transfer to the following bank account:
- Bank Name:
- Bank Branch:
- Bank Account Name:
- Bank Account Number:
- Swift Code:
- IBAN Number:
- 3.5 The Service Provider shall be responsible for the payment of all taxes, duties, levies and charges assessed on the Service Provider in connection with this Agreement.
- 3.6 IOM shall be entitled, without prejudice to any other rights or remedies it may have, to withhold payment of part or all of the Service Fee until the Service Provider has completed to the satisfaction of IOM the Services to which those payments relate

4. Warranties

- 4.1 The Service Provider warrants that:

- (a) It is a company financially sound and duly licensed, with adequate human resources, equipment, competence, expertise and skills necessary to provide fully and satisfactorily, within the stipulated completion period, all the Services in accordance with this Agreement;
- (b) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
- (c) In all circumstances it shall act in the best interests of IOM;
- (d) No official of IOM or any third party has received from, will be offered by, or will receive from the Service Provider any direct or indirect benefit arising from the Agreement or award thereof;
- (e) It has not misrepresented or concealed any material facts in the procurement of this Agreement;
- (f) The Service Provider, its staff or shareholders have not previously been declared by IOM ineligible to be awarded agreements by IOM;
- (g) It has or shall take out relevant insurance coverage for the period the Services are provided under this Agreement;
- (h) The Price specified in this Agreement shall constitute the sole remuneration in connection with this Agreement. The Service Provider 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 Service Provider shall ensure that any subcontractors, as well as the 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 Service Provider 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 Service Provider 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 terrorism legislation. If, during the term of this Agreement, the Service Provider 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 Service Provider shall ensure that this requirement is included in all subcontracts.

4.2 The Service Provider 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 Service Provider

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.

4.3 The Service Provider 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.

4.4 The Service Provider expressly acknowledges and agrees that breach by the Service Provider, or by any of the Service Provider's employees, contractors, subcontractors or agents, of any provision contained in Articles 4.1, 4.2 or 4.3 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 Service Provider all losses suffered by IOM in connection with such breach.

5. Assignment and Subcontracting

- 5.1 The Service Provider shall not assign or subcontract the activities under this Agreement in whole or in part, unless agreed in writing in advance by IOM. Any subcontract entered into by the Service Provider without approval in writing by IOM may be cause for termination of the Agreement.
- 5.2 Notwithstanding such written approval from IOM, the Service Provider shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between any subcontractor and IOM. The Service Provider 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 Service Provider remains liable as a primary obligor under this Agreement, and it shall be directly responsible to IOM for any faulty performance under any subcontract. The subcontractor shall have no cause of action against IOM for any breach of the subcontract.

6. Delays, Defaults and Force Majeure

- 6.1 Time is of the essence in the performance of this Agreement. If the Service Provider fails to provide the Services within the times agreed to in the Agreement, IOM shall, without prejudice to other remedies under this Agreement, be entitled to deduct liquidated damages for delay. The amount of such liquidated damages shall be 0.1% of the value of the total Service Fee per day or part thereof up to a maximum of 10% of the Service Fee. IOM shall have the right to deduct such amount from the Service Provider's outstanding invoices, if any. Such liquidated damages shall only be applied when delay is caused solely by the default of the Service Provider.

Acceptance of Services delivered late shall not be deemed a waiver of IOM's rights to hold the Service Provider liable for any loss and/or damage resulting therefrom, nor shall it act as a modification of the Service provider's obligation to perform further Services in accordance with the Agreement.

- 6.2 In case of failure by the Service Provider materially to perform under the terms and conditions of this Agreement, IOM may, after giving the Service Provider 30 days' written notice to perform and without prejudice to any other rights or remedies, terminate the Agreement with immediate effect without liability.
- 6.3 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.
- 6.4 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.
- 6.5 IOM shall be entitled without liability to suspend or terminate the Agreement if the Service Provider 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 17 (Termination) shall apply.

7. Independent Contractor

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

8. Audit

The Service Provider agrees to maintain financial records, supporting documents, statistical records and all other records relevant to the Services in accordance with generally accepted accounting principles to sufficiently substantiate all direct and indirect costs of whatever nature involving transactions related to the provision of Services under this Agreement. The Service Provider shall make all such records available to IOM or IOM's designated representative at all reasonable times until the expiration of 7 (seven) years from the date of final payment, for inspection, audit, or reproduction. On request, employees of the Service Provider shall be available for interview.

9. Confidentiality

- 9.1 All information which comes into the Service Provider's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Service Provider shall not communicate such information to any third party without the prior written approval of IOM. The Service Provider shall comply with IOM Data Protection Principles in the event that it collects, receives, uses, transfers, stores or otherwise processes any personal data in the performance of this Agreement. These obligations shall survive the expiration or termination of this Agreement.
- 9.2 Notwithstanding the previous paragraph, IOM may disclose information related to this Agreement, such as the name of the Service Provider 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 Service Provider and the amount of the contract/project to the extent as required by IOM's donors 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.

10. 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.

11. 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: Elodie Jacoby, Monitoring, Evaluation, Accountability & Learning Programme Officer

IOM Sub-office, 1B Pham Ngoc Thach, Ben Nghe ward, District 1, HCMC, Viet Nam

Email: ejacoby@iom.int

[Full name of the Service Provider]

Attn: *[Name of the Service Provider's contact person]*

[Service Provider's address]

Email: *[Service Provider's email address]*

12. Dispute resolution

- 12.1. 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
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.

13. Use of IOM Name

The Service Provider shall not be entitled to use the name, abbreviation or emblem of IOM without IOM's prior written authorisation. The Service Provider 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 6ter of the Paris Convention for the Protection of Industrial Property, revised in Stockholm in 1967 (828 UNTS 305 (1972)).

14. Status of IOM

Nothing in or relating to the 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.

15. Indemnity

The Service Provider 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 Service Provider or its employees, officers, agents or subcontractors, in the performance

of this Agreement. IOM shall promptly notify the Service Provider of any written claim, loss, or demand for which the Service Provider is responsible under this clause. This indemnity shall survive the expiration or termination of this Agreement.

16. Waiver

Failure by either Party to insist in any one or more instances on a strict performance of any of the provisions of this Agreement shall not constitute a waiver or relinquishment of the right to enforce the provisions of this Agreement in future instances, but this right shall continue and remain in full force and effect.

17. Termination

17.1 IOM may at any time suspend or terminate this Agreement, in whole or in part, with immediate effect, by providing written notice to the Service Provider, in any case where the mandate of IOM applicable to the performance of the Agreement or the funding of IOM applicable to the Agreement is reduced or terminated. In addition, IOM may suspend or terminate the Agreement upon thirty (30) days' written notice without having to provide any justification.

17.2 In the event of termination of this Agreement, IOM will only pay for the Services completed in accordance with this Agreement, unless otherwise agreed in writing by the Parties. The Service Provider shall return to IOM any amounts paid in advance within 7 (seven) days from the notice of termination.

17.3 In the event of any termination of the Agreement, upon receipt of notice of termination, the Service Provider shall take immediate steps to bring the performance of any obligations under the Agreement to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum, place no further subcontracts or orders for materials, services, or facilities, and terminate all subcontracts or orders to the extent they relate to the portion of the Agreement. Upon termination, the Service Provider shall waive any claims for damages including loss of anticipated profits on account thereof.

17.4 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 Service Provider in writing when the suspension is lifted and may modify the completion date. The Service Provider shall not be entitled to claim or receive any Service Fee or costs incurred during the period of suspension of this Agreement.

18. 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.

19. Entire Agreement

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

20. Final clauses

20.1 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 17.

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

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

For and on behalf of

The International Organization

for Migration

For and on behalf of

[Full name of the Service Provider]

Signature

Signature

Name: Park Mihyung

Position: Chief of Mission

Date:

Place: Hanoi

Name

Position

Date

Place