



ФОНД „УБЕЖИЩЕ, МИГРАЦИЯ И ИНТЕГРАЦИЯ“



Този документ е създаден с финансовата подкрепа на Фонд „Убежище, миграция и интеграция“, съфинансиран от Европейския съюз. Цялата отговорност за съдържанието на документа се носи от Международна организация по миграция и при никакви обстоятелства не може да се приема, че този документ отразява официалното становище на Европейския съюз и Отговорния орган.

GPSU.SF.19.20

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

SERVICE AGREEMENT
Between
the International Organization for Migration
And
.....

On
“Broadcasting of three video clips on national television” under project BG65AMNP001-2.004.0007-C01” Raising awareness of Bulgarian society and migrant communities in Bulgaria” under contract № 812108-77 / 11.10.2017 funded by the National Program of Bulgaria for support from the Asylum, Migration and Integration Fund 2014-2020

This Service Agreement is entered into by the **International Organization for Migration**, Mission in Sofia, Bulgaria, address: 77 Tsar Asen Str., represented by *Radoslav Stamenkov, Head of Office*, hereinafter referred to as “**IOM,**” and, Reg. No (EIK), address:, represented by, 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

The Service Provider agrees to provide IOM with broadcasting of three videos on national television media in Bulgaria in three information campaigns with a minimum of 18 broadcasts each in accordance with the terms and conditions of this Agreement and its Annexes.

The following documents form an integral part of this Agreement:

- (a) **Annex A** - Submitted Bid/Quotation Form
- (b) **Annex B**- Procurement Procedure;
- (c) **Annex C** - Terms of reference; and
- (d) **Annex D** - AMIF General Conditions.

2. Services Supplied

2.1 The Service Provider agrees to provide to the IOM the following services in strict accordance with the specifications, and at the price stated for each item as outlined in the Bid/Quotation Form under Separate Position (Annex A) (the “**Services**”).

№	Service	WBS	Quan	Price
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- 2.2 The Service Provider shall commence the provision of Services in the period of 4 (four) months from the date of signature of this Agreement.
- 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. Charges and Payments

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 **BGN** (the “**Service Fee**”).

3.2 The Service Provider shall invoice IOM upon completion of all the Services. The invoice shall include: number of broadcastings and the following text “The cost is under the project BG65AMNP001-2.004.0007 "Raising the awareness of Bulgarian society and migrant communities in Bulgaria" under contract № 812108-77/11.10.2017.

3.3. Payments shall become due on a step by step basis after the provision of the broadcasting services within 20 (twenty) working days after IOM’s receipt and approval of the invoice and the acceptance protocol. Payment shall be made in BGN by bank transfer to the following bank account:

Bank:
IBAN:
BIC code:

3.4 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.

3.5 IOM shall be entitled, without derogating from any other right it may have, to defer 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.

3.6 In the event of IOM deems the performance of the Services unsatisfactory or in case of failure to perform any portion of the Services, the Service Provider shall be liable for liquidated damages in the amount equivalent to 3% (three percent) of the Service Fee under Article 3.1.

3.7 In the event of delay in the performance of any portion of the Services, no portion of the Service fee will be paid by IOM, regardless of the reason for the untimely provision of Services.

3.8 In the event of any irregularities attributed to the Service Provider on account of actions or omissions committed in the performance of this Agreement by the relevant authority, the Service Provider shall reimburse to IOM all amounts that IOM paid prior to the time when such irregularity is committed.



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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



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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



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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 Agreement or any work under this Agreement in part or all, unless agreed upon in writing in advance by IOM and provided the subcontractors are listed in the Bid/Quotation Form (Annex A). In this case, the Service Provider is due to present to IOM a copy of the agreement with the subcontractor within 7 days of its signing. Any subcontract entered into by the Service Provider without approval in writing by IOM may be cause for termination of the Agreement.
- 5.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Agreement may be assigned to a subcontractor. Service Provider may only



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assign specific jobs and portions of the Agreement to the subcontractor/s listed in the Bid/Quotation Form under Separate Position (Annex A). In this case, Service Provider shall ensure that the subcontractor comply with Articles 1, 3, 4, 5, 6, 7 and 14.4 to 14.6 of the AMIF General Conditions (Annex D).

- 5.3 Notwithstanding the said written approval in clause 5.2 of this Article, the Service Provider 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 Service Provider 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 subcontract.

6. Delays, Defaults And Force Majeure

- 6.1 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.

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 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



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The Service Provider shall perform all Services under this Agreement as an independent contractor and not as an employee, partner, or agent of IOM.

8. Audit

Subject to receipt of reasonable notice, the Service Provider undertakes to provide the opportunity to the Responsible Authority, the National Audit Authorities of Bulgaria, the European Commission, the European Anti-Fraud Office, the European Court of Auditors, Directorate for Protection of the financial interests of the European Union – MoI, and the external auditors to conduct verifications on place of the implementation of the project and to conduct a full audit, if necessary, on the basis of the supporting documents for the reported, accounting documents and any other documents, relevant to the financing of the project. For this purpose, the contractor undertakes to store all documents relating to the procedure until 4 (four) years after the final payment reporting under the Grant Agreement from the Responsible Authority to the European Commission and until the finalization of eventual administrative, investigative or court proceedings. All audit costs under this Article shall be shouldered by the Responsible Authority, and other offices and entities undertaking the audit.

The Service Provider shall store and provide any information required by the Beneficiary, National and European Relevant Authorities and other persons and bodies entitled to inspection or audit to provide information on the implementation of this Agreement until 4 (four) years after the final payment reporting under the Grant Agreement from the Responsible Authority to the European Commission and until the finalization of eventual administrative, investigative or court proceedings.

The Service Provider is required to maintain accurate and regular records and accounting records reflecting the performance of this Agreement by operating an appropriate system of registration of the documentation. The accounts and the expense relating to the performance of this Agreement must comply with the requirements of applicable legislation and be subject to clear unification and verification.

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 should not communicate such information to any third party without the prior written approval of IOM. The Service Provider is obliged to keep the confidentiality of all the confidentially provided documents, information or other materials, within the minimum period provided [in accordance to Regulation for implementation 2015/840 of the European Commission].

9.2 The Service Provider 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.

9.3 These obligations shall survive the expiration or termination of this Agreement.



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9.4 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 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.

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: Radoslav Stamenkov
Sofia, Bulgaria, 77 Tsar Asen Str.
Email: iomsofia@iom.int

Attn:
Address:
Email:

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.



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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, Abbreviation and Emblem

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 unauthorised 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 this Agreement shall be deemed a waiver, express or implied of the privileges and immunities enjoyed by IOM as an intergovernmental organization.

15. Indemnities

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



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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. Entirety

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. Donor requirements

- a. The visual identification of the documents prepared in connection to the implementation of the contract should comply with Commission Implementing Regulation (EU) №1049/2014 of 30



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July 2014 on technical characteristics of information and publicity measures, as well as Commission Implementing Regulation (EU) №1048/2014 of 30 July 2014 laying down information and publicity measures for the public and information measures for beneficiaries.

- b. The Service Provider shall ensure that all requirements under Article 1.7 of the AMIF General Conditions (Annex D), in relation to Articles 1, 3, 4, 5, 6, 14.4 to 14.6 thereof are complied with.

21. Final clauses

21.1 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.

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

The present Agreement has been compiled in two copies in English and two copies in Bulgarian - one in each language for each party. In case of any discrepancies between the English and the Bulgarian versions, the English version shall prevail.

For and on behalf of

The International Organization
for Migration

For and on behalf of

Signature

Radoslav Stamenkov

Head of Office

Date

Sofia

Signature

Manager

Date