

Annex 3

General terms and conditions for consultancy contracts

Version 1.0

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These general terms and conditions apply to all consultants in all categories.

1. Legal status

- 1.1. Consultants serve in their individual capacity and not as representatives of a government or any other authority external to the International Organization for Migration (IOM). They should not be regarded, for any purposes, as “staff members” under the Unified Staff Regulations and Staff Rules or local Staff Rules or as “officials” for the purposes of privileges and immunities.
- 1.2. Accordingly, nothing within or relating to the consultancy contract shall establish the relationship of employer and employee, or principal and agent, between IOM and the Consultant, nor may the consultant have authority to make any commitments or representations that would bind IOM. Where IOM deems it necessary and appropriate, a consultant may be afforded the status of “expert on mission” and where provided for in the agreements with the relevant government.

2. Standards of conduct

- 2.1. While fulfilling the contractual obligations, the consultant shall comply with the standards of conduct set forth in the following instructions and policies:
 - IN/15: IOM Standards of Conduct
 - IN/90: Policy for a Respectful Working Environment
 - IN/123: IOM’s ICT Policies and Guidelines
 - IN/138: IOM’s Data Protection Principles
 - IN/142: Policy on Reporting Irregular Practices, Wrongdoing and Misconduct
 - IN/161: Relatives in the Workplace
 - IN/202: Mandatory Security Requirements for IOM Personnel
 - IN/234: Policies and Procedures for Preventing and Responding to Sexual Exploitation and Abuse

Consultants shall comply with any future instructions or revisions issued that apply to consultants.

- 2.2. By signing the individual consultancy contract, the consultant acknowledges that breach of any of the provisions herein shall constitute a breach of an essential term of the consultancy contract and, in addition to any other legal rights or remedies available to IOM, shall be grounds for termination of the consultancy

contract. In addition, nothing herein shall limit the right of IOM to refer any alleged breach of the foregoing standards of conduct to the relevant national authorities for appropriate legal action.

3. Title rights, copyrights, patents and other proprietary rights

- 3.1 Title to any equipment and supplies supplied by IOM to the consultant for the performance of any obligations under the consultancy contract shall rest with IOM, and any such equipment shall be returned to IOM at the conclusion of the consultancy contract, when no longer needed by the consultant, or when requested by IOM. When returned to IOM, such equipment should be in the same condition as when delivered to the consultant, subject to normal wear and tear, and the consultant shall be liable to compensate IOM for any damage or degradation of the equipment beyond normal wear and tear.
- 3.2 IOM shall be entitled to all intellectual property and other proprietary rights (including but not limited to patents, copyrights and trademarks) concerning products, processes, inventions, ideas, know-how or documents and other materials that the consultant has developed for IOM under the consultancy contract and that bear a direct relation to, or are produced, prepared or collected in consequence of, or during the course of, the performance of the consultancy contract.

4. Confidential nature of documents and information

- 4.1 All information and data the consultant receives for the performance of the consultancy contract shall be treated by the consultant as confidential and may only be used by the consultant for the performance of the contract. The consultant may not disclose such confidential information to a third party unless with IOM's express prior written approval.
- 4.2 The consultant shall not be precluded from disclosing information that is (i) publicly available, (ii) obtained by the consultant from a third party without any obligation of confidentiality, or (iii) is previously known by the consultant, or is developed at any time by the consultant completely independently of IOM.
- 4.3 Unless expressly authorized by the hiring manager in the department, office or mission concerned, consultants may not communicate at any time to the media, any institution, person, government or other external authority any information that has not been made public and that has become known to them by reason of their association with IOM. Consultants may not use such information without the prior written authorization of the Organization..
- 4.4 These obligations and restrictions of confidentiality shall be effective during the term of the consultancy contract, including any extension thereof, and, unless otherwise provided in the consultancy contract, shall remain effective following any termination or expiration of the contract.

5. Travel and health

- 5.1. If IOM determines that the consultant is required to travel beyond commuting distance from the consultant's usual place of residence to fulfil their functions, such travel shall be at the expense of IOM, unless otherwise specified in the consultancy contract. When travel is authorized for consultants, it will normally be by air and by the most direct and economical route, in accordance with the provisions of IN/6.
- 5.2. During the consultancy period, including while travelling at the expense of IOM, the consultant shall be covered for occupational accidents or illnesses by the Compensation Plan (CP), as detailed in IN/84 Rev. 1 and IN/95 "Compensation Plan".

- 5.3. The conditions and requirements regarding health insurance for non-occupational accidents and/or illnesses are detailed in IN/84 Rev. 1.

6. Prohibition on assignment and subcontracting

- 6.1. The consultant may not assign, delegate, transfer, pledge or make any other disposition of the consultancy contract, of any part thereof, or any of the rights, claims or obligations under the consultancy contract. Any attempt to do so shall be null and void, except with the prior written authorization of the Organization. The terms or conditions of any supplemental undertakings, licences or other forms of agreement concerning any goods or services to be provided under the consultancy contract shall not be valid and enforceable against IOM or in any way constitute an agreement by IOM thereto, unless any such undertakings, licences or other forms of agreement are the subject of a valid written undertaking by IOM.
- 6.2. The consultant may not assign, sub-contract, transfer, pledge or make other disposition of the consultancy contract or any part thereof, or any of the Consultant's rights, claims or obligations under the consultancy contract except with the prior written consent of the Organization, in conjunction with Human Resources Management (HRM). IOM may, at its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefore, and such rejection shall not entitle the consultant to claim any delays in the performance or to assert any excuses for the non-performance of any of their obligations under the consultancy contract. In the event that written consent is granted, the consultant shall be solely responsible for all services and obligations performed by their subcontractor, and IOM will not have any liability, financial or otherwise, to the subcontractor. The terms of any subcontract shall be subject to and shall be construed in a manner that is fully in accordance with all of the terms and conditions of the consultancy contract between the consultant and IOM.

7. Modification

- 7.1. No modification or change in the consultancy contract shall be valid and enforceable against IOM unless provided through a valid written amendment to the consultancy contract signed by the consultant and an authorized representative of IOM.

8. Use of the name, emblem or official seal of IOM

- 8.1. With the exception of reasonable representations for work purposes (e.g. for a Curriculum Vitae or Resume), the consultant shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that they have a contractual relationship with IOM; nor shall the consultant in any manner whatsoever use the name, emblem or official seal of IOM or any abbreviation of the name of IOM in connection with their business or otherwise without the prior written permission of IOM.

9. Indemnification

- 9.1. The consultant shall indemnify, defend, and hold and save harmless IOM and its officials, agents and employees from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including but not limited to all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from or relating to (a) allegations or claims that the use by IOM of any patented device, any copyrighted material or any other goods or services provided to IOM for its use under the terms of the consultancy contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property rights of any third Party; or (b) any acts or omissions of the consultant or of any subcontractor or anyone directly or indirectly employed by them in

the performance of the consultancy contract that give rise to legal liability to anyone not a Party to the consultancy contract.

10. Insurance

- 10.1. The consultant shall pay IOM promptly for all loss, destruction or damage to the property of IOM caused by the consultant, subcontractor or anyone directly or indirectly employed by them in the performance of the consultancy contract. The consultant shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of their obligations under the consultancy contract, as well as for arranging, at the consultant's sole expense, such life insurance and other forms of insurance as the consultant may consider to be appropriate to cover the period during which the consultant provides services under the consultancy contract. The consultant acknowledges and agrees that none of the insurance arrangements the consultant may make shall in any way be construed to limit the consultant's liability to IOM arising under or relating to the consultancy contract.

11. Force majeure and other changes in conditions

- 11.1. In the event of, and as soon as possible after the occurrence of any cause constituting force majeure, the consultant or IOM shall give notice and full particulars in writing to the other Party of the occurrence or cause if the consultant or IOM is thereby rendered unable, wholly or in part, to perform their obligations and meet their responsibilities under the consultancy contract. The consultant or IOM shall also notify the other Party of any other changes in condition or the occurrence of any event that interferes or threatens to interfere with their performance of the consultancy contract.
- 11.2. In the event of force majeure or other changes in condition or occurrence on the part of the consultant, not more than 15 calendar days following the provision of such notice, the consultant shall submit a statement to IOM of estimated expenditures that will likely be incurred for the duration of the change in condition or the event. Upon receipt of the notice(s) required hereunder, IOM shall take such action as it considers, at its sole discretion, to be appropriate or necessary in the circumstances, including granting the consultant a reasonable extension of time to perform any obligations under the consultancy contract.
- 11.3. In the event of force majeure or other changes in condition or occurrence on the part of IOM, not more than 15 calendar days following the provision of such notice, IOM shall submit to the consultant a reasonable extension of time to perform IOM's obligations under the consultancy contract.
- 11.4. If the consultant or IOM is rendered permanently unable, wholly or in part, by reason of force majeure to perform their obligations and meet their responsibilities under the consultancy contract, the other Party shall have the right to terminate the contract on the same terms and conditions as provided for below, under "Termination", except that the period of notice shall be five calendar days instead of any other period of notice.
- 11.5. Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the consultant. The consultant acknowledges and agrees that, with respect to any obligations under the consultancy contract that the consultant must perform in or for any areas in which IOM is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delay or failure to perform such obligations arising from or relating to harsh conditions within such areas or any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the consultancy contract.

12. Payment

- 12.1. No payment shall be made if the consultant fails to complete the tasks or outputs specified in the contract to the satisfaction of IOM. If the tasks or outputs are carried out partially, a determination shall be made as to what amount, if any, is to be paid, based on that part of the work completed, as set out in IN/84.

13. Termination

- 13.1. Either Party may terminate the consultancy contract, in whole or in part, upon giving written notice to the other Party. The notice period shall be five (5) calendar days in the case of contracts for a total period of fewer than two months and 14 calendar days in the case of contracts for a period of two months or longer. The initiation of conciliation or arbitral proceedings, as provided below, shall not be deemed to be a cause for, or otherwise to be in itself a termination of the consultancy contract.
- 13.2. No notice shall be required for the Organization if termination is due to misconduct, including failure to comply with the Organization's Official Instruction(s), or to a serious fault on the part of the Consultant.
- 13.3. In the event of termination, the Consultant shall be paid on a pro-rata basis for no more than the actual amount of work performed to the satisfaction of IOM.
- 13.4. In the event of any termination of the consultancy contract, upon receipt of notice of termination, the consultant shall, except as may be directed by IOM in the notice of termination or otherwise in writing:
- (a) take immediate steps to bring the performance of any obligations under the consultancy contract to a close in a prompt and orderly manner and, in doing so, reduce expenses to a minimum;
 - (b) refrain from undertaking any further or additional commitments under the consultancy contract as of and following the date of receipt of such notice;
 - (c) deliver all completed or partially completed plans, drawings, information, work product, and other property that, if the consultancy contract had been completed, would have been required to be furnished to IOM thereunder; and
 - (d) take any other action that may be necessary, or that IOM may direct in writing, for the protection and preservation of any property, whether tangible or intangible, related to the consultancy contract that is in the possession of the consultant and in which IOM has or may be reasonably expected to acquire an interest.

14. Non-exclusivity

- 14.1. IOM shall have no limitations on its right to services of the kind described in the consultancy contract from any other source at any time.

15. Taxation

- 15.1. Consultants are responsible for determining their tax liabilities and payment of any taxes and/or duties in accordance with local laws. IOM will have no liability for taxes, duty or other similar charges payable by the consultant regarding any amounts paid to the consultant under the contract, and does not reimburse

consultants for any taxes, duty or other contribution payable by the consultants on payments made to them by IOM.

16. Settlement of disputes

- 16.1. Any dispute, controversy or claim arising out of or in relation to the consultancy contract, including any extensions and amendments thereof, or the breach, termination or invalidity thereof, shall be reported by the Party claiming to be aggrieved within 60 days of the day such Party became aware of the matter. If the matter is not reported within 60 days, the claim shall be considered null and void. The Parties will then make efforts to settle the matter amicably by negotiation between the Parties. In the event that the dispute, controversy or claim has not been resolved by negotiation within 90 days 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 Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL) of 1980. Article 16 of the UNCITRAL Conciliation Rules does not apply. 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 toward punitive damages. The arbitral award will be final and binding. The consultancy contract as well as the arbitration agreement above shall be governed by the terms of the consultancy contract and supplemented by internationally accepted general principles of law for the issues not covered by the consultancy contract, to the exclusion of any single national system of law that would defer the consultancy contract 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.

17. Privileges and immunities

- 17.1. Nothing in or relating to the consultancy contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of IOM as an intergovernmental organization.