

## LEG-D.2. SAMPLE MODEL SUPPLY CONTRACT

IOM office-specific Ref. No.:	
IOM Project Code:	
LEG Approval Code / Checklist Code	

### AGREEMENT FOR THE RECURRING SUPPLY AND DELIVERY OF GOODS

Between

The International Organization for Migration

And

**[Name of the Other Party]**

This Agreement for the Supply and Delivery of Goods (the “**Agreement**”) is entered into by the International Organization for Migration (“IOM”) of [insert address] represented by [insert Name, Title of Chief of Mission], hereinafter referred to as “IOM,” and [Name of the Supplier] of [insert address], represented by [insert Name, Title of the representative of the Supplier], hereinafter referred to as the “**Supplier**” on [insert date]. IOM and the Supplier are also hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

#### 1. Introduction and Integral Documents

- 1.1 The Supplier agrees to provide IOM with [insert description of goods] upon request by IOM in accordance with the terms and conditions of this Agreement and its Annexes, if any, from [starting date] to [end date].
- 1.2 The following documents form an integral part of this Agreement: [add or delete as required]
  - a) **Annex A** - Bid/Quotation Form;
  - b) **Annex B** - Price Schedule;
  - c) **Annex C** - Technical Specifications;
  - d) **Annex D** – Sample Purchase Order
  - e) **Annex E** - Accepted Notice of Award (NOA); and
  - f) **Annex F** - Performance Security.

#### 2. Goods/Services Supplied

- 2.1. The Supplier agrees to supply the Goods to IOM when requested by Purchase Order (sample attached as Annex D) in the amounts outlined therein in strict accordance with the specifications, and at the price stated for each item in the Price Schedule in Annex B, in accordance with the Technical Specifications outlined in Annex C and in line with the delivery schedule outlined by each Purchase Order.
- 2.2 IOM doesn't warrant that any quantity of Goods will be purchased during the term of this Agreement.
- 2.3 In the event of any advantageous technical changes and/or downward pricing of the Supplies during the duration of this Agreement, the Supplier shall notify IOM immediately.

IOM shall consider the impact of any such event and may request an Amendment to the Agreement.

2.4 The Supplier agrees to supply the following incidental services (the “**Incidental Services**”):  
[add or delete as required]

- (a) Performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- (d) Performance, supervision, maintenance and/or repair of the supplied Goods, for a period of time agreed by the Parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) Training of IOM’s personnel, at the Supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

2.5 Nothing in this Agreement shall be interpreted as creating an exclusive relationship between the Parties for the supply and delivery of Goods.

2.6 The terms and conditions of this Agreement shall apply to all Purchase Orders issued under this Agreement. In case of discrepancy between the terms and conditions of the Purchase Order and the terms and conditions outlined in this Agreement, the terms and conditions outlined in this Agreement prevail.

2.7 The Supplier shall keep all items outlined in Annex B in stock in sufficient quantities at all times. If the stock of the Supplier is temporarily depleted, the Supplier shall inform IOM in writing when said items are expected to be back in stock.

### 3. Charges and Payment

3.1 The total price for each supply and delivery of Goods and any Incidental Services under this Agreement is determined by each Purchase Order in accordance with the Price List in Annex B (the “**Price**”).

3.2 The Supplier shall invoice IOM upon completion of each delivery in accordance with this Agreement and the relevant Purchase Order. Payment shall become due 30 (thirty) calendar days after acceptance by IOM of the Goods.

3.3 The invoice for each delivery will be accompanied by the following documents: air way bill number, shipping invoice, packing list, certificate of origin, copy of signed Purchase Order  
[add or delete as required]

3.4 Payments shall be made in [currency] (currency code) by bank transfer to the following bank account of the Supplier:

[bank account details]

3.5 The Price specified in in each Purchase Order in accordance with the Price List (Annex B) is the total charge to IOM. The Supplier shall be responsible for the payment of all taxes, duties, levies and charges assessed on it in connection with this Agreement. IOM shall not be charged for the cost of previous storage of any Goods or related costs.

- 3.6 IOM shall be entitled, without derogating from any other right it may have, to defer payment of part or all of the Price until the Supplier has completed, to the satisfaction of IOM, the delivery of the Goods and the Incidental Services to which those payments relate.
- 3.7 The Price List (Annex B) shall remain valid for a period of at least [enter period, preferably at least one year]

#### 4. Delivery

- 4.1 The Goods shall be delivered to [insert place of delivery or state "to the place outlined by each Purchase Order"] according to the delivery schedule in each Purchase Order. The cost of delivery is deemed included in the Price specified in each Purchase Order and the Price List (Annex B). The Incidental Services as described in Article 2.4 shall be performed at the place of delivery and completed by the same delivery date, unless otherwise stated in Article 2.4 of this Agreement.
- 4.2 In the event of breach of this clause IOM reserves the right to:
- (a) Terminate this Agreement without liability by giving immediate notice, and to charge the Supplier any loss incurred as a result of the Supplier's failure to make the delivery within the time specified; or
  - (b) Charge a penalty of 0.1% (one-tenth of one per cent) of the Price for every day of delay or breach of the delivery schedule by the Supplier.

#### 5. Performance Security (applicable for Purchase Orders with value over USD 250,000)

- 5.1 If any Purchase Order exceeds a value of USD 250,000, the Supplier shall furnish IOM with a performance security (the "**Performance Security**") in an amount equivalent to [10 (ten)] per cent of the Price, to be issued by a reputable bank or company, and in the format acceptable to IOM.
- 5.2 The Performance Security shall serve as the guarantee for the Supplier's faithful performance and compliance with the terms and conditions of this Agreement. The amount of the Performance Security shall not be construed as the limit of the Supplier's liability to IOM, in the event of breach of this Agreement by the Supplier. The Performance Security shall be effective until 30 (thirty) days from the completion of Supplier's obligations under relevant Purchase Order following which it will be discharged by IOM.

#### 6. Inspection and Acceptance

- 6.1 Where any annexed Technical Specifications state what inspections and tests are required and where they will be carried out, those terms will prevail in the event of any inconsistency with the provisions in this clause.
- 6.2 IOM or its representative shall have the right to inspect and/or test the Goods at no extra cost to IOM at the premises of the Supplier, at the point of delivery or at the final destination. The Supplier shall facilitate such inspections and provide required assistance.
- 6.3 IOM shall have 30 (thirty) calendar days after proper receipt of the Goods purchased to inspect them and either accept or reject them as non-conforming with this Agreement. Based on an inspection of a valid sample, IOM may reject the entire delivery. IOM may also charge the cost of inspecting rejected Goods to the Supplier. All rejected Goods will

be returned to the Supplier, transportation charges collect, or held by IOM for disposition at Supplier's risk and expense. IOM's right to reject the Goods shall not be limited or waived by the Goods having been previously inspected or tested by IOM prior to delivery.

- 6.4 The Supplier agrees that IOM's payment under this Agreement shall not be deemed acceptance of any Goods delivered hereunder.
- 6.5 The Supplier agrees that any acceptance by IOM does not release the Supplier from any warranty or other obligations under this Agreement.
- 6.6 Title to the Goods shall pass to IOM when they are delivered and accepted by IOM. Risk of loss, injury, or destruction of the Goods shall be borne by the Supplier until title passes to IOM.

## **7. Adjustments**

- 7.1 IOM reserves the right to change at any time the quantities, packaging, unit size, place, method and/or time of delivery or the Incidental Services to be provided. Where the Goods are being specifically produced for IOM, IOM may also make changes to the drawings, designs or specifications.
- 7.2 The Supplier agrees to proceed with this Agreement in accordance with any such change(s) and to submit a claim request for an equitable adjustment in the Price or delivery terms caused by such change(s).
- 7.3 IOM may deem any claim by the Supplier for equitable adjustments under this clause waived unless asserted in writing within 10 (ten) days from the date of receipt by the Supplier of IOM's change(s).
- 7.4 No change in, modification of, or revision to this Agreement shall be valid unless made in writing and signed by an authorized representative of IOM.

## **8. Packaging**

- 8.1 The Supplier must provide proper and adequate packaging in accordance with best commercial practice, to ensure that the Goods being delivered to IOM will be free of damage. Packaging must be adequate to allow for rough handling during transit, exposure to extreme temperatures, salt and precipitation during transit and open storage, with consideration for the type of Goods and transportation mode. IOM reserves the right to reject any delivery that is deemed not to have been packaged adequately.
- 8.2 Packing, marking and documentation shall comply with any requirements or instructions notified by IOM.

## **9. Warranties**

- 9.1 The Supplier warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination. This warranty shall remain valid for 12 (twelve) months after the Goods have been delivered to and accepted at the final destination indicated in the Contract.

- 9.2 The Supplier warrants that all Goods supplied under this Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in this Contract. All Goods/Services delivered under this Contract will conform to the specifications, drawings, samples, or other descriptions furnished or specified by IOM.
- 9.3 IOM shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 9.4 Upon receipt of such notice, the Supplier shall, within the time period specified in the notice, repair or replace the defective Goods or parts thereof, without cost to IOM.
- 9.5 IOM's continued use of such Goods after notifying the Supplier of their defect or failure to conform or breach of warranty will not be considered a waiver of the Supplier's warranty.
- 9.6 The Supplier further represents and warrants that:
- (a) It has full title to the Goods, is fully qualified to sell the Goods to IOM, and is a company financially sound and duly licensed, with adequate human resources, equipment, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the delivery of the Goods 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, employee or agent of IOM or any third party has received from, will be offered by, or will receive from the Supplier any direct or indirect benefit arising from this Agreement or award thereof;
  - (e) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
  - (f) The Supplier, its staff or shareholders have not previously been declared by IOM ineligible to be awarded contracts by IOM;
  - (g) It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child;
  - (h) The prices for the Goods under this Agreement do not exceed those offered for similar goods to Supplier's other customers;
  - (i) The Prices specified in Annex B of this Agreement shall constitute the sole remuneration of the Supplier in connection with this Agreement. The Supplier 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 hereunder. The Supplier shall ensure that any subcontractors, as well as the officers, employees, and agents of either of them, similarly, shall not receive any additional remuneration.
- 9.7 The Supplier 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. Failure to comply with (a)-(d) shall constitute grounds for immediate termination of this Agreement.

9.8 The above warranties survive the expiration or termination of this Agreement.

## **10. Assignment and Subcontracting**

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

10.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Agreement may be assigned to a subcontractor. Notwithstanding the said written approval, the Supplier 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 Supplier remains bound and liable there under 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.

## **11. Force Majeure**

Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by force majeure, such as civil disorder, military action, natural disaster and other circumstances which are beyond the control of the Party in question. In such event, the Party will give immediate notice in writing to the other Party of the existence of such cause or event and of the likelihood of delay.

## **12. Independent Contractor**

The Supplier shall provide the Goods under this Contract as an independent contractor and not as an employee, partner, or agent of IOM.

## **13. Audit**

The Supplier agrees to maintain financial records, supporting documents, statistical records and all other records in accordance with generally accepted accounting principles to sufficiently substantiate all direct and indirect costs of whatever nature involving transactions related to the supply and delivery of Goods and the Incidental Services under this Agreement. The Supplier shall make all such records available to IOM or its 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 Supplier shall be available for interview.

#### **14. Confidentiality**

All information which comes into the Supplier's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Supplier should not communicate such information to any third party without the prior written approval of IOM. The Supplier 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. These obligations shall survive the expiration or termination of this Agreement.

#### **15. Notices**

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

**International Organization for Migration (IOM)**

Attn: [Name of IOM contact person]

[IOM's address]

[IOM's email address]

**[Full name of the Supplier]**

Attn: [Name of the Supplier's contact person]

[Supplier's address]

[Supplier's email address]

#### **16. Dispute Resolution**

16.1. 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.

16.2. 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.

16.3. 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.

16.4. The present Agreement as well as the arbitration agreement above shall be governed by internationally accepted general principles of law and by the terms of the present 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.

#### **17. Use of IOM's Name**

The official logo and name of IOM may only be used by the Supplier in connection with this Agreement and with the prior written approval of IOM.

#### **18. Status of IOM**

Nothing in this Agreement affects the privileges and immunities enjoyed by IOM as an intergovernmental organization.

#### **19. Indemnification and Insurance**

19.1 The Supplier 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 Supplier or its employees, officers, agents or subcontractors, in the performance of this Agreement. IOM shall promptly notify the Supplier of any written claim, loss, or demand for which the Supplier is responsible under this clause.

19.2 This indemnity shall survive the expiration or termination of this Agreement.

19.3 The Goods supplied under this Agreement shall be fully insured in a freely convertible currency against loss or damage resulting from or related to manufacture or acquisition, transportation, storage, and delivery. Further insurance requirements may be specified in the Technical Specifications.

#### **20. 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.

#### **21. Termination and Re-procurement**

21.1 IOM may terminate this Agreement, in whole or in part, at any time with written notice to the Supplier. Any monies paid in advance by IOM shall be refunded on or before the date of termination.

21.2 If IOM terminates this Agreement in whole or in part for default on the part of the Supplier, it may acquire elsewhere goods similar to those terminated and the Supplier shall be liable for any excess costs to IOM for the re-procurement of those goods as well as the removal of any or all of the Supplier's product or equipment from IOM's premises or other places of delivery. The Supplier shall not be liable for any excess costs if the failure to perform under this Agreement arises from causes beyond its control and without fault or negligence of the Supplier.

21.3 Upon any such termination, the Supplier shall waive any claims for damages including loss of anticipated profits on account thereof.



**22. 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.

**23. Entirety**

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

**24. Special Provisions (Optional)**

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

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

**25. Final Clauses**

25.1 This Agreement will enter into force upon signature by both Parties and shall remain in force until completion of all obligations of the Parties under this Agreement.

25.2 Amendments to this Agreement 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 Supplier]

Signature

Signature

\_\_\_\_\_  
Name  
Position  
Date  
Place

\_\_\_\_\_  
Name  
Position  
Date  
Place

Checklist Code: CHECKLIST-\_\_\_\_\_  
(To be filled in upon receiving Checklist Code from LEG.)

Checklist – D.2. Model Recurring Supply Contract  
*Valid from 1 September 2015*

**Please tick one of the following for the Agreement:**

- i) ~~The Model Recurring Supply Contract attached does NOT require LEG approval, as it follows the latest IOM template Model Recurring Supply Contract without any deviation<sup>1</sup>. (IN/99 Rev.2, paragraph 7)~~
- ii) ~~The Model Recurring Supply Contract attached does NOT require LEG approval, as it follows the special template previously agreed by LEG as per Ref. No. EXC \_\_\_\_\_ . (IN/99 Rev.2, paragraph 10)~~

**~~PLEASE NOTE: If there are deviations in this Agreement which result in inability to confirm applicability of all checklist requirements and thereby make LEG review and approval necessary, but if this Agreement is for the purpose of buying or renting small office equipment with total value of less than USD 75,000 as per IN/99 Rev.2 paragraph 12 (ii), please check if all checklist requirements of the applicable Mandatory Contract Guideline are fulfilled. In such case the Agreement may still proceed without approval.~~**

**If filling in this checklist for an Amendment, please tick one of the following:**

- ~~The Amendment attached does NOT require LEG approval, as it is an Amendment to a Recurring Supply Contract listed in paragraphs 7 or 10 of IN/99 Rev.2 and the amendment, together with the original contract and any other existing amendments, if any, remain within the parameters set in these paragraphs. (IN/99 Rev.2, paragraph 13)~~

**Please write here LEG approval/checklist code, if any, for the original Agreement and for any previous Amendment signed:**

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**1. Checklist**

**Before signing any Agreement, Directors/CoMs/HoOs should check ALL items and tick all applicable boxes depending on the content of the Agreement.**

- ~~No services or deliveries have taken place prior to signing the Agreement. (For Amendments: The changes made under the Amendment shall apply only from the date of signing of the Amendment or later and the original Agreement [as amended previously, if at all] has not yet expired.)~~
- ~~All activities comply with IOM's Constitution, policies, regulations, rules, manuals, Guidance Notes and instructions from relevant thematic areas.~~
- ~~The other party has been selected in compliance with IOM procurement rules.~~
- ~~The authority of the person signing on behalf of the other party to do so has been verified.~~
- ~~The name and dates/duration for the Agreement are exactly the same on:~~

<sup>1</sup> Without any deviation means that nothing in the template is changed other than filling in names, prices, dates, etc. in the appropriate space provided therefor.

- ~~○ The Annexes;~~
- ~~○ The Agreement; and~~
- ~~○ The Price List.~~

~~☐ The price per item is explicitly outlined for each item in the Price List (Annex B). The Price List and the Agreement specify the currency used.~~

~~☐ Contract Price is to be paid:~~

- ~~a) By bank transfer into the bank account of the other party, as indicated in the agreement, and not to the bank account of a representative of the other party or another individual.~~
- ~~b) By cheque to the other party, as the bank transfer is not possible. Cheque will be addressed to the other party, and not a representative of the other party or another individual.~~
- ~~c) By cash to the other party, as payment by cheque or bank transfer is not possible. Payment by cash has been exceptionally authorized by ACO and TSY in writing for this specific Agreement. (please attach relevant email from ACO and TSY to your checklist code request.)~~

~~○ Specify a), b) or c): \_\_\_\_\_~~

~~☐ Payment for each delivery shall be made for Services/Goods which have been completed/delivered to the satisfaction of IOM~~

~~☐ No Agreement shall be backdated. The signature date shall always be the actual date of signature.~~

~~☐ There is no advance payment.~~

~~☐ The Agreement is concluded in one of the following languages:~~

- ~~○ a) English, b) French, c) Spanish or d) bilingually (both language versions have identical content with at least one language being an official IOM language — in this case mandatory addition that official language prevails in case of discrepancy has been inserted)~~

~~○ Specify a), b), c) or d): \_\_\_\_\_~~

~~☐ Specify:~~

- ~~a) The currency used in defining the contract price is the same currency as the one in which payment shall be made; or~~
- ~~b) The currency used in the provision defining the contract price is different from the currency to be paid to the other party, but the UN exchange rate at the date of payment is agreed~~

~~○ Specify a) or b): \_\_\_\_\_~~

~~☐ Specify:~~

- ~~a) The total contract value is more than USD 250,000 and a Performance Security has been drafted and sent to LEG for approval; or~~
- ~~b) The total contract value is less than USD 250,000 and “NOT APPLICABLE” has been added to Article 5 in line with the comment next to said provision.~~

~~○ Specify a) or b): \_\_\_\_\_~~