



## ► Terms and Conditions applicable to ILO Implementation Agreements

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### 1. The Parties

- 1.1. **Legal status:** The International Labour Organization, represented by the International Labour Office (**ILO**), and the Implementing Partner (referred to individually as a **Party** and together as the **Parties**) have the following legal status:
  - 1.1.1. the International Labour Organization has full juridical personality, including the ability to contract, and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes pursuant to the *Constitution of the International Labour Organisation*;
  - 1.1.2. the Implementing Partner will neither seek nor accept instructions from any authority external to the ILO in connection with the performance of its obligations. Nothing contained in or relating to the Agreement will be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent; and
  - 1.1.3. the employees, officials, representatives, staff or subcontractors (**Personnel**) of either of the Parties will not be considered in any respect as being the employees or agents of the other Party. Each Party is solely responsible for all claims arising out of or relating to the engagement of its respective Personnel.
- 1.2. **Privileges and immunities:** Nothing in or related to the Agreement will be deemed a waiver of any of the privileges and immunities of the International Labour Organization recognized under the Convention on the Privileges and Immunities of the Specialized Agencies (1947), its Annex I relating to the International Labour Organization, or other relevant national and international law.
- 1.3. **Tax exemption:** The International Labour Organization, as a United Nations Specialized Agency, enjoys a special tax status in Switzerland and in other Member States. Unless specified in the Agreement, invoices will be submitted exclusive of any amount representing charges, duties or taxes (e.g., value added tax).
- 1.4. **Restrictions in advertising:**
  - 1.4.1. Except with the prior written authorization of the ILO, the Implementing Partner may not:
    - 1.4.1.1. use or reproduce the emblem, logo, name or official seal of the International Labour Organization or of the ILO, including abbreviations, in connection with its activities or otherwise; nor
    - 1.4.1.2. advertise or otherwise make public the fact that it is an Implementing Partner to the ILO. Such restrictions will not apply to the mention of the International Labour Organization or of the ILO for the purposes of the Implementing Partner's annual or other reporting obligations (e.g., audit, board).
  - 1.4.2. The ILO reserves the right to publish on the internet, including the websites of the International Labour Organization <sup>1</sup> and the United Nations Global Marketplace (**UNGM**) <sup>2</sup>, or otherwise make public the Implementing Partner's name and address as well as basic information regarding the Agreement, including the total value of the Agreement.

### 2. Agreement Documents and Validity

- 2.1. **Nature of the Agreement:**
  - 2.1.1. The Agreement constitutes the complete and exclusive agreement between the Parties. It supersedes all proposals, verbal or written arrangements or agreements, and any other communications by one of the Parties or between the Parties relating to the Agreement.
  - 2.1.2. The Agreement is composed of the following documents listed in their order of precedence:
    - 2.1.2.1. Agreement Document, including any specific conditions;
    - 2.1.2.2. Terms and Conditions applicable to ILO Implementation Agreements; and
    - 2.1.2.3. any other document explicitly listed in the Agreement Document and annexed to it.

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<sup>1</sup> <https://www.ilo.org/global/about-the-ilo/procurement/lang--en/index.htm>.

<sup>2</sup> <https://www.ungm.org/>.

- 2.1.3. Unless otherwise included in any of the documents listed in paragraph 2.1.2., any terms, conditions of contract, or general reservations published or issued by the Implementing Partner or written in any correspondence or documents emanating from the Implementing Partner will not form part of the Agreement.
- 2.1.4. The original of the Agreement has been written and signed in English. If the Agreement is translated into another language, the English version will govern and prevail.
- 2.2. **Validity:** The Agreement will expire upon fulfilment by the Parties of their respective obligations or otherwise in accordance with its provisions.
- 2.3. **Communications:** Communications (e.g., notices, documents) will be addressed to the ILO contact indicated in the Agreement.

### 3. Total Value and Payment

- 3.1. **Total value and currency:** The total value and currency specified in the Agreement are firm-fixed and not subject to any adjustment or revision due to price or currency fluctuations, or alteration in the actual costs incurred by the Implementing Partner in the performance of the Agreement. All expenditures related to the assignment, replacement and withdrawal of the Implementing Partner's Personnel, including allowances, cost of travel arrangements, local transport, and insurance, will be borne by the Implementing Partner.
- 3.2. **Payment:**
  - 3.2.1. Upon receipt of the Implementing Partner's written invoice and any related supporting documentation, the ILO will effect payment, normally within thirty (30) days, by bank transfer (the ILO will not pay through letters of credit or bank draft). The written invoice will be sent electronically to the addressee specified in the Agreement and will contain the:
    - 3.2.1.1. number of the Agreement that it relates to;
    - 3.2.1.2. invoiced amount (without the rounding of currency decimals and exclusive of VAT, duties or charges);  
and
    - 3.2.1.3. date of completion of the related reports and any other deliverable(s).In no event will complete or partial payment by the ILO, in and of itself, constitute acceptance of reports or any other deliverable(s).
  - 3.2.2. The Implementing Partner is responsible for providing the ILO with complete, accurate and up to date information sufficient for it to effect payment. If the ILO is unable to effect payment due to the failure of the Implementing Partner to provide such information, the ILO will not be obligated to effect payment beyond the time limit referred to in paragraph 13.8. (Limitation on actions).
- 3.3. **Bank charges:** Each Party will bear any charge or levy imposed by its respective financial institution (i.e., the ILO will assume charges levied by its own financial institution, so will the Implementing Partner).

### 4. Performance

- 4.1. **Observance of laws by Implementing Partner:** The Implementing Partner will comply with all laws, ordinances, regulations and rules bearing upon the performance of its obligations and, in particular, those concerning terms of employment, conditions of work and any collective agreements to which it is a party.
- 4.2. **Duty of care:** The Implementing Partner undertakes to perform its obligations in good faith with the fullest regard to the ILO's interests, providing its expertise and relevant professional advice, using the degree of skill, care, and diligence to be expected from an entity performing in the trade, industry or field of expertise concerned, and in the region where work is carried out. If the Implementing Partner becomes aware of any circumstances or information that may threaten the proper performance of the Agreement, it will immediately notify the ILO.
- 4.3. **Responsibility for Personnel:**
  - 4.3.1. Each Party is solely responsible for the professional and technical competence of its respective Personnel, which will permit that Party to effectively perform its obligations.
  - 4.3.2. The Implementing Partner will bring to the attention of its Personnel their conditions of work and any other information relevant to the performance of the Agreement (e.g., paragraph 10. (Responsible Business Practices)), including through the posting of notices in conspicuous places in the establishments and workplaces concerned and, where effective enforcement does not exist, provide for a system of inspection adequate to ensure effective enforcement.
  - 4.3.3. The ILO reserves the right to request the withdrawal or replacement of any of the Implementing Partner's Personnel, at any time, including as in the case of demonstrable poor performance or misconduct by the Implementing Partner's Personnel. Such request will be in writing and will not be unreasonably withheld by the Implementing Partner.

- 4.3.4. If any of the Implementing Partner's Personnel are removed by the Implementing Partner or for any reason are no longer available, the Implementing Partner will replace said Personnel with individuals possessing equal or better knowledge, experience and ability to perform its obligations.
- 4.3.5. Regardless of cause, the withdrawal and replacement of the Implementing Partner's Personnel will be carried out in a manner that will not adversely affect the Implementing Partner's ability to perform its obligations.
- 4.4. **Sustainability:** In addition to the foregoing, the Implementing Partner will wherever possible take appropriate steps to perform its obligations in a manner that takes into account economic and social considerations, as well as is respectful of the environment (e.g., undertaking initiatives to promote greater environmental responsibility and encourage the development and diffusion of environmentally friendly technologies and solutions, and implementing sound life-cycle practices).
- 4.5. **Procurement:** Unless otherwise instructed by the ILO, the Implementing Partner will in its own name purchase any goods or equipment (referred together to as **Goods**), or contract for works or services (referred together to as **Services**). In addition, the Implementing Partner will ensure that:
- 4.5.1. its procurement activities are conducted in accordance with its own rules and regulations, subject to any instructions that the ILO may issue;
- 4.5.2. its rules and regulations meet internationally acceptable procurement standards, including through the conduct of procurement in a fair, transparent and competitive manner;
- 4.5.3. it will maintain an inventory and financial and other relevant records of such Goods and Services that are complete, accurate and up to date and provide to the ILO such records in the format specified in the Agreement;
- 4.5.4. it will not cause or permit any lien, claim or other encumbrance to be attached to any or all of the foregoing and will promptly report to the ILO each loss, damage or theft of such Goods. The Implementing Partner acknowledges and agrees that the ILO hereby disclaims any and all warranties regarding the functionality or installation of such Goods. The Implementing Partner is solely responsible for the installation (including any Personnel, tools, materials or other Goods necessary for installation), maintenance and functioning of such Goods and, unless otherwise provided in the Agreement, it will bear all costs;
- 4.5.5. if requested by the ILO no later than one (1) year after termination or expiration of the Agreement, it will hand over at its sole expense the Goods in good condition, excluding normal wear and tear; as well as transfer the title and ownership of them to the ILO or any other party designated by the ILO. The obligations of the Implementing Partner under paragraph 4.5.4. will continue until such handing over and transfer of ownership has been completed; and
- 4.5.6. the provisions of paragraphs 4.5.3. to 4.5.5. apply, if Goods are provided by the ILO to the Implementing Partner or are developed by the Implementing Partner for the ILO pursuant to the Agreement. Upon the termination or expiration of the Agreement, the Implementing Partner will take all reasonable measures to avoid any loss of or deterioration to such Goods and all such Goods will be returned to the ILO in the same condition as when delivered to or developed by the Implementing Partner, excluding normal wear and tear. The return of such Goods or other disposal as the ILO may direct, will be at the Implementing Partner's sole expense. The Implementing Partner will compensate the ILO for actual costs of any loss of, damage to or deterioration of such Goods that is beyond normal wear and tear.
- 4.6. **Performance issues:**
- 4.6.1. Should the Implementing Partner encounter conditions that do not constitute force majeure (see paragraph 11.) and which impede, or are likely to impede, timely and/or satisfactory performance of the Agreement, the Implementing Partner will immediately notify the ILO in writing with full particulars, including the likely duration and the cause. The Parties will consult as soon as practicable after receipt of such notice, to evaluate any available means of mitigation or appropriate remedies.
- 4.6.2. The ILO may apply any additional costs incurred, by deduction or otherwise, against future amounts owed by the ILO to the Implementing Partner.
- 4.6.3. In addition to paragraph 9.2.4. (Confidentiality exclusions), the ILO may record performance issues by the Implementing Partner and such record may negatively affect future opportunities including with the International Labour Organization, entities of the United Nations System and multilateral development finance institutions.

## 5. Indemnification and Insurance

- 5.1. **Indemnification:** The Implementing Partner will indemnify, hold harmless and defend, at its sole expense, the ILO and its Personnel from and against all complaints, claims, suits, judgments, damages, losses, and liability of any nature or kind including costs, fees and related expenses, arising from acts, omissions or events by the Implementing Partner or its Personnel in the performance of the Agreement.

## 5.2. **Insurance:**

5.2.1. The Implementing Partner, for the duration of the Agreement, any extension thereof or any reasonably adequate period to deal with losses following any termination of the Agreement warrants that, and will provide evidence upon request, it has taken out insurance from a reputable insurer, which includes:

5.2.1.1. coverage for a sufficient amount for any vehicles or equipment used for the performance of the Agreement; and

5.2.1.2. where required by the ILO, any other insurance in relation with the performance of the Agreement, such as a comprehensive civil liability insurance with regard to third-parties, including the ILO and its Personnel, in respect of physical injury, theft or damage to property, systems and data.

5.2.2. The Implementing Partner acknowledges and agrees that neither the requirement for taking out and maintaining insurance as contained in the Agreement nor the amount of any such insurance, including any deductible or retention relating thereto, will in any way be construed as limiting the Implementing Partner's liability arising under or relating to the Agreement.

5.3. **Notice:** The Implementing Partner will immediately notify the ILO upon becoming aware of:

5.3.1. any complaints, claims, suits, judgments, damages, losses, and liability of any nature or kind including costs, fees and related expenses; or

5.3.2. any cancellation or material change of the insurance coverage required under the Agreement.

## 6. Assignment and Subcontracting

6.1. **Assignment:** The Implementing Partner may not assign, transfer, pledge or make any other disposition of the Agreement, of any part of the Agreement, or of any of the rights, claims or obligations under the Agreement except with the prior written authorization of the ILO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, will not be binding on the ILO.

6.2. **Subcontracting:** In the event that the Implementing Partner requires the services of any subcontractor, the Implementing Partner will obtain the prior written authorization to subcontract and the approval of the ILO of the subcontractor selected. The authorization and approval by the ILO of such a subcontractor does not relieve the Implementing Partner of any of its obligations and the Implementing Partner is solely responsible for the deliverables provided by a subcontractor in the framework of the Agreement, including their quality. The terms of any subcontract will be subject to and be in conformity with the provisions of the Agreement with particular attention drawn to paragraphs **4.** (Performance), **7.** (Intellectual Property), **8.** (Data Protection), **9.** (Confidentiality), and **10.** (Responsible Business Practices). The Implementing Partner will be responsible for ensuring compliance with the above terms, as for its own Personnel, and for any subcontractors and its Personnel who are performing any part of the Implementing Partner's obligations. The prior written authorization to subcontract by the ILO does not permit the Implementing Partner to permit its subcontractor(s) to subcontract, assign, transfer, pledge or make any other disposition of the Agreement, of any part of it, or of any of its rights, claims or obligations.

## 7. Intellectual Property

7.1. **Intellectual Property and other proprietary rights:** All intellectual property and other proprietary rights, including copyrights, industrial designs, patents, source codes, and trademarks, with regard to applications, documents, inventions, know-how, other materials, or products (**Intellectual Property**) that the Implementing Partner has developed under the Agreement will be the sole property of the International Labour Organization and will be communicated in full to the ILO, at the latest upon termination or expiration of the Agreement.

7.2. **Licensing:** To the extent that any Intellectual Property due to the International Labour Organization under paragraph **7.1.** includes any Intellectual Property of the Implementing Partner that pre-existed the performance by the Implementing Partner of its obligations or, any Intellectual Property of the Implementing Partner that it may develop or acquire, or that may have been developed or acquired, independently of the performance of its obligations, the Implementing Partner grants to the International Labour Organization an unlimited perpetual, royalty-free license to make unrestricted use of such Intellectual Property. The ILO will not claim any ownership interest in the pre-existing Intellectual Property described in this paragraph.

7.3. **Third-party rights:** The Implementing Partner undertakes to obtain, at its sole expense, permission to use any third-party protected rights that are necessary for the performance of the Agreement (including an unlimited perpetual transferable license to the International Labour Organization) and will provide evidence upon request.

## 8. Data Protection

- 8.1. **Transfers of ILO Data:** Subject to paragraph 8.3., if the performance of the Agreement requires access to International Labour Organization data including personal data (**ILO Data**), the ILO will transfer such ILO Data necessary for the performance of the Implementing Partner's obligations.
- 8.2. **Use of ILO Data:** Use (including accessing, processing, retention, storage) of ILO Data is limited to the purposes contained in the Agreement and such use will be limited to Implementing Partner's Personnel on a "need to know" basis. Use of ILO Data for internal research, marketing, sales, or promotional purposes is strictly prohibited. Subject to paragraph 9. (Confidentiality), the Implementing Partner will treat ILO Data as confidential and may neither disclose it nor make it available to any third-party except with the prior written authorization of the ILO.
- 8.3. **Compliance:** The Implementing Partner confirms that it has a data protection policy in place that meets applicable legal requirements and that it will apply such a policy to ILO Data. The Implementing Partner will implement technical and organisational measures to ensure appropriate protection of ILO Data, in conformity with industry standards.<sup>3</sup> In addition, the Implementing Partner will:
  - 8.3.1. at its sole expense and risk, return, delete, or destroy all ILO Data, including data backups, upon written instruction of the ILO. The ILO will provide a reasonable period of time and take into account the Implementing Partner's legitimate interests, as well as the termination or expiration date of the Agreement;
  - 8.3.2. process, retain or store ILO Data exclusively in countries that are a party to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I relating to the International Labour Organization or that provide other arrangements that ensure adequate legal protection of the International Labour Organization's privileges and immunities;<sup>4</sup> and
  - 8.3.3. be liable for any resulting damages or penalties for its failure to comply with its obligations.
- 8.4. **Data security:**
  - 8.4.1. Upon discovery of a data security incident, the Implementing Partner will immediately notify the ILO<sup>5</sup> and undertake at its sole expense to:
    - 8.4.1.1. propose immediate remedial actions (including containment);
    - 8.4.1.2. implement, as directed by the ILO, all necessary damage mitigation and remedial actions;
    - 8.4.1.3. where applicable, as directed by the ILO, restore the ILO's and end-users' access; and
    - 8.4.1.4. keep the ILO informed of its progress.
  - 8.4.2. The Implementing Partner, at its sole expense, will cooperate fully with any ILO investigation, remediation steps, and response to a data security incident.

## 9. Confidentiality

- 9.1. **Confidential information:** The Agreement and any information identified as restricted or confidential<sup>6</sup> that is delivered or disclosed by one Party (**Discloser**) to the other Party (**Recipient**) during the course of performance of the Agreement will be treated as confidential and used solely for the purpose for which it was disclosed.
- 9.2. **Exclusions:** There will be no obligation of confidentiality or restriction on use, where the information:
  - 9.2.1. is publicly available, or becomes publicly available, other than by an action or omission of the Recipient;
  - 9.2.2. was already lawfully known to the Recipient prior to the performance of the Agreement;
  - 9.2.3. was received by the Recipient from a third-party not in breach of an obligation of confidentiality; or
  - 9.2.4. is to be provided to an International Labour Organization entity, to another entity of the United Nations System or a multilateral development finance institution, including information relating to paragraph 4.6. (Performance issues) or the Implementing Partner's failure to comply with the provisions of paragraph 10. (Responsible Business Practices).
- 9.3. **Disclosure:** The Recipient may disclose confidential information to the extent required by law or a regulatory body, provided that the Recipient gives the Discloser sufficient prior notice of the request in order to provide the Discloser with a reasonable opportunity from the receipt of the disclosure request, to take protective measures or such other action as may be appropriate before any such disclosure is made. Any such disclosure that is made

<sup>3</sup> ISO/IEC 27001:2013 or equivalent.

<sup>4</sup> International Labour Organization Legal Protection database, available at <https://www.ilo.org/dyn/legprot/en/>.

<sup>5</sup> ILO Information Security and Assurance Services Unit (ISAS) at [isas@ilo.org](mailto:isas@ilo.org).

<sup>6</sup> For the ILO refer to ILO Office Directive, *Classification of ILO Information Assets*, IGDS No. 456, as revised from time to time, available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/genericdocument/wcms\\_745768.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/genericdocument/wcms_745768.pdf).

in this context does not constitute a waiver of the privileges and immunities of the International Labour Organization.

## 10. Responsible Business Practices

- 10.1. **Responsible business practices:** The ILO requires the Implementing Partner and its Personnel to support and respect the protection of internationally proclaimed human rights<sup>7</sup> and to observe the highest ethical standards in any of its supply chains, during the selection process and the performance of the Agreement. The ILO further requires that the Implementing Partner and its Personnel, will neither use nor engage in any: threats of violence, verbal or psychological harassment or abuse.
- 10.2. **Labour clauses:** The Implementing Partner undertakes to respect, at all times and in all circumstances relevant to the performance of the Agreement and in relation to all its Personnel, the following principles concerning international labour standards of the International Labour Organization:
- 10.2.1. the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as the protection of those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
  - 10.2.2. the prohibition of forced or compulsory labour in all its forms;
  - 10.2.3. equal remuneration for men and women for work of equal value;
  - 10.2.4. equality of opportunity and treatment in respect of employment and occupation without discrimination on the grounds of race, colour, sex (including pregnancy), religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of the Agreement takes place, including but not limited to age, disability, HIV status, sexual orientation or gender identity;
  - 10.2.5. the prohibition of the employment of children below fourteen (**14**) years of age or, if higher than fourteen (**14**), the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of the Agreement takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher;
  - 10.2.6. the prohibition of the employment of persons under the age of eighteen (**18**) for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
  - 10.2.7. the payment of wages in legal tender, at regular intervals no longer than one month, in full and directly to the workers concerned. The Implementing Partner will keep an appropriate record of such payments. Deductions from wages are permitted only under conditions and to the extent prescribed by the applicable law, regulations or collective agreement, and the workers concerned must be informed of such deductions at the time of each payment;
  - 10.2.8. the provision of wages, hours of work and other conditions of work not less favourable than the best conditions prevailing (i.e., as contained in: (i) collective agreements covering a substantial proportion of employers and workers; (ii) arbitration awards; or, (iii) applicable laws or regulations) for work of the same character performed in the trade, industry or field of expertise concerned, and in the region where work is carried out;
  - 10.2.9. the need to ensure, so far as is reasonably practicable, that the workplaces, machinery, equipment and processes under their control are safe and without risk to health, and that the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health; and
  - 10.2.10. the provision of social security benefits, including the need to ensure that its Personnel are adequately insured against the consequences of the following risks: (i) illness, injury and death; and (ii) incapacity to work due to accident and sickness either during normal working hours or outside working hours.
- 10.3. **Proscribed Practices and Prohibited Conduct:** The Implementing Partner and its Personnel certify that they have not and will not engage in proscribed practices or prohibited conduct during the selection process and the performance of the Agreement.
- 10.3.1. The ILO provides the following definitions of conduct or behaviour that constitute proscribed practices (**Proscribed Practices**):

<sup>7</sup> United Nations Guiding Principles on Business and Human Rights, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

- 10.3.1.1. “fraud” or “fraudulent practice”: any act or omission whereby an individual or entity knowingly misrepresents or conceals a fact: (i) in order to obtain an undue benefit or advantage or avoid an obligation for himself, herself, itself, or a third-party; and/or (ii) in such a way as to cause an individual or entity to act, or fail to act, to his, her or its detriment;
- 10.3.1.2. “corruption” or “corrupt practice”: the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- 10.3.1.3. “coercion” or “coercive practice”: an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party;
- 10.3.1.4. “collusion” or “collusive practice”: an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- 10.3.1.5. “unethical practice”: any conduct or behaviour that entails an actual, potential, or perceived conflict of interest. This may include the receipt of gifts and hospitality, violation of post-employment provisions, or non-compliance with other published requirements of doing business with the ILO (e.g., the United Nations Supplier Code of Conduct <sup>8</sup> ); and
- 10.3.1.6. “obstruction” or “obstructive practice”: the deliberate destruction, falsification, alteration or concealing of evidence material to an investigation or making false statements to investigators in order to materially impede an investigation into allegations of the foregoing; and/or threatening, harassing, or intimidating another to prevent them from disclosing their knowledge of matters relevant to an investigation or from pursuing an investigation; or an act intended to materially impede the exercise of the ILO’s inspection and audit rights.

10.3.2. The ILO provides the following definitions of conduct or behaviour that constitute prohibited conduct (**Prohibited Conduct**):

- 10.3.2.1. “sexual exploitation” is any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to profiting monetarily, socially or politically from the sexual exploitation of another;
- 10.3.2.2. “sexual abuse” is the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
- 10.3.2.3. sexual activity with children (persons under the age of eighteen (**18**)) regardless of age of majority or age of consent locally. Mistaken belief in the age of a child is not an excuse; and
- 10.3.2.4. exchange of money, employment, assistance, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour.

10.4. **Conflict of interest:** If at any stage of the selection process or during Agreement performance a conflict of interest arises, or appears likely to arise, including any situation in which the interests of the Implementing Partner conflict with the interests of the ILO, or any situation in which any ILO official, employee or person under a contract with the ILO may have, or appears to have, an interest of any kind in the Implementing Partner’s activities or any kind of economic or personal ties with the Implementing Partner, then the Implementing Partner will immediately notify the ILO in writing, setting out all relevant details. The Implementing Partner will take such steps as the ILO may reasonably require to resolve or otherwise deal with the conflict to the satisfaction of the ILO.

10.5. **Full disclosure:**

10.5.1. The Implementing Partner will immediately notify the ILO upon becoming aware of any Proscribed Practices, Prohibited Conduct, or suspicion thereof, by itself or its Personnel during the selection process or the performance of the Agreement. <sup>9</sup> The Implementing Partner will take all appropriate measures to prohibit and prevent its Personnel from engaging in Proscribed Practices or Prohibited Conduct, as well as to investigate allegations thereof, or to take corrective action when such a Proscribed Practice or Prohibited Conduct has occurred.

10.5.2. The Implementing Partner further warrants that it is neither the subject of any sanctions <sup>10</sup> nor identified as ineligible by any government, supranational organization (e.g., European Union), another entity of the United Nations System or multilateral development finance institution. The Implementing Partner will

<sup>8</sup> [https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unscc/conduct\\_english.pdf](https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unscc/conduct_english.pdf)

<sup>9</sup> ILO Office of Internal Audit and Oversight (IAO) at [investigations@ilo.org](mailto:investigations@ilo.org); <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/accountability-and-transparency/lang--en/index.htm>.

<sup>10</sup> See, in particular the United Nations Security Council Consolidated List, available at <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>.

disclose to the ILO if it becomes subject to any sanction or temporary suspension during the term of the Agreement. The Implementing Partner recognizes that a breach of this provision constitutes a fraudulent practice.

- 10.6. **Terrorism:** The Implementing Partner undertakes to use reasonable efforts to ensure that no resources provided under the Agreement are made available or used to provide support to individuals or entities associated with terrorism, which are named on the United Nations Security Council Consolidated List <sup>11</sup>, as may be amended.

## 11. Force Majeure

### 11.1. Force Majeure:

- 11.1.1. Neither Party will be liable to the other Party for failure to perform its respective obligations, if such failure is as a result of an unforeseeable and irresistible event, act of nature (including fire, flood, earthquake, storm, hurricane, epidemic or other natural disaster), any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, (**Force Majeure**) provided that such acts arise from causes beyond the control and without the fault or negligence of the invoking Party.
- 11.1.2. The defaulting Party will notify, as soon as possible after the occurrence of the Force Majeure event, the other Party in writing with full particulars of the Force Majeure event, including its likely duration, the estimated expenditures that will likely be incurred for the duration of the Force Majeure event, and any other conditions which threaten to interfere with the defaulting Party's performance of the Agreement.
- 11.1.3. If either Party is rendered unable, in whole or in part, by reason of Force Majeure to perform its obligations then that Party will have the right to:
- 11.1.3.1. suspend the Agreement or reduce activities, scope or services. Such suspension will be in effect until further notice or for such a period as to be agreed upon by the Parties and will be reviewed on an ongoing basis; or
- 11.1.3.2. terminate the Agreement.
- 11.1.4. In the event of disagreement as to the level of reduction, suspension or termination, the ILO's decision will prevail.

- 11.2. **Notice:** If notice is not received by a Party in accordance with paragraph **11.1.2.**, the Party who fails to notify of the Force Majeure event will be liable for damages resulting from such non-receipt, except where the Force Majeure event also prevents transmission of the notice.

## 12. Termination or Suspension

- 12.1. **Termination or suspension by the ILO:** Without requiring prior adjudication or any other authorisation, the ILO may by written notice immediately terminate or suspend the Agreement, in the event that:
- 12.1.1. the ILO becomes aware of any incident or allegation of infringement by the Implementing Partner or its Personnel of any of its obligations contained in paragraphs **8.** (Data Protection) or **10.** (Responsible Business Practices);
- 12.1.2. the Implementing Partner is found to have made a false or fraudulent misrepresentation in the making of or performance of the Agreement, regardless of when the misrepresentation is discovered;
- 12.1.3. the ILO's activities are curtailed or terminated;
- 12.1.4. the ILO does not receive the necessary funds (e.g., from its donor(s)) to cover the total value of the Agreement;
- 12.1.5. the ILO receives a recommendation regarding public health, safety or the security level, whether issued by the World Health Organization, ILO Medical Service, United Nations Department of Safety and Security or from competent authorities where the Implementing Partner is to perform any of its obligations;
- 12.1.6. the Implementing Partner is declared undesirable by the government where the Implementing Partner is to perform any of its obligations; or
- 12.1.7. the Implementing Partner becomes bankrupt, otherwise insolvent, or the ILO reasonably determines that the Implementing Partner has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Implementing Partner to perform any of its obligations.
- 12.2. **Termination or suspension by either Party:** Without requiring prior adjudication or any other authorisation:

<sup>11</sup> <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>.



- 12.2.1. either Party may terminate the Agreement in the event that the other Party fails to perform its obligations (other than those described in paragraph **12.1.**) or to satisfy any guarantees or warranties it has made under the Agreement and does not rectify such failure within thirty (**30**) days from receipt of a written notice from the invoking Party, or within another mutually agreed timeframe; or
- 12.2.2. the Parties may agree on a temporary suspension of the Agreement, in whole or in part. The defaulting Party will take such steps as the invoking Party may reasonably require to rectify the failure or otherwise deal with the conflict to the satisfaction of the invoking Party.

**12.3. Consequences of termination or suspension:**

- 12.3.1. Upon receipt of notice of termination or suspension by the ILO and unless otherwise instructed by the ILO, the Implementing Partner will:
- 12.3.1.1. take immediate steps to stop activities, production of report(s) and any other deliverable(s) in a prompt and orderly manner, reduce expenses to a minimum and not undertake any further obligations from the date of receipt of the notice of termination or suspension; and
- 12.3.1.2. deliver all completed or partially completed report(s) and any other deliverable(s).
- 12.3.2. The ILO will only pay for those report(s) and any other deliverable(s) provided to the ILO in accordance with the requirements of the Agreement, if they were ordered, requested or otherwise provided prior to the Implementing Partner's receipt of the notice of termination or suspension from the ILO.
- 12.3.3. In the event of termination or suspension pursuant to paragraphs **12.1.1.**, **12.1.2.** or **12.2.1.**, the ILO reserves the right to require full or partial restitution of sums previously paid by it and impose sanctions as per the ILO applicable procedures.

## 13. Miscellaneous

- 13.1. **Change orders:** The ILO may, by written notification, increase or decrease the number of deliverables of the Agreement provided the stage reached in the performance of the Agreement so allows. If any such changes increase or decrease the cost of and/or the time required for the performance of any part of the Agreement, an equitable adjustment will be made in the Agreement's total value or time schedule, or both, and the Agreement will accordingly be amended. Any request for consultation or claim for adjustment under this paragraph will be asserted by the Implementing Partner within thirty (**30**) days from the date of receipt of the ILO's change order.
- 13.2. **Amendments:** The Parties may by mutual agreement amend the Agreement. Amendments will be effective only if in writing and when executed and delivered on behalf of the ILO and the Implementing Partner by persons duly authorized to do so.
- 13.3. **Audit and investigation:** The Implementing Partner and its Personnel will provide full and timely cooperation with ILO audit, evaluation, investigation, inspection, review, or other activity relating to any aspect of the Agreement or the award thereof. Such cooperation includes the Implementing Partner's obligation to make available its premises, Personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions during the term of the Agreement and for a period of ten (**10**) years from the termination or expiration of the Agreement. In the event of merger, acquisition or other change in its legal status, the Implementing Partner will ensure that relevant documentation and records will be transferred to the resulting entity or, if dissolved, the Implementing Partner will inform the ILO in writing and provide it with the opportunity to retain relevant documentation and records.
- 13.4. **Monitoring:** The Implementing Partner and its Personnel will provide full and timely cooperation with ILO monitoring relating to any aspect of the Agreement or the award thereof. Such cooperation includes the Implementing Partner's obligation to make available its premises, Personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions during the term of the Agreement.
- 13.5. **Non-waiver of rights:** Termination of the Agreement in whole or in part by a Party or the failure by either Party to exercise any rights available to it, will not affect the accrued rights or claims and liabilities of either Party to the Agreement.
- 13.6. **Survival:** The obligations contained in paragraphs **1.4.** (Restrictions in advertising); **4.5.** (Procurement); **5.1.** (Indemnification); **5.2.** (Insurance); **7.** (Intellectual Property); **8.** (Data Protection); **9.** (Confidentiality); and **13.3.** (Audit and investigation) survive the termination or expiration of the Agreement.
- 13.7. **Severability:** The invalidity or unenforceability in whole or in part of any provision or part of the Agreement will not affect the validity or enforceability of the rest of that provision and/or any other provisions of the Agreement.
- 13.8. **Limitation on actions:** Irrespective of their nature, any dispute, controversy, or claim arising out of the Agreement or the breach, termination, or invalidity thereof (other than obligations enumerated in paragraph **13.6.**) must be asserted within six (**6**) months after the termination or expiration of the Agreement.

## 14. Settlement of Disputes

- 14.1. **Amicable settlement:** The Parties will use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Agreement or the breach, termination, or invalidity thereof by direct informal negotiations, including, where agreed, by referral, to an executive level of authority within the Parties. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation will take place in accordance with the Conciliation Rules then prevailing of the United Nations Commission on International Trade Law (**UNCITRAL**)<sup>12</sup> or according to such other procedure as may be agreed between the Parties in writing.
- 14.2. **Arbitration:** Unless settled amicably under paragraph 14.1., within sixty (**60**) days following receipt by one Party of the other Party's written request, any dispute, controversy or claim arising out of the Agreement, or the breach, termination or invalidity thereof, will at either Party's request be settled by arbitration in accordance with the UNCITRAL Arbitration Rules then prevailing. In addition:
- 14.2.1. the place of arbitration will be Geneva, Switzerland;
  - 14.2.2. the arbitral tribunal will consist of a sole arbitrator except where the amount in dispute exceeds USD500,000 and its decisions will be based on general principles of international commercial law;
  - 14.2.3. the arbitral tribunal will have no authority to award punitive damages; and
  - 14.2.4. the Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim arising out of the Agreement, or the breach, termination or invalidity thereof.
- 14.3. **Language:** The conciliation and arbitration proceedings will be conducted in the language in which the Agreement is signed provided that it is one of the three working languages of the ILO (English, French and Spanish). In the event the Agreement is in a language other than English, French or Spanish, the conciliation or the arbitration proceedings will be conducted in English, French or Spanish.

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<sup>12</sup> <https://uncitral.un.org/en/texts>.