

5 --- ILO Terms and Conditions for USDOL-funded contracts

Required provisions where the United States of America – Department of Labour is the donor:

The Contractor/Implementing Partner acknowledges and agrees that as the funding for the Contract/Implementation Agreement (Contract/Agreement) derives from the US Department of Labor (USDOL or Government), the following provisions are required and are to be read in conjunction with the Terms and Conditions applicable to ILO Contracts/ILO Implementation Agreements (Annex 1 of the Contract/Annex A of the Agreement):

1. **RESTRICTIONS ON USE OF FUNDING:** The Contractor/Implementing Partner undertakes that it will *not* use Government funds:
 - 1.1 For **alcoholic beverages**.
 - 1.2 For **direct cash transfers** to target beneficiaries. Participant support costs incurred in the nature of incidental items that are purchased and distributed or the issuance of vouchers may be allowable. Participant support costs that are direct costs for items incidental to providing services, including such items as uniforms, school supplies, books, provision of tuition (e.g., in the form of stipends), and transportation costs, are allowable.
 - 1.3 For **entertainment**, including amusement, diversion, and social activities and any costs directly associated with entertainment (such as tickets, meals, lodging, rentals, transportation, and gratuities). Costs of training, meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. Costs of meals, refreshments, transportation, rental of facilities and other items incidental to such meetings and conferences, are allowable. Costs related to child labour educational activities, such as street plays and theatre, are allowable.
 - 1.4 For payments to **host country governments**, or entities that are agencies of, or operated by or for host country governments, ministries, officials or political parties, that duplicate or substitute for existing government functions. Payments to host country governments not specified in the Contract/Agreement are not allowed except when the Contractor/Implementing Partner has obtained prior approval in writing.
 - 1.5 With the intent to **influence a Government official** (including any member of Congress, Congressional staff, or any Federal, state, or local official of the Government), to favour, adopt, or oppose, by vote or otherwise, any Government legislation, law, ratification, policy or appropriation, or to influence in any way the outcome of a political election in the United States, or to contribute to any political party or campaign in the United States, or for activities carried on for the purpose of supporting or knowingly preparing for such efforts. This includes awareness raising and advocacy activities that include fund-raising or lobbying of Federal, state, or local officials of the Government. Any communications about the ILO and its programs or activities, in response to a request by any Government official, or for consideration or action on the merits of a federally-sponsored agreement or relevant regulatory matter by a Government official, will be handled in direct consultation with the ILO.
 - 1.6 For the purchase of **land**.
 - 1.7 For goods or services used for **private purposes** by the Contractor/Implementing Partner or its Personnel.¹¹
 - 1.8 To lobby for, promote or advocate the **legalization or regulation of prostitution** as a legitimate form of work.
 - 1.9 For **religious instruction**, worship, prayer, proselytizing or other inherently religious activities, or the purchase of religious materials. This includes matching funds.
 - 1.10 To provide support to individuals or entities associated with **terrorism**, including groups, undertakings and entities identified on the list established by the United Nations Security Council Resolution 1267 (1267 Consolidated List).

¹¹ See respectively, paragraph 4.9.1 of the Terms and Conditions Applicable to ILO Contracts; paragraph 4.5.1 of the Terms and Conditions Applicable to ILO Contracts for Services (**Annex 1** of the Contract); or paragraph 2.2.1 of the Terms and Conditions Applicable to ILO Implementation Agreements (**Annex A** of the Agreement) for definition.

2. In implementing the Contract/Agreement, the Contractor/Implementing Partner acknowledges and agrees that:
 - 2.1 **SELECTION OF ENTITIES:** It will use neutral, non-religious criteria that neither favour nor disfavour religion in the selection of any entities.
 - 2.2 **INHERENTLY RELIGIOUS ACTIVITIES:** It will separately account for any non-Government and non-matching funds, or allocable portion thereof, used for inherently religious activities. Any inherently religious activities must be clearly separated in time or physical space from activities funded by the Government. Direct beneficiaries of the project must have a clear understanding that their enrollment in a Government funded project is not conditioned on their participation in any religious activities and that any decision not to participate in any inherently religious activity will in no way impact or result in any negative consequences to their standing, participation in or receipt of benefits from a Government funded project.
 - 2.3 **PROGRAM INCOME:** Except as provided for in paragraph 2.4, it will retain program income generated during the Contract/Agreement period, to be added to funds committed to the project by the Government and the ILO, and use it to further eligible project or program objectives. This does not affect program income generated after the termination or expiration of the Contract/Agreement. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Government. Proceeds from the sale of property are not program income and will be handled in accordance with the requirements of the Government's Property Standards contained in 29 CFR 95.30 through 95.37 (available at <http://www.ecfr.gov>).
 - 2.4 **LICENSE FEES AND ROYALTIES:** Unless the Government's regulations or the terms and conditions of the agreement between the ILO and the Government provide otherwise, the Contractor/Implementing Partner will have no obligation to the Government with respect to program income generated from license fees and royalties for copyrighted material, patents, patent applications, trademarks and inventions produced. However, the Government's Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made that are funded by an agreement between the ILO and the Government for an experimental, developmental, or research award. The rights to any subject invention will be consistent with 35 U.S.C. 18 (available at <http://uscode.house.gov>).
 - 2.5 **INTELLECTUAL PROPERTY RIGHTS:** Notwithstanding the Intellectual Property rights due to the ILO, the Government reserves a royalty-free, non-exclusive and irrevocable right to obtain, copy, publish, grant or otherwise use outputs produced using Government funds for Government purposes, and may so authorize others. It also requires that outputs be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted material and requires such users to attribute the material in the manner specified by the ILO. The Contractor/Implementation Partner will ensure that all outputs it produces contain the appropriate license, as described in the Terms of Reference.
 - 2.6 **ACKNOWLEDGMENT OF FEDERAL FUNDING:** Unless otherwise agreed upon by USDOL and the ILO, all publicly disseminated print or electronic materials prepared with Government funds must contain an acknowledgment of such funding through the following language: "Funding is provided by the United States Department of Labor under cooperative agreement number IL-XXXXX. These statements do not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government. XX percentage of the total costs of the project or program is financed with Federal funds, for a total of XX US dollars."
 - 2.7 **TITLE:** Ownership of goods and equipment purchased, in whole or in part, with funds from the Government may not be transferred to it, or any other party, without prior authorization of the Government.
 - 2.8 **RECORDS:** It will retain all records, including financial documents, related to or arising from the implementation of the Contract/Agreement for a period of not less than five (5) years from the termination or expiration of the Contract/Agreement. Where applicable, the ILO, or any person authorized by the ILO, may, at the sole discretion of the ILO, conduct a review, audit, investigation or other activity requiring access to such records during the term of the Contract/Agreement or thereafter. The Contractor/Implementing Partner will grant to any such person, at a time to be agreed upon, free access to all workplaces, and will make available at any time all records and documents, including supporting documents for expenditures that have been incurred for the delivery of Goods, in the completion of Services or in the execution

of the Work described in the Contract/Agreement. This obligation will survive the termination or expiration of the Contract/Agreement.

- 2.9 AUDIT:** It will conduct and share audit reports carried out by an independent accounting firm, if it receives Government funds in excess of USD 500,000 either from the ILO or cumulatively from the ILO and other sources during a fiscal year (1 October to 30 September).
- 2.10 GOVERNMENT ACCESS:** Nothing in paragraphs 2.8 or 2.9 above will be deemed to waive or otherwise limit any right or authority of the Government to review, audit, investigate or undertake any other activity requiring access to such records described above during the term of the Contract/Agreement or thereafter.
- 2.11 OBSERVANCE OF LOCAL LAWS AND REGULATIONS:** It and its Personnel will observe the laws, regulations and other instruments having the force of law in the country or countries where the performance, in whole or in part, of the Contract/Agreement takes place, which regulate the sector in respect of which the delivery of Goods, the completion of Services or the execution of the Work are to be provided under the Contract/Agreement, including all safety and health regulations, and that no threat is posed to the mental or physical well-being of target beneficiaries.
- 2.12 DISABILITY ACCESS:** It will ensure that all outputs it produces (e.g. documents, publications) are accessible for individuals with disabilities (Section 508 of the Rehabilitation Act, <http://www.section508.gov>).
- 2.13 TRAFFICKING IN PERSONS:** Neither it nor its employees/Personnel will during the Contract/Agreement period: (i) engage in severe forms of trafficking in persons; (ii) procure a commercial sex act; or (iii) use forced labour in the performance of the Contract/Agreement.
- 2.14 TERMINATION:** The ILO, without prejudice to any other right or remedy available under the Contract/Agreement, may unilaterally terminate the Contract/Agreement, without penalty, if the Contractor/Implementing Partner: (i) is determined to have violated paragraph 2.13 above; or, (ii) has or had any employees/Personnel who are determined by the ILO to have violated, after entering into the Contract/Agreement, paragraph 2.13 above through conduct that is either: (a) associated with performance under the Contract/Agreement; or (b) imputed to the Contractor/Implementing Partner in accordance with paragraph 4 below.
- 3. DEFINITIONS:** For purposes of paragraph 2.13 above, the following definitions apply:
- 3.1** “coercion” means: (i) threats of serious harm to or physical restraint against any person; (ii) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (iii) the abuse or threatened abuse of law or the legal process.
- 3.2** “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.
- 3.3** “employee” means either: (i) an individual employed by the Contractor/Implementing Partner or a funded entity and engaged in the performance of the Contract/Agreement; or (ii) another person engaged in the performance of the Contract/Agreement and not compensated by the Contractor/Implementing Partner including, but not limited to, a volunteer or individual whose services are contributed by a third-party as an in-kind contribution toward cost sharing or matching requirements.
- 3.4** “forced labour” means labour or services of a person obtained by: (i) threats of serious harm to, or physical restraint against, that person or another person; (ii) any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm or physical restraint; or (iii) the abuse or threatened abuse of law or the legal process.
- 3.5** “severe forms of trafficking in persons” means: (i) sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced to perform such act has not attained 18 years of age; or (ii) the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 4. CONDUCT IMPUTED FROM AN INDIVIDUAL TO A CONTRACTOR/IMPLEMENTING PARTNER:** For purposes of actions taken under paragraph 2.14 above, the ILO may impute conduct as follows:
- 4.1** The ILO may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, Personnel or other individual associated with a Contractor/Implementing Partner, to that Contractor/Implementing Partner when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of

that Contractor/Implementing Partner, or with the Contractor/Implementing Partner's knowledge, approval or acquiescence. The Contractor/Implementing Partner's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

4.2 Only if the record supports a conclusion that the Contractor/Implementing Partner shares in the individual's culpability, or blameworthiness, for the conduct, the misconduct of an individual associated with that Contractor/Implementing Partner may be imputed to the Contractor/Implementing Partner as described in paragraph **4.1** above. There may be circumstances in which a given activity is not illegal from a criminal standpoint, but is restricted or prohibited by the terms of the Contract/Agreement. In those circumstances, the degree of the Contractor/Implementing Partner's knowledge of the individual's conduct, and the extent of the Contractor/Implementing Partner's control over that conduct, is relevant to the determination by the ILO.

5. The Contractor/Implementing Partner acknowledges and agrees that it will comply with all applicable provisions of the Government's Federal laws, executive orders, regulations and policies that govern the use of the Government's funds, now or in the future, including:

*** For receipt and expenditure of federal financial assistance inside and/or outside of the United States:**

29 CFR Part 2 Subpart D - Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

29 CFR Part 93 - New Restrictions on Lobbying;

29 CFR Part 95 and the provisions of Annex A (OMB Circular A-110) - Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations;

2 CFR Part 200.400-475.1 - Cost Principles;

49 U.S.C. 40118 Fly America Act;

P.L. 114-113, Division E, Title VII, Section 739 - Funding for Travel to and from Meetings with an Executive Branch Agency;

P.L. 114-113, Division E, Title VII, Section 743 - Reporting of Waste, Fraud and Abuse;

P.L. 114-113, Division H, Title I, Section 103 - Prohibition on Procuring Goods Obtained Through Child Labor;

P.L. 114-113, Division H, Title V, Sections 506 and 507 - Restriction on Health Benefits Coverage for Abortions;

P.L. 114-113, Division H, Title V, Section 521 - Requirement for Blocking Pornography.

*** For receipt and expenditure of federal financial assistance inside of the United States:**

29 CFR Part 31 - Non-discrimination in Federally Assisted Programs of the Department of Labour – Effectuation of Title VI of the Civil Rights Act of 1964;

29 CFR Part 32 - Non-discrimination on the Basis of Handicap In Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

29 CFR Part 33 - Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

29 CFR Part 35 - Non-discrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

29 CFR Part 36 - Federal Standards for Non-discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

29 CFR Part 94 - Federal Standards for Government-wide Requirements for Drug-Free Workplace (Federal Assistance);

29 CFR Part 96 (OMB Circular A-133) - Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements;

29 CFR Part 99 (OMB Circular A-133) - Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations;

2 CFR Part 170, Appendix A - Federal Funding Accountability and Transparency Act, Pub. L. 109-282;

P.L. 114-113, Division H, Title V, Section 509 - Restriction on the Promotion of Drug Legalization;

P.L. 114-113, Division H, Title V, Section 520 - Restriction on Purchase of Sterile Needles or Syringes.

By signing below, the Contractor/Implementing Partner warrants that: (i) it has obtained a Data Universal Numbering System (DUNS) number; (ii) it is registered in the System for Award Management (SAM) (www.sam.gov); (iii) it is not subject to any sanction or temporary suspension imposed by the Government (www.sam.gov) and will immediately inform the ILO of any change to its status; (iv) the Contract/Agreement has not been made contingent upon it agreeing to provide matching funds; and (v) it will comply with the terms and conditions applicable to the Contract/Agreement.

The Contractor/Implementing Partner further warrants that the terms of any subcontract will be subject to and be in conformity with the provisions of the Contract/Agreement, including this Annex.

If the Contractor/Implementing Partner fails to comply with any provision of the Contract/Agreement or of this Annex, it may be obligated to reimburse the ILO for any disallowed costs as determined by it or the Government, including by deduction or otherwise, against future amounts owed by the ILO to the Contractor/Implementing Partner.

[Name, Position]

[Date]

[Address]

*Headings are for indicative purposes only and do not relieve the Contractor/Implementing Partner from any liability.