**Agreement on the Transfer of Personal Data**

**Between**

**International Organization for Migration (IOM) and**

**[add name of the Receiving Party]**

This Data Transfer Agreement is entered into by the **International Organization for Migration**, Mission in [XXX], [Address of the Mission], represented by [Name, Title of Chief of Mission etc.], hereinafter referred to as “**IOM**,” an organization part of the United Nations system, and [**Name of the Other Party**], [Address], represented by [Name, Title of the representative of the Other Party], hereinafter referred to as the “**Receiving Party**.” IOM and the Receiving Party are also referred to individually as a “**Party**” and collectively as the “**Parties**.”

**Preamble**

TAKING NOTE that the purposes of [Name of the Receiving Party] are: [Receiving Party to insert information on their mission]

TAKING NOTE that IOM, committed to the principle that humane and orderly migration benefits migrants and society, acts to: assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards effective respect of the human rights and well-being of migrants,

[OPTIONAL] TAKING NOTE that the [e.g. Receiving Party] and IOM has signed [full name of the over all cooperation agreement] on [date of signature],

WHEREAS the collection and processing of personal data are necessary components of IOM’s commitment to facilitate migration movements, understand migration challenges, and respect the human dignity and well-being of migrants.

WHEREAS IOM shall take all reasonable and necessary precautions to preserve the confidentiality of personal data and the anonymity of data subjects and all personal data shall be collected, used, transferred and stored securely in accordance with the IOM Data Protection Principles.

WHEREAS the Parties agree that data protection is paramount for the safe exchange, secure storage and confidential treatment of personal data and that sharing of personal data should be done in accordance with the IOM Data Protection Principles.

CONSCIOUS that many times the effective implementation and coordination of IOM projects and activities in accordance with IOM’s mandate involves the exchange of personal data of beneficiaries.

1. **Scope**
   1. This Agreement aims to ensure the protection of the personal data that will be transferred to the Receiving Party.
   2. IOM is …. [please add information about the project under which the sharing of personal data will take place and why this is needed] .
   3. The Receiving Party is … [please add information about the work of the Receiving Party that explains why the personal data would be needed]
   4. The following document forms an integral part of this Agreement:

Annex I: IOM Data Protection Principles

1. **Definitions** 
   1. *Personal data* means all information that could be used to identify or harm data subjects; it is any information relating to an identified or identifiable data subject that is recorded by electronic means or paper.
   2. *Data processing* means the manner in which personal data are collected, registered, stored, filed, retrieved, used, disseminated, communicated, transferred and destroyed.
   3. *Data subject* meansan individual who can be identified directly or indirectly by reference to a specific factor or factors. Such factors may include a name, an identification number, material circumstances and physical, mental, cultural, economic or social characteristics. For the purposes of this Agreement, *data subjects* are IOM beneficiaries.
   4. *“Need to know” basis* means the case-by-case granting or denying or authorized access to categories of personal data after careful deliberation.
2. **Data Transfer** 
   1. IOM shall, in accordance with its Data Protection Principles and the provisions of this Agreement, transfer to the Receiving Party the following personal data of its beneficiaries (hereinafter “the selected personal data”):

[add all the types of personal data which will be shared, e.g. name, date of birth etc.)

* 1. The specified purpose of the data transfer of the selected personal data is the following:

[add why IOM is transferring personal data of its beneficiaries with the other entity]

* 1. The method of transfer of the selected personal data will be the following:

[add whether they will be in paper or electronic format and how exactly they will be shared]

1. **Obligations of the Receiving Party**
   1. The Receiving Party understands that IOM is bound by a duty of confidentiality in relation to the personal data it receives from data subjects or collected on behalf of IOM. The Receiving Party shall take all reasonable and necessary precautions to preserve the confidentiality of the selected personal data and the anonymity of data subjects.
   2. The Receiving Party shall comply with the IOM Data Protection Principles (Annex I) when it processes the selected personal data in the performance of this Agreement.
   3. The Receiving Party warrants that it shall comply with the data protection safeguards outlined in this Agreement, and shall perform its obligations under this Agreement in such a way as to ensure that its data protection obligations and the data protection obligations of IOM to the data subjects are not breached. In particular, the Receiving Party undertakes to:
2. Use the selected personal data it receives from IOM exclusively for the specified purpose of transfer mentioned in Article 3.2. The Receiving Party shall make no other use of the selected personal data under the Agreement without IOM’s prior written consent.
3. Implement appropriate data security measures to preserve the integrity of the selected personal data and prevent any corruption, tampering, loss, damage, unauthorized access and improper disclosure of the same.
4. Maintain strict standards of confidentiality, employ appropriate access control measures and ensure that all transmissions of the selected personal data are encrypted.
5. Take all reasonable steps to limit the access to the selected personal data on a strictly applied “need to know” basis to its authorized employees and agents.
6. Take all reasonable steps to ensure that all its employees, agents and subcontractors abide by the confidentiality obligations under this Agreement.
7. Prohibit any processing of the selected personal data which is not in accordance with the terms of this Agreement.
8. Immediately update, rectify and/or delete the selected personal data upon instruction from IOM.
9. Inform IOM of any current or future internal regulations, national laws or regulations which may impact on the IOM Data Protection Principles.
10. Not further process, disclose, publish or transmit the selected personal data to any third party, without the prior written permission of IOM.
11. Retain the selected personal data only to the extent, and in such a manner, that is necessary to fulfill the specified purpose(s) of transfer.
12. Immediately notify IOM in case any data subject contacts the Receiving Party to request access, modification, deletion or any other type of processing of his/her personal data.
13. Immediately transmit to IOM any request by a third entity, including governmental authority, to share the selected personal data.
14. Provide updates to IOM with any changes recorded in the selected personal data every month or anytime it received such a request from IOM.
15. Immediately notify IOM in writing upon becoming aware of any data breach, in particular if the data breach is likely to result in personal injury or harm to the data subjects.
16. Include confidentiality notice on each copy reproduced, in whole or in part, but only to the extent reasonable necessary for the purpose.
    1. The Receiving Party further warrants that:
17. It is an organization financially sound and duly licensed, with adequate human resources, equipment, competence, expertise and skills necessary to comply fully and satisfactorily, with the obligations stated in this Agreement;
18. It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
19. In all circumstances it shall act in the best interests of IOM; and
20. It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practices or practices inconsistent with the rights set forth in the Convention on the Rights of the Child.
    1. The Receiving Party shall:
21. 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.
22. Strongly discourage its employees or other personnel having sexual relationships with IOM beneficiaries.
23. 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.
24. Ensure that the SEA provisions are included in all subcontracts.
25. Adhere to above commitments at all times. Failure to comply with (a)-(d) shall constitute grounds for immediate termination of this Agreement.
26. **Independent Contractor**

The Receiving Party shall perform its obligations under this Agreement as an independent contractor and not as an employee, partner, or agent of IOM.

1. **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]

Email: [IOM’s email address]

**[Full name of the Receiving Party]**

Attn: [Name of the Receiving Party’s contact person]

[Receiving Party’s address]

Email: [Receiving Party’s email address]

1. **Dispute resolution** 
   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.
   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.
   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.
   4. The present Agreement as well as the arbitration agreement above shall be governed by the terms of the present Agreement and supplemented by internationally accepted general principles of law for the issues not covered by the Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction. Internationally accepted general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts. Dispute resolution shall be pursued confidentially by both Parties. This Article survives the expiration or termination of the present Agreement.
2. **Ownership of Personal Data**

Ownership of the selected personal data shall remain vested in IOM. Disclosure by IOM of the selected personal data received by the Receiving Party for the purpose of this Agreement shall not affect the ownership rights of IOM.

1. **Use of IOM Name**

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

1. **Status of IOM**

Nothing in or relating to the Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration as an intergovernmental organization.

1. **Breach of Agreement**

The Parties acknowledge and agree that any breach of confidentiality obligations under this Agreement shall cause IOM and IOM beneficiaries substantial and irreparable damage. If the Receiving Party makes or threatens such breach in violation of this Agreement, IOM shall be entitled to immediate injunctive relief, or any other remedy available.

1. **Assignment**

The Receiving Party shall not assign any rights or obligations arising under this Agreement in part or all, unless specifically authorized by IOM in writing in advance.

1. **Indemnity**

The Receiving Party shall at all times defend, indemnify and hold harmless IOM, its officers, employees and agents from and against all loss, costs, damages and expenses (including legal fees and costs), claims, suits and liabilities to the extent arising out of or resulting from the activities under this Agreement. IOM shall promptly notify the Implementing Partner of any written claim, loss, or demand for which the Implementing Partner is responsible under this clause.

1. **Term and Termination**
   1. This Agreement may be terminated by one (1) months’ written notice to the other Party. However, where the Receiving Party is in breach of any of the terms and conditions of this Agreement, IOM may terminate the Agreement with immediate effect.
   2. Upon termination or expiration of this Agreement or fulfillment of the specified purpose(s) envisaged under Article 3.2, the Receiving Party shall cease to access, use or process any of the selected personal data received from IOM. The Receiving Party shall destroy the selected personal data and any copies within five (5) calendar days from the date of termination or expiration of this Agreement or fulfillments of the specified purpose(s), unless otherwise agreed by IOM in writing in advance, and shall provide a certificate to IOM that it, its agents and subcontractors have destroyed all traces of the selected personal data.
   3. The obligations under Articles 4.5, 4.6, 7, 8, 9, 10 and 13 shall survive the termination or expiration of this Agreement.
2. **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.

1. **Entirety**

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

1. **Final clauses**
   1. This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 14.1.
   2. Amendments 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*  [Name of the Receiving Party] |
| Signature | Signature |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name  Position  Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Place : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name  Position  Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Place : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |