

[REDACTED]	[REDACTED]
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**Agreement
Between
Ministry of Interior
Department of Public Security – Central Directorate of Immigration and Border Police of Italy
And
the International Organization for Migration (IOM)
On
the implementation of IOM's Activities under the project
"Support to Integrated Border and Migration Management in Libya (SIBMMIL) – First Phase" T05-
EUTF-NOA-LY-04/T05.213 ("the Project"), funded by the European Union (the 'Donor') through the
EU Emergency Trust Fund for Africa**

This Agreement (the "Agreement") is entered into by Ministry of Interior – Department of Public Security – Central Directorate of Immigration and Border Police of Italy (hereinafter referred to as the "Directorate") of Via Tuscolana, 1558 - Rome, represented by Mr. Massimo Bontempi, Central Director, and the International Organization for Migration ("IOM"), an organization part of the United Nations system, of Via Faravelli snc- Rome, represented by Mr. Laurence Hart, Chief of Mission with coordinating role for the Mediterranean. IOM and the Directorate are also hereinafter referred to individually as a "Party" and collectively as the "Parties."

1. Introduction and Integral Documents

- 1.1 This contribution-specific Agreement has the purpose to govern coordination between the Directorate and the IOM on the implementation of Activity N.6 "Strengthen the Humanitarian Border Management and Health, Border and Mobility Management capacities of South Libya authorities" within the project entitled "SIBMMIL - Support to Integrated Border and Migration Management in Libya- First Phase" (the "Project"), as established in the EU Delegation Agreement T05-EUTF-NOA-LY-04/T05.213 and Addendum N.1 to it signed on 18 December 2020 (the "EU Agreement"), which is an integral part to this Agreement;
- 1.2 The Directorate, as the lead Organisation, received the European Commission – DG NEAR's approval for this Project for Libya that is funded within the framework of the EU Emergency Trust Fund for Africa;
- 1.3 The initial EU Agreement concluded with the European Commission (DG NEAR) defines the activities entrusted to the Directorate for the implementation of the Project;
- 1.4 Following the second Steering Committee of the Project (9-10 July 2019) and subsequent meetings in Tunis and in Rome in 2020, the European Commission (DG NEAR) and the Directorate officially acknowledged IOM as a partner of the Project (i.e. Co-Delegatee under the terms of the EU Agreement), for the implementation of activity N.6 of the Action, which entered into effect with the Addendum N.1 to the Delegation Agreement T05-EUTF-NOA-LY-04/T05.213;
- 1.5 The total budget of the Project Activity N.6 entrusted to IOM amounts to EUR 12.692.831,00 (Twelve million Six Hundred Ninety-Two Thousand Eight Hundred Thirty-One Euros), as per the attached Annex B, which forms an integral part of the present Agreement; and
- 1.6 The Directorate agrees to provide IOM with financial support for the Activity N.6 under this Project in accordance with the terms and conditions of this Agreement and its Annexes.

1.7 The following documents form an integral part of this Agreement:

- (a) **Annex A** – Description of Action, including the Logical Framework;
- (b) **Annex B** – IOM Project budget;
- (c) **Annex C** – A copy of the Addendum N.1 to the EU Agreement (comprising Special Conditions, Annex I – Description of the Action, Annex II – General Conditions, Annex II.a – Provisions applicable only to Co-Delegation Agreements, Annex III – Budget for the Action);
- (d) **Annex D** – Reporting Template(s);
- (e) **Annex E** – PAGoDA 2 Management Declaration template (to be submitted by IOM with every progress and final report).

1.8 In case of discrepancy between the applicable provisions of the Annex C (Addendum N.1 to the EU Agreement) and the provisions of this Agreement, the first shall prevail.

1.9 The Description of the Action (Annex A) and Budget (Annex B) for Project Activity N.6 “Strengthen the Humanitarian Border Management and Health, Border and Mobility Management capacities of South Libya authorities” (hereinafter the “**Activities**”) are prepared based on the project duration until **15 December 2024**.

2. Role of the Parties

2.1 The Directorate as the lead Organisation, will be the intermediary for all communications with the Contracting Authority (European Commission - DG NEAR) and consequently undertakes to:

- a. Based on the reports, documents, updates, information and communications provided by IOM, carefully monitor the progress in Project Activity N.6 implementation within its responsibility for the coordination of the Project vis-à-vis the Contracting Authority;
- b. Liaise and coordinate as lead partner vis-à-vis the Contracting Authority and relevant EU Institutions;
- c. Consolidate all the reporting phases required by the Contracting Authority;
- d. Request the Contracting Authority for the necessary authorizations for any changes and review of the activities, in the terms envisaged in the Delegation Agreement and Addendum N.1;
- e. Coordinate with IOM on an appropriate reporting template that will allow consolidation of reports due to the European Commission (DG NEAR);
- f. Ensure due coordination with IOM on any aspect pertaining to Project Activity N.6 before communication with the Contracting Authority; and
- g. Pay the corresponding amounts to IOM according to the terms specified in Article 3 of this Agreement (Contribution).

2.2 The IOM, as Co-Delegatee and the implementing partner of the Project Activity N.6, undertakes to comply with the obligations and duties described below:

- a. Accepts the rules and obligations in the EU Agreement as per the Addendum N.1 and its Annexes, with regard to the Project’s component N.6 under its responsibility as per the Description of the Action (Annex A) and IOM Budget (Annex B) in terms of operational activities and financial implications as well as achievement of results;
- b. Administers the EU Contribution received through the Directorate in accordance with its own positively pillar-assessed rules and procedures by the European Commission

- and in line with the EU-UN Financial and Administrative Framework Agreement (FAFA) as referenced in Article 1.6 of the amended Special Conditions of the EU Agreement;
- c. Ensures that the Directorate has or obtains the data needed to draw up the reports as required under the EU Agreement and other information or documents required by the Contracting Authority, including any information needed in the event of monitoring or evaluations as well as the relevant management declaration to be submitted with every progress and final report in accordance with Article 3.10 of Annex II of the EU Agreement (General Conditions);
 - d. Informs the Directorate immediately of any event likely to affect or delay the implementation of the Activities assigned to IOM under the Project (Project Activity N.6);
 - e. Presents the narrative and financial reports following the templates provided by the Directorate (Annex D), in line with the same level of detail on activities and expenditures as described in Annexes A and B to this Agreement;
 - f. Acknowledges that official communications and relationships with the Libyan authorities within the implementation of the project activities shall be in principle managed by the Directorate;
 - g. Without any prejudice for the role of IOM under the terms of the EU Agreement and its operational autonomy in the project implementation, and subject to the application of IOM's internal rules, regulations, policies and procedures, IOM accepts that, to the extent possible, official communications and relationships with the Libyan authorities falling under the responsibility of IOM shall be coordinated/communicated with/to the Directorate before communication with any Libyan authorities.

3. Contribution

- 3.1 The Directorate hereby agrees to provide financial support to IOM for the Activities up to a maximum of **EUR 12.692.831,00** (Twelve Million Six Hundred Ninety-Two Thousand Eight Hundred Thirty-One Euros), including possible costs related to bank transfer, (hereinafter, the "Contribution").
- 3.2 The Contribution shall be used by IOM towards financing the costs of the Activities outlined in the Description of Action (**Annex A**), and the Project Budget (**Annex B**), which are an integral part of this Agreement. The Contribution shall include the IOM remuneration of 7% of the Project Activity N.6 total direct eligible costs (as confirmed in Article 3.2 of the Special Conditions in the Addendum N.1 to the EU Agreement).
- 3.3 The Contribution shall be paid by the Directorate into the following account in Euro (EUR), quoting the above IOM reference number indicated in the payment request to facilitate the recording of the Contribution into IOM's accounts:

BANK NAME: [REDACTED]
IBAN: [REDACTED]
SWIFT BIC: [REDACTED]
Name of Beneficiary: INTERNATIONAL ORGANIZATION FOR MIGRATION
[REDACTED]
[REDACTED]
[REDACTED]

Any change to the above-mentioned bank account shall be duly notified to the Donor in writing.

- 3.4 The Contribution shall be paid by the Directorate in instalments according to the below schedule:

- a. First payment to be intended for the start of activities of **EUR 6,500,000.00** (Six Million Five Hundred Thousand Euros). The payment will be due within 30 (thirty) days from the date of registration at the national Court of Auditors of the present Agreement duly signed by the Parties, given that the pre-financing is received by the Directorate following the terms and conditions of the EU Agreement.
- b. Second payment to be intended as pre-financing instalment of **EUR 2.461.773,95** (Two Million Four Hundred Sixty-One Thousand Seven Hundred Seventy-Three Euros Ninety-Five Cents) following the end of the 1st reporting period, i.e. since the date of inception of Activities until 15 December 2021, upon presentation by the IOM of the interim narrative and financial reports together with a request of payment for the following reporting period, via certified email. The payment will be due within thirty (30) days once the pre-financing is received by the Directorate following the terms and conditions of the EU Agreement.
- c. Third payment to be intended as pre-financing instalment of **EUR 2.461.773,95** (Two Million Four Hundred Sixty-One Thousand Seven Hundred Seventy-Three Euros Ninety-Five Cents) following the end of the 2nd reporting period, i.e. 12 (twelve) months since the end of the 1st reporting period, upon presentation by the IOM of the interim narrative and financial reports together with a request of payment for the following period, via certified email. The payment will be due within thirty (30) days once the pre-financing is received by the Directorate following the terms and conditions of the EU Agreement
- d. Fourth payment to be intended as pre-financing instalment of **EUR 1.269.283,10** (One Million Two Thousand Sixty-Nine Hundred Two Hundred Eighty-Three Euros Ten Cents) following the end of the 3rd reporting period, i.e. 12 (twelve) months since the end of the 2nd reporting period, upon presentation by the IOM of the interim narrative and financial reports, together with a request of payment for the following period until the end of the Activities, via certified email. The payment will be due within thirty (30) days once the pre-financing is received by the Directorate following the terms and conditions of the EU Agreement.

The Directorate shall notify IOM by email to [REDACTED] and [REDACTED] of the following: (a) the amount transferred; (b) the value date of the transfer; (c) that the transfer is from the Donor pursuant to this Agreement including the above IOM reference number.

3.5 The activities to be implemented by IOM under the Project shall only be started upon IOM's receipt of the first payment as per the payment schedule agreed under Article 3.4. In the event that IOM does not receive the Contribution as per the payment schedule agreed under Article 3.4 or does not receive the Contribution in full within the agreed payment schedule, IOM may contact the Directorate who shall hold a discussion with IOM with a view to determining when the payment of the Contribution or the remaining Contribution will be initiated. In the event of not receiving the Contribution fully in accordance with the payment schedule agreed under Article 3.4, the Activities implemented by IOM under the Project may be reduced, suspended, postponed or terminated by IOM upon IOM's written notification to the Directorate with immediate effect.

3.6 The Directorate's obligation under Article 3.1 above shall not be affected by or contingent on (i) any rights or obligations of the Directorate or of IOM under other contracts or agreements between IOM and the Directorate, or (ii) IOM's performance of other project activities or any result of audit, evaluation and monitoring not directly relevant to this Agreement.

3.7 IOM shall not be liable for any delay in performing or failure to perform any of its obligations under this Agreement if IOM does not receive the Contribution fully in accordance with the payment schedule as per Article 3.4 of this Agreement.

4 Project Duration

4.1 Without prejudice to Articles 22.4 and 22.5, a duration starting from **12 April 2021** until **15 December 2024** is agreed, taking account of the possibility of requesting a no-cost extension to the European Commission to extend the management of the contribution beyond the envisaged deadline.

4.2 The approving decree of this Agreement will be sent to the competent control bodies for registration, as required by the current provisions of the Italian law.

5 Administration of the Contribution

5.1 IOM shall receive and administer the Contribution in accordance with its regulations, rules and directives. The Contribution shall be subject exclusively to the internal and external auditing procedures provided for in the financial regulations, rules and directives of IOM.

5.2 IOM shall maintain a separate project code to track all related financial transactions, which will be converted using the prevailing United Nations operational rate of exchange.

5.3 The budget allocated to the IOM is broken down by cost items according to the project budget (**Annex B**); the same will constitute the maximum level of expenditure that the IOM cannot exceed unless within the rules concerning budget variations and, with a prior motivated request to the Directorate that will take care of its submission to the Contracting Authority, should an authorization be necessary in line with the applicable provisions of the EU Agreement.

5.4 According to Art. 19 and Art. 20 of Annex II - General Conditions of the EU Agreement, any part of the Contribution which has not been used upon completion of the Activities, as reported in the final financial report, shall be refunded to the European Commission (DG NEAR) via the Directorate, unless otherwise agreed by the Parties.

5.5 IOM, since 1 March 2017, is a member of the International Aid Transparency Initiative (IATI) and works towards applying the IATI standards with a view to publishing information incrementally through the IATI platform. In line with the commitment of the Parties to this Agreement to transparency, the Donor gives consent for IOM to publish data related to this Agreement (and any subsequent amendments) and associated financial transfers via its website and via the IATI platform. IOM gives consent for data related to this Agreement (and any subsequent amendments) and associated financial transfers to be published on the Donor's website and via IATI.

IATI Publisher Identifiers:

[REDACTED]

6 Reports

6.1 IOM shall provide the Directorate with the following reports during implementation of its Activities:

- a) The final narrative and financial report, relating to the period between the start and end date of the Activities, including the documents to request the final payment (following Annex V of the EU Agreement - Standard Request for Payment) and a copy of the materials produced as per the Project Document (Annex A), within 90 (ninety days) from the official conclusion of the activities.
- b) Interim narrative and financial reports every 12 (twelve) months, no later than 30 January in order to respect the date set in Art 1.5 Special Conditions of the EU Agreement to allow for the payment of the pre-financing amounts to IOM, as indicated in Article 3.4. The first interim narrative and financial report will cover the period from the commencement of IOM's Activities until 15 December 2021.
- c) A management declaration will be submitted by IOM with every progress and final report.

6.2 IOM shall provide the Directorate also with the following narrative updates:

- a) A quarterly briefing on the activities carried out and with updates on main Logical Framework indicators. Such quarterly briefings are narrative and do not include financial reports. They will be due after 15 days after the end of each quarter reporting period.
- b) Informal monthly updates to be submitted to the Directorate to inform of any relevant development of activities before the mandatory quarterly briefing.

6.3 The expenses incurred concerning the Activities must comply with the eligibility criteria as stipulated in the EU Agreement (Annex C).

6.4 The IOM undertakes to keep this original documentation for a period of 5 (five) years starting from the date of accreditation of the final balance of the Project by the European Commission to the Directorate. For this purpose, the Directorate shall inform IOM of the date of accreditation of the final balance of the Project by the European Commission.

6.5 The Parties can request a no-cost extension to the European Commission (DG NEAR), in this event the deadline for the final reporting will follow the new dates agreed upon by way of formal contract amendment with the European Commission.

7. Vetting process of beneficiaries

The Parties agree on ensuring effective vetting of Libyan officials participating in training activities, in order to exclude individuals who have committed human rights violations and abuses and therefore cannot be held reliable nor accountable for promoting and applying international standards. The vetting process will be applied by Parties during selection process. The Directorate will apply its national and any other applicable EU or international sanctions lists for this purpose. IOM will follow the applicable provisions of the EU-UN FAFA as referenced in the EU Agreement (Annex C).

8. Ownership of property financed from the Contribution

Ownership of equipment, supplies and other properties financed from the Contribution shall vest in IOM. Such properties shall be disposed of in accordance with the applicable provisions of Annex II of the EU Agreement (General Conditions), unless otherwise agreed with the Contracting Authority in writing.

9. Force Majeure

IOM shall not 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*, which means any unforeseeable

and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, blockade or embargo, strikes, Governmental or state restrictions, natural disaster, epidemic, public health crisis, and any other circumstances which are not caused by nor within the control of IOM. As soon as possible after the occurrence of a *force majeure* event which impacts the ability of IOM to comply with its obligations under this Agreement, IOM will give notice and full details in writing to the Donor and the Directorate of the existence of the force majeure event and of the likelihood of delay. On receipt of such notice, IOM, the Donor and the Directorate shall consult with a view to resuming performance of the impacted activities under this Agreement and ensuring coverage by the Donor of unavoidable expenditures incurred by IOM during the period of *force majeure*. Following consultation with the Donor and the Directorate, IOM shall be entitled without liability to suspend the implementation of some or all activities under this Agreement to the extent that it is not possible for IOM to implement the activities due to *force majeure*.

10. Confidentiality

The Parties shall both preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is communicated as confidential in accordance with Article 6 of the General Conditions (Annex II of the EU Agreement). In particular, in no case can disclosure put in jeopardy the Parties' privileges and immunities or the safety and security of the Parties' staff, contractors or the final beneficiaries of the Action.

All information including personal information which comes into the Parties' possession or knowledge in connection with this Agreement or the Project is to be treated as strictly confidential. No personal information shall be communicated to any third party without the prior written approval of the person concerned. IOM shall comply with the IOM Data Protection Principles in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. The obligations under this Article shall survive the expiration or termination of this Agreement.

The information and data relating to the structure and activity of the Directorate, which the IOM personnel may become aware of in relation to the execution of the present Agreement, shall in no way and in any form be communicated and disclosed to third parties and may not be used by IOM or anyone who collaborates in its activities for purposes other than those covered in this Agreement.

The prohibitions referred to in the previous paragraph also subsist in relation to all the material, originating or prepared by IOM in execution of the Agreement, to the software developed and to all the relevant documentation. However, such prohibitions exclude the information and data that are publicly available.

11. Intellectual Property and right of use

- a. All intellectual property and other proprietary rights including, but not limited to, patents, copyrights, trademarks and ownership of data resulting from the Activities carried out by the IOM under this Agreement shall be vested in IOM, including, without any limitation, the rights to use, reproduce, adapt, publish and distribute any item or part thereof.
- b. In line with applicable provisions of Annex II of the EU Agreement (General Conditions), the European Commission shall be entitled to use free of charge any results from the Activities implemented by IOM under this project.

12. Liability

The Directorate assumes no responsibility for damages arising from the realization of the Activities envisaged in the Project referred to in this Agreement, for contractual and extra-contractual legal relations concerning their execution, provided that such damages are not attributable to the Directorate. It is attributed to the IOM, exclusively, the responsibility for any damage to the extent caused by IOM's personnel to persons or property belonging to third parties that may occur in the execution of the Project referred to in this Agreement.

13. 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: Mr. Laurence Hart
Via L.G. Faravelli snc, 00195 - Rome
Email: lhart@iom.int

Ministry of Interior – Central Directorate of Immigration and Border Police

Attn: Mr. Massimo Bontempi
Via Tuscolana, 1548 00173 - Rome
Email: massimo.bontempi@interno.it

The Parties commit to keep themselves constantly and mutually informed about everything that has direct or indirect relation with the implementation of the commitments deriving from the present Agreement.

Communications between the Parties will normally take place through certified e-mail or, in the case of operational communications, by e-mail.

14. Dispute resolution

14.1. This Agreement will be subject to the general principles of law, excluding the application of any particular national legal system. 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.

14.2. 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.

14.3. 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.

14.4. 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.

15. 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.

16. 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.

17. Termination

17.1 Termination of the Project by the Contracting Authority

In the event that the EU Agreement (Annex C) is terminated earlier, the Directorate shall immediately inform IOM of the termination date and the cause of termination. Subject to IOM's receipt of such information in advance, this Agreement shall be automatically terminated on the same date as the termination date of the EU Agreement. In such event, IOM shall be entitled to payments in line with the Directorate's entitlements as per Article 13.3 of the Annex II - General Conditions of the EU Agreement.

17.2 Termination by notice

Each Party may terminate this Agreement with prior written notice of 3 (three) months to the other Party.

17.3 In the event that this Agreement is terminated prior to the completion of the Activities, IOM may continue to hold any unutilized Contribution until all commitments and liabilities incurred up to the date of termination for the implementation of the Activities have been satisfied and project activities have been brought to an orderly conclusion. IOM shall not be obliged to repay any funds irrevocably committed in good faith by IOM before the date of notice of such termination.

18. 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.

19. 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.

20. Final clauses

20.1 This Agreement shall enter into force upon its signature by authorized representatives of the Parties. It will remain in force until completion of all obligations of the Parties under this Agreement.

20.2 Amendments may be made by mutual agreement in writing between the Parties. Any other amendment is not valid.

20.3 This Agreement does not commit the Parties until it has been approved and made executive by the competent Authority (registration at the national Court of Auditors) in the manner established by law, except for specific authorization for early execution.

20.4 In order to fulfil the international obligations assumed and to avoid funding recovery from the European Commission because in case of failure to achieve the project targets, the immediate execution of this Agreement is arranged with effect from 12th April 2021.

Signed in English and Italian, on the date and at the places indicated below. In case of discrepancy between the two versions, the English version shall prevail.

For and on behalf of
Ministry of Interior
Central Directorate of Immigration and
Border Police - Italy
Signature

MASSIMO BONTEMPI
MINISTERO DELL'INTERNO
- DIPARTIMENTO DELLA
P.S.
08.04.2021 07:53:34 UTC

Massimo Bontempi
Central Director

Date of digital signature
In Rome

For and on behalf of
The International Organization
for Migration

Firmato digitalmente da: LAURENCE HART
Data: 09/04/2021 13:26:29

Laurence Hart
Director, Coordinating Office for the
Mediterranean, Chief of Mission for Italy and
Malta, Representative to the Holy See

Date of digital signature
In Rome