

Post Distribution Monitoring for Delivering UNHCR's Energy Appliances, Short-Term Energy Interventions for Refugees in Pakistan

Annex I - Supplementary Agreement

SUPPLEMENTARY AGREEMENT

CONCERNING THE PROTECTION OF BENEFICIARIES' PERSONAL DATA

between

**THE OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
(the "UNHCR" or "UNHCR")**

and

**XXXX
(the "Service Provider")**

PREAMBLE

WHEREAS, for the purpose of allowing the provision of Post Distribution Monitoring (the "PDM") on the Energy Appliances (Solar School Bags, Solar Lanterns, Energy Efficient Cooking Stoves) from UNHCR to persons of concern (the "Beneficiaries"), UNHCR collects and processes Personal Data of such Beneficiaries;

WHEREAS, UNHCR has engaged the Service Provider to render Services which incorporate processing Beneficiaries' personal data on UNHCR's behalf;

WHEREAS, by virtue of its mandate and internal rules and regulations, UNHCR has the obligation to ensure that the privacy and personal data of Beneficiaries are protected in the processing of such data, whether independently or through the engagement of data processors; and

WHEREAS, accordingly, this Supplementary Agreement pertains to the protection of Personal Data accessed, collected or otherwise received and processed by the Service Provider on UNHCR's behalf in the course of rendering the Services as set out in the Frame Agreement for Provision of Services relating to Distribution of the Energy Appliances (Solar School Bags, Solar Lanterns, Energy Efficient Cooking Stoves), (hereinafter the "Main Agreement") between UNHCR and the Service Provider.

NOW, THEREFORE, UNHCR and the Service Provider (the "Parties") hereby agree as follows:

Section 1. Certain Definitions.

1.1. In this Supplementary Agreement, the following terms have the following meanings given to them, unless the context otherwise requires:

- (a) “Data Subject” means a Beneficiary who is the intended recipient of the Energy Appliances (Solar School Bags, Solar Lanterns, Energy Efficient Cooking Stoves) and the persons to whom the Personal Data refers.
- (b) “Personal Data” means any personal information including identifying information such as the name, identification or passport number, Proof of Registration or Voluntary Repatriation Form number, mobile telephone number, email address, cash transaction details, of whatever nature, format or media that by whatever means, is provided to the Service Provider by the UNHCR, is accessed or collected by the Service Provider on the authority of the UNHCR or is otherwise received by Service Provider on the UNHCR's behalf and includes transactional or other information associated with the Data Subject generated by a Service Provider in the course of providing the service to the UNHCR.
- (c) “Processing” in relation to Personal Data, includes the obtaining, recording or holding of such data or carrying out any operation or set of operations on the data, including organization, adaptation, or alteration; disclosure by transmission, dissemination, or otherwise; and alignment, combination, blocking, erasure, or destruction.
- (d) “Services” means the specific activities for which the UNHCR has engaged the Service Provider as set out in the Main Agreement.

1.2. Unless the context otherwise requires, capitalized terms used but not otherwise defined in this Supplementary Agreement shall have the meanings given to them in the Main Agreement.

Section 2. Data Processing.

2.1. The Service Provider agrees to process the Personal Data to which this Supplementary Agreement applies, and in particular each Service Provider agrees that it shall:

- (a) process the Personal Data in accordance with the terms and conditions set out in this Supplementary Agreement and where the standards imposed by the data protection legislation regulating the Service Provider processing of the Personal Data are higher than those prescribed in this Supplementary Agreement, then in accordance with such legislation;
- (b) process the Personal Data strictly in accordance with the purposes relevant to the Services in the manner specified from time to time by the UNHCR; and for no other purpose or in any other manner except with the express prior written consent of the UNHCR;
- (c) implement appropriate technical and organisational measures to safeguard the Personal Data from unauthorised or unlawful processing or accidental loss, destruction or damage in compliance with best industry standards, having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from

unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of the Personal Data to be protected;

- (d) Personal Data as confidential data and not disclose such data without the prior written authorization of the UNHCR to any person other than to its employees, agents or subcontractors to whom disclosure is necessary for the performance of the Services, except (subject to Section 2.2 below) as may be required by any law or regulation affecting the Service Provider;
- (e) implement technical and organisational measures to procure the confidentiality, privacy, integrity, availability, accuracy and security of the Personal Data including establishing organisational policies for employees, agents and subcontractors aimed at complying with the Service Provider's duties to safeguard the Personal Data in accordance with this Supplementary Agreement;
- (f) implement backup processes as agreed between the UNHCR and Service Provider to procure the availability of the Personal Data at all times and ensure that the UNHCR will have access to such backup of the Personal Data as is reasonably required by the UNHCR;
- (g) ensure that any disclosure to an employee, agent or subcontractor is subject to a binding legal obligation to comply with the obligations of the Service Provider under this Supplementary Agreement including compliance with relevant technical and organisational measures for the confidentiality, privacy, integrity, availability, accuracy and security of the Personal Data. For the avoidance of doubt, any agreement, contract or other arrangement with an employee, agent or subcontractor shall not relieve the Service Provider of its obligation to comply fully with this Supplementary Agreement, and the Service Provider shall remain fully responsible and liable for ensuring full compliance with this Supplementary Agreement;
- (h) comply with any request from the UNHCR to amend, transfer or delete Personal Data; provide a copy of all or specified Personal Data held by it in a format and or a media reasonably specified by the UNHCR within reasonable timeframes as agreed between the Parties;
- (i) should the Service Provider receive any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with applicable law, immediately notify the UNHCR and provide the UNHCR with full co-operation and assistance in relation to any complaints, notices or communications;
- (j) promptly inform the UNHCR if any Personal Data is lost or destroyed or becomes damaged, corrupted or unstable and at the request of the UNHCR, restore such Personal Data at its own expense;
- (k) in the event of the exercise by Data Subjects of any rights in relation to their Personal Data, inform the UNHCR as soon as possible,

- (l) assist the UNHCR with all data subject information requests or complaints which may be received from any Data Subject in relation to any Personal Data;
- (m) not use the Personal Data of Data Subjects to contact, communicate or otherwise engage with the Data Subjects including transmission of any marketing or other commercial communications to the Data Subjects, except in accordance with the written consent of the UNHCR or to comply with a court order. For the avoidance of doubt, the Service Provider is not prohibited from contact, communication or engaging with the Data Subject in so far as this does not involve processing of Personal Data and the Service Provider procures that the promotion or offer of services is not in any manner associated to the UNHCR or the UNHCR's services;
- (n) not process or transfer the Personal Data outside of the country of its registered office except with the express prior written consent of the UNHCR pursuant to a request in writing from the Service Provider to the UNHCR. For the avoidance of doubt, such consent will not be granted should a request be made to transfer the Personal Data to a country which is not a party to the Convention on the Privileges and Immunities of the United Nations of 1946;
- (o) permit and procure that its data processing facilities, procedures and documentation be submitted for scrutiny by the UNHCR or its authorised representatives, on request, in order to audit or otherwise ascertain compliance with the terms of this Supplementary Agreement;
- (p) advise the UNHCR of any significant change in the risk of unauthorised or unlawful processing or accidental loss, destruction or damage of Personal Data; and

2.2. If pursuant to any law or regulation affecting a Service Provider, Personal Data is sought by any governmental body, the Service Provider shall:

- (a) promptly notify the UNHCR of this fact and consult with the UNHCR regarding the Service Provider's response to the demand or request by such governmental body;
- (b) inform such governmental body that such Personal Data is privileged due to the status of the UNHCR as a subsidiary organ of the United Nations, as a result of which it enjoys certain privileges and immunities as set forth in the Convention on the Privileges and Immunities of the United Nations (the "General Convention");
- (c) request such governmental body either to redirect the relevant request for disclosure directly to the UNHCR or to grant the UNHCR the opportunity to present its position regarding the privileges status of such Personal Data;
- (d) cooperate with the UNHCR's reasonable requests in connection with efforts by the UNHCR to ensure that its privileges and immunities are upheld and, to the extent permissible by law, seek to contest or challenge the demand or request based on, inter alia, the UNHCR's status, including its privileges and immunities;

- (e) where the Service Provider is prohibited by applicable law or the governmental body from notifying the UNHCR of a governmental body's request for such Personal Data, notify the UNHCR promptly upon the lapse, termination, removal or modification of such prohibition;
- (f) provide the UNHCR with true, correct and complete copies of the governmental body's demands and requests, the Service Provider's responses thereto, and keep the UNHCR informed of all developments and communications with the governmental body.

2.3. The obligations and restrictions in Section 2.1 and Section 2.2 of this Supplementary Agreement shall be effective during the term of this Supplementary Agreement, including any extension thereof, and shall remain effective following any termination of this Supplementary Agreement, unless otherwise agreed between the Parties in writing.

Section 3. Warranties

3.1. The Service Provider warrants that:

- (a) it will process the Personal Data in compliance with laws, enactments, regulations, orders, standards and other similar instruments applicable to the Service Provider; and in accordance with the terms and conditions of this Supplementary Agreement;
- (b) in order to observe the rights of ownership and/or other proprietary or intellectual property rights of the UNHCR in the Personal Data, it will not copy, process or retain the Personal Data in any manner other than as contemplated by the Main Agreement or as required by applicable law.

Section 4. Indemnity.

4.1. The Service Provider agrees to indemnify and keep indemnified and defend at its expense the UNHCR against all costs, claims, damages or expenses incurred by the UNHCR or for which the UNHCR may become liable due to any failure by a Service Provider or its employees, subcontractors or agents to comply with the obligations under this Supplementary Agreement.

Section 5. Subcontractors and Agents.

5.1 The Service Provider may authorise a third party subcontractor or agent to process the Personal Data, so long as such authorisation does not otherwise violate the Service Provider's obligations under this Supplementary Agreement and subject to the following conditions:

- (a) the UNHCR's prior express written consent, the validity of such consent being conditioned on the Service Provider supplying the UNHCR with full and accurate details of such third party subcontractor or agent; and
- (b) the execution by such third party contractor or agent of a written agreement with the Service Provider under which (i) such third party contractor or agent is bound to the same obligations of the Service Provider hereunder, (ii) UNHCR is expressly identified in such agreement as third-party beneficiary and such agreement provides that the obligations of such third party contractor or agent are made for the benefit of and are

enforceable by the Service Provider in a binding arbitration procedure as described in the Main Agreement and without waiver, express or implied, any of the privileges and immunities of the United Nations, including its subsidiary organs, or of UNHCR (as a subsidiary organ of the United Nations) and (iii) the agreement terminates automatically on the expiry or termination, for any reason, of this Supplementary Agreement.

- (c) UNHCR is provided an original counterpart of the agreement referred to in Section 5.1(a), signed by all parties thereto;

5.2. The Service Provider shall promptly notify the UNHCR of any breach of a third-party's obligations under an agreement referred to in Section 5.1(a) and shall use reasonable efforts to enforce the obligations of the third party thereunder. The Service Provider shall provide reasonable assistance to the UNHCR to support enforcement by the UNHCR, as third party beneficiary, of the obligations of the third party under such agreement.

Section 6. Termination.

6.1. This Supplementary Agreement shall terminate automatically upon termination or expiration of the Main Agreement.

6.2. UNHCR shall be entitled to terminate this Supplementary Agreement forthwith by notice in writing to the Service Provider if a Service Provider is in a material or persistent breach of this Supplementary Agreement which, in the case of a breach capable of remedy, shall not have been remedied within five days from the date of receipt by Service Provider of a notice from the UNHCR identifying the breach and requiring its remedy.

Section 7. Return or Destruction of Personal Data.

7.1. After expiration or termination of this Supplementary Agreement, the Service Provider shall return or (at the Service Provider's election and upon prior written notice to the UNHCR) destroy all Personal Data, except and for so long as required by applicable law.

7.2. In the event that the Service Provider elects to destroy Personal Data under this Section 7, such destruction shall be effected promptly after written notice of such election is given and shall be evidenced by a written attestation issued to the UNHCR and signed by two authorized representatives of the Service Provider.

7.3. The Service Provider shall give written notice to the UNHCR of any Personal Data it is required to retain under applicable law. The Service Provider shall promptly return or destroy such retained Personal Data as soon as permitted under applicable law, and its obligations under this Supplementary Agreement shall survive until such retained Personal Data is returned or destroyed in accordance with this Section 7.

7.4. Notwithstanding the return or destruction of the Personal Data, the Service Provider shall continue to be bound by the confidentiality obligations under the Main Agreement.

Section 8. Dispute Resolution.

Any dispute, controversy or claim between the parties arising out of this Supplementary Agreement shall be governed by the relevant provisions of the Main Agreement governing the settlement of disputes.

Section 9. Privileges and Immunities.

Nothing in or relating to this Supplementary Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, or of UNHCR (as a subsidiary organ of the United Nations).

Section 10. Miscellaneous Provisions.

10.1. Headings and titles used in this Supplementary Agreement are for reference purposes only and shall not be deemed a part of this Supplementary Agreement for any purpose whatsoever.

10.2. Unless the context otherwise clearly requires, (a) all references to the singular shall include the plural and vice versa and references to any gender shall include every gender; and (b) any words following the word “include,” “includes,” “including,” “in particular” or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them or immediately following them.

10.3. This Supplementary Agreement and everything herein contained shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have, through their authorized representatives, executed this Agreement in two identical originals in counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same instrument.

For and on behalf of:

**THE OFFICE OF
THE UNITED
NATIONS HIGH
COMMISSIONER
FOR REFUGEES** Name:
Title:
Date:
Place:

**THE SERVICE
PROVIDER** Name:
Title:
Date:
Place:

Signature
