

## The Short Format for Implementing Partner Agreement

BU: <b>SOM01</b>	Agreement No: <b>000000155</b>	Amendment No: <b>000</b>
Budget Year: <b>2010</b>	Implementer: <b>1237091</b>	Operation: <b>SOM ABC</b>

### AGREEMENT

#### UNDER THE PROGRAMME OF THE UNITED NATION HIGH COMMISSIONER FOR REFUGEES

BETWEEN

**THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES**

(hereinafter referred to as "UNHCR")

AND

**THE SOMALI HUMAN RIGHTS ASSOCIATION**

(hereinafter referred to as "the Agency")

(both hereinafter referred to as "the Parties")

### PREAMBLE

(i) The general conditions for Short-Sub-Project Agreements and other attachments as listed in Art 11.0 below herewith from an integral part of this Agreement;

## **Art. 1.0 Summary of the Sub-Project Description**

### 1.01 Background and Beneficiaries:

SOHRA is human rights and humanitarian local organizations, which their primary objective is to provide human Rights protection in terms of PMT / PMN Activities, and advocacy of violations and abuses against humanity through community mobilization and introduction of principles of fundamental human rights to the general public and routinely conducting investigation, documentation, monitoring and advocacy of the abuses and crimes against humanity .Methodologies include media interviews and declarations calling for human rights protection and press releases condemning such violations. The center has a network system of monitoring and collecting daily events in the area of coverage and all incidents of abuses occurred in this country.

1.02 Objective:

To enhance peaceful coexistence of all PoC in South Central through emphasising the importance of commemorating national holidays as a community.

1.03 Impact Indicator(s):

Extent PoC Included in National development policies

1.04 Outputs and Activities:

- 1) Partnerships established with development actors at national and regional level
- 2) Advocacy campaign for Inclusion of areas hosting persons of concern in national and local development plans implemented

1.05 Performance Indicator(s):

- # of People attending the events
- # of development partnerships established
- # of Persons reached by the campaign

**Art. 2.0 Basic Sub-Project Data**

2.01 Sub Project Symbol:

Budget Year: 2010

Implementer: 1237091 SOMALI HUMAN RIGHTS ASSOCIATION

Operation: SOM ABC

Cost Centre(s): 12101 SOMALIA, MOGADISHU

Pillar: Pillar 4 - IDP Projects

Situation(s): 4900 ANNUAL BUDGET EXCOM APPROVED

Population Planning Group(s):

4SOMA Internally displaced Somalis

Goal(s): PB Emergency response

2.02 Sub-Project Title:

Advocacy Campaigns for Somali Civilian Rights Protection

2.03 Office:

Mogadishu, Somalia

2.04 Effective Commencement Date: 15/11/2010

2.05 Planned Completion Date: 31/12/2010

2.06 Liquidation Date: 31/01/2011

2.07 Level at which Budgetary Transfers are Authorized: Account

**Art. 3.0 Reporting Requirements**

3.01 Sub-Project Monitoring Report:

- By 15 February for period ending 31 December (Parts 1 & 2);

3.02 Other (specify titles and due dates):

**Art. 4.0 Total Sub-Project Requirement**

4.01 Financial Participation by UNHCR: In consideration of the activities undertaken by the Agency and the outputs delivered as specified under Article 1.04 above, UNHCR shall transfer to the Agency, subject to the availability of funds, a maximum of:

**Cash**

<u>Currency</u>	<u>Amount</u>	<u>UN rate of exchange</u>	<u>USD Equivalent</u>
USD	6,480.00	1.00	6,480.00
Total not exceeding US \$:			6,480.00

**Kind**

<u>Currency</u>	<u>Amount</u>	<u>UN rate of exchange</u>	<u>USD Equivalent</u>
Total not exceeding US \$:			

4.02 Financial Participation by the Partner(s):

**Cash**

<u>IP Type</u>	<u>Currency</u>	<u>Amount</u>	<u>Description</u>	<u>UN rate of exchange</u>	<u>USD Equivalent</u>
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**Kind**

<u>IP Type</u>	<u>Currency</u>	<u>Amount</u>	<u>Description</u>	<u>UN rate of exchange</u>	<u>USD Equivalent</u>
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**Art. 5.0 First Remittance:**

<u>Currency</u>	<u>Amount</u>
USD	6,480.00

**Art. 6.0 Indicative Cash Requirements:**

<u>Date</u>	<u>Currency</u>	<u>Amount</u>	<u>Description</u>
15/11/2010	USD	6,480.00	FIRST & FINAL INSTALLMENT

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**Art. 7.0 Agency Data:**

Full name and address of Short Form Agency:

THE SOMALI HUMAN RIGHTS ASSOCIATION

zope Building, KM5

Buulo-Xuubey street, Medina district

Mogadishu

SOMALIA

**Art. 8.0 Bank Account to which UNHCR should remit Funds :**

somali human rights asociation

<u>Remit to</u>	<u>Bank ID</u>	<u>Description</u>	<u>Account #</u>	<u>Currency</u>	<u>City</u>
<u>Location</u>					
SOMALIA					

**Art. 9.0 Type of Account**

The account is a pool account. Interest earned on this account will be apportioned and a fair share will be credited to the Sub-Project.

**Art. 10.0 Procurement**

If the adjacent box is *ticked*, it indicates that UNHCR has approved the Agency’s own internal procurement procedures, on the basis of a “pre-qualification” exercise, to undertake procurement; these will have been judged to be in conformity with the basic principles of UNHCR Implementing Partner (IP) Procurement Guidelines.

**Pre-qualified**

If the adjacent box is *ticked*, it means that any procurement to be undertaken as part of this Agreement is subject to the UNHCR IP Procurement Guidelines, attached to this Agreement. By signing this Sub-Project Agreement, the Agency undertakes to apply and comply with UNHCR IP Procurement Guidelines.

**UNHCR IP  
Procurement  
Guidelines**



**Art. 11.0 Annexes and Appendices**

Signature of this Agreement by the Agency constitutes formal approval of the Sub-Project Budget (Annex B), the Workplan (Annex C), the General Conditions for Implementing Partner Agreements (Appendix 1) and the Standards of Conduct (Appendix 2).

Additional Annexes

SIGNED IN 2 ORIGINALS BY THE DULY AUTHORIZED SIGNATORIES ON BEHALF OF THE FOLLOWING PARTIES:

	UNHCR	THE AGENCY
Signature:	_____	_____
Name:	GEDDO, Bruno	ABDULLAHI, Sheikh Abukar
Title:	Representative, UNHCR SOMALIA	Executive Director, SOHRA
Date:		
Place:	NAIROBI, KENYA	MOGADISHU, SOMALIA

**GENERAL CONDITIONS FOR IMPLEMENTING PARTNER AGREEMENTS**

**1.0 Duration of the Agreement**

1.01 The term of the Short Sub-Project Agreement (hereinafter referred to as “the Agreement”) shall commence on the day the Agreement is signed, unless, for exceptional circumstances, the commencement date is set at an earlier date, and terminate once all the obligations under the Agreement have been fulfilled. The Sub-Project shall commence and be completed in accordance with the time frame or schedule set out in Art. 2.0.

1.02 Should either Party during the implementation of the Sub-Project consider that a revision of any terms of the Agreement or the Annexes thereto becomes advisable, including its extension beyond the planned termination date and/ or extension of the liquidation period as indicated in Art. 2.0, then such a revision shall be made prior to the expiration of the Agreement and only with the written consent of the Parties to the Agreement.

**2.0 General Responsibilities of the Parties**

2.01 The Parties agree to carry out their respective responsibilities under the Agreement in accordance with these General Conditions for Short Sub-Project Agreements (hereinafter referred to as the “General Conditions”) and in accordance with the following documents: Annexes B and C and the Standards of Conduct as set out in Appendix 2. The Parties further agree to implement the Sub-Project in accordance with UNHCR policies and procedures.

2.02 The Agency shall make available the necessary human resources to implement the Sub-Project in accordance with the General Conditions, namely its employees or persons hired for the implementation of the Sub-Project, including beneficiaries of the Sub-Project, agents and subcontractors (referred to as “the Agency Personnel”).

2.03 Both Parties shall endeavour to promote and facilitate the participation in the Sub-Project of other members of the United Nations system, intergovernmental and non-governmental organisations in meeting the total requirements of the Sub-Project. Both Parties will inform each other if and when contributions towards the Sub-Project have been received so that the Agreement can be amended accordingly.

**2.04 Responsibility for Claims**

2.04.1 UNHCR does not accept any liability for claims arising out of the activities performed under the Agreement, or any claims for death, bodily injury, disability, damage to property or other hazards that may be suffered by Agency Personnel as a result of their work pertaining to the Sub-Project. The Agency shall be responsible for dealing with all claims brought against it by Agency Personnel. It is further understood that adequate medical and life insurance for Agency Personnel, as well as insurance coverage for service-incurred illness, disability or death, are the responsibility of the Agency.

2.04.2 UNHCR shall not be liable to indemnify any third party in respect of any claim, debt, damage or demand arising out of the implementation of the Sub-Project and which may be made against any of the Parties to the Agreement. The Agency shall be responsible for dealing with all claims made against UNHCR and its officials and persons performing services for UNHCR (hereinafter referred to “UNHCR Personnel”), arising out of the acts or omissions of the Agency or its personnel.

#### 2.05 Terms and Conditions of Agency Personnel

2.05.1 Agency Personnel shall refrain from any conduct that would adversely reflect on UNHCR and the United Nations and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations or the mandate of UNHCR to ensure the protection of refugees and other persons of concern to UNHCR; more specifically, they shall prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern to UNHCR as set out in Appendix 2 to the Agreement.

2.05.2 The Agency shall be fully responsible for all services performed by Agency Personnel as defined in Paragraph 2.02 above.

2.05.3 Agency Personnel shall not be considered in any respect as being UNHCR staff members or as having any other contractual link with the UNHCR.

2.05.4 Agency Personnel shall neither seek nor accept instructions regarding the activities under the Agreement from any external authority.

2.05.5 The Government shall be requested by UNHCR to grant to Agency Personnel, other than nationals of the country employed locally, the privileges and immunities specified in Article V, Art. 18, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

#### 2.06 Personnel not to Benefit

The Parties to the Agreement shall guarantee that no personnel of the Agency, UNHCR or the United Nations has been or will be offered any direct or indirect benefit arising from the Agreement or the award thereof. The Parties agree that non-compliance with this provision is a breach of an essential term of the Agreement.

### **3.0 Obligations of UNHCR**

#### 3.01 Provision of Staff and Services

UNHCR shall assist in the implementation of the Sub-Project set out in Art. 1.01 to 1.05 by making available the advisory services of its personnel.

### 3.02 Customs

UNHCR shall make every effort to assist the Agency in clearing all equipment and supplies foreseen and necessary for the implementation of this Sub-Project through customs at places of entry into the country where activities related to the Sub-Project are to take place.

### 3.03 Remittances

3.03.1 UNHCR shall, within the ten working days following the signing of the Agreement by the Parties, make a first remittance (Art. 5.0) to the designated bank account as stated in Art. 8.0.

3.03.2 UNHCR shall, thereafter, and subject to the availability of funds, make further remittances commensurate with the progress of the Sub-Project and in accordance with the Sub-Project's liquidity status as evidenced by Sub-Project Monitoring Reports (Part 1), certifying that not more than 30% of the last instalment received remains on hand. A forecast of indicative cash requirements has been agreed and stated in Art. 6.0. The forecast of indicative cash requirements shall take into account any retention of funds for the payment of procurement by UNHCR if applicable.

### 3.04 Other expenses

UNHCR shall not be liable for the payment of any expenses, fees, tolls or any other financial cost not outlined by the Agreement, unless UNHCR has explicitly accepted such liability prior to the expenditure by the Agency.

## **4.0 Obligations of the Agency**

### 4.01 Use of Funds

4.01.1 The Agency shall utilise UNHCR's funds towards the cost of implementing the Sub Project in accordance with the Sub-Project description (Art. 1.01 to 1.05) and Budget (Annex B to the Agreement). UNHCR shall not be liable for any expenditure or obligations made in advance or in excess of actual instalment payments, unless these were expressly authorised by UNHCR.

4.01.2 The Agency shall deposit all remittances received from UNHCR into a separate bank account unless the deposit into a general or pool account has been authorised in the Agreement (Art. 9.0). The use of a general or pool account may be authorised if the deposit and the use of UNHCR funds remain traceable. The account into which the UNHCR remittances are deposited should be interest bearing. In the case of a general or pool account, any interest earnings shall be apportioned according to the source of funds and a fair share shall be credited to the UNHCR Sub-Project.

4.01.3 The Agency shall apply the most favourable official rate of exchange for all transactions relating to the implementation of the Sub-Project.

4.01.3 The Agency shall apply the most favourable official rate of exchange for all transactions relating to the implementation of the Sub-Project.

4.01.4 Only those operational and administrative support costs (including International NGOs Headquarters Support Costs) for which provision has specifically been made in the Budget annexed to the Agreement shall be charged to the Sub-Project, and then only against and not exceeding the amount specified in the budget.

4.01.5 The Agency shall be authorised to make up to 15 % transfers within the budget at the “accounts” level unless otherwise indicated in the Basic Sub-Project Data (Art. 2.07 of the Agreement). The budgetary transfers must strictly respect the budgetary levels and must therefore not change the totals of the next higher level (i.e. a 15 % budgetary transfer between “accounts” must not change the total amount under each of the respective Objective levels etc). Any transfers exceeding 15 per cent shall be subject to prior consultation with, and written authorisation by, UNHCR; this will also require a formal and officially authorised and documented revision to the budget.

4.01.6 The Agency shall effect payments to the beneficiaries of the Sub-Project governed by the Agreement only when the Sub-Project objective (Art. 1.02 and Art. 1.04) and the Budget annexed thereto provide for such payments to be made. If a beneficiary is a regular recipient of payments under the terms of the Agreement, the UNHCR Beneficiary Card (UNHCR 109/Rev.1), or its equivalent, should be used to record all such payments to each beneficiary.

4.01.7 The Agency shall credit any miscellaneous income to the Sub-Project accounts as a receipt of funds against agreed Sub-Project requirements. Miscellaneous income shall include, inter alia, proceeds or receivables from the sale of any item or property provided under the Sub-Project governed by the Agreement, as well as any bank interest earned or accrued on Sub-Project funds remitted by UNHCR and which have been deposited or temporarily placed in an interest-bearing account. At the end of the liquidation period of the Sub-Project, all miscellaneous income remaining in the Sub-Project accounts, or which is an outstanding receivable, shall be reported in the Sub-Project Monitoring Report (SPMR) due at that time. The use of such miscellaneous income during the course of the Sub-Project, for Sub-Project-related activities, requires prior consultation with and written authorisation by UNHCR.

4.01.8 The Agency shall refund all undisbursed funds, including any “miscellaneous income” (see paragraphs above) to UNHCR at the same time as submitting the final Sub-Project Monitoring Report (SPMR).

#### 4.02 Maintenance of Financial and Sub-Project Records

4.02.1 The Agency shall maintain separate Sub-Project records and accounts containing current information and documentation which, inter alia, shall comprise:

(a) copies of the Agreement(s) and all revisions thereto;

- (b) payment vouchers, clearly showing the Sub-Project symbol, the name of the payee, the amount, the purpose and date of disbursement, evidencing all payments made and with all pertinent supporting documentation attached;
- (c) vouchers evidencing the receipt of all remittances, cash or any other form of credit to the Sub-Project account;
- (d) periodic analyses of actual expenditure against the Sub-Project budget;
- (e) records of all financial commitments entered into during the duration of the Sub-Project;
- (f) reports by auditors on the accounts and activities of the Sub-Project;
- (g) a general ledger accounting system;
- (h) bank statements and reconciliations;
- (i) cash book(s);
- (j) separate accounts of sales and taxes incurred on domestic purchases;
- (k) employment contracts and planned staffing tables showing actual staffing;
- (l) complete purchase order file including; tender documents, offers, bid tabulation, evaluation, shipping/insurance inspection document, invoices and receiving reports;
- (m) inventories of assets and consumables (see Paragraph 4.10 below);
- (n) building and construction contracts and subcontracts.

4.02.2 The Agency shall allow access to the above Sub-Project records to persons duly authorised by UNHCR.

#### 4.03 Agency Personnel

The provisions in this section are applicable only when personnel is being seconded, temporarily assigned to, or employed under the Sub-Project governed by the Agreement.

The Agency shall:

4.03.1 as its contribution to the Sub-Project governed by the Agreement, temporarily reassign qualified, competent Agency personnel to undertake certain services as set forth in the Sub-Project objective (Art. 1.02) of the Agreement;

4.03.2 meet all the costs of such personnel so reassigned at levels commensurate with established scales and in accordance with generally accepted standards and practices as defined in the applicable regulations;

4.03.3 for each position, fully or partly funded by UNHCR as part of the Agreement, present a flat monthly rate (“pro-forma costs”) which includes all salaries, benefits and costs payable at source, e.g. overtime costs, travel costs and per diem, taxes, social security contributions, housing costs and board, hardship and other allowances;

4.03.4 ensure the right of any such personnel so detached, to return to Agency service in accordance with applicable regulations and practice;

4.03.5 undertake the recruitment of appropriately qualified and experienced personnel in accordance with the Staffing Table contained in the annexes attached to the Agreement, if Agency personnel are not available for reassignment. Recruitment of staff shall be conducted in consultation with UNHCR, and according to criteria agreed with UNHCR to ensure the selection of the most professionally qualified candidates and, as appropriate, following the public announcement of vacancy notices. Recruitment of personnel shall be conducted on the basis of equal opportunity for female candidates, in order that female staff are available to, inter alia, participate in the planning of Sub-Project activities in favour of women beneficiaries of the Sub-Project governed by the Agreement;

4.03.6 establish contracts with personnel recruited or seconded under the Sub-Project governed by the UNHCR Agreement, in accordance with the applicable regulations, including inter alia;

(a) a description of duties and functional responsibilities;

(b) remuneration, including applicable benefits and employment termination indemnities;

(c) period of contract including a defined probationary period;

(d) provisions for the termination of the contract on the grounds of misconduct, incompetence or breach of confidentiality.

4.03.7 adhere to provisions concerning the number and cost of project personnel in the Budget attached to the Agreement. The Agency shall justify to UNHCR any need for additional project personnel not provided for in the Staffing Table contained in the annexes attached to the Agreement. The costs of any unauthorised project personnel or remuneration in excess of the amounts agreed with UNHCR, and not provided for in the Budget attached to the Agreement, shall be borne by the Agency. Project personnel who work in multiple sectors of a Sub-Project should be budgeted under, and charged to, the main sector concerned;

4.03.8 ensure that all project personnel, including beneficiaries of the Sub-Project employed on direct Sub-Project implementation, are fully insured against accidents at least at the same level accorded to nationals, if any, employed under the Sub-Project governed by the UNHCR Agreement. Costs for this insurance may be charged against the appropriate budget line of the Sub-Project, if such a provision has been made;

4.03.9 submit with the final SPMR a list of project personnel showing for each staff member the name, functional title, period of employment and total cost charged to the Sub Project.

#### 4.04 Inspection and Audit

4.04.1 The Agency shall facilitate inspection and audit of the Sub-Project by the UNHCR Audit Service of the United Nations Office of the Internal Oversight Services, the UNHCR Inspector General's Office, or any other person duly authorised by UNHCR. Should they at any time wish to do so, the United Nations Board of Auditors may also carry out an audit of the Sub-Project. Audits of the Sub-Project will include, inter alia, the examination of the Sub-Project accounting records in order to determine that the charging of administrative and operational support costs to the Sub-Project complies with those specified in the annexes to the Agreement. For auditing purposes, Sub-Project accounting records shall be retained for the six years following the completion of the Sub-Project.

4.04.2 The Agency shall facilitate visits by the duly authorised persons to the Sub-Project site(s) to evaluate the progress and achievements of the Sub-Project during its period of implementation or thereafter.

4.04.3 UNHCR reserves the right to request an external audit for all UNHCR Agreements if this is deemed beneficial.

#### 4.05 Procurement

4.05.1 UNHCR's policy is to limit purchasing by an agency implementing its sub-projects to only those occasions when the Agency has a clearly proven advantage, such as awareness of local conditions or specific technical expertise and under the condition that the Agency can be expected to carry out such procurement in accordance with certain basic procurement principles.



4.05.2 The Agreement will indicate who is responsible for any procurement (Art. 1.04 and Annex C, Workplan) and whether the Agency has been pre-qualified to carry out procurement on behalf of UNHCR (Art. 8.0). All procurement of goods and services has to be strictly in accordance with the UNHCR Procurement Guidelines for Implementing Partners.

4.05.3 Only under exceptional circumstances, and with the prior written approval by UNHCR, may a contract for purchases of goods and/or services be concluded with other departments of the Agency that is signatory to the Agreement, or with commercial entities in which the Agency or its Senior Management have a direct or indirect interest.

4.05.4 In situations, where equipment bought by the Agency may be subject to customs duty or taxation, the Agency shall consult with UNHCR on whether and how these payments may be avoided under the applicable international legal instruments.

4.05.5 The Agency shall ensure that all customs and registration documents, licenses and operating permits which may be required for the importation of Sub-Project supplies and the operation of equipment will be applied for in ample time prior to the forecasted importation date in order to avoid delays at the port of entry. The Agency shall indicate to the competent authorities that the Sub-Project supplies are bought with UNHCR funds.

#### 4.06 Assignment and Sub-Contracting

In the event the Agency requires the services of another operational partner, sub-contractor and/or supplier, it shall obtain the prior written approval of UNHCR for all such arrangements. The Agency shall be fully responsible for all work and services performed by these operational partners, sub-contractors and suppliers and for all acts and omissions committed by them or their employees. The approval of UNHCR of another operational partner, sub-contractor and/or supplier shall not relieve the Agency of any of its obligations under the Agreement. The terms of any arrangement with another operational partner, sub-contractor and/or supplier shall be subject to and conform to the provisions of the Agreement.

#### 4.07 Use of Assets

The provisions in the following paragraphs are applicable only when assets are procured with UNHCR funds or otherwise made available to the Agency by UNHCR for use within a Sub-Project governed by the Agreement.

4.07.1 Assets shall be defined as any item of property valued at US\$ 5,000 or more per unit, or the equivalent in local currency at the United Nations official rate of exchange, and having a serviceable life of more than one year and owned by UNHCR regardless of its funding source or user, including in-kind donations. Vehicles and boats, plant, telecommunications, computer and security equipment, elsewhere termed "special items", shall be tracked and separately reported, irrespective of their acquisition value.

4.07.2 Assets and “special items” provided in-kind or financed by UNHCR shall remain the property of UNHCR and shall be returned to UNHCR upon completion of the Sub-Project or upon termination of the Agreement, unless otherwise agreed upon in writing by the Parties. During the Sub-Project implementation and prior to such return, the Agency shall be responsible for the proper custody, maintenance and care of all assets. The Agency shall, for the protection of such items during implementation of the Sub-Project, obtain appropriate insurance against damage, loss, theft and third party liability. Funds received from insurance claims are to be credited to the corresponding Sub-Project account. UNHCR is to be informed of the amount received and provided with a copy of all related documentation on the insurance claim and settlement.

4.07.3 Where UNHCR provides a right of use of assets and physical structures under the Agreement, this will be specified in a separate Agreement entitled “The Agreement for the Receipt and the Right of Use of UNHCR Assets” (hereinafter referred to as the “Right of Use Agreement”). The Right of Use Agreement is governed by the provisions set out in the Agreement.

4.07.4 UNHCR assets shall be used exclusively for the intended purposes of the Sub-Project under which they have been acquired and their use for any other purpose is prohibited. In the event of any breach of this provision, the Agency may be liable to UNHCR for compensatory damages equivalent to the value of the assets on the effective date of the hand over. The use of vehicles shall be recorded in a logbook that, inter alia, shall show the dates, distance travelled and purpose of each trip.

4.07.5 The Agency agrees to retain all UNHCR identification logos, which shall not be removed.

4.07.6 Should any costs, direct or indirect, or any levies, duties or taxes be associated with or become payable upon the granting of the right of use of UNHCR assets to the Agency (because the Government did not agree to the Agency being tax exempt) UNHCR shall not be liable for those costs.

4.07.7 Before the disposal of any asset, written approval of UNHCR shall be obtained. The proceeds of the sale of any assets, if authorised, should revert to UNHCR.

4.07.8 The right of use of assets does not preclude the reversion of the assets to UNHCR in the event that the need for such assets is identified under other projects. UNHCR may therefore exercise the right to re-deploy and/or transfer to another UNHCR Sub-Project any asset subject to these provisions.

#### 4.08 Transfer of Ownership of UNHCR Assets

4.08.1 Where the ownership of assets and “special items” is transferred, this shall be effected on the basis of an “Agreement on the Transfer of Ownership of UNHCR Assets” giving the Agency ownership of assets acquired under the Sub-Project, Sub-Projects from prior years or re-deployed from other Sub-Projects;

4.08.2 The Agency shall abide by the terms and conditions of the "Agreement on the Transfer of Ownership of UNHCR Assets", which shall come into effect on the date specified therein.

#### 4.09 Building and Construction

The provisions in this section are applicable only when the construction of permanent or semi-permanent structures or infrastructure is undertaken by the Agency and if the subcontracting of such work is envisaged.

The Agency shall:

4.09.1 in accordance with local practice and the availability of appropriate insurance, ensure that all buildings for which the overall final construction cost will exceed US\$ 20,000, or its equivalent in local currency at the United Nations official rate of exchange, are at all times during the course of construction kept adequately insured with a company of repute in the full value thereof against loss or damage by fire, lightning, flood, storm or such other hazards as may be considered advisable, until all work has been completed, or in those cases where a contractor is employed, until such time as the building has been formally handed over by the contractor. Insurance premiums incurred during the Sub-Project's implementation period may be charged against the relevant "Construction" component of the Sub-Project budget if provision has been made in the Sub-Project budget for such costs. Thereafter, and for as long as the building is being used for the purposes of the Sub-Project, similar insurance coverage shall be maintained in the full replacement value thereof at the user's own cost;

4.09.2 submit to UNHCR, one copy of each signed building and construction contract or subcontract exceeding a value of US\$ 5,000, or equivalent, together with the relevant plans, specifications, bills of quantities and cost estimates;

4.09.3 ensure that a contract being awarded to third parties for building construction is established in accordance with local professional standards and practices, and includes conditions that, inter alia, provide that:

(a) the contractor shall complete the work so as to be fit for occupation on a date specified in the Workplan (Annex C) attached to the Agreement. Failure to meet this deadline will normally incur a financial penalty payable by the contractor and calculated according to a daily or weekly rate for any delay;

(b) except for any reasonable initial down payment that may be required according to local practice, payments to the contractor against the construction cost as shown in the tender document are made only on work performed. Normally such payments will not exceed 90 per cent of the invoice value; the balance of 10 per cent being withheld as a retention that will not be paid until the satisfactory completion of all work has been verified at the end of the warranty period. Initial down payments will be deducted from subsequent payments to be made against submitted invoices;

(c) if, during the course of construction, it becomes apparent that the contractor is for any reason unable to fulfil his/her obligations under the contract or if he/she delays or neglects to complete the building within the time prescribed and fails to proceed with such work, then a second contractor may be employed to complete the building and be authorised to use any plant materials and property of the first contractor upon the ground;

(d) any defects that appear within a specified warranty period after completion shall be made good within a reasonable time by the contractor at his/her own cost. The duration of the warranty period will be in accordance with that established under normal local practices, but should in no instance be less than six months, and should be included in the formal terms of the contract;

(e) following a final inspection of the building(s) by the supervising surveyor or engineer, a delivery document will be signed by the parties to the contract indicating the date on which the hand-over has taken place, stating that the building has been constructed in conformity with the provisions of the building contract and the approved plans and specifications. Normally the hand-over will only take place once all work has been satisfactorily completed. If, however, in exceptional circumstances delivery takes place before that time, the delivery document will refer in detail to all outstanding work to be performed and will describe all apparent shortcomings and defects. The delivery document will also provide the date from which the guarantee provisions come into operation. This date will normally be the date of hand over or when all work is finally completed, whichever is later;

(f) if the warranty period extends beyond the end of the liquidation period of the Sub-Project and no new Agreement has been entered into, the Agency will remit the guarantee amount withheld pursuant to Paragraph (b) above to UNHCR for settlement after verification of satisfactory completion of work.

4.09.4 The Agency shall ensure that all buildings constructed under the Sub-Project governed by the Agreement are used exclusively for the purpose of the Sub-Project as specified in Art. 1.3 and Art. 1.4 of the Agreement.

4.09.5 The Agency shall discuss with UNHCR, at least 90 days prior to the termination of the Sub-Project governed by the Agreement, the future use of all buildings thereafter. Under no circumstances shall such buildings be disposed of or earmarked for disposition before these consultations with UNHCR.

4.09.6 The Agency shall conclude either a Right of Use or a Transfer of Ownership Agreement during the course of the Sub-Project governed by the Agreement, formally handing over to a designated party the ownership or right of use of the buildings as determined by UNHCR. The Transfer of Ownership of UNHCR Assets, or the Agreement on the Right of Use of UNHCR Assets, shall be provided by UNHCR as appropriate.

#### 4.10 Food and Non-Food Items

The paragraphs in this section are applicable only when the Agency is entrusted with the storage, warehousing and/or distribution of food and non-food items under the Sub-Project.

The Agency shall

4.10.1 establish and maintain a commodity tracking system which allows for the tracking and recording of all ordering receipts and the reception and release of all UNHCR items;

4.10.2 periodically, as requested by UNHCR, provide the latest information on the stock balance, including a summary statement with the final SPMR;

4.10.3 conduct regular physical inspections of stocks and facilitate periodic visits of UNHCR staff for the same purposes;

4.10.4 monitor the distribution of food and non-food items effectively in order to ensure compliance with the agreed procedures and principles and actively participate in post-distribution monitoring activities aimed at assessing the end-use of relief items by beneficiaries;

4.10.5 check the quality and quantity of the food and non-food items upon receipt, immediately notifying UNHCR of any loss or damage observed, or goods delivered that do not comply with contractual specifications;

4.10.6 comply with the distribution principles stated in UNHCR and World Food Programme distribution guidelines, in particular those ensuring that distribution is equitable, effective, timely, involves refugee women at all levels and in all phases of the process and protects vulnerable groups from exploitation and abuse;

4.10.7 monitor expiry dates of food to avoid wastage;

4.10.8 comply with terms stated in the relevant agreements signed between UNHCR and the World Food Programme and other third parties on the distribution modalities and responsibilities for reporting on the distribution and the use of food commodities;

4.10.9 follow food and non-food distribution scales established by UNHCR and consult with UNHCR before distributing any other item not part of the agreed assistance package.

#### 4.11 Revolving Loan Funds

The provisions in this section apply only when a Revolving Loan Fund is established by the Agreement and is funded wholly or in part with UNHCR monies.

The Agency shall:

4.11.1 not disburse any loans to individual beneficiaries or beneficiary groups before a separate “Agreement on the Transfer of a Grant pertaining to UNHCR Revolving Loan Funds” has been concluded with UNHCR;

4.11.2 not use the loan repayments and related interest for any other purpose than that provided for in the initial Agreement establishing the loan fund, unless with the written approval of UNHCR;

4.11.3 conclude a separate “Agreement on Transfer of a Grant pertaining to UNHCR Revolving Loan Funds” with UNHCR in order to obtain ownership of the revolving loan funds that are part of the Agreement. Until such date, the funds remain the property of UNHCR;

4.11.4 submit narrative and financial reports as specified in the Transfer Agreement, during the entire period of the four years covered by the Transfer Agreement;

4.11.5 not change the purpose of the Revolving Loan Fund Grant unless justified by a careful assessment involving all co-funders.

#### 4.12 Visibility

4.12.1 The Agency shall accord UNHCR the maximum publicity possible, and not less than the Agency enjoys, with regard to the implementation of the Sub-Project. The Agency agrees to fully identify and acknowledge UNHCR as a donor of the Sub-Project in reports, statements, advertisements, media and materials regarding the Sub-Project.

4.12.2 The Agency shall use UNHCR’s name and logo with respect to the Sub-Project, only, and will adhere to the correct use of the logo as defined in the “UNHCR Guide for Logotype Usage”.

#### 4.13 Observing UNHCR Policies and Guidelines

In the implementation of UNHCR Sub-Projects, the Agency is required to respect the relevant Guidelines related to the protection of, and assistance to, refugees. Particularly relevant in this regard are the Global Strategic Objectives issued in the Global Appeal (see UNHCR’s website at [www.unhcr.org](http://www.unhcr.org)). The same website on the Partnership Guides page provides a range of Guidelines related to UNHCR’s programme priorities: refugee women/gender equality; refugee children & adolescents, older refugees, environment and HIV/AIDS.

#### 4.14 Compliance with Law

The Agency shall, at its own expense, comply with all laws and regulations of its country of residence or operation, if different, and assume all liabilities and obligations imposed by any law or regulation with respect to its performance under the Agreement.

### **5.0 General Conditions**

#### 5.01 Copyright, Patents and other Proprietary Rights

UNHCR shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of the Agreement. At UNHCR request, the Agency shall take all necessary steps, execute all pertinent documents and generally assist in securing such proprietary rights and transferring them to UNHCR in compliance with the requirements of the applicable law.

#### 5.02 Confidentiality

5.02.1 The confidentiality of any information pertaining to any beneficiary or group of beneficiaries of the Sub-Project shall be respected. The contents of any files, including computerised databases, can only be released to persons duly authorised by UNHCR to receive such information, and then only when in the interests of the beneficiary or group of beneficiaries.

5.02.2 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Agency under the Agreement shall be the property of UNHCR, shall be treated as confidential and shall be delivered only to UNHCR Personnel on completion of work under the Agreement.

5.02.3 The Agency may not communicate at any time to any other person, Government or authority external to UNHCR information known to it by reason of its association with UNHCR which has not been made public, except with the authorisation of UNHCR; nor shall the Agency at any time use such information to private advantage. These obligations do not lapse upon termination of the Agreement.

#### 5.03 Privileges and immunities

Nothing in the Agreement, and its Annexes and Appendices shall be deemed a waiver, expressed or implied, of any privileges or immunities enjoyed by UNHCR.

#### 5.04 *Force majeure* and other changes in condition

5.04.1 If during the period covered by the Agreement, the Agency is prevented from carrying out its obligations referred to in the Agreement, this fact shall be reported to UNHCR who shall decide what arrangements, if any, shall be made to further implement or curtail the Sub-Project.

5.04.2 Should the number of beneficiaries, for whom assistance was foreseen under the Sub-Project, significantly change from the number originally envisaged, or if for any reason, changed circumstances reduce or increase the need for assistance in the amounts as originally foreseen, UNHCR shall be immediately informed so that, after mutual consultation, UNHCR can adapt its participation in the Sub-Project to the new situation or discontinue it as the circumstances may warrant.

5.04.3 In the event of, and as soon as possible after the occurrence of, any cause constituting *force majeure*, the Agency shall give notice and full particulars in writing to UNHCR, of such occurrence or change if the Agency is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Agreement. The Parties shall consult on the appropriate action to be taken, which may include termination of the Agreement, with either Party giving to the other at least seven days written notice of such termination.

#### 5.05 Amicable Settlement

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of the Agreement or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the Parties.

#### 5.06 Arbitration

Any dispute, controversy or claim between the Parties arising out of the Agreement or the breach, termination or invalidity thereof, unless settled amicably in accordance with Art. 5.05 above within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitration tribunal shall consist of one Arbitrator agreed to by the Parties and appointed in accordance with the UNCITRAL Arbitration Rules. If the Parties cannot agree on the selection of a single arbitrator, then they may appoint each one Arbitrator who shall choose the third Arbitrator. In the event of disagreement as to the nomination of the third arbitrator, the latter shall be appointed by the Chairman of the Court of Arbitration of the International Chamber of Commerce. The arbitration tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute. The place of arbitration shall be Geneva.



## 5.07 Early Termination

5.07.1 If the Agency refuses or fails to prosecute any work or separable part thereof, or violates any term, condition or requirement of the Agreement, UNHCR may terminate the Agreement in writing with immediate effect. Such termination shall relieve UNHCR from any further obligations under the Agreement or liability for compensation. The Agency shall return all unspent funds provided under the Agreement and UNHCR property in its possession, if any.

5.07.2 UNHCR may terminate forthwith the Agreement at any time should the mandate or the funding of UNHCR be curtailed or terminated, in which case the Agency shall be reimbursed by UNHCR for all reasonable costs incurred by the Agency prior to receipt of the notice of termination; this does not extend to expenditure incurred in excess of the funds made available under the Agreement.

5.07.3 In the event of any termination by UNHCR under this Article, no payment shall be due from UNHCR to the Agency except for work and services satisfactorily performed in conformity with the express terms of the Agreement. UNHCR shall not be liable for any expenditure or obligations made in advance or in excess of actual instalment payments, unless these were expressly authorised by UNHCR.

5.07.4 Should the Agency be adjudged bankrupt, or be liquidated or become insolvent, or should the Agency make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Agency, UNHCR may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate the Agreement forthwith. The Agency shall immediately inform UNHCR of the occurrence of any of the above events.

## **STANDARDS OF CONDUCT**

### **Ensuring Protection from Sexual Exploitation and Abuse**

Sexual exploitation and sexual abuse may occur in many different forms. Sexual exploitation is defined as any abuse of a position of vulnerability, differential power or trust for sexual purposes; this includes profiting monetarily, socially or politically from the sexual exploitation of another. Sexual abuse is actual or threatened physical intrusion of a sexual nature, including inappropriate touching by force or under unequal or coercive conditions.

1. Sexual exploitation and abuse by personnel working on Projects/Sub-Projects funded by UNHCR, constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal.
2. Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally(\*). Mistaken belief in the age of a child is not a defence.
3. Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour is prohibited. This includes any exchange of assistance that is due to beneficiaries.
4. Sexual relationships between personnel working on Projects/Sub-Projects funded by UNHCR, and beneficiaries of assistance undermine the credibility and integrity of the work of the UN, and UNHCR in particular, and are strongly discouraged since they are based on inherently unequal power dynamics.
5. Where personnel working on UNHCR Projects/Sub-Projects develop concerns or suspicions regarding sexual abuse or exploitation by a fellow worker, whether in the same agency or not, he or she must report such concerns via established reporting mechanisms.
6. Personnel of Agencies, both non-governmental and governmental, working on UNHCR-funded Projects and Sub-Projects are obliged to create and maintain an environment that prevents sexual exploitation and abuse and promotes the implementation of their code of conduct. Managers at all levels have particular responsibilities to support and develop systems that maintain this environment.

These six standards are not intended to be an exhaustive list. Other types of sexually exploitative or abusive behaviour may be grounds for disciplinary measures, including summary dismissal.

In entering into cooperative arrangements with UNHCR, Agencies and Governments undertake to inform their personnel of the six core principles listed above and work to ensure adherence to them. By signing the Agreement with UNHCR, the Parties to the Agreement undertake to abide by and promote these principles. The failure of partner agencies to take preventative measures to prevent abuse, investigate allegations of abuse and to take disciplinary actions when sexual exploitation or sexual abuse is found to have occurred, will constitute grounds for termination of the Agreement with UNHCR.

(\* ) Executive Heads of Agencies (Governmental or NGO) may use their discretion in applying this standard where a staff member is legally married to someone under the age of eighteen but over the age of majority or consent in both their country of citizenship and the country in which they are stationed.