

ANNEX D: UNHCR SPECIAL DATA PROTECTION CONDITIONS

1 DEFINITIONS

Unless otherwise stated in these Special Data Protection Conditions (these “Special Conditions”), the capitalised terms used but not otherwise defined herein shall be construed and have the same meanings as stated in the contract which these Conditions form part of (the “Contract”). The following terms shall have the meanings ascribed to them below, except as otherwise required by the context:

- (a) **Applicable Data Protection Law** means data protection and privacy laws and regulations applicable to the Contractor in relation to the Processing of Personal Data under the Contract.
- (b) **Data Controller** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of personal data.
- (c) **Data Processor** means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the Data Controller.
- (d) **End User** means any and all employees, contractors, consultants, agents or other representatives of UNHCR; any UNHCR customers (including, without limitation, any donors, supporters or users of UNHCR websites or other media); and any other external users collaborating with UNHCR, in each case, authorized by UNHCR to access and use the Services.
- (e) **End User Data** includes any and all End User account credentials and information, and any and all records sent, received and/or created by or for End Users, including, without limitation, (i) any email content, headers and attachments, and/or (ii) any Personal Data, financial or other information of any End User or third party the use, disclosure or other Processing of which is governed by the Applicable Data Protection Law, in each case, contained in such records or in any logs or other records in connection with the performance by the Contractor of the Services.
- (f) **General Convention** means the Convention on the Privileges and Immunities of the United Nations adopted by the UN General Assembly on 13 February 1946.
- (g) **Governmental body** means any local, national or international governmental, regulatory or law enforcement body, agency or other authority, any court or other tribunal, and any arbitrator, which has jurisdiction over the Contractor or the End User Data.
- (h) **Personal Data** means any information relating to an identified or identifiable natural person (“Data Subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Identifying information may include the name, identification or passport number, mobile telephone number, email address, cash transaction details, of whatever nature, format or media that by whatever means, is provided to the Contractor by UNHCR, is accessed by the Contractor on the authority of UNHCR or is otherwise received by the Contractor on UNHCR’s behalf and includes transactional or other information associated with the Data Subject generated by the Contractor in connection with the performance of the Services.
- (i) **Personal Data Breach** means a breach of data security leading to the accidental or unlawful/illegitimate destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transferred, stored or otherwise processed.
- (j) **Processing**, in relation to Personal Data, includes any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration,

retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

- (k) **Services** means the services, activities and other duties to be performed by the Contractor under and/or as defined in the Contract.
- (l) **Sub-processor** means any subcontractor engaged as Processor by the Contractor for carrying out processing activities in respect of UNHCR Data.
- (m) **UNHCR Data** means any and all information, whether in oral or written (including electronic) form, created by or in any way originating with UNHCR and/or End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with UNHCR and/or End Users (including any and all credentials issued to UNHCR by the Contractor, records relating to UNHCR's use of the Services and administration of End User accounts), in the course of using and configuring the Services, and specifically includes, without limitation, any and all End User Data.
- (n) **UNHCR GCCs** means the UNHCR General Conditions of Contract for the Provision of Services, which form part of the Contract.

2 STATUS OF UNHCR

- 2.1 The Contractor recognizes that UNHCR Data is the property of UNHCR and is subject to the privileges and immunities accorded to the United Nations, including UNHCR, pursuant to the General Convention, and as such:
 - (i) shall be deemed part of UNHCR's archives which are inviolable wherever located and by whomever held and cannot be disclosed, and
 - (ii) shall be immune from search, requisition, confiscation, and any form of interference by any party, whether by executive, administrative, judicial or legislative action, unless such immunity is expressly waived in writing by UNHCR.
- 2.2 The Contractor recognizes that in view of the privileges and immunities pertaining to it, UNHCR whenever acting as a Data Controller or a Data Processor under the Contract is not subject to the Applicable Data Protection Law.
- 2.3 The Contractor shall ensure, and shall cause its Sub-processors to ensure, that UNHCR Data is maintained and/or stored exclusively in member State(s) that have recognized the privileges and immunities of the United Nations pursuant to the General Convention.
- 2.4 Nothing in or relating to these Special Conditions shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations and its subsidiary organs, including UNHCR, whether under the General Convention, or otherwise, and no provision of these Special Conditions or the Contract shall be interpreted or applied in a manner, or to an extent, inconsistent with such privileges and immunities.

3 NON-DISCLOSURE OF UNHCR DATA

- 3.1 Article 13.3 (Confidentiality) of the UNHCR GCCs. is deleted and shall be deemed replaced by the provisions under this Clause 3 of these Special Conditions.
- 3.2 The Contractor (i) shall treat UNHCR Data as confidential and shall segregate such data to the fullest extent possible; (ii) shall use such data only for the purpose of fulfilling its duties under the Contract and for the sole benefit of UNHCR and its End Users; (iii) shall deliver UNHCR Data only to duly authorized representatives of UNHCR, and (iv) subject to Clauses 3.3, 3.4 and 3.5 below, shall not disclose or transmit UNHCR Data or their contents to any person or entity other than the personnel, agents or sub-processors of the Contractor to whom disclosure is necessary for the performance of the Services, without the prior written consent of UNHCR.

- 3.3 In the event that any person or entity requests access to any UNHCR Data, the request shall be immediately transmitted to UNHCR in accordance with the notices provision of the Contract. To the extent the Contractor may be required to disclose or provide access to UNHCR Data, the Contractor shall notify UNHCR of such requirement prior to disclosure, and the Contractor shall undertake diligent efforts to avoid and/or limit disclosure, in accordance with Clauses 3.4 and 3.5.
- 3.4 If any information relating to UNHCR or any UNHCR Data processed pursuant to this Contract (including without limitation Personal Data) is sought from the Contractor by any Governmental Body, the Contractor shall: (i) subject to Clause 3.5 (iii) below, promptly notify UNHCR of this fact; (ii) consult with UNHCR regarding the Contractor's response to the demand or request by such Governmental Body; (iii) cooperate with UNHCR's reasonable requests in connections with efforts by UNHCR to ensure that its privileges and immunities are upheld; (iv) to the extent permissible by law, seek to contest or challenge the demand or request based on, inter alia, UNHCR's status, including its privileges and immunities, contractual arrangements, etc., and (v) upon UNHCR's request, provide UNHCR a true, correct and complete copy of the Contractor's response to such demand or request, and keep UNHCR informed of all developments and communications with the Governmental Body.
- 3.5 In any event of such request for disclosure from a Governmental Body, the Contractor shall: (i) inform such Governmental Body that the Contractor understands that UNHCR Data is privileged under the General Convention, and request such Governmental Body where applicable to redirect the relevant request for disclosure directly to UNHCR; (ii) in the event that such Governmental Body still seeks such data, request such Governmental Body that UNHCR be given the opportunity to present before such Governmental Body UNHCR's position regarding the confidentiality of such UNHCR data or information; and (iii) where the Contractor is prohibited by law or the Governmental Body from notifying the users of its Services of such request, so notify UNHCR promptly upon the lapse, termination, removal or modification of such prohibition.

4 PERSONAL DATA PROCESSING

- 4.1 The Contractor is a processor of UNHCR's Personal Data under this Contract to which these Special Conditions apply, and in particular the Contractor agrees that it shall:
- (a) process the Personal Data in accordance with the terms and conditions set out in these Special Conditions and, where the standards imposed by the Applicable Data Protection Law regulating the Contractor with respect to the processing of the Personal Data are higher than those prescribed in these Special Conditions, then in accordance with such standards;
 - (b) process the Personal Data strictly in accordance with the purposes relevant to the Services, in the manner specified from time to time by UNHCR and for no other purpose or in any other manner, except with the express prior written consent of UNHCR;
 - (c) implement appropriate technical and organisational measures to safeguard the Personal Data from unauthorised or unlawful processing or accidental loss, destruction or damage, 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) regard the Personal Data as confidential information and data in accordance with Article 13 of the UNHCR GCCs and not disclose such data to any person other than to employees, agents or sub-Processors to whom disclosure is necessary for the performance of the

Services or, subject to Clause 3 above, except as may be required by any provisions of the Applicable Data Protection Law affecting the Contractor;

- (e) implement technical and organisational measures to ensure the confidentiality, privacy, integrity, availability, accuracy and security of the Personal Data including establishing organisational policies for employees, agents and Sub-processors aimed at complying with the Contractor's duties to safeguard the Personal Data in accordance with these Special Conditions;
- (f) implement backup processes as agreed between UNHCR and the Contractor to procure the availability of the Personal Data at all times and ensure that UNHCR will have access to such backup of the Personal Data as is reasonably required by UNHCR;
- (g) ensure that any disclosure to an employee, agent or Sub-processor is subject to a binding legal obligation to comply with the obligations of the Contractor pursuant to these Special Conditions, 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 with an employee, agent or Sub-processor shall not relieve the Contractor of its obligation to comply fully with the special data protection provisions under these Special Conditions, and the Contractor shall remain fully responsible and liable for ensuring full compliance with these Special Conditions;
- (h) comply with any request from 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 UNHCR within reasonable timeframes as agreed between the Parties;
- (i) notify UNHCR as soon as possible upon becoming aware of a Personal Data Breach, and use, if appropriate jointly and/or in consultation with UNHCR, its best efforts to take mitigating measures;
- (j) should the Contractor 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 Data Protection Law, immediately notify UNHCR and provide UNHCR with full co-operation and assistance in relation to any complaints, notices or communications;
- (k) promptly inform UNHCR if any Personal Data is lost or destroyed or becomes damaged, corrupted or unusable and, at the request of UNHCR, restore such Personal Data at its own expense;
- (l) in the event of the exercise by Data Subjects of any rights in relation to their Personal Data, inform UNHCR as soon as possible;
- (m) assist UNHCR with all Data Subject information requests which may be received from any Data Subject in relation to any Personal Data;
- (n) 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 UNHCR or in order to comply with the Applicable Data Protection Law or a court order. For the avoidance of doubt, the Contractor is not prohibited from contact, communicating or engaging with the Data Subject in so far as this does not involve processing of Personal Data and the Contractor ensures that the promotion or offer of services is not in any manner associated to UNHCR or UNHCR's services;
- (o) not use any Personal Data for the benefit of the Contractor or any third party and, in particular, not engage in "data mining" of any such data for UNHCR or any End Users, whether through automated or human means.
- (p) notify UNHCR of the country(s) in which the Personal Data will be processed where such country(s) is not the country of the Contractor's registered office;

- (q) not process or transfer the Personal Data outside of the country of its registered office except with the express prior written consent of UNHCR pursuant to a request in writing from the Contractor to UNHCR;
 - (r) permit and procure that its data processing facilities, procedures and documentation be submitted for scrutiny by UNHCR or its authorised representatives, on request, in order to audit or otherwise ascertain compliance with the terms of these Special Conditions including under the circumstances described in Clause 6;
 - (s) advise UNHCR of any significant change in the risk of unauthorised or unlawful processing or accidental loss, destruction or damage of Personal Data;
 - (t) report every 2 weeks to UNHCR on the steps it has taken to ensure compliance with the provisions of this Clause 4 of these Special Conditions; and
 - (u) permanently destroy or transmit to UNHCR, or to a third party designated in writing by UNHCR, any backup copies of UNHCR Data including Personal Data in its possession or under its control, and in all forms (including but not limited to electronic, digital, physical form available online, offline or on backup, disaster recovery or archival systems) either twelve (12) months after its collection or immediately upon termination or expiration of the Contract (whichever is earlier), except and for so long as required by Applicable Data Protection Law, in which case it will give written notice to UNHCR of any UNHCR Data, including Personal Data, it is required to retain under Applicable Data Protection Law and its obligations under these Special Conditions shall survive until such retained UNHCR Data is permanently destroyed/deleted in accordance with these Special Conditions.
- 4.2 UNHCR recognizes that the Contractor shall process Personal Data in compliance with its obligations under the Applicable Data Protection Law in respect of the performance of the Services. If in the Contractor's reasonable opinion, the processing of UNHCR Personal Data in accordance with UNHCR's processing instructions will infringe the Applicable Data Protection Law, the Contractor shall immediately notify UNHCR and the Parties shall promptly commence consultations aimed at ensuring that the Processing is not at variance with any law or regulation applicable to the Contractor.

5 WARRANTIES

The Contractor warrants that:

- (a) it will process the Personal Data, in compliance with the Applicable Data Protection Law including any laws, enactments, regulations, orders, standards and other similar instruments applicable to the Contractor; and in accordance with these Special Conditions;
- (b) in order to observe the rights of ownership and/or other proprietary or intellectual property rights of UNHCR in UNHCR Data, including Personal Data, not copy, retain or process such data in any manner over the course of the Contract and upon expiration or termination of the Contract, except as required by law or in accordance with these Special Conditions.

6 INDEMNITY

The Contractor agrees to indemnify, defend, and hold and save harmless, UNHCR, and its officials, agents and employees, in accordance with, and under the circumstances foreseen by, Article 7 (Indemnification) of the UNHCR GCCs, including, for the avoidance of any doubt, in the event a third party claim is brought against by UNHCR as a result of an act or omission of the Contractor, or of any subcontractor, Sub-processor or agent directly or indirectly employed by it, in performing the obligations prescribed under these Special Conditions.

7 AUDIT

Following any actual or reasonably suspected unauthorized disclosure of UNHCR Data shared with the Contractor, in accordance with Article 23 (Audits and Investigations) of the UNHCR GCCs, UNHCR shall have the right to conduct, pursuant to appropriate confidentiality and technical restrictions, an on-site audit of the Contractor's or its affiliates' systems, policies, and procedures relevant to the security and integrity of UNHCR Data.

8 APPOINTMENT OF SUB-PROCESSORS

8.1 The Contractor may authorise a Sub-processor to process the Personal Data subject to the following terms:

- (a) UNHCR's prior written consent, the validity of the consent will be conditional on the Contractor supplying UNHCR with full and accurate details of the Sub-processor;
- (b) The Sub-processor is bound to the same obligations of the Contractor hereunder;
- (c) UNHCR is expressly identified in the relevant contract with the Sub-processor as third-party beneficiary and such contract provides that the obligations of Sub-processor are made for the benefit of and are enforceable by UNHCR in a binding arbitration procedure as described in the UNHCR GCCs and without any waiver, express or implied, of any privileges and immunities of UNHCR;
- (d) any use of Sub-processors will not affect the purposes of these Special Conditions and will always be under the responsibility, supervision, control and coordination of the Contractor.
- (e) the relevant Sub-processor's contract terminates automatically with respect to the processing of UNHCR Data on the termination of the Contract for any reason.

8.2 UNHCR acknowledges and expressly authorizes the Contractor to use, in the execution of Services, the Sub-Processors listed in the attached Appendix A.

8.3 The Contractor undertakes to inform UNHCR on any intended changes concerning the addition or replacement of any Sub-processors so as to provide to UNHCR the possibility to object to the change before Personal Data are communicated or otherwise transmitted to the new sub-processor(s).

8.4 If a Sub-processor fails to perform its data protection obligations with respect to the Contractor or as required under this Contract, the Contractor shall remain fully liable to UNHCR for failure to perform.