

[REDACTED]

PROGRAMME COOPERATION AGREEMENT

BETWEEN

[REDACTED]

AND THE

UNITED NATIONS CHILDREN'S FUND

FOR THE

IMPLEMENTATION OF UNICEF-FUNDED PROGRAMME RELATING TO THE
UNICEF PROGRAMME FOR GOVERNMENT OF GUINEA

[REDACTED] and the United Nations Children's Fund (referred to jointly as the "Parties" and each separately as a "Party"), hereby agree as follows:

**ARTICLE I
DEFINITIONS**

In this Agreement, the expression:

1. "United Nations Children's Fund" or "UNICEF" means the subsidiary organ of the United Nations established by the General Assembly pursuant to resolution 57(I) of 11 December 1946.

2. "Implementing Partner" or "IP" means [REDACTED]

3. "Programme" means the UNICEF country programme for Guinea, approved by the Executive Board of the United Nations Children's Fund for the period 2018 - 2022, including any subsequent extension of the ongoing Programme as approved by either the Executive Director or the Executive Board.

4. "Programme Document" means the formal document (in standard format) attached to this Agreement, which is concluded by the Parties and reflects expected results, detailed activities, timeframes and budget, and defines what is to be accomplished. The Programme Document is the basis for requisitioning, committing and disbursing funds to carry out planned activities and for their monitoring and reporting.

5. "Programme Document Progress Report" or "PDPR" means UNICEF's standard form of Workplan progress report, available at http://www.unicef.org/about/partnerships/files/Programme_Document_Progress_Report.docx or at such other URL as may be decided from time to time by UNICEF.

6. “HACT” means the Harmonized Approach to Cash Transfer of the United Nations Development Group (“UNDG”), available at <https://undg.org/document/harmonized-approach-to-cash-transfer-framework/> or at such other URL as UNDG may from time to time decide.

7. “FACE form” means the UNDG’s standard Funding Authorization and Certificate of Expenditure Form, a copy of which is available at http://www.unicef.org/about/partnerships/files/9_Annex_J_FACE.xlsx or at such other URL as UNICEF may from time to time decide.

8. “e-FACE” means UNICEF’s electronic data entry facility for the information contained in FACE forms, when available.

9. “Headquarters support costs” means those costs incurred by the IP which cannot be unequivocally attributed to a specific activity implemented by the IP in accordance with this Agreement, including any Programme Document.

10. “Authorized Officer” means one of the following officers of the IP:



It is understood, for the avoidance of doubt, that any removals from or amendments to the (list of) Authorized Officer(s) identified above shall require a written amendment to this Agreement in accordance with Article 20.0 of the General Terms and Conditions for Programme Cooperation Agreements appended hereto.

11. “non-expendable equipment” means any item that costs two thousand five hundred US dollars (US\$2,500) or more, including costs of initial delivery and handling, and which has a service lifetime of at least three (3) years.

12. “Government” means the Government of Guinea.

13. “Country” means Guinea.

ARTICLE II AGREEMENT DOCUMENTS

1. This Agreement consists of the following documents:

- (a) This Agreement;
- (b) The General Terms and Conditions for Programme Cooperation Agreements appended hereto;
- (c) Any Programme Documents concluded hereunder; and

- (d) Any Special Conditions established with regard to a particular programme, IP, or Programme Document, attached to this Agreement.

ARTICLE III PURPOSE AND SCOPE

1. This Agreement shall govern the implementation by the IP of the relevant parts of the Programme (including humanitarian response in the Country) through one or several Programme Documents. It describes the relationship between the Parties and the Parties' responsibilities.

ARTICLE IV GENERAL RESPONSIBILITIES OF THE PARTIES

1. The Parties will work together in a spirit of cooperation and partnership, with the responsibilities and accountabilities set out in this Agreement, to implement the Programme Documents in full in a timely, efficient, and effective, manner.

2. The Parties agree to carry out their respective responsibilities in accordance with the provisions of this Agreement, including the Programme Documents.

3. The Parties shall keep each other informed of all relevant activities pertaining to the implementation of the Programme Documents, and shall hold consultations when either Party considers it appropriate, including any circumstance that may affect the achievement of the results of the Programme and the Programme Documents.

4. The Parties shall fulfill their commitments with the fullest regard for the terms and conditions of this Agreement and the principles of the United Nations.

ARTICLE V RESPONSIBILITIES OF THE IP

1. The IP will contribute to the implementation of each Programme Document covered by this Agreement by undertaking the responsibilities allocated to it in this Agreement, in full cooperation with UNICEF, and will do so in accordance with the budget, schedule, and other details set out in the Programme Document, including by:

(a) Displaying the highest standard of conduct in ensuring that the core values of the United Nations, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities are respected;

(b) Commencing work on the responsibilities allocated to it in the Programme Document promptly upon signing the Programme Document (but

in no case prior to signing this Agreement) and, as applicable, receipt of the first installment of the cash, supplies and equipment to be transferred to it by UNICEF;

(c) Making its designated contributions of technical assistance, services, supplies and equipment towards the implementation of the Programme Document as provided for under this Agreement, including the Programme Document;

(d) Completing its responsibilities with diligence and efficiency, and in conformity with the requirements set out in the Programme Document (including in connection with the schedule and budget);

(e) Providing the reports required under this Agreement in a timely manner and satisfactory to UNICEF, and furnishing all other information covering the Programme Document and the use of any cash, supplies and equipment transferred to it by UNICEF that UNICEF may reasonably ask for;

(f) Exercising the highest standard of care when handling and administering the cash, supplies and equipment provided to it by UNICEF, and ensuring that its personnel will conduct itself with the highest standards of integrity and care in the administration of public assets including money.

2. In addition to the obligations set out in paragraph 1 above,

(a) The IP will maximize the use of any tax exemptions or exemptions from customs duties, excise or import taxes, available to it in the Country or elsewhere, with regard to the purchase, importing, registration, or use of supplies and equipment purchased using funds provided by UNICEF under this Agreement and shall consult with UNICEF in that regard.

(b) The IP will establish and maintain a system for monitoring progress of the implementation of the Programme Document using the defined results, including outputs, indicators and targets as set out in the Programme Document.

(c) The IP will accommodate monitoring visits of representatives of any donors that are contributing to the costs of implementing the Programme Document. UNICEF will give the IP reasonable prior notice of any such visits.

ARTICLE VI RESPONSIBILITIES OF UNICEF

1. UNICEF will contribute to the implementation of each Programme Document covered by this Agreement by undertaking the responsibilities allocated to it in this Agreement, including by:

(a) Commencing and completing the responsibilities allocated to it in the Programme Document in a timely manner, provided that all necessary reports and other documents are available;

(b) Making transfers of cash, supplies and equipment in accordance with the provisions of this Agreement;

(c) Undertaking and completing monitoring, assessment, assurance activities, evaluation and oversight of the Programme Document;

(d) Liaising on an ongoing basis, as needed, with the Government (as applicable), other members of the United Nations Country Team, donors, and other stakeholders; and

(e) Providing overall guidance, oversight, technical assistance and leadership, as appropriate, for the implementation of the Programme Document, and making itself available for consultations as reasonably requested; and

(f) Initiating joint monitoring and review meetings that shall be held at least at mid-term and at the end of the Programme Document in order to agree on the resolution of findings and to build on lessons learned to better serve the needs of children. The joint partnership review shall take into account: (a) the progress of the Programme Document; (b) working relationship of the Parties; (c) the compliance of the Parties with this Agreement; and (d) the success and challenges of the IP in meeting the agreed objectives and desired results of the Programme Document.

2. Headquarters support costs with respect of any single Programme Document and associated budget shall be reimbursable by UNICEF to the IP at a rate of seven percent (7%) of actual expenditures in connection with that Programme Document and associated budget. The IP shall record the headquarters support costs in the FACE forms to be submitted to UNICEF in accordance with the terms of this Agreement.

ARTICLE VII PROGRAMME DOCUMENTS

1. The Parties will conclude one or several Programme Documents as the case may be. Programme Documents shall be signed by duly authorized representatives of the Parties.

2. Programme Documents may be modified only by written agreement between the Parties.

ARTICLE VIII INPUTS BY UNICEF TOWARDS IMPLEMENTATION OF PROGRAMME DOCUMENTS

(A) Cash Transfer by UNICEF to/on behalf of IP

General provisions:

1. UNICEF will provide the IP with cash assistance for the activities as stipulated in the Programme Documents (the “Cash Transfer”), subject to the availability of funds and the terms of this Agreement. UNICEF’s assistance to the IP will not exceed the amounts included in the Programme Documents. UNICEF will provide the cash assistance to the IP following three Cash Transfer modalities (the “Cash Transfer Modalities” and each a “Cash Transfer Modality”):

(a) Advance payment by UNICEF to IP (referred to in the HACT as “Direct Cash Transfer”);

(b) Reimbursement by UNICEF to IP (referred to in the HACT as “Reimbursement”); and

(c) Payment by UNICEF on IP’s behalf to IP’s vendor or supplier (referred to in HACT and in this Agreement as “Direct Payment”).

2. The Cash Transfer shall be done in installments as requested by the IP on the FACE form and supporting itemized cost estimate representing the cash requirements to undertake the activities identified in the Programme Documents or as otherwise decided by UNICEF (the “Cash Transfer Installments” and each one of them separately a “Cash Transfer Installment”).

3. In each Cash Transfer request, the IP will provide UNICEF with a written request for a Cash Transfer Installment in an amount equal to the IP’s cash needs for the Quarter relating to the activities as specified in the Programme Document. The first such written request is to be submitted when the IP provides UNICEF with a signed copy of this Agreement and the Programme Document. The request will be signed by an Authorized Officer.

Cash Transfer procedures:

4. Cash Transfer Installments will be transferred to or, where the Direct Payment modality is used, on behalf of the IP solely to contribute to the implementation of the Programme Documents. The IP agrees that the funds so transferred will be used exclusively for the implementation of the Programme Documents.

5. UNICEF will make each Cash Transfer Installment to or, where the Direct Payment modality is used, on behalf of the IP in response to a written request from the IP, in accordance with the following procedures:

Procedures for requests for Cash Transfer Installments under all three Cash Transfer Modalities:

(a) Unless otherwise indicated by UNICEF in writing, every three calendar months during the term of this Agreement (“Quarter”) the IP will provide UNICEF with a written request for the Cash Transfer Installment in an

amount equal to the IP's cash needs for that Quarter relating to the activities as specified in the Programme Document. The IP will do so using the FACE form and Itemized Cost Estimate. The request will be signed by an Authorized Officer.

(b) The first written request, using the FACE form, may be made as soon as this Agreement and the Programme Document have been signed by both Parties. If such written request is in proper form and complete, UNICEF will determine the amount to be transferred and will transfer that amount to or, where the modality of Direct Payment is used, on behalf of the IP within a reasonable time.

(c) Unless otherwise decided by UNICEF, the second and each subsequent written request, using the FACE form, may not be made before expenditures have been reported to UNICEF, using the FACE form, and activity progress has been reported using the PDPR. If such second or subsequent request is received in a timely fashion and is in proper form and complete, UNICEF will determine the amount to be transferred and will transfer that amount to or, where the modality of Direct Payment is used, on behalf of the IP within a reasonable time.

Additional procedures applicable only to Direct Payment modality:

(d) The request for a Direct Payment is submitted using the FACE form and shall in all cases include the vendor's complete details and banking information in a format specified by UNICEF at the time of Programme Document finalization.

(e) For both Direct Payment and Reimbursement modalities, the requested expenditures should have been previously authorized through the FACE form by UNICEF.

Special terms and conditions for Cash Transfer Installments:

6. Any request for a Cash Transfer Installment by the IP will fulfill the following criteria to the satisfaction of UNICEF, failing which UNICEF may decide not to honor the request in whole or in part:

(a) The amount and purpose of the request will correspond to the provisions of the Programme Document, including its activities, schedule and budget;

(b) The request will be reasonable and justified under principles of sound financial management, in particular the principles of value for money and cost-effectiveness;

(c) There are to be no other grounds for believing the expenditure is in contravention of this Agreement, including the Programme Document; and

(d) Subject to paragraph 5(c) above, prior Cash Transfer Installments will have been reported on to UNICEF's satisfaction in accordance with Article X of this Agreement.

7. UNICEF may decide to adjust the amount of any Cash Transfer Installment where it has reason to do so, including:

(a) To take into consideration the general progress made to date under the Programme Document; or

(b) To offset any unspent or unreported balance remaining with the IP from any previous Cash Transfer Installment

8. UNICEF will only be required to transfer to or, where the Direct Payment modality is used, on behalf of, the IP the amount UNICEF determines is due under the terms of this Agreement. The IP agrees that UNICEF will not be liable to the IP or any third party, including the IP's vendor or supplier, for any amounts that UNICEF determines are not in compliance with this Agreement.

9. (a) The administration by the IP of the Cash Transfer shall be carried out under its own financial regulations, rules and procedures, which UNICEF has reviewed and assessed and found to be appropriate.

(b) Where, in accordance with HACT, UNICEF provides a Cash Transfer prior to the review and assessment of the IP's financial regulations, rules and procedures, then in the event UNICEF subsequently determines that the IP's financial regulations, rules and procedures are not appropriate, UNICEF shall give written notice to the IP and in such case UNICEF may require return of unspent Cash Transfers already provided to the IP and may decide to implement the Programme Document or any parts thereof (including any procurement activities) directly.

10. Where the IP buys goods or services from the Cash Transfer, the IP shall do so giving due consideration to the following principles:

(a) Best value for money;

(b) Fairness, integrity and transparency;

(c) Competition.

11. The Cash Transfer other than Direct Payments shall be made by UNICEF to the following bank account of the IP:



(B) Transfer of supplies/equipment by UNICEF to IP

12. Supplies and equipment transferred to the IP by UNICEF will be used exclusively for the implementation of the Programme Document, unless UNICEF agrees otherwise.

13. The IP will become owner of the supplies and equipment when it receives them. In the event that UNICEF agrees to store the supplies and equipment for the IP or hold them on the IP's behalf, the IP will become owner of those supplies and equipment as agreed between UNICEF and the IP. Exceptionally, UNICEF may decide in writing that UNICEF shall remain the owner of the supplies and equipment transferred to the IP by UNICEF.

14. UNICEF may, in its absolute discretion, decide that supplies and equipment already transferred to the IP should be deployed by the IP for implementation of another Programme Document, or reassigned to another implementing partner in connection with implementation of the Programme Document or another Programme Document. The IP will promptly comply with UNICEF's decision and in the latter case, the IP agrees that, notwithstanding the provisions of Article VIII, paragraph 12 above, it shall upon written instructions by UNICEF transfer ownership of the supplies and equipment to the successor implementing partner designated by UNICEF.

15. The IP shall exercise the highest standard of care when using and administering such supplies and equipment, and the IP shall place UNICEF markings thereon in consultation with UNICEF.

16. Vehicles, if any, made available to the IP by UNICEF will be transferred on loan only. Such vehicles will be provided to IP once the Parties sign the standard UNICEF vehicle loan agreement, a copy of which will be provided to the IP.

**ARTICLE IX
RECORD KEEPING**

1. The IP agrees to maintain books and records that are accurate, complete and up-to-date.

Cash Transfer:

2. The IP's books and records will clearly identify all Cash Transfer Installments received by the IP as well as disbursements made by the IP under this Agreement, including the amount of any unspent funds. Without limiting the foregoing, the IP is required to maintain:

(a) Records showing which transactions recorded in its accounting system represent the expenditures reported for each line on the FACE forms and any income earned by the IP in relation to Advance Payments (Direct Cash Transfers) made by UNICEF;

(b) Original documentation including bills, invoices, receipts and any other relevant documentation, which shall be kept by the IP for a period of five (5) years after the completion of the last Programme Document or the termination of this Agreement, whichever happens later. Such documentation shall include but not be limited to purchase orders, suppliers' invoices, contracts, delivery notes, leases, payment vouchers, bank statements, airline tickets, gasoline coupons, payroll records, employment contracts, attendance lists, expenses claims, petty cash receipts, journal vouchers, procurement files documenting competitive and fair selection, and any other relevant supporting documentation. Unless agreed in advance with UNICEF, the IP shall ensure that all vouchers related to the utilization of Cash Transfers carry clear notation showing a reference to the Programme Document. The IP understands that a written statement by the IP that money has been spent is insufficient and cannot replace the original documentation to support expenditures.

Supplies/equipment:

3. The IP will maintain records of supplies and equipment purchased from the Cash Transfer or transferred to the IP in accordance with Article VIII (B) of this Agreement. Detailed inventories shall be taken by the IP and kept for a period of five (5) years after the completion of the last Programme Document or the termination of this Agreement, whichever happens later.

**ARTICLE X
REPORTING REQUIREMENTS**

1. The IP will deliver to UNICEF the reports set out below. Narrative reports will, if possible, be provided in English, French, or Spanish.

(A) Financial reporting

Financial reporting using FACE form:

2. (a) Unless otherwise agreed between the Parties in writing, the IP will submit FACE forms at the end of every Quarter, using the FACE form. Should a FACE form not be submitted within six (6) months from the last Quarter, UNICEF will, unless agreed otherwise, suspend any further cash transfers to the IP, or on behalf of the IP.

(b) The final FACE form will be submitted no later than thirty (30) calendar days after the end of the Programme Document.

(c) The FACE form:

(i) will only include expenditures that are identifiable and verifiable. (The term “identifiable” includes that the expenditures are recorded in the IP’s accounting system and that the accounting system shows which transactions represent the expenditures reported for each line on the FACE form. The term “verifiable” includes that the expenditures may be confirmed by the records in Article IX.)

(ii) will only include those expenditures that are directly attributable to the implementation of the activities included in the Programme Document;

(iii) will only include expenditures that have actually been incurred and borne by the IP;

(iv) will not include any expenditures that are ineligible for Cash Transfer (“Ineligible Expenditures”, as stipulated in subparagraph 2(e) of this Article X, below);

(v) will include the balance of any unspent funds remaining from any previous Cash Transfer Installments; and

(vi) will include any refunds or adjustments received by the IP against any previous Cash Transfer Installments.

(d) UNICEF will have access, upon request, to all documents and records that support or may be deemed to support the information contained in the FACE form.

Ineligible Expenditures:

(e) The following are Ineligible Expenditures (as determined by UNICEF in its sole discretion) and, therefore, will not be included in the FACE form:

(i) Expenditures not made for activities, or not necessary for the implementation of the activities, included in the Programme Document;

(ii) Expenditures for value added tax (“VAT”) unless the IP can reasonably demonstrate to UNICEF that it is unable to recover the VAT;

(iii) Expenditures covered by or relating to another Programme Document;

(iv) Expenditures paid or reimbursed to the IP by another donor or entity;

(v) Expenditures in relation to which the IP has received an in-kind contribution from another donor or entity;

- (vi) Support costs, if any, exceeding the support cost rate referred to in Article VI, paragraph 2, of this Agreement;
- (vii) Expenditures that are not verifiable by records as provided in Article IX of this Agreement (other than support costs, if any, referred to in Article VI, paragraph 2 of this Agreement);
- (viii) Salaries for IP's employees exceeding the rates payable by UNICEF for comparable functions performed by locally-recruited staff members at the relevant duty station;
- (ix) Salaries for IP's internationally recruited employees exceeding the rates payable by UNICEF for comparable functions performed by internationally recruited staff members at the relevant duty station;
- (x) Expenditures in respect of fees for individual consultants retained by the IP exceeding those payable by UNICEF for comparable services rendered by individual consultants;
- (xi) Expenditures for travel, daily subsistence and related allowances for the IP's employees or consultants exceeding those payable by UNICEF to its staff members or consultants, as applicable;
- (xii) Amounts that represent accruals of costs not expenditures actually incurred by the IP;
- (xiii) Expenditures that merely represent financial transfers between administrative units or locations of the IP, for example as payment for services provided by one administrative unit of the IP to another;
- (xiv) Expenditures that are not reasonable and justified under principles of sound financial management, in particular the principles of value for money and cost-effectiveness;
- (xv) Expenditures that relate to obligations that were entered into after the end date of the relevant Programme Document;
- (xvi) Debt and debt service charges;
- (xvii) Foreign exchange loss;
- (xviii) Fines or levies payable to the authorities related to timeliness of payment of VAT or custom payments required by law;
- (xix) Expenditures made in contravention of any of the terms of this Agreement.

3. All financial reporting to UNICEF will be performed by the IP in the currency in which the Cash Transfer was made. The IP is not required to convert transactions into United States Dollars or any other currency.

Use of FACE e-tool:

4. In addition to using the FACE form, the IP may enter the information contained in the FACE form into the FACE e-tool, once available, if requested by UNICEF.

(B) Progress reporting

5. The IP will submit to UNICEF narrative progress reports against the planned activities contained in the Programme Document, using the PDPR. Unless otherwise agreed between the Parties in writing, these reports will be submitted at the end of every Quarter. The final report will be submitted no later than thirty (30) calendar days after the end the Programme and will be provided together with the FACE form.

(C) Additional reporting

6. Additional reporting requirements will be specified in the Programme Document. The IP will provide ad hoc reporting as may be requested by UNICEF from time to time. UNICEF will make every reasonable effort to minimize ad hoc reporting requests.

**ARTICLE XI
ACTIONS UPON COMPLETION
OF ACTIVITIES UNDER A PROGRAMME DOCUMENT**

1. (a) Upon completion of the IP's activities under a Programme Document, the IP shall refund to UNICEF the unspent balances of all Cash Transfers under that Programme Document (which shall be reported on the final FACE form submitted by the IP) and all other amounts of money it is not entitled to.

(b) Upon completion of the IP's activities under a Programme Document, the IP shall return to UNICEF all unused supplies and equipment provided by UNICEF as inputs for programme implementation but not used.

(c) Such refunds and returns shall be effected no later than ninety (90) calendar days after the end date of the Programme Document or the effective date activities have ceased, whichever occurred earlier.

2. Upon winding up of the IP's activities under a Programme Document, the Parties shall consult as to the disposition of all non-expendable property provided by UNICEF or acquired from the Cash Transfer to or, insofar as the Direct Payment modality was used, on behalf of the IP, with regard to that Programme Document. UNICEF may decide that such non-expendable property shall be transferred for use by another implementing partner. In that case, the IP shall, upon written instructions

by UNICEF, transfer ownership of such property to the implementing partner designated by UNICEF.

ARTICLE XII
PRIVILEGES AND IMMUNITIES; RESOLUTION OF DISPUTES

1. In accordance with Article 18.0 of the General Terms and Conditions for Programme Cooperation Agreements, nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNICEF.

2. The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of this 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 Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

3. Any dispute, controversy, or claim between the Parties arising out of this Agreement or the breach, termination, or invalidity thereof, unless settled amicably under the preceding paragraph, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim Measures of Protection”) and Article 34 (“Form and Effect of the Award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Agreement, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

ARTICLE XIII
FINAL PROVISIONS

1. This Agreement shall enter into force on the date it is signed by both Parties. It shall expire on the last day of the Programme unless terminated earlier in accordance with Article 11.0 of the General Terms and Conditions attached to and incorporated in this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by the respective Parties, have signed this Agreement.

For the Implementing Partner:

**For the United Nations Children's
Fund:**



**GENERAL TERMS AND CONDITIONS
FOR PROGRAMME COOPERATION AGREEMENTS**

- 1.0 LEGAL STATUS:** IP shall be considered as having the legal status of an independent contractor *vis-à-vis* UNICEF. IP's employees, personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNICEF.
- 2.0 IP'S RESPONSIBILITY FOR EMPLOYEES, PERSONNEL AND SUBCONTRACTORS:** IP shall be responsible for the professional and technical competence of its employees, personnel and subcontractors and will select, for work under this Agreement, reliable persons who will perform effectively in the implementation of this Agreement, respect the local customs, and conform to a high standard of moral and ethical conduct.
- 3.0 ASSIGNMENT:** IP shall not assign, transfer, pledge or make other disposition of this Agreement or any parts thereof, including any Programme Documents, or any of IP's rights, claims or obligations under this Agreement except with the prior written consent of UNICEF.
- 4.0 SUB-CONTRACTING:** IP may not use the services of sub-contractors unless permission is granted in advance by UNICEF in writing in any particular case. If UNICEF approves a particular sub-contracting of services, the IP shall ensure that IP's sub-contractors do not use further tiers of sub-contractors, including sub-subcontractors, unless UNICEF has given prior written permission in each particular case. The use by IP of sub-contractors, or of further tiers of sub-contractors in the event that UNICEF has given prior written permission in accordance with the preceding sentence, shall not relieve IP of any of its obligations under this Agreement. The terms of any sub-contract, sub-subcontract and so forth shall be subject to, conform to and give full effect to the provisions of this Agreement. In particular, the IP shall ensure that any sub-contract or further tiers of sub-contracts include provisions substantially the same as Article 14.0.
- 5.0 OFFICIALS NOT TO BENEFIT; RESTRICTION ON HIRING UNICEF PERSONNEL:**
- a. IP warrants that no official of UNICEF has received or will be offered by IP any direct or indirect benefit arising from this Agreement or the award thereof. IP agrees that breach of this provision is a breach of an essential term of this Agreement.
 - b. The IP represents and warrants that the following with regard to former UNICEF officials have been complied with and will be complied with: (i) during the one year period after an official has separated from UNICEF, the IP may not make a direct or indirect offer of employment to that former UNICEF official if that former UNICEF official was, during the three years prior to separating from UNICEF, involved in any aspect of the process leading to the IP's selection or the implementation of the Programme; and (ii) during the two year period after an official has separated from UNICEF, the former official may not communicate with UNICEF, or present to UNICEF, on behalf of the IP on any matters that were within such former official's responsibilities while at UNICEF.
- 6.0 INDEMNIFICATION:** IP shall indemnify, hold and save harmless, and defend, at its own expense, UNICEF, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of IP, or IP's employees, officers, agents or sub-contractors, in the performance of this Agreement and Programme Documents. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by IP, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Agreement.

- 7.0 ENCUMBRANCES/LIENS:** IP shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office against any monies due or to become due for any work done, services rendered or materials, supplies or equipment furnished under this Agreement, or by reason of any other claim or demand against IP.
- 8.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS; CONFIDENTIALITY:**
- 8.1 Except as is otherwise expressly provided in writing in the Agreement, UNICEF shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which IP has developed under the Agreement and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Agreement, and IP acknowledges and agrees that such products, documents and other materials constitute works made for hire.
- 8.2 At the request of UNICEF, IP shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNICEF in compliance with the requirements of applicable law.
- 8.3 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by IP under this Agreement shall be the property of UNICEF, shall be made available for use or inspection by UNICEF at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNICEF authorized officials on completion of work under the Agreement.
- 8.4 The IP shall respect the confidentiality of all information that UNICEF advises the IP is confidential, and shall treat it no less confidentially than the IP's most confidential information. When the IP is required to disclose UNICEF's confidential information by law, the IP shall give UNICEF sufficient prior notice of a request for the disclosure of information in order to allow UNICEF to have reasonable opportunities to take protective measures or such other actions as may be appropriate prior to any disclosure being made.
- 8.5 Where collection and use of data related to beneficiaries (meaning any personal information including identifying information such as the name, identification or passport number, mobile telephone number, email address, cash transaction details) is part of the responsibilities of the IP under this Agreement, such information shall be deemed to be UNICEF's confidential information and shall be governed by the UNICEF Disclosure of Information policy, a copy of which is available at http://www.unicef.org/about/legal_disclosure.html. The IP shall only use such data in order to implement the Programme Document. The IP shall promptly notify UNICEF of any actual or suspected or threatened incident of accidental or unlawful destruction or accidental loss, alteration, unauthorized or accidental disclosure or access to such data.
- 9.0 USE OF UNICEF's AND IP's NAME, LOGO AND EMBLEM:** Each of the Parties is permitted to use the other's name, logo, and emblem, as applicable, solely in connection with this Agreement and the implementation of the Programme Documents, unless permission is withdrawn in any particular case by any of the Parties and notified in writing to the other Party. When reporting to third parties and/or general public, the IP will attribute results reported as being funded by UNICEF. At UNICEF's request, the IP shall provide visibility, as specified by UNICEF, to UNICEF's donors that are contributing funds for the Programme Document. Where such visibility would jeopardize the safety and security of the IP's staff, the IP shall propose appropriate alternative arrangements.
- 10.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**
- 10.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, IP shall give notice and full particulars in writing to UNICEF, of such occurrence or

change if IP is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. IP shall also notify UNICEF of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Agreement. On receipt of the notice required under this Article, UNICEF shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to IP of a reasonable extension of time in which to perform its obligations under this Agreement.

- 10.2 If the IP is rendered permanently unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under this Agreement, UNICEF shall have the right to suspend or terminate this Agreement on the same terms and conditions as are provided for in Article 11.0, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.
- 10.3 *Force majeure* as used in this Article means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar force or nature, provided that such acts arise from causes beyond the control and without the fault or negligence of the Party concerned.
- 10.4 The IP acknowledges and agrees that, with respect to any obligations under this Agreement that the IP must perform in or for any areas in which UNICEF is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute *force majeure*.

11.0 TERMINATION:

- 11.1 Either Party may terminate this Agreement by giving thirty (30) calendar days' written notice to the other Party in each of the following situations:
- a. if it concludes that the other Party has breached its obligations under this Agreement or any Programme Document and has not remedied that breach after having been given not less than fourteen (14) calendar days' written notice to do so with effect from a date specified in such notice; and
 - b. if it concludes that the other Party cannot meet its obligations under this Agreement.
- 11.2 UNICEF may also suspend or terminate, as it deems appropriate, this Agreement forthwith in each of the following situations:
- a. if implementation of any Programme Document has not commenced within a reasonable time;
 - b. if IP fails to take preventive measures against sexual exploitation and abuse, or child safeguarding violations; if IP fails to investigate allegations of sexual exploitation or abuse, or child safeguarding violations; or if IP fails to take corrective action if sexual exploitation or abuse or child safeguarding violations have occurred (as such terms are defined in Article 14.1);
 - c. if it decides that IP or any of its employees or personnel has engaged in any corrupt, fraudulent, collusive, coercive or obstructive practice (as such terms are defined in clause 15.3 b.) or has engaged or have engaged in sexual exploitation or abuse, or any child safeguarding violations, without the IP having taken timely and appropriate action satisfactory to UNICEF;
 - d. should UNICEF's funding decrease, be curtailed or terminated; or
 - e. should IP be adjudged bankrupt, or be liquidated or become insolvent, or should IP make an assignment for the benefit of its creditors, or should a Receiver be appointed

on account of the insolvency of IP, in which case IP shall immediately inform UNICEF of the occurrence of any of the above events.

- 11.3 The Party receiving a notice of suspension or termination will immediately take all necessary steps to suspend or terminate (as the case may be) its activities in an orderly manner so that continued expenses are kept to a minimum.
- 11.4 Immediately upon sending or receiving a notice of termination UNICEF will cease disbursement of any funds under this Agreement and IP will not make any forward commitments, financial or otherwise, in connection with this Agreement.
- 11.5 On termination of this Agreement pursuant to this Article 11.0, IP will transfer either to UNICEF or in accordance with UNICEF's instructions the unexpended balance of the Cash Transfer held by IP and the unused supplies and equipment provided by UNICEF under this Agreement and any non-expendable property provided by UNICEF under this Agreement or purchased by the IP using funds provided by UNICEF under this Agreement.
- 11.6 If UNICEF exercises its right to terminate this Agreement, UNICEF will have the right to require IP to repay to UNICEF such amount of money, up to the total amount paid to IP by UNICEF prior to the date of the notice of termination, as UNICEF shall determine. It is understood that expenditures incurred by the IP in compliance with this Agreement prior to the date of the notice of termination will not be required to be repaid. The payment owing by IP will be made promptly upon receipt of UNICEF's notice to pay.
- 11.7 If UNICEF exercises its right to terminate this Agreement and decides that the Programme Document is to be implemented by another organization, IP will promptly provide full cooperation to UNICEF and the other organization in the orderly transfer to the other organization of all unused supplies and equipment provided to IP by UNICEF and the provisions of Article 11.5 above will apply.
- 12.0 EVALUATION:** The evaluation of the activities performed under this Agreement shall be subject to the provisions of the UNICEF Evaluation Policy as from time to time approved or amended by UNICEF's Executive Board.
- 13.0 COMPLIANCE WITH UNICEF POLICIES:** The IP and IP's employees, personnel, and subcontractors will be required to comply with:
- (a) the provisions of ST/SGB/2003/13 entitled "Special Measures for Protection from Sexual Exploitation and Sexual Abuse", which is available at <https://undocs.org/ST/SGB/2003/13>;
 - (b) the relevant provisions of the substantive rules in UNICEF's Policy on Conduct Promoting the Protection and Safeguarding of Children available at https://www.unicef.org/supply/files/Executive_Directive_06-16_Child_Safeguarding_Policy_-_1_July_2016_Final.pdf, and other UNICEF policies relating to the safeguarding of children as UNICEF may advise from time to time, or IP's own policy, which conforms to the standards set by Keeping Children Safe. "Child safeguarding" or "safeguarding of children" is the reduction of risk of harm to children arising from a party's work, employees, personnel or subcontractors; and
 - (c) the relevant provisions of UNICEF's Policy Prohibiting and Combatting Fraud and Corruption available at http://www.unicef.org/publicpartnerships/files/Policy_Prohibiting_and_Combatting_Fraud_and_Corruption.pdf or such other URL as may be decided from time to time by UNICEF.
- 14.0 SEXUAL EXPLOITATION AND ABUSE; CHILD SAFEGUARDING VIOLATIONS:**

14.1 IP and IP's employees, personnel, or subcontractors, shall not engage in any sexual exploitation and abuse conduct, or child safeguarding violations. IP acknowledges and agrees that UNICEF will apply a policy of "zero tolerance" with regard to sexual exploitation and abuse, and child safeguarding violations. For purposes of this Agreement the following definitions shall apply:

- (a) "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
- (b) "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Sexual exploitation and abuse are strictly prohibited;
- (c) "child" means any person less than eighteen (18) years of age, regardless of any laws relating to consent or age of majority.
- (d) "child safeguarding violation" is a conduct by a party's employees, personnel or subcontractors that actually or likely causes significant harm to a child, including any kind of physical, emotional or sexual abuse, neglect or exploitation.

14.2 Without prejudice to the generality of the foregoing:

14.2.1 Sexual activity with any person less than eighteen (18) years of age, regardless of any laws relating to consent or age of majority, shall constitute the sexual exploitation and abuse of such person. Mistaken belief in the age of a child shall not constitute a defense under this Agreement.

14.2.2 The exchange of any money, employment, goods, services, or other things of value, for sexual favors or activities or from engaging in any sexual activities that are exploitative or degrading to any person, shall constitute sexual exploitation and abuse.

14.2.3 IP acknowledges and agrees that sexual relationships between beneficiaries of assistance and IP's employees, personnel, or subcontractors, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of UNICEF and are strongly discouraged.

14.3 Prevention. IP shall take all appropriate measures to prevent sexual exploitation and abuse, and child safeguarding violations, by its employees, personnel or subcontractors. IP shall, *inter alia*, ensure that its employees, personnel or subcontractors shall have undertaken and successfully completed appropriate training with regard to the prevention of sexual exploitation and abuse, and training on safeguarding children. Such training shall include but not be limited to: reference to definitions of sexual exploitation and sexual abuse, and child safeguarding violations; a clear and unambiguous statement that any form of sexual exploitation and abuse, and any conduct that undermines the safeguarding of children, is prohibited; the requirement that any allegations of sexual exploitation and abuse, or child safeguarding violations be promptly reported as provided for in Article 14.4; and the requirement that alleged victims of sexual exploitation and abuse or child safeguarding violations, be promptly informed of and referred to available professional assistance, upon her or his consent.

14.4 Reporting of allegations to UNICEF. IP shall promptly and confidentially, in a manner that assures the safety of all involved, report allegations of sexual exploitation and abuse, or any reasonable suspicion (or allegations) of child safeguarding violations, arising from this Agreement, of which IP has been informed or has otherwise become aware, to the UNICEF head of office in Country or the UNICEF Director, Office of Internal Audit and Investigation (integrity1@unicef.org).

14.5 Investigation. IP shall properly and without delay investigate allegations of sexual exploitation and abuse, or child safeguarding violations, by IP's employees, personnel, or subcontractors. (It is understood, however, that any investigation conducted by the IP under this clause shall be without prejudice to the right of UNICEF under Article 15.3 to conduct investigations.) IP shall keep UNICEF informed during the conduct of the investigation, without prejudice to the due process rights of any persons concerned. Following the conclusion of the investigation by the IP, IP shall promptly provide reports on the outcome of the investigation, including any relevant details relating the alleged offender, to the extent legally possible. Upon request, IP shall provide relevant evidence to UNICEF for examination and further use by UNICEF as deemed necessary solely by UNICEF. UNICEF may decide that the obligation on the part of the IP under the first sentence of this Article 14.5 to conduct an investigation shall not apply if an investigation is being or has been conducted by competent national authorities. In the event that competent national authorities are conducting or have conducted the investigation, IP shall assist UNICEF and take all necessary steps, to the extent legally possible, for UNICEF to obtain information on the status and outcome of the investigation.

15.0 ASSURANCE ACTIVITIES:

15.1 Audit:

- a. At the request of and at such times as determined solely by UNICEF, IP will have its activities under this Agreement audited. Audits will be performed subject to such standards, scope, frequency and timing as decided by UNICEF (and may cover financial transactions and internal controls related to the activities implemented by IP).
- b. Audits as provided under paragraph 1 of this Article shall be conducted by individual or corporate auditors to be designated by UNICEF, such as, for example, an audit or accounting firm. IP shall provide its full and timely cooperation with any audits. Such cooperation shall include, but shall not be limited to, IP's obligation to make available its personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions and to grant the auditors access to IP's premises and/or sites of programme implementation at reasonable times and on reasonable conditions in connection with such access to IP's personnel and relevant documentation and records. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any audits carried out hereunder.
- c. In the event that the audit is conducted by auditors designated by UNICEF, UNICEF or the auditors will provide a copy of the final audit report to IP without delay.

15.2 Spot checks and programmatic visits:

IP agrees that, from time to time, UNICEF may conduct on site reviews ("spot checks" and programmatic visits), subject to such standards, scope, frequency and timing as decided by UNICEF. IP shall provide its full and timely cooperation with any such spot checks or programmatic visits, which shall include IP's obligation to make available its personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions and to grant to UNICEF access to IP's premises and/or sites of programme implementation at reasonable times and on reasonable conditions. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any spot checks carried out by UNICEF hereunder. It is understood that UNICEF may, at its sole discretion, contract for the services of an individual or corporate person to conduct spot checks or programmatic visits, or UNICEF may conduct spot checks or programmatic visits with its own staff, employees and agents.

15.3 Investigation:

- a. IP agrees that UNICEF may conduct investigations, at such times as determined solely by UNICEF, relating to any aspect of this Agreement or the award thereof, the obligations performed under the Agreement, and the operations of the IP relating to performance of this Agreement. The right of UNICEF to conduct investigations shall not lapse upon expiration or prior termination of this Agreement. IP shall provide its full and timely cooperation with any such investigations. Such cooperation shall include, but shall not be limited to, IP's obligation to make available its personnel and any relevant documentation and records at reasonable times and on reasonable conditions and to grant to UNICEF access to the IP's premises and/or sites of programme implementation at reasonable times and on reasonable conditions. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any investigations carried out by UNICEF hereunder. It is understood that UNICEF may, at its sole discretion, contract for investigation services of an individual or corporate person, or UNICEF may conduct investigations with its own staff, employees and agents.
- b. IP agrees to bring allegations of corrupt, fraudulent, collusive, coercive or obstructive practices arising in relation to this Agreement, of which IP has been informed or has otherwise become aware, promptly to the attention of the Director, Office of Internal Audit and Investigation, UNICEF. For purposes of this Agreement, the following definitions shall apply:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official;
 - (ii) "fraudulent practice" means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation;
 - (iii) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (iv) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) "obstructive practice" means acts intended to materially impede the exercise of UNICEF's contractual rights of audit, investigation and access to information, including destruction, falsification, alteration or concealment of evidence material to a UNICEF investigation into allegations of fraud and corruption.

15.4 IP consents to the public disclosure by UNICEF of the audit reports referred to in Article 15.1; the spot check and programmatic visit reports referred to in Article 15.2; and the investigation reports referred to in Article 15.3. It is understood that investigation reports under Article 14.5, or perpetrator information, will only be shared within the UN.

16.0 ASSESSMENTS: IP agrees that UNICEF may from time to time conduct assessments of IP, including IP's capacity to perform its obligations as an implementing partner in a manner satisfactory to UNICEF, IP's capacity to prevent sexual exploitation and abuse, and child safeguarding violations and internal control framework ("assessments"). UNICEF may conduct such assessments subject to such standards, scope, frequency and timing as decided by UNICEF with reasonable advance notice provided to the IP. IP shall provide its full and timely cooperation with any assessments. Such cooperation shall include, but shall not be limited to, IP's obligation to make available its personnel and any relevant documentation and

records at reasonable times and on reasonable conditions and to grant to UNICEF access to IP's premises at reasonable times and on reasonable conditions. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any assessments carried out by UNICEF hereunder. It is understood that UNICEF may, at its sole discretion, contract for services of an individual or corporate person to conduct any assessment, or UNICEF may conduct the assessment with its own staff, employees and agents. IP consents to the public disclosure by UNICEF of the assessments referred to in this Article 16.0. It is understood that assessment reports of the IP's capacity to prevent sexual exploitation and abuse, and child safeguarding violations will only be shared within the UN.

- 17.0 REFUNDS/OFFSETS:** UNICEF shall be entitled to a refund from IP or to make an offset against any amounts payable to IP: for any amounts paid by UNICEF or used by IP other than in accordance with the terms and conditions of this Agreement, including any amounts shown by audits, spot checks or investigations to have been so paid or used; for any amounts paid by UNICEF or used by IP as a result of IP or any of its employees or personnel having engaged in any corrupt, fraudulent, collusive, coercive or obstructive practice (as such terms are defined in clause 15.3 b.); for any unspent amounts; for any amounts transferred by UNICEF to IP but not included or properly reflected in any financial report (using the FACE form) or supported by appropriate documentation and records; for any amounts paid by UNICEF in relation to an Ineligible Expenditure; or for any amounts otherwise subject to a refund in accordance with the terms of this Agreement. IP will make payment of such refund promptly upon receiving from UNICEF a written request for such refund.
- 18.0 PRIVILEGES AND IMMUNITIES:** Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNICEF.
- 19.0 OBSERVANCE OF THE LAW:** IP shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Agreement.
- 20.0 AUTHORITY TO MODIFY:** No modification or change in this Agreement shall be valid and enforceable against UNICEF unless provided by a written amendment to this Agreement signed by a duly authorized officer of UNICEF and an Authorized Officer of IP.
- 21.0 SUPPORT TO TERRORISM:** IP agrees to apply the highest reasonable standard of diligence to ensure that cash, supplies and equipment under its control, including but not limited to cash, supplies and equipment transferred by UNICEF to IP: (a) are not used to provide support to individuals or entities associated with terrorism; (b) are not transferred by the IP to any individual or entity on the UN Security Council Committee Consolidated List available at <https://www.un.org/securitycouncil/sanctions/un-sc-consolidated-list>; and (c) are not used, in the case of money, for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.