

**ANNEX 1 ZOA DORCAS GENERAL CONTRACT PROVISIONS**

**THE BELOW ARE THE ZOA DORCAS GENERAL CONTRACT PROVISIONS. WHERE IT SAYS SERVICE PROVIDER, THIS COULD ALSO BE READ AS SUPPLIER AND IT IS APPLICABLE FOR THE SUPPLIER WHO SIGNS A CONTRACT WITH ZOA DORCAS.**

**ARTICLE 1 ETHICAL REQUIREMENTS AND ZOA DORCAS SUPPLIER CODE OF CONDUCT**

1.1 The Service Provider shall treat project beneficiaries with respect and provide any necessary assistance. ZOA Dorcas's Code of Conduct for Suppliers is a guideline for this.

1.2 The Service provider hereby declares that it has not offered or given the Organization's staff, subordinates or auxiliary persons any benefit in order to obtain the order, nor arranged for them to be offered or given any such benefit. It will not do so in the future with a view to inducing such persons to perform or refrain from performing any act.

1.3 The Service provider hereby also submits a signed version of the ZOA Dorcas Code of Conduct for Suppliers if this had not happened before and agrees to have understood this document and to adhere the principles stated in this document.

1.4 The Service Provider shall ensure that himself/herself and personnel refrain from any conduct that would adversely reflect on ZOA Dorcas and shall not engage in any activity which is incompatible with the aims, objectives or mandate of ZOA Dorcas; more specifically, they shall prevent, oppose and combat all exploitation and abuse of vulnerable population assisted by the project and other persons of concern to ZOA Dorcas.

1.5 The Service Provider acknowledges and agrees that ZOA Dorcas has zero tolerance for abuse and misconduct, including sexual exploitation and abuse, as detailed in "ZOA Dorcas's Code of Conduct for Suppliers". It shall communicate accordingly to its personnel and shall take all reasonable measures to prevent abuse and misconduct in any form.

1.6 The Service Provider shall guarantee that no personnel or himself/herself has been or will be offered any direct or indirect benefit arising from this Contract. The Parties agree that non-compliance with the provision of this Article is a breach of essential term of this Contract, which may result in immediate termination of the Contract or any other remedial action deemed by ZOA Dorcas.

**ARTICLE 2 TITLE TO EQUIPMENT**

Title to any equipment and supplies that may be made available by ZOA Dorcas shall rest with ZOA Dorcas and any such equipment shall be returned to ZOA Dorcas at the conclusion of this Contract or when no longer needed by the Service provider. Such equipment, when returned to ZOA Dorcas, shall be in the same condition as when delivered to the Service provider, subject to normal wear and tear. The Service provider shall be liable to compensate ZOA Dorcas for equipment determined to be damaged or degraded beyond normal wear and tear.

**ARTICLE 3 CONFIDENTIALITY AND PERSONAL DATA PROTECTION**

All information which comes into the Service provider's possession or knowledge in connection with this Contract is to be treated as strictly confidential. The Service provider should not communicate such information to any third party without the prior written approval of ZOA Dorcas.

The Service provider shall process any personal data used or produced under this contract in compliance with applicable EU and national law on data protection (including authorizations or notification requirements).

Service provider shall limit access and use of personal data to that strictly necessary for the performance, management and monitoring of this contract and shall adopt all appropriate technical and organizational security measures necessary to preserve the strictest confidentiality and limit access to this data.

These obligations shall survive the expiration or termination of this Contract.

**ARTICLE 4 ASSIGNMENT AND SUBCONTRACTING**

The Service provider shall not assign or subcontract the Contract or any work under this Contract in part or all, unless agreed upon in writing in advance by ZOA Dorcas. Any subcontract entered into by the Service provider without approval in writing by ZOA Dorcas may be cause for termination of the Contract.

**ARTICLE 5 ACCESS TO INFORMATION**

The Service provider agrees to maintain financial records, supporting documents, statistical records and all other records in accordance with generally accepted accounting principles to sufficiently substantiate all direct and indirect costs of whatever nature involving transactions related to the delivery of services under this Contract. The Service provider shall make all such records available to ZOA Dorcas or its designated representative, including auditors from institutional donors funding ZOA Dorcas, at all reasonable times until the expiration of seven (7) years from the date of final payment, for inspection, audit, or reproduction. On request, employees of the Service provider shall be available for interview.

**ARTICLE 6 LIABILITY, CLAIMS, INSURANCE AND WARRANTIES**

6.1 ZOA Dorcas shall not be responsible or liable for direct or indirect harm or damages caused by the service provider and/or its sub service provider to themselves or any third party in relation to this contract, including but not limited to the process of delivering the agreed services that is the subject of this contract not for worker's injuries or any other losses occurred to anyone due to this service contract.

6.2 ZOA Dorcas shall bear no responsibility over losses, claims or damages of the service provider's properties, properties of other people, injury claims or any other form of claim including excess payments resulting from services provided by the service provider during the performance of this contract.

6.3 The Service provider shall indemnify, hold and save harmless, and defend, at its own expense, ZOA Dorcas, 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 the Service provider, or the Service provider's employees, officers, agents or sub-service providers, in the performance of this Contract. 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 the Service provider, its employees, officers, agents, servants or sub-service providers. The obligations under this Article do not end upon termination of this Contract.

6.4 The Service provider shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

6.5 The Service provider shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

6.6 The Service provider shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Service provider or its agents, servants, employees or sub-service providers performing work or services in connection with this Contract.

6.7 ZOA Dorcas cannot be held responsible for price or tax increases.

6.8 In case any goods are involved in the contract:

- a) The Service provider warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Service provider that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination. This warranty shall remain valid for twelve (12) months after the Goods have been delivered to and accepted at the final destination indicated in the Contract.
- b) The Service provider warrants that all Goods supplied under this Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in this Contract. All Goods/Services delivered under this Contract will conform to the specifications, drawings, samples, or other descriptions furnished or specified by ZOA Dorcas if any.

**ARTICLE 7 SECURITY**

- 7.1 The responsibility for the safety and security of the Service provider and its staff and property, and of ZOA Dorcas's property in the Service provider's custody, rests with the Service provider.
- 7.2 Service provider unreservedly holds duty of care for its staff involved in the provision of services under this contract.
- 7.3 In fulfillment of its duty of care the Service provider shall put in place appropriate security measures, including but not limited to, an appropriate security plan taking into account the security situation in the country where the services are being provided;

**ARTICLE 8 SPECIAL PROVISIONS ON WORKING WITH ZOA DORCAS**

- 8.1 Designated ZOA Dorcas Representatives are the only parties that the service provider can liaise and coordinate with in fulfilling this contract or any amendments. Any violation of this will give the right for ZOA Dorcas to cancel the contract or waive any additional costs incurred and the service provider has no right to request any compensation.
- 8.2 This contract does not constitute an exclusive commitment to the service provider, and ZOA Dorcas reserves the right to purchase the same or similar services at any other Service provider at any point.
- 8.3 This contract does not create a partnership, joint venture or agency between the parties and no party shall be liable for the debts of the other party, howsoever incurred.
- 8.4 None of the parties will use the others' name, logo or any other form of other corporate identity without their prior written consent.

**ARTICLE 9 PROGRESS REPORTS**

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Service Provider and submitted to ZOA Dorcas. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

**ARTICLE 10 COUNTER TERRORISM**

- 10.1 The Service provider agrees to undertake all reasonable efforts to ensure that none of the ZOA Dorcas funds received under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by ZOA Dorcas hereunder do not appear on the sanction lists maintained by the EU, the UN and OFAC.
- 10.2 ZOA Dorcas will enter the Service provider in an online tool for sanction list checks. By signing this contract, the service provider gives ZOA Dorcas the right to do this check.

10.3 In case the Service provider, its key staff or the owner(s) of the Service provider's company, are or will be mentioned on a sanction list of the European Union, OFAC, the UN, or any other sanction list relevant to the Organization and its donors, the Organization holds the rights to immediately terminate the contract without any notice period.

## **ARTICLE 11    TERMINATION**

**11.1** This Contract will automatically terminate with immediate effect on the Termination date as stated in this Contract and is not automatically renewable. In case of a termination during the course of this contract period, a 1 (one) month written notice to terminate by either party is mandatory.

11.2 ZOA Dorcas may terminate this contract immediately upon Service Provider's receipt of written notice without cost if ZOA Dorcas determines that Service Provider or one of its employees/workers has committed one or more of the following:

- Fraud defined as any intentional act or omission relating to:
  - The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of ZOA Dorcas or institutional donors' funds.
  - Non-disclosure of information, with the same effect.
  - The misapplication of such funds for purposes other than those for which they were originally granted.
- Active corruption: to deliberately promise or give an advantage to an official to act or refrain from acting in accordance with his duty in a way which damages or is likely to damage ZOA Dorcas or institutional donors' financial interests.
- Collusion: the coordination of firms' competitive behavior, with the likely result that prices rise, output is restricted and the profits of the colluding companies are higher than they would otherwise be. Collusive behavior does not always rely on the existence of explicit contracts between firms, but can also be tacit.
- Coercive practice: harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of this Contract.
- Bribery: to offer ZOA Dorcas employees monetary or in-kind gifts in order to gain additional market or to continue the Contract.
- Involvement in a criminal organization, including terrorist organizations, or any other illegal activity as established by a judgement from any donor funding ZOA Dorcas.
- Immoral conduct: exploitation of child labor, sexual abuse, non-respect of basic social rights and/or working conditions of employees or sub-contractors. This list is not exhaustive.
- Misuse of the project's purpose: giving goods instead of cash to cards' owner, even if requested by the beneficiary.
- Any other behavior that breaches the commitments made in ZOA Dorcas's Code of Conduct.
- Ceases project activity as described in this Contract.
- Is in compulsory liquidation.
- Becomes subject to a bankruptcy proceeding.

11.3 ZOA Dorcas reserves the right to terminate with a valid cause this Contract at any time upon 30 days prior written notice to the Service provider, in which case ZOA Dorcas shall reimburse the Service provider for all reasonable costs incurred by the Service provider prior to receipt of the notice of termination.

11.4 Either party may terminate this contract with immediate effect if the other party is in material breach of any provision of this contract (including annexes) and remains in breach for a period of 10 calendar days after written notice from the party affected by the breach. The notice of material breach must be provided using a means that allows for a proof of delivery, such as registered mail, e-mail, fax or delivery in person upon signature. Cost incurred and damages caused may need to be reimbursed in this case.

11.5 ZOA Dorcas may terminate the contract if its humanitarian activities are suspended for reasons beyond its control, or if there is inaccessibility or limitation in ZOA Dorcas programs due

to the security situation. ZOA Dorcas will inform the Service provider immediately about this issue and the Service provider will not be entitled to any compensation.

11.6 ZOA Dorcas may terminate this contract and its relationship with the service provider with immediate effect if the Service provider does not adhere to the ZOA Dorcas Supplier Code of Conduct. By signing this contract, the service provider agrees to adhere to ZOA Dorcas Supplier Code of Conduct. ZOA Dorcas expressly reserves the right to seek any legal remedies available to it in respect of such non-adherence, including refunds of payments already made to the service provider.

11.7 ZOA Dorcas holds the rights to immediately terminate the contract without any notice period in case the Service provider or one of its key members of staff are mentioned on an international sanction list that is relevant for ZOA Dorcas or one of its donors.

#### **ARTICLE 12 FORCE MAJEURE**

12.1 If a party is prevented or restricted from carrying out all or any of its obligations under this Contract by any cause beyond the reasonable control of that party, including, without limitations, civil commotions, riots, kidnapping/murder of ZOA Dorcas staff, insurrection, fire, explosion, governmental embargoes/suspension, inaccessibility due to insecurity or like causes ("force majeure"), the party so affected shall, to the extent so prevented, be relieved of its obligations hereunder during the period of such events and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other party may suffer due to or resulting from such delays or failure; provided always that written notice of the occurrence constituting force majeure shall be given within 48 (forty eight) hours by the affected party.

12.2 In the above case, the contract shall be suspended. Suspension of service means that activities under the Contract will not be delivered during a given period. Following a period or periods of suspension, the Contract will continue until the original agreed upon end date. The contract can only be extended beyond the original end date as per the terms of **Article 3 of the contract**.

12.3 The parties agree that, should force majeure last more than 2 weeks, the party who has not invoked force majeure to excuse any non-performance of its obligations may terminate this Contract by giving written notice to the other party.

#### **ARTICLE 13 MODIFICATION OF CONTRACT, ISSUES AND JURISDICTION**

13.1 Jurisdiction: This contract shall be governed by the laws of South Sudan.

13.2 The parties will use their best efforts to resolve any disputes amicably. Any dispute contemplated shall first be referred to the relevant manager for informal resolution. Should the manager be unable to resolve the matter within a period of 1 month, from the matter first being reported to it, the matter shall then be referred to the Head of operations, who shall inform the Country Director of ZOA Dorcas South Sudan for resolution. Should they not be able to resolve the matter amicably within a period of 1 month from the matter first being reported to it, the matter shall be submitted to arbitration in accordance with local law. In case the dispute between the Parties cannot be resolved between them, the dispute shall be finally settled in accordance with the Arbitration Rules of South Sudan by an arbitrator or adjective appointed in accordance with those rules. The arbitral procedure shall be conducted in the English language.

13.3 Any issues arising during this contract must be communicated in writing between these two contacts, with acknowledgement of receipt. Any adjustments to the contract must also be noted in writing, with signatures from representatives of both parties. Any modification to this contract will be in a written amendment signed by both parties.

13.4 The Service provider shall be considered as having the legal status of an independent service provider vis-à-vis ZOA Dorcas. The Service provider's personnel and sub-service providers shall not be considered in any respect as being the employees or agents of ZOA Dorcas.

13.5 The parties shall have the right to modify/amend/add/delete the provisions of this Contract, mutually written consent and such changes, as and when introduced in writing shall form an integral part of this Contract.

**ARTICLE 14      COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS**

Except as is otherwise expressly provided in writing in the Contract, ZOA Dorcas 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, knowhow, or documents and other materials which the service provider has developed for ZOA Dorcas under the Contract 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 Contract.