

SOUTH SUDAN GENERAL TERMS OF SERVICE

These general terms of services shall govern all contracts for engagement of all external partners or contractors or consultants or vendors either at individual or corporate levels by BRAC South Sudan (here after referred to as “BRAC”). All these various parties herein shall be referred to as “Contractor” in these general terms and conditions. Unless otherwise stated or waiver under specific consideration of a particular contract the clauses under these terms and conditions shall be applicable.

1. LIABILITY, INDEMNIFICATION, INSURANCE AND TAXES

- 1.1 **BRAC** shall not, in any circumstances or for any reason, be responsible or held liable for (a) loss or damage sustained or caused, including direct, special, indirect or consequential loss or damage, or loss of profit, revenue, anticipated savings or business, in the course of this contract by the **Contractor** or representatives or other persons acting on behalf of or in the name of the **Contractor**.
(b) any third-party claims, losses and expenses that may arise from negligence, recklessness or intentional act or omission that is related to the performance of, or otherwise in connection with, this Contract by or on behalf of the **Contractor**.
(c) compensation for the death, disability, or other hazards which may be suffered by **Contractor** arising from the performance of activities in connection with this Contract (d) the safety and security of the **Contractor** or representatives or associates or other persons acting on behalf of or in the name of the **Contractor**.
- 1.2 The **Contractor** undertakes to fully indemnify and hold **BRAC**, its respective members, governing body, directors, officers, employees, agents and affiliates harmless from its own resources for any loss, costs, damage (including any third-party claim of a Donor) incurred by any of them arising from a breach by the **Contractor** of any term of this Contract or any of its annexes or any unlawful act of the **Contractor**.
- 1.3 The **Contractor** shall be liable for all taxes, insurance, premium payments and excess or deductibles arising out of any payments made under this Contract.

2. MONEY LAUNDERING, TERRORISM AND PROHIBITED PARTIES

- 2.1 The **Contractor** shall not engage in any dealing with, or otherwise provide, directly or indirectly, funds, economic resources or support to, any person or organisation who is:
(a) designated on any list of targeted persons issued under economic or financial sanctions administered by an official government or is otherwise associated with terrorism; or (b) located within or operating from a Sanctioned Territory as identified by the United Nations Security Council, or any other relevant (donor or local) governmental authority.
- 2.2 The **Contractor** shall provide to **BRAC** for vetting or screening purposes the full names and full dates of birth, and any other information requested, of its shareholders, members, directors, trustees (if applicable) and any key staff, and any other person directly or indirectly involved with this Contract, at the request of **BRAC**.
- 2.3 The **Contractor** shall ensure that none of the Contract funds or resources are transferred to any person or organisation that is located, organised or resident in a Sanctioned Territory as identified by the United Nations Security Council or any other relevant (local) governmental authority, nor directly or indirectly involved in money laundering or terrorism.
- 2.4 The **Contractor** shall notify **BRAC** immediately if, during the course of this Contract, the **Contractor** becomes aware of any link whatsoever between the **Contractor** and any Prohibited Party or organisation or individual who may be perceived to be linked in any way to money laundering and/or terrorism or who appears on any sanctions list, including but not limited to any detected, suspected or attempted (direct or indirect) financial transaction or other dealing with a Prohibited Party or a terrorist group; or
- 2.5 The **Contractor** shall ensure that any person associated with this contract who is performing services or providing goods in connection with this Contract or is otherwise a sub**Contractor** does

performance by such persons of any of these terms, and shall be directly liable to **BRAC** for any breach by such persons of any of these terms.

2.6 In this Contract, “**Prohibited Party**”¹ includes politically exposed persons, persons, organisations and entities listed in resolutions of the United Nations Security Council, designated by the United States Treasury Department’s Office of Foreign Asset Controls (“**OFAC**”) as specially designated nationals (“**SDNs**”) and by United States government agencies, with which one may not engage in business transactions because of terrorism risks or legal restrictions imposed on them.

3. CORE BRAC POLICIES

3.1 Safeguarding Children and Vulnerable Adults

- (a) **BRAC** safeguarding policies form an integral part of the Contracts, and the parties acknowledge their obligations to report allegations, suspicions and actual behavior to **BRAC** for investigation and report alleged, suspected or actual Behavior.
- (b) The **Contractor** shall ensure that children and adults at risk are safeguarded from any form of abuse, sexual harassment, intimidation, violence, bullying, humiliation, neglect, exploitation and discrimination, including physical, financial, psychological and sexual abuse, sexual exploitation, neglect, or self-harm or inhuman or degrading treatment howsoever arising (collectively, “**Behaviour**”). The **Contractor** agrees and undertakes to take all reasonable steps necessary to eliminate or minimize risk of actual, attempted or threatened Behavior, and whether or not such conduct would amount to a criminal offense.
- (c) The **Contractor** agrees and undertakes to ensure that all allegations, suspicions and incidents of abuse, harm or the risk of harm to children and/or adults or where there is concern about the behavior of an individual, or about the welfare of a child or adult, and believes they are suffering or likely to suffer abuse, harm or neglect, or otherwise related to safeguarding, are reported immediately to **BRAC** on a strictly confidential basis. **BRAC** shall review and, if considered appropriate in its sole discretion, investigate and inquire into the reported allegation, suspicion or incident. Such review, investigation and inquiry will be confidential, independent of and without prejudice to a report and proceedings under any applicable law.
- (d) The **Contractor** shall ensure awareness of all the **Contractor**’s agents (paid and voluntary) taking part in any aspect related to this Contract of safeguarding obligations, including as terms and conditions of its contracts with its employees, staff, **Contractors**, sub-**Contractors**, agents and other parties.
- (e) **BRAC** considers adherence to safeguarding requirements as a core condition of Contracts and **BRAC** safeguarding policies form an integral part of this Contract. **BRAC** has the right to terminate, suspend all activities or withhold payment, until requirements of this clause and any other related conditions are complied with.

3.2 Whistleblowing Policy and Procedure

BRAC shall hear, respect and act appropriately upon any reports by **Contractor** or agents or third parties of wrongdoing or dangerous, unethical or illegal practices relating to **BRAC** by **BRAC** or its staff (including any suspicion of fraud) or by the **Contractor**’s staff or representatives.

3.3 Material Breach

Notwithstanding any provision inconsistent or contrary, breach of any provision of **this clause 3** shall be considered a material breach of this Contract.

¹<https://webgate.ec.europa.eu/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw>
<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>; <https://sanctionssearch.ofac.treas.gov/>;
<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>

- 4.1 Without prejudice to any **BRAC** Conditions relating to Intellectual Property Rights, any and all Intellectual Property Rights in materials prepared by or on behalf of any Party to this Contract for or arising from the contract shall be owned by **BRAC**, and may be used or allowed to use by others for the purposes of this contract after obtaining prior consent of **BRAC** in writing and thereafter by entering into a separate Contract in writing.
- 4.2 **BRAC** shall own Intellectual Property Rights in information, documents, software, technology, data, manuals and other materials in any form or medium (whether in paper, computer, electronic, digital or other form), and processed (including 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), under, in connection with or arising from this Contract.
- 4.3 No Party shall use or utilize the trademarks or other intellectual property of the other Party without prior written consent of the other.
- 4.4 The official logo, design, copyright and name of **BRAC** may only be used by the party in connection with the Contract with the prior written approval of **BRAC**.
- 4.5 Where **BRAC** has permitted the **Contractor** to use any other Intellectual Property Rights owned or licensed by **BRAC** for use in connection with the Project, the **Contractor** shall on termination of this Contract, expiration of the Term or completion of the Project, unless otherwise instructed in writing by **BRAC**, cease to use such intellectual property rights immediately and shall either return to **BRAC** or destroy any materials representing or containing such Intellectual Property Rights as requested by **BRAC**.
- 4.6 **BRAC** shall use its discretion to determine whether the Intellectual Property Rights have been exploited or not.
- 4.7 The **Contractor** must ensure that its performance of the activities and their receipt (including any **BRAC** subsequent use of deliverables) does not infringe the Intellectual Property Rights of any third party. The **Contractor** must indemnify and defend **BRAC** (including their respective directors, officers and employees) in respect of all losses, costs and liabilities where a third party claims that the activities and/or their receipt (including any subsequent use of deliverables) infringe the third party's Intellectual Property Rights.
- 4.8 **Contractor** will, from its own resources, indemnify, hold harmless and upon written demand defend **BRAC** and the respective members, governing body, officers, directors, employees, agents and successors of **BRAC** (collectively, "Indemnified Parties" and severally an "Indemnified Party") from and against any and all actions, suits, proceedings, claims, demands, investigations, liabilities, damages, penalties, fines, judgments, settlements, costs and expenses (including, without limitation, any attorneys' and experts' fees and expenses) arising out of or relating to (i) any claim that the contract, or any name or mark furnished by Contract under this Contract, infringes or misappropriate any confidential information, trade secret, patent, copyright, trademark, trade name, or any other legal right of any third party, (ii) any claim that, if true, would constitute a breach by the **Contractor** of any term of this Contract or any of its annexes.
- 4.9 For the purposes of this Contract, "**Intellectual Property Rights**" includes all patents, trademarks, registered designs, copyrights, trade secrets, business and technical know-how, rights in databases domain names, any right to have Confidential Information (kept confidential owned by either party).

5. DATA PROTECTION²

- 5.1 Parties agree that in the course of fulfilling their obligations under this Contract, if any data, personal information and other related information in connection with the Project (collectively, the "**Data**"), is collected from any beneficiary or stakeholder ("**Data Subjects**"), it shall be done so in compliance with all applicable laws related to data protection and privacy ("**Data Protection**").
- 5.2 The Parties will not access, collect, share, store, process or transfer any Data except to the extent any such action is strictly necessary to perform the obligations under this Contract or to fulfil any legal requirements in the performance of this Contract, and not for any other purpose whatsoever.
- 5.3 Each Party will take and implement appropriate technical procedures and measures to protect the Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and that, such measures shall ensure a level of security commensurate with

²As applicable, beneficiaries' personal data must be retained for a period of at least 10 years after project completion.

the risks represented by the nature of the Data to be protected. The **Contractor** must immediately notify **BRAC** of any known security breach that may result in the unauthorized use, access, disclosure, alteration or destruction of Data.

- 5.4 Any collection, sharing and disclosure of personal information shall require the prior consent in writing of the Data Subject. **BRAC** may from time to time specify the form of any notices or consents referred.
- 5.5 If the **Contractor** is served with a court order compelling disclosure of any personal information or receives notice of proceedings for such an order, it will oppose the order, will promptly notify **BRAC** of the order or notice, and will provide **BRAC** the opportunity to intervene before it files any response to the order or notice. **Contractor** will provide **BRAC** with assistance and cooperation reasonably requested by **BRAC** to assist with **BRAC**'s compliance with protection and disclosure of personal information by providing:
 - (a) all applicable notices to Data Subjects required for the lawful processing of Data by **BRAC** in accordance with the Contract;
 - (b) Agreeing that no disclosure of the Data shall be made to any third party without complying with the applicable laws and notifying the other Party; and
 - (c) obtaining any consents required under applicable Data Protection for the processing of Data by **BRAC** in accordance with the Contract.
- 5.6 This clause shall survive the termination of this Contract.

6. CONFIDENTIALITY

- 6.1 During the course of this Contract, the **Contractor** will be entrusted with confidential and proprietary information directly or indirectly related to **BRAC** ("Confidential Information") and all Confidential Information shall be and remain the exclusive property of **BRAC**.
- 6.2 Both Parties agree that Confidential Information will not be released, divulged, whether directly or indirectly, unless authorised by the disclosing party, required by law, judicial order or through the express written consent of the other party, Confidential Information, this Contract and its contents (including its annexes) shall be kept confidential and shall not be filed, advertised, published or otherwise disclosed to others, without the prior written consent of **BRAC**.
- 6.3 The **Contractor** agrees to keep such Confidential Information secure and confidential, and to take reasonable measures to prevent disclosure (including without limitation to third parties) or unauthorised use of such information, and shall return promptly any and all originals and copies of such Confidential Information to **BRAC** at its request.
- 6.4 The **Contractor** must promptly provide such information as **BRAC** may require pursuant to any laws on access to information. The **Contractor** acknowledges that this information may be disclosed to third parties pursuant to such legal requirements.
- 6.5 This clause shall survive the termination of this Contract.

7. FORCE MAJEURE

- 7.1 If either party considers that a Force Majeure Event has occurred which may affect the performance of its obligations under this Contract (including its annexes), it shall notify the other party as soon as possible and in any event within 10 (ten) days after it should reasonably have become aware of the commencement of such circumstances (a "**Force Majeure Notice**"). Such Force Majeure Notice shall include full and detailed particulars of such circumstances and their effect.
- 7.2 Notwithstanding the provisions of Clause 10, upon the issue of a Force Majeure Notice and with the other party's consent, which shall not be unreasonably withheld, the issuing party's time for any performance under this Contract shall be extended for the duration of the Force Majeure Event. If the Force Majeure Event continues for more than two months, **BRAC** may terminate this Contract by giving written notice to the **Contractor**. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.

7.3 Neither Party shall be liable in damages or otherwise for any failure or delay in the performance of any obligation hereunder where such failure or delay is caused by a Force Majeure Event.

7.4 For the purposes of this Contract:

- (a) **“Force Majeure”** shall mean any substantial change of circumstances, failures, delays and/or defaults in its performance or commitments since the contract began due to causes beyond the reasonable control of a party and without its fault or negligence or which a Party could not reasonably have been expected to prevent, avoid, or overcome, the event by exercising a standard of skill, care and diligence and which makes that party’s performance of its obligations under this Contract impossible or so impractical as to be considered effectively impossible in the circumstances.
- (b) **“Force Majeure Event”** includes any occurrence or circumstances which are reasonably beyond the control of a Party or irresistible force, including without prejudice to the generality of the foregoing, but is not limited to: war and other hostilities (whether declared or not), invasion, act of foreign enemies, rebellion, revolution, acts of terrorism, insurrection or military or usurped power or civil war, acts of public enemy, fire, explosion, flood, extreme weather events, riots, invasion, strike, lock-out, riot, rebellion, civil commotion or disorder (unless due to the **Contractor**’s actions), boycott, embargo, global health emergency, pandemic or epidemic, quarantine, or mandatory office closures, full or partial lockdowns of cities, travel bans, and restrictions imposed by Government authorities (including allocations, priorities, requisitions, quotas and price controls); change of law (including, without limitation, any introduction of, or change in, sanctions), directions of any governmental authority or regulatory action, judicial order; and, acts of God, earthquake, flood, tempest, storm, tempest, cyclone, tornado, flood, inundation, and other natural disasters.

8. SUBCONTRACTING/NON-ASSIGNMENT

8.1 The **Contractor** shall not assign or sub-contract its rights, transfer, or purport to assign or transfer, or cause to be assigned or transferred, any interest in this Contract or any part, share, interest therein and obligation under this Contract to a third party, without the prior written consent of **BRAC**.

8.2 Subject to approval of **BRAC**, if any assignment or subcontracting is provided by the **Contractor**, the **Contractor** shall remain liable for all subcontracted obligations and all acts or omissions of its subcontractors.

8.3 The **Contractor** shall be responsible for workers compensation and employment liability for their staff under this contract, if applicable. The **Contractor** shall be responsible to cover the indemnity of obligation against all damages, costs, and charges and expenses for injury to any person or property arising out of or in connection with the tasks which result from the fault of the **Contractor** or staff or agents.

8.4 The **Contractor** must ensure its permitted sub-contractors comply with the **BRAC** Conditions and the terms under this Contract.

9. RELATIONSHIP OF THE PARTIES

9.1 The relationship between the Parties is that of independent **Contractors**. Nothing in this Contract shall be construed to create a relationship of agency, partnership, or joint venture between the Parties, nor to render either Party liable for any debts or obligations incurred by the other.

9.2 Neither Party is authorized to make representations on behalf of the other, or to bind the other in any manner whatsoever.

10. NOTICES

10.1 All notices and communications or requests in connection with this Contract shall be given among the Parties in writing by registered post, by a nationally or internationally recognized courier service, by email, or by hand. Scanned copies of signed notices sent by email shall be contemporaneously sent by any of the foregoing methods. Written notice shall be deemed to have been duly served if delivered in person to a party or if delivered by hand, on actual delivery date; if sent by registered



post or by internationally reputable courier, upon receipt to the address of the other party set out below, or at such other address as either party may in writing designate from time-to-time.

- 10.2 Notices provided under this Contract must be in writing with original signature and treated as delivered:
 - (a) on the date of in-person delivery
 - (b) 5 days after posting if sent by pre-paid or registered post;
 - (c) on date of delivery as documented by a pre-paid commercially recognized courier service;
 - (d) when a receiving party acknowledges receipt of an email if delivered by email, and an original signed notice delivered by any means mentioned in sub-clauses (a) to (c), above.

11. DISPUTE RESOLUTION MECHANISM

11.1 Both **BRAC** and the **Contractor** agree to resolve all misunderstandings or disputes that might arise throughout the implementation of the contract in an amicable manner. If having used reasonable endeavours to settle a dispute informally either Party considers the dispute cannot be so settled, it may give notice that the dispute is being referred to the appropriate level in accordance with the escalation procedure below for resolution. The decisions or outcome of these discussions shall be documented and signed by both Parties.

11.2 If the parties are unable to resolve the dispute within a further thirty days from the date that the matter is escalated, then the Parties shall attempt to settle the dispute by discussions among those representatives of each Party. The decisions or outcome of these discussions shall be documented and signed by both parties.

11.3 The courts in Juba South Sudan shall have the exclusive jurisdiction over any dispute arising out of or in connection with this Contract

ACCEPTANCE

I, _____ have read and understood the general terms of service of this contract as stated herein. I hereby accept my compliance with them.

Signature: _____ **Date** _____