ANNEX H: UNHCR SPECIAL CONDITIONS FOR CLOUD COMPUTING

In addition to the General Terms and Conditions for Contracts for the Provision of Services attached as Annex A to this Contract, the following Special Conditions shall apply, and shall remain effective following the expiration or termination of this Contract:

1 Definitions

1.1 "Data" means any and all information, whether in oral or written (including electronic) form, created by or in any way originating with UNHCR and/or End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with UNHCR and/or End Users, in the course of using and configuring the Services, and specifically includes, without limitation, any and all UNHCR Data and End User Data.

1.2 "Data Compromise" means any actual, threatened or reasonably suspected unauthorized access to, disclosure of, use of or acquisition of computerized Data that compromises the security, confidentiality, or integrity of the Data, or the ability of UNHCR or End Users to access the Data.

1.3 "Documentation" means, collectively: (i) all materials published or otherwise made available to UNHCR by the Contractor that relate to the functional, operational and/or performance capabilities of the Services; (ii) all user, operator, system administration, technical, support manuals and/or other materials published or otherwise made available by the Contractor that describe the functional, operational and/or performance capabilities of the Services; and (iii) any Requests for Information, Invitations to Bid and/or Requests for Proposals (or documents of similar effect) issued by UNHCR.

1.4 "End User" means any and all employees, contractors, consultants, agents or other representatives of UNHCR; any members or customers of UNHCR; and any other external users collaborating with UNHCR, in each case, authorized by UNHCR to access and use the Services.

1.5 "End User Data" includes any and all End User account credentials and information, and any and all records sent, received and/or created by or for End Users, including, without limitation (i) any email content, headers and attachments, and/or (ii) any personally-identifiable, financial or other information of any End User or third party the use and/or disclosure of which is restricted under applicable laws, in each case, contained in such records or in any logs or other records of the Contractor reflecting End User's use of the Services.

1.6 "Enhancements" means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services which the Contractor may now or hereafter (i) develop or acquire and incorporate into its standard version of the Services, or (ii) elect to make generally available to its customers.

1.7 "Governmental Body" means any local, national or international governmental, regulatory or law enforcement body, agency or other authority, any court or other

tribunal, and any arbitrator, which has jurisdiction over the Contractor or the client data.

1.8 "Security Breach" means: (i) the failure by Contractor to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by Contractor of: (a) Data in any format or (b) third party information in any format specifically identified as confidential; (ii) any misappropriation or any unintentional violation of the Contractor's privacy policy that results in the violation of any applicable data privacy laws, rules or regulations; or (iii) any other act, error or omission by the Contractor which is reasonably likely to result in the unauthorized disclosure of Data.

1.9 “Services” means Contractor’s computing solutions, provided over the Internet to UNHCR and its End Users pursuant to this Contract, which provide the functionality and/or produce the results described in the Documentation, including without limitation, all Enhancements thereto and all interfaces.

1.10 “UNHCR Data” includes any and all credentials issued to UNHCR by the Contractor, records relating to UNHCR’s use of the Services and administration of End User accounts, and other UNHCR information.

2 Data protection, security and integrity

2.1 The Contractor recognizes that UNHCR is a subsidiary organ of the United Nations, an international organization established by treaty and that as a result of its status it enjoys certain privileges and immunities as set forth in the Convention on the Privileges and Immunities of the United Nations (“the General Convention”). In particular, UNHCR’s data and information, including without limitation the Data and Information to be transmitted pursuant to this Contract, is the property of UNHCR and is subject to the privileges and immunities accorded to the United Nations, including UNHCR, pursuant to the General Convention. As a result of these privileges and immunities, any such data and information is inviolable and cannot be disclosed, provided or otherwise made available to, or searched, confiscated or otherwise be interfered with by any party, unless such immunity is expressly waived in writing by UNHCR. To ensure compliance with the privileges and immunities pertaining to the United Nations, including UNHCR, the Contractor shall segregate UNHCR data to the fullest extent possible. Should UNHCR provide personally identifiable data or information to the Contractor, the Contractor shall immediately take specific organizational, technical and administrative measures to protect such data and shall ensure compliance with applicable data security laws.

2.2 In the event that any party requests access to the data and information of UNHCR, the request shall be immediately transmitted to the UNHCR at the address specified in Article [12] of this Contract. To the extent the Contractor may be required to disclose or provide access to such data and information, the Contractor shall notify UNHCR of such requirement prior to disclosure, and the Contractor shall undertake diligent efforts to avoid and/or limit disclosure, in accordance with Sections 4.3 and 5.1 of this Annex.

2.3 The Contractor will implement, maintain and use administrative, technical, physical, procedural and security infrastructures, facilities, tools, technologies, practices and other measures, (collectively, “Protective Measures”), including, without limitation,

Data encryption, anti-virus and anti-malware protections, intrusion detection and reporting methods, which are necessary and sufficient: (i) to protect the confidentiality and integrity of all Data that is electronically maintained, stored, processed and/or transmitted; (ii) to protect all Data from unauthorized access, destruction, use, modification or disclosure; and (iii) to protect all Data against deterioration or degradation of its quality and authenticity. Such Protective Measures shall be no less protective than those used by the Contractor to protect its own confidential information, and in no event less than reasonable in view of the nature and type of Data involved.

3 Location of servers

The Contractor shall ensure that UNHCR data and information is maintained and/or stored exclusively in member State(s) that have recognized the privileges and immunities of the United Nations pursuant to the General Convention.

4 Data ownership and Data privacy

4.1 The Parties agree that, as between them, all UNHCR Data, End User Data and other data compiled by, processed by, or received by the Contractor under the Contract, together with all rights (including intellectual property and proprietary rights), title and interest thereto, shall be and remain the exclusive property of UNHCR.

4.2 UNHCR hereby grants the Contractor a limited, non-exclusive license to access and use these Data as provided in this Contract solely for the purpose of performing its obligations hereunder. The Contractor shall not use data provided by UNHCR for purposes other than carrying out the Services set forth in this Contract. In particular, the Contractor shall use its best efforts to ensure that no UNHCR data processed or stored by the Contractor pursuant to the Contract is (i) accessed or modified by anyone other than a UNHCR-authorized user, or (ii) intentionally or inadvertently deleted, lost or corrupted. Except for the foregoing license, the Contractor shall have no other rights, whether express or implied, in or to any Data or its content.

4.3 The Contractor (i) shall treat the Data as confidential; (ii) shall use the Data only for the purpose of fulfilling its duties under this Contract and for the sole benefit of UNHCR and its End Users; (iii) shall deliver the Data only to duly authorized representatives of UNHCR; and (iv) shall not disclose or transmit the Data or their contents to any person or entity other than the personnel of the Contractor performing services under this Contract, and that have a need to know, without the prior written consent of UNHCR.

4.4 The Contractor will not use any Data for the benefit of the Contractor or any third party and, in particular, will not engage in “data mining” of any Data or communications by or for UNHCR or any End Users, whether through automated or human means, except as expressly authorized in writing by UNHCR.

4.5 UNHCR retains the right to use the Services to access and retrieve, at any time and in UNHCR’s sole discretion, any Data stored on the Contractor’s infrastructure relating to the Services.

4.6 The Contractor will ensure that, prior to being granted access to the Data, all employees, contractors, agents and other representatives of the Contractor who will perform Services under this Contract: (i) have undergone and passed criminal background screenings; (ii) have successfully completed training of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Contract; and (iii) possess all qualifications necessary to the nature of their duties and the sensitivity of the Data.

5 Non-disclosure of data

The following text shall replace Section 13.3 of the General Terms and Conditions for Contracts for the Provision of Services ("Confidentiality"):

5.1 If any Information relating to UNHCR or any Data is sought from the Contractor by any Governmental Body, the Contractor shall (i) subject to section 5.2 below, promptly notify UNHCR of this fact in accordance with Section 2.2 of this Annex, (ii) consult with UNHCR regarding the Contractor's response to the demand or request by such Governmental Body; (iii) cooperate with UNHCR's reasonable requests in connections with efforts by UNHCR to ensure that its privileges and immunities are upheld; (iv) to the extent permissible by law, seek to contest or challenge the demand or request based on, inter alia, UNHCR's status, including its privileges and immunities, contractual arrangements, etc.; and (v) upon UNHCR's request, provide UNHCR a true, correct and complete copy of the Contractor's response to such demand or request, and keep UNHCR informed of all developments and communications with the Governmental Body.

5.2 In any event of such request for disclosure from a Governmental Body, the Contractor shall:
(i) Inform such Governmental Body that the Contractor understands that such Information and Data is privileged under the Convention on the Privileges and Immunities of the United Nations and request such Governmental Body to redirect the relevant request for disclosure directly to UNHCR;
(ii) In the event that such Governmental Body still seeks such Information and Data, request such Governmental Body that UNHCR be given the opportunity to present before such Governmental Body UNHCR's position regarding the confidentiality of such UNHCR data or information; and
(iii) Where the Contractor is prohibited by applicable law or the Governmental Body from notifying the users of its services of such request, the Contractor so notify UNHCR promptly upon the lapse, termination, removal or modification of such prohibition.

6 Data Compromise Response

6.1 In the event of any Data Compromise, the Contractor shall notify UNHCR immediately upon the Contractor's discovery of such Data Compromise, specifying: (i) the nature and source of the incident, (ii) the nature or typo of Data implicated in the incident, (iii) the person or entity responsible for the Data Compromise, if known, (iv) the and actions taken or proposed to be taken by the Contractor to remedy or cure the breach and to prevent similar Data Compromises on the future. The Contractor shall keep UNHCR

reasonable informed of the progress of the Contractor's implementation of such mitigating and corrective actions.

6.2 As soon as possible following the date when the Contractor discovers a Data Compromise, the Contractor, at its sole cost and expense, shall complete the implementation of any and all actions necessary to: (i) mitigate any deleterious effect of such Data Compromise, (ii) correct, remedy or cure such Data Compromise, which shall include retrieving and destroying any Data copied by a third party and (iii) prevent similar Data Compromises from occurring in the future, and shall restore UNHCR's and, as directed by UNHCR, End Users' access to the Services.

6.3 The Contractor, at its sole cost and expense, shall cooperate fully with UNHCR's investigation of, remediation of, and/or response to any Data Compromise.

6.4 The Contractor shall not provide notice of any Data Compromise directly to any person or entity whose Data were implicated in such Data Compromise, to any Governmental Body or to any third party, in each case, without prior written permission from UNHCR.

7 Data retention and Disposal

7.1 The Contractor will retain all Data until the expiration of a time period agreed to in writing by the Parties. The Contractor will retain all logs associated with End User activity for a minimum of [XXX] months.

7.2 The Contractor will regularly backup all Data using appropriate and reliable storage media, and shall retain all backup copies of Data for a minimum of [XXX] months following their respective creation. At the written election of UNHCR, the Contractor shall either securely destroy or transmit to UNHCR, or to a third party designated in writing by UNHCR, any backup copies of the Data. The Contractor shall provide UNHCR a written certificate indicating the nature or type of Data disposed of, the date of such disposal, and the method of disposal.

8 Data transfer upon termination or expiration

8.1 At the time of expiration or in the event of termination of this Contract, the Contractor shall, at the written election of UNHCR, either securely destroy or transmit to UNHCR, or to a third party designated in writing by UNHCR, all Data; shall provide UNHCR with a backup copy of all then current Data in native readable format, and shall securely remove all Data as well as all logs relating thereto from the Contractor's servers, networks and systems. The Contractor shall take and complete all foregoing actions within 30 (thirty) days of the expiration or termination of this Contract, and shall provide UNHCR with sufficient written proof of such transfer and removal. The Contractor shall ensure (i) that such migration of the Data uses facilities, methods and formats that are compatible and interoperable with the relevant systems of UNHCR and the provider of services which is the successor to the Contractor, and (ii) that UNHCR shall have sufficient access to the Data during the entire duration of the transition. The Contractor shall take all necessary actions (including, without limitation, work closely with the Contractor's successor) to provide for a successful, effective and efficient

migration of Data and transition of service with minimal disruption to UNHCR or End Users.

8.2 The Contractor shall provide UNHCR with no less than ninety (90) days prior written notice of impending cessation (whether by sale of equity or assets, merger, consolidation, operation of law, bankruptcy or otherwise) of the Contractor or any of its subcontractors. Such written notice shall be accompanied by (i) any contingency and/or exit plans in connection with such cessation, (ii) a full inventory and configuration of the servers, routers, other hardware and software involved in the provision of the Services, along with supporting documentation, indicating which, if any, of these are owned by or dedicated to UNHCR and/or End Users. Following the giving of such notice, and prior to the expiration of such ninety (90) day period, the Contractor, at its sole cost and expense, shall (a) destroy or transfer to UNHCR, or to a third party designated in writing by UNHCR, any and all Data or other UNHCR assets previously escrowed; (b) provide UNHCR access to the infrastructure and facilities of the Contractor or its subcontractors (as the case may be) in connection with such destruction or transfer, and (c) otherwise fully implement its contingency and/or exit plans. The Contractor shall take all necessary actions to provide for an effective and efficient migration of Data and transition of service with minimal disruption to UNHCR or End Users.

9 Interruptions and Suspensions of Service

9.1 Notwithstanding the Force Majeure provisions contained in this Contract, in the event the Contractor, or any of its infrastructure or facilities necessary to provide the Services, experiences or suffers a disaster, the Contractor, at its sole cost and expense, shall provide disaster recovery Services to UNHCR and End Users, and shall take all necessary steps to ensure that neither UNHCR nor End Users are denied access to the Services for more than minimally necessary. The Contractor shall procure and maintain, at the Contractor's sole cost and expense, all necessary capability to resume the provision of the Services from one or more alternate locations and via one or more alternate telecommunications routes in the event of a disaster that renders unusable or unavailable any of the Contractor's primary infrastructure or facilities for the provision of the Services.

9.2 In the event of an outage of Services, the Contractor will refund or credit UNHCR, at UNHCR's election, the pro-rated amount of fees under this Contract corresponding to the time period for which the Services were unavailable.

9.3 The Contractor will provide UNHCR with no less than 60 days' prior written notice of any time period during which the Services will be unavailable due to non-emergency scheduled maintenance or Enhancements. If the Services are unavailable during any unscheduled and unforeseen times, the Contractor shall immediately provide notice thereof to UNHCR and shall cooperate with UNHCR's reasonable requests for information regarding the unavailability of the Services (e.g., causes, effect on the Services, estimated duration).

9.4 UNHCR may suspend or terminate, or direct in writing the Contractor to suspend or terminate (in which case the Contractor shall suspend or terminate), an End User's access to Services in accordance with UNHCR's internal rules, regulations, policies and/or procedures.

10 Representations and Warranties

10.1 Services Warranty

10.1.1 The Contractor represents and warrants to UNHCR that the Services: (i) shall conform to the Documentation, (ii) shall be performed, function and produce results substantially in accordance with the Documentation, and (iii) shall be free and clear of any and all liens, claims, encumbrances or demands of third parties (collectively, the “Services Warranty”).

10.1.2 In the event of a breach of the Services Warranty, UNHCR shall provide the Contract prompt notice thereof, and the Contractor, at its sole cost and expense, shall promptly correct or replace the portion of the Services implicated in such breach. If the Contractor fails to cure any breach of the Services Warranty by a reasonable date prescribed by UNHCR in its notice, UNHCR may, in its sole discretion, either extend the time for the Contractor to cure the breach, or terminate this Contract and receive a full refund of all amounts paid to the Contractor under this Contract.

10.2 Disabling Code Warranty

10.2.1 The Contractor represents and warrants to UNHCR that the Services shall not contain, and none of UNHCR or any End User shall receive from the Contractor, any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any Data or any system, server, facility or other infrastructure of UNHCR or any End User (collectively, a "Disabling Code").

10.2.2 If a Disabling Code is identified, the Contractor, at its sole cost and expense, shall take all steps necessary to: (i) restore and/or reconstruct any and all Data lost by UNHCR and/or End Users as a result of Disabling Code; (ii) furnish to UNHCR a corrected version of the Services without the presence of Disabling Codes; and, (iii) as needed, re-implement the Services.

10.3 Intellectual Property Warranty

10.3.1 The Contractor represents and warrants to UNHCR that the Contractor: (i) has all intellectual property and proprietary rights necessary to provide the Services in accordance with the terms and conditions of this Contract; (ii) is the sole owner or is a valid licensee of any and all intellectual property (including, without limitation, any software, text, pictures, audio, video, logos and copy) that provides the foundation for provision of the Services, and (iii) has secured all necessary licenses, consents and authorizations with respect to the use of such intellectual property by the Contractor, UNHCR and End Users, as the case may be, in accordance with the terms and conditions of this Contract.

10.3.2 The Contractor further represents and warrants to UNHCR that (i) the Services do not and shall not infringe upon, violate or misappropriate any intellectual property or proprietary rights (including, without limitation, any patent, copyright, trademark or trade secret) or any other right of any third party; and (ii) there is currently no actual or threatened litigation or other proceeding against the Contractor by any third party based on an alleged infringement, violation or misappropriation of any such rights.

11 Insurance and liability

11.1 Without prejudice to the Contractor's liability pursuant to Section 8.1 of the General Terms and Conditions for Contracts for the Provision of Services (Annex A), the Contractor shall pay UNHCR promptly for all loss incurred due to a breach of its obligations relating to data security.

11.2 In addition to the insurance obligations set out in Section 8.2 of the General Terms and Conditions for Contracts for the Provision of Services (Annex A), and in the same conditions, the Contractor shall take out technology, data protection, cyber liability and professional liability insurance covering liabilities for financial loss resulting or arising from acts, errors or omissions in connection with the performance of this Contract, as well as all Contractor costs (including damages it is obligated to pay UNHCR or any third party) arising from or relating to any Security Breach (as hereafter below) or loss of Data, regardless of cause (including, without limitation, the Contractor's negligence or gross negligence and unlawful third party acts). If this insurance is written on a claims-made form, it shall continue for three (3) years following expiration or termination of this Contract. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Contract.

12 Service providers, subcontractors and third parties

The Contractor shall impose the same requirements relating to data protection and non-disclosure of data, as are imposed upon the Contractor itself by this Contract and the General Terms and Conditions for Contracts for the Provision of Services, on its service providers, subcontractors and other third parties.