

Annex 1: Sample Service Contract between Agency X and Money Transfer Company ‘Hawala Agent Y’

Service Contract between Agency XXXXX and Hawala Agent YYYYY for Cash for Programme Somalia

PREAMBLE

This service contract is entered into between YYYYY (hereinafter referred to **The Service Provider**) and XXXXX represented by the situated at, (hereinafter referred to as XXXXX).

WHEREAS, the Service Provider and XXXXX stand for and actively uphold the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief;

WHEREAS, the Service Provider and XXXX have realized that the above-mentioned values can be effectively upheld throughout the project entitled **Cash Programming in regions in South Central Somalia** hereinafter referred to as **the Project**;

WHEREAS, each party has agreed to collaborate for the realization of the Project; and therefore, this contract is entered into on the terms and conditions stated hereunder.

1.0 OBJECTIVE OF SERVICE CONTRACT

1.1 The Service Provider and XXXXX to endorse the contract as the instrument which will establish and clarify the partnership of the two parties to achieve the goal and objectives of the Project.

1.2 To ensure the full coordination of a humanitarian response in the form of cash relief to the vulnerable communities in regions of South Central Somalia; the Service Provider has agreed to undertake specific activities for the implementation of the project.

2.0 RIGHTS AND OBLIGATIONS OF THE SERVICE PROVIDER

The Service Provider agrees to execute the project under the following Terms and Conditions.

2.1 Provide a bank guarantee equivalent to one month cash payment of **USD** in the name of XXXXX as a cash security guarantee.

2.2 Make all payments to the intended recipients when and where required in the agreed currency and notes. All payment will be disbursed within **four days** after receiving the instruction from XXXXX to the villages.

2.3 The local agent of the Service Provider will travel to the registered villages and no beneficiary will be requested to travel more than 20 minutes to collect his/her money by the Service Provider or its local agents.

2.4 To deploy a different local agent for each district to facilitate the payment and reconcile the payment summaries with XXXXX and the local partner at the district level.

2.5 To serve the most destitute and vulnerable people as determined by XXXXX and the Local Authorities despite clan affiliation.

2.6 Provide a full account of payments made at the end of each month together with a certified copy of the reconciliation and payment receipts to XXXXX's office in 4 days after payment completion. The Service Provider should also submit an interim invoice with all the necessary supporting documents (Monthly statement, Copies of Signed payroll and Signed payment receipts) within the same period.

2.7 Provide the required personnel and ensure that the necessary security, logistics (vehicle, driver and fuel) and communication (thuraya or mobile) arrangements are taken care of to ensure that the beneficiaries are paid on time and in a secure environment.

2.8 To print receipt books for the payments in triplicate (3 copies) in which one copy is provided to the beneficiary, one copy to XXXXX and a copy is kept by the Service Provider for their records. A sample of the receipt books to be printed will be provided by XXXXX to the Service Provider and the Service Provider must ensure to comply with this sample.

2.9 To indemnify XXXXX against any claims in regards to cash loss, including robbery and taxation from local authorities that may arise during the transfer, transport and/or distribution of the cash.

2.10 To carry out the project's cash distributions with due diligence and efficiency.

2.11 To be responsible for the security of the funds and provide security, at own expense, during all payment periods on site and provide for reasonable security in the movement of all funds between locations.

2.12 To make the cash payments in USD to the registered beneficiaries at the villages in the presence of XXXXX and/or a local NGO representative. Payment should be done individually (to the registered beneficiary) and the exact amount of denomination should be given to each registered beneficiary.

2.13 If the Service Provider, for any reason or due to any act of God, is compelled to discontinue the activities covered under this contract, the Service Provider shall return any unspent amount from the Project to XXXXX along with a full financial report of all funds spent.

2.14 The Service Provider shall dedicate a suitable number of employees to the management of the Project. Employees engaged by the Service Provider for the implementation of the Project will be under the sole employment of the Service Provider without any legal relationship whatsoever with XXXXX. XXXXX will be exempt of any claims, damages, expenses or costs incurred by the Service Provider employees.

2.15 XXXXX will be exempt of any claims, damages, expenses or costs incurred by third parties or sub-service providers used by the Service Provider during the implementation of the Project.

2.16 To not erect any billboards or signs or to use the name of XXXXX and any donor for any publicity purpose without written approval from XXXXX. The service provider shall not issue any public statement regarding this project without the approval of

XXXXX. All public statements pertaining to this Project must not create security risks to XXXXX and its partners or their staff and must and without written permission:

- a) Must not mention locations of project or which agency is working where or detailed numbers of beneficiaries in the media.
 - b) Must not mention the involvement of XXXXX in
- 2.17 To comply fully with the terms and conditions of the contract.

3.0 RIGHTS AND OBLIGATIONS OF XXXXX

- 3.1 XXXXX, through authorized representatives, has the right to visit the project area in order to hold discussions with the Service Provider and its agents on project-related concerns. XXXXX will stay fully informed on the progress of the activities.
- 3.2 XXXXX shall cooperate with the Service Provider according to the signed contract.
- 3.3 XXXXX's project-designated finance person will conduct within three (3) working days a final reconciliation after receiving the monthly statement from the Service Provider. If there are any discrepancies, he/she will inform the Service Provider's representative to resolve the issue and amend or issue a final invoice.
- 3.4 XXXXX, within 7 days after the resolutions of any issues, will reimburse the Service Provider% of the cash disbursement made together with the commission/fee. The payment will be made by Swift or cheque from the XXXXX/Donor account in 7 days after all the documentations has been approved internally. The balance of the% will be processed and transfer within 3 days after the service provider confirms receipt of the first transfer and issue an official receipt.
- 3.5 XXXXX shall provide to the Service Provider a list of the recipients including details pertaining to their identity, location and amounts payable.
- 3.6 XXXXX shall pay a commission of% on all transfers for the services provided by the Service Provider in regards to the distribution of cash to the beneficiaries of the project.
- 3.7 The Service Provider will be paid in USD from the XXXXX office. Funds will be transferred to the Service Provider's account. The Service Provider will acknowledge the receipt of payment by issuing an official receipt to that effect as required by XXXXX.
- 3.8 The Service Provider shall make payments to the beneficiaries in accordance to the instruction and the monthly payroll provided by XXXXX, and in accordance with the terms and conditions of this contract.
- 3.9 XXXXX will not reimburse any additional expenses in excess of approved amounts released to the Service Provider.
- 3.10 The Service Provider is fully responsible for the use of funds once funds are received from XXXXX.
- 3.11 The contract duration will be for months starting on ending on

4.0 SPECIAL CONDITIONS

- 4.1 Notwithstanding any other provision of this contract, the Service Provider agrees to apply the highest reasonable standard of diligence to ensure that the supplies and equipment and money provided by XXXXX under this Agreement;
 - a) are not used to provide support to individuals or entities associated with terrorism;
 - b) are not transferred to any individual or entity on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999), available at <http://www.un.org/Docs/sc/committees/1267>; and
 - c) are not used, in the case of money provided by XXXXX, 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. The Bidder acknowledges that, consistent with relevant decisions of the United Nations Security Council and XXXXX's established policies and procedures and other relevant agreements, the funds provided under this agreement are not to be used to make payments or provide financial assets or other economic resources to any entity referred to by the United Nations Security Council under its resolution 1844, and that it will use enhanced due diligence to ensure that this is the case, and will advise XXXXX should this take place.
- 4.2 The Service Provider and its partners (including contractors, grantees, sub-contractors and sub- grantees) agree to exercise enhanced due diligence when undertaking contracted activities and any other project activities on behalf of XXXXX to avoid the accidental, unintentional or incidental provision of such payments or benefits to excluded parties.
- 4.3 The Service Provider agrees that it and/or its partners (including the service providers, grantees, and sub- grantees) will not knowingly and voluntarily make payments or provide any other benefits to any excluded parties, or individuals acting on behalf of any excluded parties. Such payments or other benefits would include:
 - a) Cash facilitation fees or other similar fees at roadblocks, ports, warehouses. Air field or other transit point to excluded parties;
 - b) Purchases or procurement of goods or services from excluded parties; and;
 - c) Payments to excluded parties as the de facto municipal authority;
- 4.4 In the event that the Service Provider or its partners (including the service providers, grantees, and sub- grantees) becomes aware that it made a payment or provided a benefit to excluded parties, the Service Provider shall, in accordance with this contract and within seven days after becoming aware of such payments or provision of benefit, notify of XXXXX at in writing of such payment or provision of benefit. This notification shall include the following information:
 - a) Factual description of each such event;
 - b) Amount of funds expended or other benefit provided for each such event;
 - c) Safeguards and procedures, including management and oversight systems, that were in place to help avoid the occurrence of each event; and
 - d) Explanation of the reasons for each such payment or each such benefit provided, including whether it was made or provided knowingly, voluntarily accidentally, unintentionally, incidentally or forced.

4.5 A variety of monitoring activities will be conducted to independently confirm the validity of the reported disbursements and documentation may be submitted to a competent hand writing and figure print specialist for analysis at the discretion of XXXXX and its donors.

5.0 TERMINATION

- 5.1 This Contract will automatically terminate with immediate effect on the Termination Date.
- 5.2 Notwithstanding Clause 5.1 above, this Contract may be terminated by XXXXX or by the Service Provider giving to the other not less than 14 days notice in writing.
- 5.3 XXXXX shall also be entitled to terminate this Contract at any time if it reasonably believes that there has been a fundamental or serious breach of this Contract by the Service Provider.
- 5.4 XXXXX shall also be able to terminate this Contract at any time if in its reasonable opinion any activity by the Service Provider is likely to bring XXXXX into disrepute.
- 5.5 XXXXX shall also be able to terminate this Contract at any time up to the termination date if an event occurs which makes the start or continuation of the Services impossible. This may include (but is not limited to) conflict, floods, hurricanes, any action of man or an act of God (a “termination event”). Such a termination event will be determined at the absolute discretion of the XXXXX focal person for the project.
- 5.6 The Service Provider will not at any time after the termination date represents her or himself as being in any way still connected with XXXXX.

6.0 MISCELLANEOUS

- 6.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 6.2.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties and no party shall have authority to act in the name or on behalf of or otherwise to bind any of the others in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 6.3 This Agreement constitute the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 6.4 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, it shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 6.5 No term of this Agreement shall be enforceable by a third party.
- 6.6 This Agreement may be executed in any number of copies, each of which, when executed and delivered, shall be an original, and all the copies together shall constitute one and the same instrument. No copy shall be effective until each party has executed it by signing on the copy.

7.0 GOVERNING LAW AND LANGUAGE

- 7.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of Kenya and the parties submit themselves to the exclusive jurisdiction of the Kenyan.
- 7.2 For the purpose of this Contract, English shall be considered the applicable language.

8.0 VARIATIONS

- 8.1 No variation or purported variation to this Agreement shall be effective unless the same is made in writing and signed by all the parties.

9.0 NOTICE

- 9.1 Any notices shall be in writing and shall either be delivered personally, sent by post (if operative) or courier to the address stated in this Agreement or to such other address as may be supplied by the parties or emailed (provided a confirmation is sent by post (if operative) or courier by the end of the next Business Day) and shall be deemed duly served and delivered as follows:
 - a) in the case of a notice delivered personally or by courier, at the time of delivery;
 - b) in the case of a notice sent by post, on the fifth Business Day after the date of dispatch;
 - c) in the case of email:
 - i) if sent during normal business hours (being 9am to 5pm) on a Business Day, then at the time of transmission; and
 - ii) if sent outside normal business hours then on the first Business Day after the date of transmission.

10.0 SIGNATURE

10.1 The following signatures are a representation of all parties understanding and commitment to the aforementioned roles and responsibilities. This contract comes into effect upon signature by all parties below.

Representative from XXXXX

Representative from YYYY

Signature _____

Signature _____

Name _____

Date _____

Name _____

Date _____