<u>**ANNEX E**</u>

SUPPLEMENTARY AGREEMENT ON
THE PROTECTION OF PERSONAL DATA

SUPPLEMENTARY AGREEMENT

CONCERNING THE PROTECTION OF BENEFICIARIES' PERSONAL DATA

between

**THE OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
(the "Data Controller" or "UNHCR")**

and

**XXX
(the "Data Processor")**

<u>**PREAMBLE**</u>

WHEREAS, for the purpose of allowing electronic cash transfers from UNHCR to persons of concern to UNHCR (the "Beneficiaries") receiving the cash transfer, UNHCR collects and processes Personal Data of such Beneficiaries;

WHEREAS, UNHCR has engaged the Data Processor to render Services which incorporate processing Beneficiaries' personal data on UNHCR's behalf;

WHEREAS, by virtue of its mandate and internal rules and regulations, UNHCR has the obligation to ensure that the privacy and Personal Data of Beneficiaries are protected in the processing of such data, whether independently or through the engagement of data processors; and

WHEREAS, accordingly, this Supplementary Agreement pertains to the protection of Personal Data accessed, collected or otherwise received and processed by the Data Processor on UNHCR's behalf in the course of rendering the Services as set out in the Bank Services Agreement Relating to Delivery of Cash Assistance (hereinafter the "Main Agreement") between UNHCR and the Data Processor.

NOW, THEREFORE, the Data Controller and the Data Processer (the "Parties") hereby agree as follows:

Section 1.   <u>Certain Definitions</u>.

1.1.   In this Supplementary Agreement, the following terms have the following meanings given to them, unless the context otherwise requires:

   (a)   "<u>Data Subject</u>" means a Beneficiary who is the intended recipient of cash transfers facilitated by the Data Controller and the persons to whom the Personal Data refers.

   (b)   "<u>Personal Data</u>" means any personal information including identifying information such as the name, identification or passport number, biometric data such as fingerprints, mobile telephone number, email address, cash transaction details, of whatever nature, format or media that by whatever means, is provided to the Data Processor by the Data Controller, is accessed or collected by the Data Processor on the authority of the Data Controller or is otherwise received by the Data Processor on the Data Controller's behalf and includes transactional or other information associated with the Data Subject generated by the Data Processor in the course of providing the service to the Data Controller.

(c)   "<u>Processing</u>" in relation to Personal Data, includes the obtaining, recording or holding of such data or carrying out any operation or set of operations on the data, including organization, adaptation, or alteration; disclosure by transmission, dissemination, or otherwise; and alignment, combination, blocking, erasure, or destruction.

(d)   "<u>Services</u>" means the specific activities for which the Data Controller has engaged the Data Processor as set out in the Main Agreement.

1.2.   Unless the context otherwise requires, capitalized terms used but not otherwise defined in this Supplementary Agreement shall have the meanings given to them in the Main Agreement.

Section 2.   <u>Data Processing</u>.

2.1.   The Data Processor agrees to process the Personal Data to which this Supplementary Agreement applies, and in particular the Data Processor agrees that it shall:

(a)   process the Personal Data in accordance with the terms and conditions set out in this Supplementary Agreement and where the standards imposed by the data protection legislation regulating the Data Processor processing of the Personal Data are higher than those prescribed in this Supplementary Agreement, then in accordance with such legislation;

(b)   process the Personal Data strictly in accordance with the purposes relevant to the Services in the manner specified from time to time by the Data Controller; and for no other purpose or in any other manner except with the express prior written consent of the Data Controller;

(c)   implement appropriate technical and organisational measures to safeguard the Personal Data from unauthorised or unlawful processing or accidental loss, destruction or damage in compliance with best industry standards, having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of the Personal Data to be protected;

(d)   in accordance with Article 13 of UNHCR General Conditions of Contract for the Provision of Services (Annex A to the Main Agreement), regard Personal Data as confidential data and not disclose such data without the prior written authorization of the Data Controller to any person other than to its employees, agents or subcontractors to whom disclosure is necessary for the performance of the Services, except (subject to Section 2.2 below) as may be required by any law or regulation affecting the Data Processor;

(e)   implement technical and organisational measures to procure the confidentiality, privacy, integrity, availability, accuracy and security of the Personal Data including establishing organisational policies for employees, agents and subcontractors aimed at complying with the Data Processor's duties to safeguard the Personal Data in accordance with this Supplementary Agreement;

(f)   implement backup processes as agreed between the Data Controller and Data Processor to procure the availability of the Personal Data at all times and ensure that the Data Controller will have access to such backup of the Personal Data as is reasonably required by the Data Controller;

(g)   ensure that any disclosure to an employee, agent or subcontractor is subject to a binding legal obligation to comply with the obligations of the Data Processor under this Supplementary Agreement including compliance with relevant technical and organisational measures for the confidentiality, privacy, integrity, availability, accuracy and security of the Personal Data. For the avoidance of doubt, any agreement, contract or other arrangement with an employee, agent or subcontractor shall not relieve the Data Processor of its obligation to comply fully with this Supplementary Agreement, and the

Data Processor shall remain fully responsible and liable for ensuring full compliance with this Supplementary Agreement;

(h)   comply with any request from the Data Controller to amend, transfer or delete Personal Data; provide a copy of all or specified Personal Data held by it in a format and or a media reasonably specified by the Data Controller within reasonable timeframes as agreed between the Parties;

(i)   should the Data Processor receive any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with applicable law, immediately notify the Data Controller and provide the Data Controller with full co-operation and assistance in relation to any complaints, notices or communications;

(j)   promptly inform the Data Controller if any Personal Data is lost or destroyed or becomes damaged, corrupted or unstable and at the request of the Data Controller, restore such Personal Data at its own expense;

(k)   in the event of the exercise by Data Subjects of any rights in relation to their Personal Data, inform the Data Controller as soon as possible,

(l)   assist the Data Controller with all data subject information requests or complaints which may be received from any Data Subject in relation to any Personal Data;

(m)   not use the Personal Data of Data Subjects to contact, communicate or otherwise engage with the Data Subjects including transmission of any marketing or other commercial communications to the Data Subjects, except in accordance with the written consent of the Data Controller or to comply with a court order. For the avoidance of doubt, the Data Processor is not prohibited from contact, communication or engaging with the Data Subject in so far as this does not involve processing of Personal Data and the Data Processor procures that the promotion or offer of services is not in any manner associated to the Data Controller or the Data Controller's services;

(n)   not process or transfer the Personal Data outside of the country of its registered office except with the express prior written consent of the Data Controller pursuant to a request in writing from the Data Processor to the Data Controller. Under no circumstance shall any data be shared with beneficiaries' country of origin;

(o)   permit and procure that its data processing facilities, procedures and documentation be submitted for scrutiny by the Data Controller or its authorised representatives, on request, in order to audit or otherwise ascertain compliance with the terms of this Agreement;

(p)   advise the Data Controller of any significant change in the risk of unauthorised or unlawful processing or accidental loss, destruction or damage of Personal Data; and

2.2.   If pursuant to any law or regulation affecting the Data Processor, Personal Data is sought by any governmental body, the Data Processor shall:

(a)   promptly notify the Data Controller of this fact and consult with the Data Controller regarding the Data Processor's response to the demand or request by such governmental body;

(b)   inform such governmental body that such Personal Data is privileged due to the status of the Data Controller as a subsidiary organ of the United Nations, as a result of which it enjoys certain privileges and immunities as set forth in the Convention on the Privileges and Immunities of the United Nations (the "General Convention");

(c)   request such governmental body either to redirect the relevant request for disclosure directly to the Data Controller or to grant the Data Controller the opportunity to present its position regarding the privileges status of such Personal Data;

(d) cooperate with the Data Controller's reasonable requests in connection with efforts by the Data Controller to ensure that its privileges and immunities are upheld and, to the extent permissible by law, seek to contest or challenge the demand or request based on, inter alia, the Data Controller's status, including its privileges and immunities;

(e) where the Data Processor is prohibited by applicable law or the governmental body from notifying the Data Controller of a governmental body's request for such Personal Data, notify the Data Controller promptly upon the lapse, termination, removal or modification of such prohibition;

(f) provide the Data Controller with true, correct and complete copies of the governmental body's demands and requests, the Data Processor's responses thereto, and keep the Data Controller informed of all developments and communications with the governmental body.

2.3. The obligations and restrictions in Section 2.1 and Section 2.2 of this Supplementary Agreement shall be effective during the term of this Supplementary Agreement, including any extension thereof, and shall remain effective following any termination of this Supplementary Agreement, unless otherwise agreed between the Parties in writing.

Section 3. Warranties

3.1. The Data Processor warrants that:

(a) it will process the Personal Data in compliance with laws, enactments, regulations, orders, standards and other similar instruments applicable to the Data Processor; and in accordance with the terms and conditions of this Supplementary Agreement;

(b) in order to observe the rights of ownership and/or other proprietary or intellectual property rights of the Data Controller in the Personal Data, it will not copy, retain or process the Personal Data in any manner over the course of this Supplementary Agreement and upon expiration or termination of this Agreement, except as required by law and in accordance this Supplementary Agreement.

Section 4. Indemnity.

4.1. The Data Processor agrees to indemnify and keep indemnified and defend at its expense the Data Controller against all costs, claims, damages or expenses incurred by the Data Controller or for which the Data Controller may become liable due to any failure by the Data Processor or its employees, subcontractors or agents to comply with the obligations under this Agreement.

Section 5. Subcontractors and Agents.

5.1. The Data Processor may authorise a third party subcontractor or agent to process the Personal Data, so long as such authorisation does not otherwise violate the Data Processor's obligations under this Supplementary Agreement and subject to the following conditions:

(a) the Data Controller's prior express written consent, the validity of such consent being conditioned on the Data Processor supplying the Data Controller with full and accurate details of such third party subcontractor or agent; and

(b) the execution by such third party contractor or agent of a written agreement with the Data Processor under which (i) such third party contractor or agent is bound to the same obligations of the Data Processor hereunder, (ii) UNHCR is expressly identified in such agreement as third-party beneficiary and such agreement provides that the obligations of such third party contractor or agent are made for the benefit of and are enforceable by the Data Processor in a binding arbitration procedure as described in the Main Agreement and without waiver, express or implied, any of the privileges and immunities of the United Nations, including its subsidiary organs, or of UNHCR (as a subsidiary organ of the United

Nations) and (iii) the agreement terminates automatically on the expiry or termination, for any reason, of this Supplementary Agreement.

(c) UNHCR is provided an original counterpart of the agreement referred to in Section 5.1(a), signed by all parties thereto;

5.2. The Data Processor shall promptly notify the Data Controller of any breach of a third-party's obligations under an agreement referred to in Section 5.1(a) and shall use reasonable efforts to enforce the obligations of the third party thereunder. The Data Processor shall provide reasonably assistance to the Data Controller to support enforcement by the Data Controller, as third party beneficiary, of the obligations of the third party under such agreement.

Section 6. Termination.

6.1. This Supplementary Agreement shall terminate automatically upon termination or expiration of the Main Agreement.

6.2. The Data Controller shall be entitled to terminate this Supplementary Agreement forthwith by notice in writing to the Data Processor if the Data Processor is in a material or persistent breach of this Supplementary Agreement which, in the case of a breach capable of remedy, shall not have been remedied within five days from the date of receipt by the Data Processor of a notice from the Data Controller identifying the breach and requiring its remedy.

Section 7. Return or Destruction of Personal Data.

7.1. After expiration or termination of this Supplementary Agreement, the Data Processor shall return or (at the Data Processor's election and upon prior written notice to the Data Controller) destroy all Personal Data, except and for so long as required by applicable law.

7.2. In the event that the Data Processor elects to destroy Personal Data under this Section 7, such destruction shall be effected promptly after written notice of such election is given and shall be evidenced by a written attestation issued to the Data Controller and signed by two authorized representatives of the Data Processor.

7.3. The Data Processor shall give written notice to the Data Controller of any Personal Data it is required to retain under applicable law. The Data Processor shall promptly return or destroy such retained Personal Data as soon as permitted under applicable law, and its obligations under this Supplementary Agreement shall survive until such retained Personal Data is returned or destroyed in accordance with this Section 7.

7.4. Notwithstanding the return or destruction of the Personal Data, the Data Processor shall continue to be bound by the confidentiality obligations under the Main Agreement.

Section 8. Dispute Resolution.

Any dispute, controversy or claim between the parties arising out of this Supplementary Agreement shall be governed by the relevant provisions of the Main Agreement governing the settlement of disputes.

Section 9. Privileges and Immunities.

Nothing in or relating to this Supplementary Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, or of UNHCR (as a subsidiary organ of the United Nations).

Section 10. Miscellaneous Provisions.

10.1. Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement for any purpose whatsoever.

10.2. Unless the context otherwise clearly requires, (a) all references to the singular shall include the plural and vice versa and references to any gender shall include every gender; and (b) any words following the word "include," includes," "including," "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them or immediately following them.

10.3. This Agreement and everything herein contained shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to append their signatures below as of the date first stated above.

For and on behalf of: For and on behalf of:

THE OFFICE OF THE UNITED NATIONS   **XXX**
HIGH COMMISSIONER FOR REFUGEES

_____   _____
            Signature   Signature

Name: Name:

Title: Representative   Title: General Manager

Date: Date:

Place: Place: