In the Spirit of Partnership:

What NGOs Should Know About UNHCR’s New Partner Selection Policy and Project Partnership Agreement (PPA) Template

1 September 2014
Introduction

The purpose of this document is to highlight to NGOs what they need to know about UNHCR’s new selection and retention policy and the new Project Partnership Agreement (PPA) template that are being rolled out as part of UNHCR’s Enhanced Framework for Implementing with Partners.

It is not soup-to-nuts guidance on running projects as a UNHCR partner (that guidance will be issued by UNHCR in the coming months). Rather, it focuses specifically on what has changed when compared to UNHCR’s previous Framework for Implementation.

It is based on a comparison of UNHCR’s old (Bipartite Project Agreement) BPA and the new PPA, plus a review of associated documentation and guidance from UNHCR and other sources. Some of this guidance is still in draft form – so this document remains a ‘work in progress’.

Acknowledgements

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The Big Picture

Selection and Retention

UNHCR issued Implementing Partnership Management Guidance Note No. 3: Selection and Retention of Partners for Project Partnership Agreements in July 2013.

UNHCR’s selection process is now one of competitive bidding, which is similar to a procurement process. UNHCR outlines the programme it wants delivered through a Call for Expressions of Interest, and NGOs present a short Concept Note, which UNHCR uses to select a partner after considering which of the partners offers the best fit. The term ‘best fit’ is not clearly defined, but it will likely include aspects of capacity, experience and cost.

This process should be transparent: the criteria to be used in selection should be published as part of the Call for Expressions of Interest. The Guidance Note on Selection and Retention, page 9, says, “The Committee is required to establish predefined, relevant and accessible criteria to be included in the Call for Expression of interest.”

UNHCR then works closely with the partner to develop the detailed project proposal, in line with the original concept note.

- NGOs are encouraged to read more about this process in the July 2013 Guidance Note and the accompanying FAQ document which was issued in August 2014.

The New Project Partnership Agreement (PPA)

UNHCR’s new PPA came into effect on 1 April 2014. In response to feedback from the NGOs, it now speaks the language of the Principles of Partnership in the preamble. As ever, the devil is in the detail.

From a structural and legal perspective, the document is a significant improvement on its predecessor. However, it has also been heavily reorganised, making it difficult to compare with the old BPA agreements and find the changes – some of which are quite subtle. There are also a number of additions. The annexes at the back of this document provide tables where these changes can be tracked.

Be aware that not all of the PPA’s requirements are explicitly included in the contract – some are outlined in separate UNHCR guidance and policy documents, some of which are yet to be finalized.

- NGOs are encouraged to thoroughly review existing UNHCR guidance and policies referenced in the PPA before signing any agreement.

Balance

The new PPA appears to be rather unbalanced in terms of the enumerated obligations placed on partners vs. UNHCR. It spells out in some detail the obligations for NGO partners, but it is not specific on the parallel obligations on UNHCR. For example, there are 2 articles regarding the participation and obligations of UNHCR (9.1 – 9.2) and 51 for NGOs (10.1 – 10.51). UNHCR’s obligations are formalised in its mandate and policy elsewhere, but many NGOs will not be familiar with these. Some of these areas of imbalance may bring associated risks for NGO partners.
Additional responsibilities need to be resourced

The new PPA increases the stated responsibilities of implementing partners. These additional responsibilities – in reporting, in monitoring, in accountability – will all need resources to achieve them. In some cases NGOs will be able to do this with their existing teams and capacities. But in some cases, additional resources may be needed: more people, more money, or even additional equipment.

- NGOs are encouraged to address any requirements they might have for additional resources to comply with the PPA at the project planning stage, building requirements into their staffing plans and the budgets. NGOs can consider seeking UNHCR support, particularly with regard to handling investigations/misconduct.

Annual planning

UNHCR’s planning process continues to run on an annual cycle, as required by the UN General Assembly. This means that regardless of when in the year a new programme starts, the longest contract will begin in January and finish in December, unless under extraordinary circumstances an extension is granted up to March 31 of the following year.

From an implementation perspective, this brings advantages and disadvantages. It does provide both parties with a formal opportunity to re-negotiate areas of the Agreement. But it is a very short period for implementation, and quite inappropriate for some programme areas. The 12-month planning cycle reduces predictability, and the frequent handover between one agreement and the next increases reporting requirements and the risk of a gap in service provision – it is challenging for UNHCR and NGOs alike.

- NGOs may want to consider opportunities to advocate in New York for UN Member States to give more flexibility to UNHCR to plan for multi-year projects.

Contracting process and timelines

To improve continuity and partner retention, UNHCR has introduced a contracting process that can run over 4 of these annual cycles, which is managed by the new Implementing Partner Management Committee, usually established at the country level. Within each programme, a new PPA contract will be negotiated and agreed each programme cycle – that is, each calendar year. Once a concept note is agreed, the Partner will normally be selected for 2 annual programme cycles, after which there is a review process, which would normally lead to another 2 programme cycles. After 4 cycles, the contract must go back to tender, at which point other NGOs can also bid to become partners.

The 2 + 2 years structure of UNHCRs engagement with a single NGO partner on a project

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>^ Bidding, selection, negotiation and contract</td>
<td>^ Programme-level review leading to renewed PPA</td>
<td>^ Committee-level review &amp; new PPA</td>
<td>^ Programme-level review leading to renewed PPA</td>
</tr>
</tbody>
</table>
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Although the implementation period covered by the PPA is usually a calendar year, the overall timelines covered by the PPA process are more than a year. At the start of the process there is the bidding, selection and negotiation, and at the end of the process there are reporting requirements, and more extended periods apply to construction work and audit requirements.

The timeline for a single PPA for a single programme cycle

The year before implementation
- Call for Expressions of Interest: Mid year
- NGOs present Concept Notes
- Committee selects / retains Partner NGO: No later than October
- Negotiation of project proposal
- Signature of PPA: Contractual obligations start on date of signature

During the implementation year
- Reporting Period quarter 1: Start of Project Implementation Period: 1 January
- Reporting Period quarter 2: Optional Q1 reports due: 10 April
- Reporting Period quarter 3: Q2 reports due: 15 July
- Reporting Period quarter 4: Optional Q3 reports due: 10 October
- Provisional (?) Financial Report due: 10 December

The year following implementation
- Project liquidation period: 1-31 January
- Warranty period for construction work: At least six months
- Financial Report due: 10 December

Subsequent years
- Audit period: Keep records for 6 years after contract closes

See page 10 for a more detailed explanation of the reporting expectations.

Areas not included in the PPA

While the PPA is quite comprehensive, it does not cover all aspects of the programme arrangements. It is intended to provide a global standard for the main clauses, but there are aspects which will need to be negotiated locally within and described in the Project Proposal.

There are other aspects that are covered by UNHCR’s developing package of guidance materials, and are not included within the PPA. Some of this guidance is marked as ‘final’ and some remains in draft and in discussion. These include calculation of overheads, the frequency and nature of verification meetings and visits, and providing visibility to UNHCR’s back donors.

- Since the UNHCR guidance is still changing it is not possible to provide definitive advice. Areas that will need particular attention seem to include personnel – especially in the matter of UNHCR contributions towards staff costs.
Planning

Uncertain funding

Both the old BPA and the new PPA contain clauses warning the NGO that full funding for the project is subject to the availability of UNHCR’s funds. The majority of project funds will come from donors’ voluntary contributions to UNHCR received throughout the year. In some cases the NGO makes a contribution.

The funding situation may be uncertain. There is always a risk that the project will have to be scaled down, or even closed completely, if the funding is not forthcoming (although such capping has not occurred in the past 5 years). The PPA explicitly protects UNHCR from the consequences of this, but it does not offer parallel protection to the Partners (see the section on Termination below).

- It is important for partners to refrain from committing to contributing resources to the project if their funding situation is uncertain.
- Partners should take particular care when organising staff contracts – while maintaining good practice and providing as much job security and continuity as possible.

2+2 year planning horizon for partnership

As outlined in the introduction, to improve retention and continuity UNHCR plans to make programme level partnerships last for up to four years before re-opening the competitive selection process. At the same time, PPAs and project proposals will retain a one-year horizon. The retention of the project partner is dependent on a successful review at the end of each year and the negotiation of the new project proposal.

The reviews take place at two levels. Towards the end of years 1 and 3 (probably around October), a review will take place at the programme level. In normal circumstances, if implementation is going according to plan, this review would result in the retention of the NGO for the following year. However, this is not guaranteed.

During the second year, a more substantial review will take place at the level of the Committee. If successful, the Partner will be retained for a second two-year period, again subject to a programme level review in year 3.

During year 4 of the Partnership, the bidding process for new partners begins again, even if the existing partner is providing excellent services. Partners wishing to continue will need to complete the full bidding process along with other interested NGOs.

- Partners should prepare for the possibility they may not be selected for ongoing funding and be asked to conduct a handover process, including setting aside resources as necessary.
- Partners should plan for these review processes, and ensure that adequate resources and monitoring data is available for the review period.

4 years for revolving funds

Agreements on the use of revolving funds have a separate four-year planning and reporting horizon, and will need to be planned for separately.

- Note that there are potential resource implications if a partner has a four-year agreement for revolving funds, but the main partnership agreement is not renewed.
Planning for technical areas and support functions

Within section 6 of the PPA there are a number of optional sections, which are included within the Agreement document only if they are applicable to the scope of the project. These cover a range of programmatic sectors such as WASH, nutrition, and protection, some specific modalities like distribution of items, resource transfers through cash and vouchers, and some support functions like warehousing, and heavy duty vehicle transport.

- It is important that each of these areas (they are un-numbered in the PPA, but follow section 6.15) is considered during the planning phase, and that if they are to be included within the Agreement that they are appropriately resourced.

Planning for reporting, monitoring and visibility

The main reporting requirements are discussed below. While the old BPA had quarterly reporting as standard, the PPA only requires bi-annual reporting as standard – although on option exists within the PPA to reinstate quarterly reporting. There are also reporting requirements associated with other elements of the partnership, which are outlined below.

At the same time resources need to be allocated to monitoring, and perhaps also to visibility requirements. The joint monitoring requirements are new (see below).

- NGOs should ensure that reporting, monitoring and visibility requirements are appropriately resourced, and associated activities should be built into the project plan.

Risk management

The project proposal document (which is separate from the PPA) contains an ‘optional’ section on risk analysis.

- Partners might be well advised to undertake a detailed risk assessment process, which looks internally and more widely.

The mitigation or response strategies associated with some of these risks may require additional resources beyond those included within the project. If risks, perceived likelihoods, and mitigation strategies are documented in advance, this strengthens the case for including resources within the project plan and structure.

- As part of the risk analysis, partners may want to consider questions such as:
  - What would happen if the caseload were to increase by 10%? By 30%
  - What would happen if it were to reduce?
  - What is the likelihood of political instability, and what impact would it have on implementation?
  - What plans are in place for managing a serious security incident?
  - What is the current risk analysis of the UNHCR country office?
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Personnel

Defining personnel 10.38

The PPA defines the personnel within the project in fairly specific terms (see definitions listed on page 32 of the PPA). However, UNHCR’s approach to partner personnel costs was still under discussion at the time of writing.

All personnel associated with the project must be documented in advance, along with their percentage engagement with the project and the various partners’ contributions to their cost.

UNHCR contributions for project implementation period only 10.47

UNHCR’s contributions to personnel costs only extend to the implementation period. These contributions are not restricted to salary: they could, in principle, also include the whole range of employer contributions and benefits such as pension contributions or health insurance. It seems likely that end-of-service benefits can also be included, although the exact terms for these have not been finalised.

According to the PPA, UNHCR will agree to an all-inclusive flat rate per period, per staff member, which may or may not cover 100% of the costs of employing that person. However, this contribution will not extend either side of the implementation period.

Partner responsibilities for good employment practice 10.41-43

The PPA places responsibility for good employment practice on the Partner – rightly so, as the Partner (and not UNHCR) is hiring the staff for the project. But the terms of the PPA could actually reduce the chance of good HR practice being delivered.

Some aspects of good HR practice will be challenging to implement through annual programme cycles, especially in situations of uncertain funding, and situations where Partners have no additional funds to supplement UNHCR. For example, employment security for staff may be difficult to ensure in places where funding is uncertain and short contracts are the norm. Similarly, investment in staff training and development may be a challenge, and it should certainly be included in the project proposal.

- Project managers should be ready to resist efforts to reduce training budgets on the grounds that it is not appropriate for short contracts, for example. Through the PPA, UNHCR has required Partners to ensure good working practices, and so they should be willing to resource this properly.
- Equally, efforts to reduce overall workforce numbers to inappropriate levels can be resisted, on the grounds that this will increase workload to unacceptable levels, and that it will have a negative impact on service provision and the outcomes for the population of concern.

Need for clear documentation of partner staff 10.49

The PPA requires high quality documentation on personnel issues, right from the beginning of the project design. This documentation will need to include:

- The specific roles required within the project workforce.
- The number of people in each of these roles.
- The contractual status of each of these (employee, consultant, volunteer, etc.)
- The duration of their planned employment with the project
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- The proportion of their time that will be associated with the project
- The actual costs per period associated with this employment
- The contributions to these costs being paid by the project Partner
- The contributions to these costs being paid by other donors or stakeholders
- The contributions to these costs being requested from UNHCR.

It is critical that these are correctly calculated at the start, as it will not normally be possible to make changes once the project has been approved.

No immunities

Unlike in the old BPA, UNHCR is no longer required to request immunities and privileges for staff of Partner organisations, and this clause has been removed from the PPA.

UNHCR contributions to staffing costs

The PPA states that “the Partner shall meet all the costs of engaging Partner Personnel... at levels commensurate with established scales and in accordance with applicable regulations and relevant legislation” (article 10.41). At the time of writing, UNHCR was developing a guidance note to provide further details on what this would look like.

UNHCR is not obliged to offer a 100% contribution to staffing costs. That does not mean that Partners cannot suggest 100% contributions: they can. These issues will form part of the best fit discussions at the point of selection.

The term ‘best fit’ is not clearly defined, but it seems to include two broad elements. On the one hand, the overall cost is an important factor. But ‘value’ is also important – in the sense of the quality of the outputs for POC, and in the quality of the management processes.

UNHCR may offer less than 100% contribution towards staffing costs, either across the board or for individual roles. UNHCR have in the past also set a ceiling for contributions towards any role or set of roles.

However, the PPA is explicit that:

- Partners are responsible for their own human resource management, and
- Partners are required to exercise good practice in human resource management.

Under the spirit of the PPA, then, it would be inappropriate for UNHCR to try to:

- dictate a salary scale to individual Partners at country level
- allocate specific roles to specific grades on the Partner’s pay scale
- set a cap on the remuneration associated with any particular grade or role
- set a global cap on any function or role.

Since 2009, UNHCR global policy has been to contribute a lump sum of $6000 for international staff, and to contribute to national staff salaries based on a market survey of humanitarian peers. In practice, however, the application of these policies has not been uniform, and was only implemented selectively by certain UNHCR Offices.

This area has already proven challenging in the field, and discussions continue at the global level.

- One option would be for NGOs seeking to be UNHCR partners to work together to ensure that national staff salaries are broadly coherent across the sector. This is a responsibility of the NGOs, and while UNHCR has an interest, it should not be leading the process. In particular, NGOs should not undercut each other to try to gain UNHCR contracts: having a common basis for staff salaries is more likely to produce fair terms for employees and better quality services for POCs.
For international staff, there are good reasons for staffing costs (and therefore, contributions to staffing costs) to vary between countries. In addition, there are differences in seniority. One option would be for INGOs to resist the idea of a global rate or a global cap on staffing costs, especially one that does not reflect the actual costs of deploying professional staff to the field.

Given that the overall process of selection is one of competitive bidding for projects, there is no need for UNHCR to get involved at this level of detail. The process should allow for the best balance of quality and cost to be recognised and selected.

Implementing through partners

Contractual obligations and added value

In some cases the Partner that signs the PPA with UNHCR will not undertake all the implementation themselves: some of it may be delivered by partners under a sub-contract.

The PPA now stipulates that the Partner is required to demonstrate that such sub-contracting will add value to the project as a whole. Such sub-contracting needs to be agreed with UNHCR in advance, and the contract needs to contain some specific clauses linked to the clauses of the PPA. These agreements must be reflected within the Project Description. Sub-contracting does not release the Partner from their obligations under the PPA.

Obligations on third parties

A number of clauses of the PPA will also be applied to third party sub-contracts. Those specifically mentioned include clauses relating to:

- personal benefit from project activities (10.32)
- conflict of interest, or adverse reflection on UNHCR (10.33)
- exploitation or abuse of refugees and other persons of concern (10.34)
- contractual links with UNHCR (10.39)
- integrity and accountability (11.3)

Reporting

Regular reporting

According to the PPA, the minimum reporting expectations are as follows:

<table>
<thead>
<tr>
<th>Reporting period to:</th>
<th>Reporting due date</th>
<th>Reports required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Half year: to 30 June</td>
<td>15 July</td>
<td>Project Performance Report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Project Financial Report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Goods and Property Report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Project Personnel Report</td>
</tr>
<tr>
<td>to 30th November</td>
<td>10 December</td>
<td>Project Financial Report</td>
</tr>
<tr>
<td>Final reports:</td>
<td>15 February of following year</td>
<td>Final Project Performance Report</td>
</tr>
<tr>
<td>31 December</td>
<td></td>
<td>Final Project Financial Report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Final Goods and Property Report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Final Project Personnel Report</td>
</tr>
</tbody>
</table>
However, by ticking a box within article 5.1 UNHCR can add additional reporting at the end of Q1 and Q3, and indeed can add additional reporting at any time by including further dated lines in the table. Additionally, other sections of the PPA imply that these minimum requirements are understated, and the following may also be required of partners depending on local expectations and programme components:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Report</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly</td>
<td>Health monitoring data</td>
<td>Or as required</td>
</tr>
<tr>
<td>Periodic</td>
<td>Food distribution report</td>
<td>Presumably, per distribution</td>
</tr>
<tr>
<td>Daily</td>
<td>Warehouse</td>
<td>Incoming and outgoing shipments, Goods Received Notes, waybills, quality inspection reports Warehouse manager obligations</td>
</tr>
<tr>
<td>Weekly</td>
<td>Warehouse</td>
<td>Stock reports: goods in, out, balances</td>
</tr>
<tr>
<td>Monthly</td>
<td>Warehouse</td>
<td>Copies of stock cards</td>
</tr>
<tr>
<td>Unspecified</td>
<td>Cash and voucher</td>
<td>With Project Performance Report (or more frequently?)</td>
</tr>
</tbody>
</table>

**Ad hoc reporting**

In addition to the agreed regular reports above, the PPA also suggests that UNHCR can request ad-hoc reports, as long as UNHCR provides the request in writing and with ‘sufficient advance notice’.

Since these requests are inherently unpredictable, it is challenging to ensure that sufficient capacity exists to produce them at all times. UNHCR does state that it ‘shall make all efforts to minimise the reporting requirement and specify all necessary reports in this Agreement’.

- To maximize the resources available for project implementation, NGOs are encouraged to discuss reporting expectations with UNHCR in advance of signing the PPA, and emphasize the PPA language that “UNHCR shall make all efforts to minimize the reporting requirement.”

**Processes and sign-off**

The PPA also states that all submitted reports are subject to ‘verification and acceptance by UNHCR’ (article 5.7). Release of subsequent funds is dependent on this acceptance. The PPA requires UNHCR to communicate acceptance, or request additional information, but it does not state what the processes shall be for verification, or what the timelines for acceptance will be. This is a new obligation upon UNHCR.

- NGOs are encouraged to discuss with their UNHCR interlocutors expected timelines for feedback on their reports prior to signing the PPA.
Finances

Budgeting for additional responsibilities

As noted in the planning section, wherever the new PPA requires that the Partner takes on additional tasks or responsibilities, resource implications need to be considered and included in project budgets and staffing considerations. Areas that might require additional resources under the new PPA include:

- Additional reporting requirements
- Insurance of stocks
- Warehouse management and reporting
- Access to services previously provided by UNHCR services under the old BPA (such as technical advice, customs clearing)
- Joint monitoring processes
- Tracking of low value project assets
- Long-term archive of project performance data and records
- Negotiation of third party subcontracts
- Compliant IT systems, with protected access to sensitive data
- Visibility obligations
- Capacity building in management of misconduct and data protection

HQ overheads and exceptions

6.13

Articles 6.12 and 6.13 clarify a new methodology of calculating the overhead support costs for “international non-governmental organizations that implement projects in countries other than where [their] headquarters [are] located.”

When UNHCR enters into a Project Partnership Agreement with a partner, there is an expectation that the partner will contribute additional resources to the Project. However, contribution of resources by an INGO to the project is no longer a precondition for UNHCR’s contribution towards its Headquarters Overhead Support Costs.

The new policy of the UNHCR’s contribution to Headquarters Overhead Support is set now at 7% (a change from “up-to 7%”). The 7% contribution is paid proportionally with each transfer.

Another change is the reduction and clarification of exclusions:

- Bulk Procurement (above $100,000),
- sub-contracts to commercial entities,
- provision of voucher/cash assistance, and
- funds for micro-credit.

It is possible to budget for specific technical support from the HQ to the programme, in addition to the overhead fee. This would need to be explicit support to the programme: for example, a technical advisor for two months.
Complementary funds 6.1 – 6.3

The PPA states that Partners will endeavour to raise complementary funds and resources, but this is no longer an automatic expectation.

However, in some cases UNHCR may need a contribution from partners, or a partner may have the ability to contribute to the project. In these cases, this will be documented in the PPA, and then becomes binding on the partner.

The UNHCR contribution is never technically binding: it is conditional on UNHCR having the funds available for the programme. There is no option for Partners to have a balancing clause in this regard.

Cash flow and instalment transfers 6.4 – 6.8

Clarifications have been made to the articles that govern the flow of funds to Partners. Partners can now expect the equivalent of an additional month’s planned activities within the first instalment to ensure the availability of working capital at all times.

Thereafter, transfer dates and amounts are agreed locally between the partners and documented in the PPA.

Interest bearing bank accounts 6.9

The previous requirement to keep project funding in an interest-bearing bank account has been loosened. The new expectation is that the account should ‘preferably’ be interest-bearing.

➢ At the time of writing, the draft PPA guidance note stated that ‘normally, UNHCR funds must be deposited into a separate interest-bearing account.’ This discrepancy with the PPA’s language has been brought to UNHCR’s attention.

Currencies and Exchange rates 10.18

Partners can now use the actual exchange rates in their reporting, which provides some protection against exchange rate losses between the ‘actuals’ and the ‘UN exchange rate’.

Budgets should ideally be developed in two currencies: that of the ‘currency of expenditure’ for in-country expenditure, and one for the HQ expenditures, salaries of international staff.

Taxes and customs 11.5

The PPA section on taxes is slightly expanded from the BPA, now requiring the Partner to try to make use of its charitable status to secure tax exemptions.

➢ If the Partner is not able to gain a tax exemption, but can demonstrate it has tried, it should be possible to include relevant taxes within the project budget.
Pooled funds

The stated preference of UNHCR is that the project should have a separate bank account for UNHCR funds. Even funds contributed by different donors or the NGO for the same project should be held separately.

Where funds need to held in common in a pooled account, written approval must be gained in advance from UNHCR’s Controller, and special rules will apply.

In practice, UNHCR is generally very reluctant to allow the use of pooled accounts, and only ‘mature’ and large NGO partners are likely to gain approval.

Miscellaneous Revenue and Bank Interest

In a significant change to the old contracts, all miscellaneous revenue will need to be returned to UNHCR. It cannot be spent on project activities. This PPA clause relates to the following as a minimum:

- Any revenue generated by project funds
- Any revenue generated by project Goods and Property
- Foreign exchange gains
- Receivables from the sale of items
- Insurance claims
- Bank interest earned on UNHCR funds.

The clause only applies where the source of the funds or items was UNHCR. That is, it does not relate to items or funds provided through other donors to the project.

It is only possible to retain Miscellaneous Revenue within the project with the written agreement of the UNHCR controller and an Agreement Amendment.

The potential consequences of this change include the following:

- Foreign exchange losses will be carried by the project (which will then have reduced funds to operate with) while foreign exchange gains will be returned to UNHCR.
- If goods, equipment or vehicles are lost or damaged and an insurance claim is made, that equipment will not automatically be replaced or repaired using the insurance money: instead these funds must be returned to UNHCR.

Transfers between budget lines

Partners may now make transfers between budget lines without the consent of UNHCR with the following qualifications:

- no change is allowed to the total Project Budget amount;
- no change is allowed to Partner Personnel costs;
- budget line transfers may not exceed 15% of the ‘authorised level’.

The Partner must retain documentation relating to the transfers.

Any other changes require the written authorisation of UNHCR.
Audit, oversight and accountability

Audit scope

In an important change from the old BPA, the scope of the audit function has increased. The list of areas now covered by the audit process now includes achievement of expected results of the Project, which would previously have only been covered by the evaluation or monitoring processes.

The implications of this change are not explained in the PPA, and need to be clarified. However, since an audit process can take place up to six years after the project closure, and the audit is managed independently by UNHCR, one possible result of an audit process is that UNHCR seeks to reclaim the funding from the Partner. This represents a new risk for project Partners to consider.

Partners must now retain performance and monitoring reports as well as financial and contractual information for the six years period.

The PPA lists the Project Records that must be kept for audit purposes in 10.19, separately from the other information on audit in 10.27 – 30. They include 12 different kinds of records.

Protecting beneficiary data

In an effort to better protect persons of concern from exploitation, the PPA has a set of new requirements relating to the protection of beneficiary data. These place significant obligations on the Project Partner and additional resources may be needed to meet these obligations. For example:

- Meeting the expectations of (unspecified) international data protection rules and principles, UNHCR policies, and data privacy laws in the country of operation.
- Informed consent of the people whose data is being collected and stored, at the point of collection – ‘to the extent possible’.
- Restricted access to such data within the Partner, so that only authorised and necessary Partner Personnel have access, and that these people are aware of the obligations associated with this access.
- Establishment and maintenance of technical and organisational measures to protect against accidental or unlawful loss, destruction, alteration, disclosure or unauthorised access.

This section of the PPA makes reference to compliance with and implementation of “relevant UNHCR policies on data protection,” but no such policies were published and made available to NGOs at the time of writing.

Unlike the clauses relating to audit, where obligations to maintain records and support audit processes expire after six years, the obligations associated with data protection appear to be open ended. The clauses on data protection effectively require that the Partner holds a secure offsite backup of all sensitive data, and puts in place effective measures on the working copy to protect it against misuse or damage. Once again, there are resource implications for this.

- UNHCR should expedite its finalization of its forthcoming policy on data protection and take measures to promote NGO awareness of its contents.

Joint monitoring

The section on monitoring is an addition to the PPA. It requires the Partner to have an effective system to monitor the progress of the project. The associated guidance document (still in draft at the time of writing) describes a joint monitoring approach, which would actually take the form of a joint review of the Project, with a minimum frequency of twice a year, tied to key project milestones.

- The resource implications of such a review process should be included within the Project Proposal.
Misconduct and investigation

Ethical considerations 10.31 – 10.37

The new PPA reproduces an appendix recently added to the BPA concerning the way in which Partners manage misconduct. It refers to this annex through a series of Articles, mostly new, relating to investigations and ethical considerations.

NGO partners are now expected to have a policy framework in place that explicitly ensures that Project Personnel cannot derive personal benefits from project activities.

Minimum standards for managing misconduct PPA Appendix 2

The Partner is expected to ‘have in place’ (according to the main PPA) or be ‘working towards’ (according to the appendix) policies, procedures and standards relating to the investigation of (alleged) misconduct.

The definition of misconduct used in the Appendix is both broad and open ended. As part of personnel systems, all Partner Personnel should be aware of what to do if they suspect misconduct.

The minimum standards that should be in place in each Partner Agency include:

- A code of conduct policy
- Complaints mechanism
- Investigation guidelines
- Procedures for joint investigation (where multiple Agencies are implicated), and
- Human Resource policies including confidentiality, induction and development
- Policies on confidentiality of data and information disclosure
- Policies on child protection, sexual exploitation and abuse
- Protection for whistle-blowers
- A disciplinary system, including administrative proceedings and a mechanism for recovery of assets
- Investigative capacity, including trained investigators (or a formal collaboration to achieve this)

While this list represents good practice for organisations working in this sector, it is very ambitious and for many NGOs would require a significant investment over an extended period to produce and implement. Some of these obligations (and perhaps all, depending on the reading of the PPA), are also to be required of any third parties subcontracted by the Project Partner.

- NGOs requiring assistance to meet these requirements should make use of various UNHCR tools at their disposal: sample codes of conduct, an investigations resource manual, SOPs for referral of cases and information sharing, and TORs for joint investigation.
- NGOs might consider provisioning an amount in their agreement budgets that could be needed for investigations. UNHCR is developing a roster of investigators that can be used by partners.
Communication, information, and visibility

The PPA contains new and revised clauses on communication, information and visibility that may prove difficult to reconcile with each other in practice.

Confidentiality of information

The PPA is specific that neither party can be held responsible for information material put out by the other party. However, it also places restrictions on the information that may be released, by stating that “all Information” is confidential. The term “Information” is defined very clearly in Annex 1 as meaning:

“...any and all information, whether in oral or written (including electronic) form, created by or in any way originating with UNHCR, and all information that is the output of the performance of activities pursuant to this Agreement.”

This would make the release of any communication about the progress of the Project a breach of the PPA agreement, unless it is previously approved by UNHCR. This effectively means that all communications by the Partner about the Project must be formally signed off by UNHCR.

However, there is no parallel expectation on UNHCR to have their communications materials signed off by the Partner, nor any obligation on UNHCR to mention their Partners in external communications.

➢ NGOs are advised to discuss with their UNHCR interlocutors expectations regarding the handling of information prior to signing the PPA.

Visibility and disclaimers

Partners are obliged to make a disclaimer on all communication material, which indemnifies UNHCR from the contents of that material.

UNHCR is not obliged to make a similar disclaimer protecting the Partner in their promotional material. Since those communications do not need to be signed off by the Partner in advance, there is no protection for the Partner against misrepresentation.

Both parties, however, can control the way in which their logos, names and acronyms are used by the other.

NGOs should be aware of a new element, article 11.30, which says, “at UNHCR’s request, the Partner shall provide visibility, as specified by UNHCR to UNCHR’s donors that are contributing funds to the Project.”

➢ NGOs are advised to discuss clause 11.30 with their UNHCR interlocutors, and request a waiver if required for security or other reasons.
Intellectual property

Intellectual property belongs to UNHCR

As in the previous BPA, all intellectual property resulting from the Project belongs to UNHCR. Intellectual property is described in the PPA as including patents, copyrights, trademarks and databases, as well as products and documents and other materials such as maps, drawings, plans, reports, estimates, recommendations and other documents. It is not clear if this clause would cover, for example, internal emails within the Partner organisation between project staff or relating to the project.

Exemptions for prior ownership

UNHCR does not claim ownership of intellectual property that existed before the Project. So, for example, if a Partner has previously developed a database system and uses it for this project, UNHCR will own the data, but will not have rights to the database system and structure.

Opportunities to licence property back

If however, a database was developed as part of this project, it would belong to UNHCR, and the Partner would not be allowed to use it in another location or after the project was closed.

In some cases — but only on a case-by-case basis where the partner has provided a meaningful financial contribution to the Project — the Partner may be able to retain the intellectual property rights.

In other cases, UNHCR may grant the partner a license for the use of the product. This allows the Partner to continue to use the product, although the ownership remains with UNHCR.

Implications for closure and handover

If the project is terminated, or it comes to the end of its contractual period and is closed, then these parts of the PPA suggest that all project materials and documentation will be handed over to UNHCR and not retained by the Partner.

There are serious implications associated with this, tied to a loss of institutional memory for the Partner, or to liabilities for the Partner that may last longer than the Project duration.

- NGOs are advised to seek shared ownership of intellectual property through an Agreement Amendment, or at a minimum the right to maintain copies of materials and a license to use them, at the beginning of the project negotiation phase.
Termination, closure and handover

**Termination**

The new PPA makes a distinction between a project being terminated and a project coming to a natural end. Termination occurs if the Agreement is stopped before the end of the Project Implementation Period.

If a Project is terminated for any reason, the obligations on the Partner regarding handover remain.

**Termination without cause**

Either party is able to terminate the contract without providing a reason, but they have to provide written notice 90 days in advance of that termination.

**Termination with cause by UNHCR**

There are certain situations where UNHCR (but not the Partner) can terminate the Agreement with immediate effect. The possible situations are listed in the PPA and mostly relate to the Partner’s behaviour and financial situation, but it should be noted that they include “a significant curtailment of UNHCR’s funds” – in other words, it is possible for UNHCR to terminate a PPA with no notice because it does not have enough money.

**Force majeure**

In the new PPA, it is the responsibility of UNHCR to say when *force majeure* is in effect – but they are under no obligation to do so, even if they evacuate their own staff. This is an unlikely scenario, but if it were to occur, the Partner would probably seek to terminate the Agreement.

**Liability for costs and damages**

UNHCR reserves the right to pursue the Partner for damages and costs, even if the Partner has gone bankrupt.

**Responsibilities associated with handover**

The PPA does not specifically address the issues related to handover, and guidance for this area has yet to be developed. In principle, all project assets will revert to UNHCR at this time.

- NGOs are advised that continuation of the project is not guaranteed at the end of each twelve month implementation period, and preparations for handover should be in place.
## Annex 1: Cross-referencing the New PPA with the Old BPA

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<tr>
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<td><strong>General comments</strong></td>
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<td><strong>Articles specific to Specialised project activities</strong></td>
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<td>Participation and obligations of the Partner</td>
<td>Article 6</td>
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<td>Monitoring</td>
<td>New Section</td>
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<td>10.5–10.10</td>
<td>Use of resources</td>
<td>New Section</td>
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<td>10.11–10.17</td>
<td>Transfer of monies to UNHCR from Partner</td>
<td>Annex A.7</td>
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<td>10.18</td>
<td>Application of rate of exchange</td>
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In the Spirit of Partnership
What NGOs Should Know About UNHCR’s New Partner Selection Policy and Project Partnership Agreement (PPA) Template

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<td>Maintenance of project records</td>
<td>Appendix 1.A.8</td>
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<td>10.20 – 10.26</td>
<td>Goods and property</td>
<td>6.10</td>
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<td>10.27 – 10.30</td>
<td>Inspection, monitoring and audit</td>
<td>6.03; Appendix 1.A.9</td>
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<td>10.31 – 10.37</td>
<td>Investigation and ethical considerations</td>
<td>6.03</td>
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<td>10.38 – 10.49</td>
<td>Partner personnel</td>
<td>Article 7; 4.03; 6.13; Appendix 1.B.15</td>
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<td>10.50-10.51</td>
<td>Assignment to a 3rd party – non commercial entities</td>
<td>6.09</td>
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11 Other provisions

| 11.1     | No party to benefit                          | 4.04                 |
| 11.2 – 11.3 | Anti-corruption and anti-fraud              |                     |
| 11.4     | Compliance with legislation                  | 6.14                 |
| 11.5     | Taxation and customs                         | 6.07                 |
| 11.6-11.10 | Copyright, patent and proprietary rights    | 8.01                 |
| 11.11 – 11.16 | Confidentiality                            | 8.02                 |
| 11.17 – 11.25 | Protection of personal data                |                     |
| 11.26 – 11.30 | Visibility                                | 6.12                 |
| 11.31 – 11.32 | Responsibility for claims                    | 4.02                 |
| 11.33    | Privileges and immunities                    | 8.03                 |
| 11.34 – 11.37 | Force majeure                              | 8.04                 |
| 11.38 – 11.41 | Amicable settlement                         | 8.05; 8.06           |
| 11.42 – 11.49 | Termination                                | 8.07                 |

12 Amendments

13 Contact data

14 Appendices and signature

15 Language
Annex 2: Summary of key issues, big changes and areas for follow-up

Key issues

**Timetable:** Although UNHCR’s new PPA template was finalized in December 2013, many of its accompanying documents are still being drafted. NGOs should provide UNHCR with specific suggestions on these draft documents. New policies from UNHCR should not apply to PPA contracts that have already been signed.

**Structure:** The new PPA is a more professional and thorough document in many ways, with many additional references to the Principles of Partnership as well as source documents and policy.

It has been substantially restructured, which makes tracking changes from prior agreement a real challenge. Many substantive changes have been introduced through fairly modest changes to the language of the agreement.

The new PPA moves some items (particularly related to sector-specific projects, like education and SGBV) out of the project documentation and into the PPA, therefore standardising them.

**Balance:** The PPA appears unbalanced in that it spells out in much more detail the obligations for NGO partners, but it is not specific on the parallel obligations on UNHCR. As such, an opportunity has been missed to institutionalise the partnership approach and protect the Partners also – and by doing so, promote best outcomes for POCs.

**Resource implications:** The PPA places new obligations on partners, which will require additional resources. Partners should seek UNHCR funding to address these requirements within their project budgets.

The Big Changes

**Involvement of the Controller:** The new PPA is more explicit about exceptions, revisions and changes to the contract, most of which require the involvement of the UNHCR controller. These include:
- No cost extensions of project implementation period or project liquidation period
- The use of pooled accounts
- The use of Interest Revenue or Miscellaneous Revenues for project expenditure

**Periodicity of Transfers:** The first instalment now allows for the inclusion of the cash requirement of an additional month’s planned activities as a lead-time to ensure Project cash flow. The old BPA’s clause 5.04.02 (that had required certification that no more than 30% remains unspent) has been removed.

**Reporting Obligations:** The new PPA has reduced obligatory reporting, but UNHCR can increase this by ticking a box when processing the agreement. Projects including warehousing, cash and vouchers, or nutrition work have additional reporting expectations.

**Moving funds between budget lines:** This appears to have been loosened, with the possibility to move funds between budget groups as well as between lines within a group. Does not apply to personnel.

**Overhead support costs:** UNHCR will now apply a flat 7% Overhead Support Cost rate for all NGOs implementing projects in countries other than where their headquarters are located, excluding bulk procurement, cash/vouchers, and revolving loans/ microcredit.

**Visibility:** Two elements have been added. First, partners must inform UNHCR whenever there are changes in the partners’ receipt of complementary contributions from other donors. Second, UNHCR can request the partner to provide visibility to UNHCR’s own donors.

**Data protection:** A new section on personal data protection has been added, stating that partners shall comply with and implement “relevant UNHCR policies on data protection.” – which do not yet exist.

**Audit:** Audit thresholds have been removed: all projects funded by UNHCR are subject to audit. Audit scope has increased to include project performance metrics.

**Termination:** In the old agreement, UNHCR could terminate the agreement with cause with immediate effect. In the new PPA, either party can terminate the agreement without cause at any time by giving 90 days advance written notice to the other Party.

Key areas for follow up with UNHCR

**Access to key documents:** Because UNHCR’s Partner Portal will not likely be ready before the end of 2014, UNHCR and ICVA should ensure that all finalized documents accompanying the Framework (including sector-specific guidelines) are easy to find in a centralized location.

**Updates:** UNHCR should alert partners to changes to and finalisation of guidelines, and introduction of new policy. It should be made clear to UNHCR that policies introduced during the Implementation Period should not be considered binding.

**Principles of Partnership:** Although these are not embodied by the detail of the document, they are explicitly referenced in the preamble, and should inform further discussions.

**Reporting Obligations:** UNHCR guidance should emphasise that additional regular and ad hoc reports should be required by UNHCR only when necessary and justified.

**Cost implications:** UNHCR should acknowledge within their guidance the increased cost implications of the new PPA, and commit to support capacity building to meet these where required.

**Salary contributions:** UNHCR practice in the field is not consistent. NGO independence should be preserved. UNHCR should recognise the need to meet 100% of normal NGO salaries in some cases.

**Data protection and misconduct:** Data protection rules and misconduct guidance are unrealistic in the short term for many NGOs, which will need support to develop capacity.
### PPA subject area

<table>
<thead>
<tr>
<th>Previous PPA</th>
<th>What has changed</th>
<th>Suggestions</th>
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<tbody>
<tr>
<td><strong>Preamble</strong></td>
<td>Revised preamble makes more reference to Principles of Partnership and ways of working. Partners are now explicitly responsible and accountable for use of resources, delivery of results and outputs (vii).</td>
<td>Use the Principles of Partnership to advocate for measures compensating for some of the less balanced sections of the PPA and guidance.</td>
</tr>
<tr>
<td>1. Definitions</td>
<td>Not clear?</td>
<td>New PPA provides clear, concise boundaries for all terms eliminating risk of misinterpretation and providing legal protection for UNHCR.</td>
</tr>
<tr>
<td>2. Nature and Extent of Cooperation</td>
<td>Article 1</td>
<td>More explicit in nature of the partnership. Article 2.4 states that while previous discussions are 'embodied', they are actually over-ridden by this agreement. NGOs should carefully consider which previous agreements might be overridden as a result of signing a new PPA.</td>
</tr>
<tr>
<td>Section 1. Project Specific Provisions</td>
<td>New PPA has a substantially revised structure, making direct parallels difficult.</td>
<td></td>
</tr>
<tr>
<td>3. Duration of this agreement</td>
<td>Article 3</td>
<td>More clearly defined start date and completion date (no later than 31 December of the budget year unless there are exceptional circumstances). Project liquidation period (no later than 31 January of the year following the project implementation, except in exceptional circumstance). No scope for unplanned costs – any additional costs will require an amendment [see also Art. 10.6] Controller’s written agreement in advance is needed for No Cost Extensions to implementation period or liquidation period. Annual project approach remains detrimental to effective planning and implementation, not cost-effective, potential negative impact on POC: NGOs may want to consider options to lobby UNGA for longer cycle. The PPA guidance note should explicitly state that requests for No Cost Extensions should be processed by UNHCR no later than 30 November.</td>
</tr>
<tr>
<td>4. Project Identification</td>
<td>Article 2.01</td>
<td></td>
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<tr>
<td>5. Project reporting</td>
<td>Article 2.08 Annex 1, Article 12</td>
<td>Quarterly reporting reduced to half-year. However, quarterly reporting can be quickly re-introduced by UNHCR checking boxes in 5.1. Main reporting dates unchanged. UNHCR must accept the report (and by implication, can reject it) [5.7] Additional reporting implied by sections on cash, warehouse and inventory, and monitoring. Ensure that all reporting obligations are negotiated and documented in advance of signing. The PPA guidance note should add a timeline for UNHCR to accept the reports (article 5.7) and strongly recommend only adding additional requirements if absolutely necessary (based on the commitment to minimise reporting 5.6)</td>
</tr>
<tr>
<td>6. Resource requirements and financial arrangements</td>
<td>Appendix 1.</td>
<td>Clearer boundaries on partner-provided funding (in-kind/cash) Need to list in-kind contributions from extra-project sources (specifically personnel). This issue is connected to discussions about 7% OSC (6.9) and about intellectual property (11.6 - 11.10)</td>
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<td>Periodicity of transfers</td>
<td>6.4 - 6.8</td>
<td>Previous PPA: One month activity budget included as ‘float’ with first transfer, which should be helpful for NGOs. Clear time frame for transfers included, also helpful. New PPA: &lt;30% unspent clause [Old 5.04.2] has been removed, also helpful. UNHCR retains ‘discretion’ over transfer amounts based on availability of funds and performance of partner.</td>
<td>Possible space to negotiate locally for lower overheads for procurements and cash / vouchers</td>
</tr>
<tr>
<td>Banking</td>
<td>Article 6.02, Appendix 1.A.6</td>
<td>Treatment of pooled funds clarified, although pooled accounts are unlikely to be authorised – experience suggests that this is highly challenging. Obligation to have interest-bearing account dropped (although the guidance states that an interest bearing account would be ‘normal’, the PPA says ‘preferably’).</td>
<td>Possible space to negotiate locally for lower overheads for procurements and cash / vouchers</td>
</tr>
<tr>
<td>Project Budget and transfers</td>
<td>Appendix 1.A.2</td>
<td>Possibility for 15% transfers between budget lines excepting staffing without prior authorisation from UNHCR [6.11] Previously, this was 15% within each grouping of line items. Flat rate 7% applies to Headquarters Overhead Support Costs, but HOSC has exemptions: bulk procurement, cash &amp; vouchers and microcredit are zero-rated. Only applies to International NGOs.</td>
<td>Action needed to clarify the guidance: which is not consistent with the PPA. It states that only in exceptional circumstances (“…where there is a long history of partnership and performance and when allowed by the nature of Project activities …”) will transfers be allowed at the objective level. Propose a reduced rate OSC (perhaps 1% for bulk procurement and 4% for C&amp;V)</td>
</tr>
<tr>
<td>Commercial procurement</td>
<td>Article 6.11, Appendix 1.B.16</td>
<td>Explicit reference to UNHCR procurement guidelines. Two levels of authorisation delegated to Partners. Partners need to be pre-qualified for procurement.</td>
<td>Propose a reduced rate OSC (perhaps 1% for bulk procurement and 4% for C&amp;V)</td>
</tr>
<tr>
<td>Articles specific to Specialised project activities</td>
<td>Since the following sections are optional, they are not numbered.</td>
<td>Propose a new (numbered) heading 6.16 introducing the project specific sections?</td>
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<tr>
<td>Cash and vouchers</td>
<td>New section</td>
<td>New document required relating to warrantee periods beyond the term of the project agreement [subsection b.iii] Reference UNHCR guidelines</td>
<td>Cash transfers carry specific monitoring and reporting obligations</td>
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<td>Building, shelter, construction</td>
<td>Appendix 1.B.17</td>
<td>New document required relating to warrantee periods beyond the term of the project agreement [subsection b.iii] Reference UNHCR guidelines</td>
<td>NGOs should take note of: cost implications relating to insurance of stocks; and expectations of daily, weekly and monthly reporting obligations</td>
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<td>Distributions</td>
<td>Appendix 1.B.18</td>
<td>New document required relating to warrantee periods beyond the term of the project agreement [subsection b.iii] Reference UNHCR guidelines</td>
<td>NGOs should take note of: cost implications relating to insurance of stocks; and expectations of daily, weekly and monthly reporting obligations</td>
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<td>Warehouse and inventory</td>
<td>New section [App 1.B.18.1]</td>
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<tr>
<td>Revolving funds</td>
<td>Appendix 1.B.19</td>
<td>No change apart from new Management guiding document Revolving funds relate to a 4 year agreement referenced within a 1 year agreement.</td>
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<tr>
<td>Education</td>
<td>New section</td>
<td>Reference policy documents including several non-UNHCR references</td>
</tr>
<tr>
<td>Environment</td>
<td>New section</td>
<td>Reference policy documents (including a global energy strategy that was released after the PPA was finalized) including one non-UNHCR reference</td>
</tr>
<tr>
<td>Fuel, vehicle workshop and heavy vehicles</td>
<td>New section</td>
<td>Reference UNHCR checklists</td>
</tr>
</tbody>
</table>

### Section 2. General Provisions

| 7. Participation of the population of concern | Appendix 1.B.14 | 2011 policy document on Age, Gender and Diversity | Policies that post-date the signing of the agreement should not be binding on the NGO partner. OR List of UNHCR policies (with hyperlinks) that do apply to the partner to be annexed to the project document. |
| 8. General responsibilities of the parties | Explicit separation of partner and UNHCR, with protection for UNHCR however, not for partner All actions undertaken (presumably, including actions taken by subcontractors?) fall under the legal responsibility of the partner, not of UNHCR |
| 9. Participation and obligations of UNHCR | Article 5 | Runs to 9.2 – considerably shorter than old Art 5. Loss of access to UNHCR advisory services [old 5.01] Loss of access to other parts of the UN system [old 5.02] Loss of support to customs clearing [old 5.03] | Suggest UNHCR reinstate access to these services through the guidance note |
| 10. Participation and obligations of the Partner | Article 6 | Runs to 10.51. (with additional obligations included in Article 11) Dealt with by subsection, below Requirement for partner financial participation has been dropped |
| Implementation of the project 10.1 – 10.3 | New guiding documents to follow |
### Monitoring

<table>
<thead>
<tr>
<th>PPA subject area</th>
<th>Previous PPA</th>
<th>What has changed</th>
<th>Suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.4 Monitoring</td>
<td>New Section</td>
<td>New section, with new explicit documentation requirements – annexes to the Project Description and Project Work Plan. Joint monitoring approach is new. Guidance implies that “joint review” would be a more appropriate terminology (and occasionally refers to it as “joint monitoring and review”, as this is an external, intermittent process with much in common with evaluation, rather than an on-going monitoring process. The PPA suggests that such joint evaluation will be a mixture of “learning process” and “passing judgement on quality”.</td>
<td>NGOs should take note of: cost implications of monitoring, which includes aspects of “sharing” data – that is, potentially, additional reporting. Clarify if monitoring documentation is new</td>
</tr>
</tbody>
</table>

### Use of resources

<table>
<thead>
<tr>
<th>Use of resources</th>
<th>New Section</th>
<th>Due to strengthening anti-terror regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.5 – 10.10</td>
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</table>

### Transfer of monies to UNHCR from Partner

| Transfer of monies to UNHCR from Partner | Annex A.7 | Important changes: UNHCR must authorise income such as bank interest and exchange rate surpluses, insurance claims to be used for project expenditure, otherwise it should be returned to UNHCR. Such authorisation must be in writing, from the UNHCR Controller, and requires an Agreement Amendment. So, exchange rate losses must be suffered by the project while exchange rate gain should be returned to UNHCR; insurance claims (for example, to replace essential project equipment) should be returned to UNHCR rather than used to replace said equipment. Additionally, UNHCR has sole discretion over identifying any financial irregularities and can demand repayment of such expenditure. The duration of this clause is unclear, but presumably 6 years as per audit. | Amendments to UNHCR guidance that insurance payments will normally be approved as project expenditure, except in final 3 months of years 2 and 4. |
| 10.11 – 10.17    |             |                                           |

### Maintenance of project records

| Maintenance of project records | Appendix 1.A.8 | List is consolidated and expanded to include:  
- performance and monitoring reports  
- oversight and administrative arrangements  
- correspondence with UNHCR | These terms should be better defined in the Guidance. |
| 10.19             |             |                                           |

### Goods and property

| Goods and property | 6.10 | UNHCR can now demand return without justification, [0.25c], rather than purely on termination or completion of contract. Goods and property rules apply to low-value items (Appendix 1 / Goods and Property / 2 / b. ’Serially Tracked Items’, and see Goods and Property Report) They may also apply to intangible assets (such as knowledge) – although it is unclear how these should be tracked as per 10.23) See also “Goods and Property Report” | Suggest a lower value boundary associated with Serially Tracked Items, otherwise the term applies to all non-consumable assets. Clarify with UNHCR how this applies to non-tangible assets |
| 10.20 – 10.26     |       |                                           |

### Inspection, monitoring and audit

| Inspection, monitoring and audit | 6.03 | Scope of audit has increased to include project performance, as well as project processes – up to 6 years after close [10.29] This expansion of audit responsibilities was NOT identified as a “key issue” in earlier UNHCR presentations. | Guidance to clarify potential conflict with section on intellectual property rights starting 11.6 NGOs should encourage UNHCR’s forthcoming guidance note on audit and verification to apply an approach that minimizes the burden on field staff and maximises predictability |
| 10.27 – 10.30      | Appendix 1.A.9 |                                           |                                                                 |

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### Investigation and ethical considerations 10.31-37

<table>
<thead>
<tr>
<th>Previous PPA</th>
<th>What has changed</th>
<th>Suggestions</th>
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</thead>
<tbody>
<tr>
<td>6.03</td>
<td>Partners now explicitly required to have a policy framework to avoid personnel deriving personal benefits – plus additional responsibilities regarding communication. [10.32]</td>
<td>NGOs should seek common basis for negotiation, protecting their autonomy, and using the Principles of Partnership as a basis. 10.41 can be seen as protecting NGO pay scales. Remember: UNHCR has a mandate (and therefore an obligation) to provide services; NGOs do not. But UNHCR needs the NGOs to deliver those services. NGOs should work together to inform UNHCR’s forthcoming policy on partner personnel costs.</td>
</tr>
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</table>

### Partner personnel 10.38 – 10.49

<table>
<thead>
<tr>
<th>Previous PPA</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Article 7 4.03 6.13 Appendix 1.B.15</td>
<td>UNHCR will no longer seek privileges and immunities for international personnel of the Partner [old Art 7, removed from new contract] Some detailed obligations have been reduced (e.g. recruitment practices Old App1.B.15.6) UNHCR explicitly not responsible for longer-term costs, benefits, compensation, beyond those stipulated in Annex A of the Project Description. Partner responsible for equality of opportunity, opposition to child labour, insurance, responsibility, confidentiality. Recording of donor contributions to staffing to avoid double-dipping.</td>
<td></td>
</tr>
</tbody>
</table>

### Assignment to a 3rd party – non commercial entities 10.50 – 10.51

<table>
<thead>
<tr>
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<th>What has changed</th>
<th>Suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.09</td>
<td>Partner now needs to demonstrate that sub-contracting will add value to the Project Sub-contracts need to be in accordance with the PPA and specific clauses included. Possible cost implications for Partners in ensuring standards are kept.</td>
<td></td>
</tr>
</tbody>
</table>

### Anti-corruption and anti-fraud 11.2 – 11.3

<table>
<thead>
<tr>
<th>Previous PPA</th>
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</table>

### Compliance with legislation 11.4

<table>
<thead>
<tr>
<th>Previous PPA</th>
<th>What has changed</th>
<th>Suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.14</td>
<td>This clause applies to all goods purchased by the Partner, but should probably only apply to good purchased with UNHCR funds.</td>
<td></td>
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</tbody>
</table>

### Taxation and customs 11.5

<table>
<thead>
<tr>
<th>Previous PPA</th>
<th>What has changed</th>
<th>Suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.07</td>
<td>This clause applies to all goods purchased by the Partner, but should probably only apply to good purchased with UNHCR funds.</td>
<td></td>
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</tbody>
</table>

### Copyright, patent and proprietary rights 11.6 – 11.10

<table>
<thead>
<tr>
<th>Previous PPA</th>
<th>What has changed</th>
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</tr>
</thead>
<tbody>
<tr>
<td>New Section Only wealthier Partners are likely to be able to make the ‘significant contributions’ required to secure a licence (see 11.10) to intellectual property they have contributed towards. This may disadvantage smaller NGOs and southern Partners. Could cause significant problems when one Partner hands over to a different NGO.</td>
<td>The guidance document suggests that this clause provides flexibility to partners; the PPA suggests otherwise. Seek clarity in line with the spirit of Partnership. Note that the current approach may drive Partners to develop materials with their own resources to protect intellectual property, and therefore deprive UNHCR of the opportunity to benefit from innovation.</td>
<td></td>
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</tbody>
</table>
### In the Spirit of Partnership
What NGOs Should Know About UNHCR’s New Partner Selection Policy and Project Partnership Agreement (PPA) Template

<table>
<thead>
<tr>
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</table>
| Confidentiality                      | 8.0          | Confidentiality of “all Information” (see Annex 1 for very broad definition) is contrary to many NGOs commitments to participation and transparency and to Sphere Standards (see Core Standard 5, Sphere Handbook pp 68-71)  
It is unclear what would happen to Information that was Disclosed by e.g. a refugee to the Partner, as part of the Project activities, with the express instruction that it should not be released to UNHCR. | Seek guidance with examples from UNHCR, which demonstrates the Principles of Partnership.          |
| Protection of personal data          | 11.17 – 11.25| Comprehensive new section  
Policy on personal data protection is not quoted – will not be available for several months.  
Need for protection of data [11.21]. Effective data protection requires hi-tech IT systems with cost implications. Particular issues may arise when delivering cash and vouchers through third party providers e.g. via mobile phones.  
No end-date for data protection after project closes. Need for this to be reflected in staff JDs. Some agencies have concerns with this clause, relating to the transfer of data to UNHCR. The PPA’s language does not recognize the internal rules and policies of the Partners on this issue. | Policy should not postdate the agreement.  
Seek guidance on the sharing of personal information for C&V delivered through ‘new technology’.  
Since UNHCR’s policy on data protection will not likely be completed for many months, the UNHCR guidance note should specify that the partner is only accountable for compliance with policies that came into affect before the date of signing the agreement. |
| Visibility                            | 6.12         | Article 11.27 is in direct conflict with Article 11.12. 11.27 says that neither party is responsible for the publicity materials of the other, while the 11.12 says that partners must seek UNHCR approval prior to releasing any information.  
Article 11.30 on providing visibility to UNHCR’s donors is additional, and non-specific. Such clauses need to be highlighted prior during programme discussions, not brought in an ad hoc manner. | Seek guidance from UNHCR on the interpretation of clauses on visibility and project information.  
The PPA guidance should provide opt-out language if drawing attention to UNHCR’s donors could have an adverse affect on the program, and UNHCR should be encouraged to provide visibility to the NGO if the NGO requests. |
| Force majeure                        | 11.34 – 11.37| New clause includes the words “The Parties acknowledge and agree that the existence of harsh conditions within areas from which the UN are disengaging from humanitarian operations or which are subject to civil unrest is not, in and of itself, force majeure.”                                                                 |                                                                                                   |
| Amicable settlement                  | 8.04         | Arbitration rules have changed. While punitive damages are not allowed, the arbiters may now award return or destruction of property, confidential information and other protective measures. Simple interest may be charged.  
A new (but qualified) time limit of three years has been included to begin arbitration.         |                                                                                                   |
| Termination                          | 8.07         | Both parties have an additional right to terminate the agreement without cause, 90 days. UNHCR (alone) may terminate the contract with cause, immediate effect. Responsibilities during early termination are clarified.  
Note that UNHCR can pursue the Partner for all damages and costs, even if the Partner has been declared bankrupt or insolvent. |                                                                                                   |
| Appendices                            |              |                                                                                                                                                                                                                                                                                                                                          |                                                                                                   |
## In the Spirit of Partnership
What NGOs Should Know About UNHCR’s New Partner Selection Policy and Project Partnership Agreement (PPA) Template

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<tbody>
<tr>
<td>Appendix 1. Definitions</td>
<td></td>
<td>A valuable clarification</td>
<td></td>
</tr>
<tr>
<td>Appendix 2. Standards of managing misconduct</td>
<td></td>
<td>Same as previous agreement, but this was reportedly a very recent addition to the BPA. Minimum standards – or a plan to improve or work towards them</td>
<td>Seek UNHCR guidance on the concept of partners (and sub-partners) ‘working towards’ these standards, and UNHCR’s willingness to support the building of this capacity.</td>
</tr>
<tr>
<td>Annexes and associated docs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex A Project Description</td>
<td></td>
<td>Risk management section is optional (3.2). Partners would be strongly advised to complete a risk analysis for every project – and for that analysis to include issues relating to the PPA contract identified above. Note that the risk management section of the Project Performance Report is not optional. Overall, the Project Description format is quite light, which brings a risk that the project is not well defined, which in turn may leave the partner exposed.</td>
<td>ICVA guidance to partners to undertake risk management of all UNHCR projects.</td>
</tr>
<tr>
<td>Project Performance Report</td>
<td></td>
<td>Performance is reduced to numerical values. Monitoring system must be set up to accommodate this expectation.</td>
<td></td>
</tr>
<tr>
<td>Goods Property Report</td>
<td></td>
<td>See concerns above</td>
<td></td>
</tr>
</tbody>
</table>

Note: References to the “Guidance” documents means draft documents produced by UNHCR: *Project Agreement Guidance (undated)* and *Project Agreement - How to Complete, (April 2014).*