

Consultancy Agreement

This agreement is effective from **Mention Effective Date** by and between:

CARE India Solutions for Sustainable Development a company registered under section 25 of the Companies Act, 1956 (now section 8 of the Companies Act, 2013) having its corporate office at A-12, 'Bhilwara Towers', Third Floor, Tower II, Sector-1, Noida, Uttar Pradesh 201301".through its Authorized Signatory (hereinafter called "**CARE INDIA**"which expression unless repugnant to the context and/or expressly excluded shall include its assigns) party of the second part

AND

<**AGENCY NAME**> is an individual Agency, located at <**AGENCY ADDRESS**>. having on the other part which expression shall unless repugnant to the context hereof, be deemed to mean and include its successors and assigns:

- 1) **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with, and governed by the laws of Republic of India, and within the exclusive jurisdiction of courts in Delhi unless agreed otherwise in writing by parties without regard to its choice of law /rules.

- 2) **SCOPE OF SERVICES.** Agency shall complete the Services, including providing any specified deliverables, and be provided compensation as described in **Schedule A**, as modified in writing by the parties from time to time. All Services shall be of the best industry standards, conforming to or exceeding all specifications provided by Agency. All the resources deployed shall be fully qualified and skilled to perform all the services as described in the schedule A. If risks of personal safety are a part of the Services, Agency shall execute the release set forth in **Schedule B**. Time is of the essence and delivery of Services shall be strictly in accordance with this Agreement. In the event of a dispute between the parties, CARE India may withhold payments due the Agency until a settlement has been reached. The compensation and currency hereunder shall not change regardless of exchange rate fluctuations, except as CARE India may otherwise agree in writing.

- 3) **OWNERSHIP OF WORK.** Agency certifies that all materials created hereunder for CARE India [other than materials preexisting this Agreement and prepared for other customers] shall be original work and that no third party shall hold rights in or to the Services. Agency agrees: (a) all rights to the Services shall belong to CARE India and be deemed work for hire; and (b) on CARE India's request, Agency shall provide CARE India all materials containing the Services, including deliverables, and any documentation required to show CARE India's ownership of the Services.
 - i) **Pre-Existing and Independently Developed Works.** Each party will retain all rights in Intellectual Property that it owned prior to the Effective Date, and Intellectual Property that it acquires from a third party or develops after the Effective Date of this Agreement outside the scope of performance of this Agreement (collectively, "Background IP"). Each party further will own any derivative works of its Background IP "Intellectual Property" means, amongst others, inventions, designs, mask works and works of authorship, as those terms are understood under applicable law, which are conceived or fixed in tangible form by a party.

 - ii) **CARE India's Ownership Rights.** All Intellectual Property rights in the Deliverables will constitute work made for hire under the applicable copyright laws and will be owned exclusively by CARE India. To the extent that title to any Deliverable does not vest in CARE India as a matter of law, or to the extent the Deliverable is not deemed a "work made for hire" under applicable law, Agency hereby assigns and agrees to assign all right, title and interest in and to the Deliverable to CARE India immediately upon payment for the same. Agency agrees to take all necessary steps and

execute all documents reasonably required by CARE India, to effectuate the vesting of such title and ownership.

iii) **Agency Intellectual Property.** The Agency grants to CARE India a nonexclusive, worldwide, royalty-free, fully paid-up license during the term of this Agreement to use all Agency Background IP that is embedded in a Deliverable. Provided, however, that in the event that the CARE India desires to use the same beyond the term of this Agreement, the parties shall mutually agree on the terms and conditions of such use. Further provided, that notwithstanding anything contained herein, neither party shall have any right to reverse-engineer or in any other manner use the intellectual property of the other party than as provided herein.

iv) **Permitted Use of Marks.** Subject to the terms and conditions of this Agreement, CARE India grants to Agency the non-exclusive limited license to use certain of CARE India's Marks as may be designated by CARE India from time-to-time, as necessary for Agency to perform the Services and as authorized by CARE India in writing in each instance. Agency will adhere to CARE India's brand guidelines, as updated and amended from time-to-time, at all times in connection with its use of the Marks and acknowledges that it has received a copy of such guidelines. Agency acknowledges that CARE India will have the right to review the use, reproduction or display of any Marks by Agency in connection with the Services to ensure that such use, reproduction or display is consistent with the terms of this Agreement. Agency acknowledges that the Marks, all rights therein, and the goodwill associated therewith, are and will remain the exclusive property of CARE India. "Marks" shall mean name, trade names, trademarks, service marks, logos, designs, symbols or domain names.

4) **CONFIDENTIAL INFORMATION.** During the term hereof and for three years afterwards, except as specifically set forth herein to perform the terms of this Agreement, neither party shall disclose confidential information of the other party to any third-party or make use of such confidential information for its own purposes without the owner's prior written consent. Confidential information shall mean any information (written, oral or observed) relating to: (a) donors or potential donors; (b) participants; (c) employees; (d) business or strategic plans; (e) finances; or (f) a relationship with any governmental entity; and shall also include information specifically designated confidential by the owner or that the disclosing party knows or reasonably should know is not public. Confidential information does not include any information generally known to the public or readily obtainable from public sources. Further, confidential information may be disclosed to government authorities if the disclosure is required by law and the disclosing party has provided the owner notice and, if practicable, a reasonable opportunity to defend against such disclosure. Upon the termination or expiration of this Agreement, Agency shall destroy or return such information of the other party in its possession, including copies and notes, and in the case of destruction, at the owner's request shall certify to such destruction. Neither party shall use the other party's name or marks in any form of publicity or publicly disclose information relating to its Services without the other party's prior written consent. Neither party shall publicly disparage the other. This clause will survive the termination of this agreement.

5) **CONDUCT.** Agency shall comply with all laws and regulations applicable to its performance hereunder. Agency and its employee shall maintain and comply with a written code of conduct that prohibits giving anything of value, directly or indirectly, to any person or entity, including government officials or CARE India staff, in the form of a bribe or kickback; establishes appropriate limitations on transactions with relatives of Agency employees or businesses or ventures related to Agency or its employees; and otherwise properly governs the performance of its employees engaged in soliciting, awarding or administering contracts and receiving gifts. Agency shall comply with industry best practice to avoid exploitation of child labor and shall not discriminate on the basis of race, ethnicity, religion, gender, disability, While on CARE India premises or working for CARE India, Agency shall comply with (a) the office and security policies and directives of CARE India; (b) CARE India's policy prohibiting harassment and discrimination; and (c) such other policies as CARE

India may make known to Agency. The parties are independent contractors of each other, and : (a) each party is responsible for all payments relating to its Services, including without limitation, social security, income tax withholding, and insurance ; (b) neither party is an agent of the other, has the authority to enter into contract or obligation on behalf of the other party ; and (c) nothing herein shall create an employer/employee relationship, partnership or joint venture between the parties, or between one party and any employee of the other.

- 6) **ANTI CORRUPTION.** Agency shall comply with all laws and regulations applicable to its performance hereunder. Agency and its employees shall maintain and comply with a written code of conduct that prohibits giving anything of value, directly or indirectly, to any person or entity, including government officials or CARE India staff, in the form of a bribe or kickback; establishes appropriate limitations on transactions with relatives of vendor's employees or businesses or ventures related to Agency or its employees; and otherwise properly governs the performance of its employees engaged in soliciting, awarding or administering contracts, and receiving gifts.
- 7) **INDEMNITY.** The Agency shall be responsible for compliance with all the laws and regulations that may be applicable on the part of the Agency, its subcontractor(s), employee(s) or agent(s) including but not limited to tax laws, service tax laws, labour laws which shall include Payment of Wages Act, Minimum Wages Act, Bonus Act, employees Provident Fund Act, Esic Act, Workmen Compensation Act, Contract Labour Regulations and Abolition Act and all other applicable laws. The Agency assumes all liability for all loss, damage, cost, and expense arising out of or in any way connected with the operation or performance of, or the failure to perform, any duty, obligation, or activity on the part of the Agency, its subcontractor(s), agent(s), or employee(s) in connection with this Agreement. The Agency further agrees to defend, indemnify and hold harmless CARE India and the officers, agents and employees of CARE India and such entities from all loss, damage, cost and expense, including all reasonable attorneys' fees, arising from or in any way connected with the operation or performance of, or failure to perform, any duty, obligation, or activity on the part of the Agency, its subcontractor(s), agent(s), or employee(s) in connection with this agreement. The parties shall first try to resolve any controversy or claim arising out of or relating to this Agreement, or the breach or alleged breach thereof, by good faith negotiation among senior managers unrelated to the dispute, and failing that, by arbitration. The parties shall select a mutually acceptable arbitrator and work in good faith with the arbitrator to resolve the dispute as per the Indian Arbitration Act. To the extent permitted by law, the arbitrator's decision shall be final and binding and may be entered in any court having competent jurisdiction. This paragraph shall survive the completion or termination of this Agreement
- 8) **INVOICE STATEMENTS AND ADJUSTMENTS.** Agency shall provide CARE India with periodic and final invoice statements indicating Services performed, expenses incurred (if reimbursable pursuant to Schedule A), past payments made and any other information CARE India shall reasonably request. Agency shall provide a final invoice statement whenever requested by CARE India up to sixty (60) days after the date set for the completion of the Services on Schedule A. The receipt or payment by CARE India of any invoice shall not preclude CARE India from questioning the correctness thereof at any time. If any invoice is found to be incorrect, that invoice shall be corrected immediately and an appropriate payment or adjustment made between the parties. Agency shall keep complete and accurate records relating to this Agreement and providing a basis for the invoice statements to CARE India. During the term of this Agreement, and for three (3) years thereafter, CARE India, donor if any, or their agents, during normal working hours, shall have full and free access to inspect and make extracts from such records, provided that CARE India or donor shall provide Agency at least seven (7) days prior written notice. If any such examination and audit shall disclose any deficiency of five percent (5%) or more for the period audited, the Agency shall pay, in addition to such deficiency, the reasonable cost of such examination and audit.
- 9) **EXPIRATION AND TERMINATION.** This Agreement shall expire 30 (Thirty) days after the date set forth on Schedule A for the completion of the Services. Either party may terminate this Agreement at any time , upon 30

(Thirty) days prior written notice to the Agency. On receipt of such notice, Agency shall discontinue all services, and terminate any subagreements hereunder, unless the notice otherwise provides. Upon such termination not involving a breach of Agency's obligations hereunder, full and complete settlement of all Agency's claims shall be made as follows: a) Agency shall be paid full compensation for services properly performed prior to the termination date and materials relating thereto approved by CARE India, such as work-in-progress, plans, drawings, and specifications, subject to Agency returning all CARE India's property, advances and other related materials in the possession of Agency to the satisfaction of CARE India and b) title shall vest in CARE India for any such materials for which CARE India has paid. Certain obligations by their content shall survive any termination or expiration of this Agreement, including in sections 3 through and including 9 hereof.

- 10) ENTIRE AGREEMENT.** This Agreement, together with its attachments, states the complete agreement of the parties and supersedes any prior or contemporaneous agreements, whether oral or written, with respect to the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by all parties hereto. All attachments are incorporated by reference herein and form a part of this Agreement. Failure by CARE India to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any specific waiver or relinquishment be deemed a blanket waiver or relinquishment of such right or power. No waiver shall be binding unless in writing and signed by the party granting the waiver. If any provision of this Agreement shall be held invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Agreement will not in any respect be affected or impaired thereby. This Agreement, and the duties to be performed hereunder, shall not be assigned, in whole or in part, except with the prior written consent of the other party. No provision of this Agreement shall in any way inure to the benefit of any third-party so as to constitute such party as a third-party beneficiary of this Agreement or any one or more of the terms hereof, or otherwise give rise to any cause of action in any party not a party hereto.
- 11) ANTI TERRORISM CERTIFICATION.** Each Party certifies that it has not provided and will not provide material support or resources to any individual or organization with the knowledge or intent that the support or resources be used to prepare for or carry out an act of terrorism in violation of applicable laws.
- 12) DONOR REGULATIONS.** If this Agreement is funded with donor ("Donors") funds, certain donor requirements may apply. CARE India will notify you regarding these additional requirements if any from time to time and the Agency shall be laible to comply with the same..
 - a. At CARE India's request, Agency shall sign any certificates or documents and such take actions as are required by the donor or the governing law for such donor in India.
- 13)** No delay or failure by either party in excercising any right or no partial or single exercise of any right shall be deemed to constitute the waiver of that right or any other right under this agreement .
- 14)** Agency agrees not to use CARE India copyright material for its own advertising or publishing puposes without the written authorization from the CARE India
- 15)** Agency represents and warrants that Agency's signing of this Agreement and the performance of Agency's Services hereunder is not and will not be in violation of any other contract, agreement or understanding to which Agency is a party or by which Agency is bound.

AGREED TO AND ACCEPTED BY

CARE India Solutions for Sustainable Development

AGENCY

Primary Signatory

By: _____

Name: **MENTION NAME**

Title: **Mention Title**

Date:

By: _____

Name: **MENTION NAME**

Title: **Mention Title**

Date:

SCHEDULE A

1. **Scope of Services.** Agency shall perform the following duties:

SCOPE OF WORK/SERVICES - Attached

Time. Agency shall start Services on :**Mention Start Date**
All Services shall be completed by :**Mention End Date**

Assigned Employees. If names of Agency's employees are filled in below, then Agency agrees that these employees shall perform the duties under this Agreement, unless CARE India shall otherwise agree.

Contacts. Unless a party shall otherwise advise in writing, the contacts for this Agreement are:

CARE India Contact Person.

Name : **MENTION NAME**
Title :Mention Title

Address : CARE INDIA,
H No 14, Patliputra Colony Patna-13
Bihar,Patna

Country : India
Tel: Mention Phone No
Email: Mention Email ID

Agency Contact Person.

Name : **MENTION NAME**
Title : Mention Title

Address: MENTION ADDRESS

Country: India
Tel: Mention Phone no
Email: Mention Email ID

2. **Compensation.** Agency shall receive the following compensation for the Services and any deliverables:
The CARE will pay consolidated amount of **Rs. XX,XX,XXX/- (Rs Consultancy Fees in words only)** for this assignment.

This amount will be paid to you after submission of the report as per attached timeline of deliverables (TOR) and satisfactory proof of determined by the point person of CARE and all payments will be approved by Chief of Party, BTSP CARE India, Bihar.

3. **Expenses.** Agency shall be reimbursed reasonable expenses for:
CARE India will pay all expenses on actual basis upon submission of copies of bills/ invoices/vouchers towards i.e.travel, taxi, Fooding, Lodging, communication , Documentation charges, fringe benfits etc in connection to the assignment during the contract period, which will be total limited to **RS. XX,XX,XXX/- (Rs Reimbursement Expense in words only)**.
No reimburseable expense in excess of Rs XX,XX,XXX/- shall be incurred without prior written approval by point person

4. **Manner of Payment.** Agency's compensation and reimbursable expenses shall be paid by cheque/wire transfer 30 (**Thirty**) days after receipt of proper approved by the point person. Payment will be made by cross cheque/DD/NEFT after deducting appropriate income tax as per the Income Tax rules.

5. **Good Faith Estimate of Total Payments.** The following is a good faith estimate of the total payments to be made by CARE India under this Agreement:

Compensation (Section 2 above):	<u>Rs. XX,XX,XXX/- (Rupees Mention Consultancy Fees in Words only)</u>
Reimbursable expenses (Section 3 above)	<u>Rs XX,XX,XXX/- (Rupees Mention Consultancy Fees in Words only) On Actuals</u>
Total Sum of Agreement	<u>Rs. XX,XX,XXX/- (Rupees Mention Sum Total in Words Only)</u>

Delivery Schedule (If Applicable)

S. NO	Deliverables	Delivery Date	Amount (In RS)
XX	Detail description of deliverables	DD-MM-YYYY	XX,XX,XXX

SCHEDULE B

Agency Release

(Make copies as needed for each Agency employee)

In connection with Agency's Services, Agency and its employees may encounter difficult conditions and hazards. CARE India requires that Agency all insurance Agency considers appropriate, including emergency medical evacuation coverage, to protect itself and its employees against the risks inherent in the Services. Agency further agrees each of its assigned employees who will travel to perform Services has reviewed and executed the below disclosure and release, which Agency will provide to CARE India.

Agency Release

I agree that in that the course of my Services and travel to and from CARE India missions or projects, I may encounter extremely difficult travel conditions and be subjected to hazards and risks, foreseen and unforeseen, including the dangers of delays, illnesses, injuries, death or kidnapping, or the loss of, or damage to, my property (collectively, each an "injury"). I recognize that CARE India, its employees and agents cannot ensure my safety or that of my property.

I am aware that such injuries may be caused by a variety of difficulties of travel, including, without limitation, natural causes, poor sanitation, infectious diseases, the activities of animals, trip members, CARE India personnel and agents, other persons and war or civil disturbances, and that such injuries may result from negligence or other causes. I appreciate that I may be called upon to exercise extra care for my own person as well as for others around me. I understand that there may not be rescue or medical facilities or expertise necessary to deal with the hazards to which I may be exposed. I understand that these risks exist and not withstanding them I wish to participate in this work and travel hereunder.

I confirm that I have read the foregoing and voluntarily assume all such risks occurring in connection with the Services and travel hereunder and so hereby waive, release and discharge all such claims against CARE India (which includes its officers, agents and employees and its and their respective heirs, legal representatives, successors and assigns) to the extent permitted by applicable law. This Agreement shall bind my heirs, executors, administrators and assigns.

<p><u>Signed by:</u></p> <hr/> <p><i>Print Name:</i> MENTION AGENCY NAME</p> <p><i>Title:</i> Mention Title</p> <p><i>Address:</i> MENTION AGENCY ADDRESS</p>	<p><u>Person to contact in case of emergency:</u></p> <p><i>Name:</i> _____</p> <p><i>Relationship:</i> _____</p> <p><i>Address:</i> _____</p> <hr/> <p><i>Ph #: Home:</i> _____ <i>Work:</i> _____</p>
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