



MASTER PURCHASE AGREEMENT

Contract No. _____

THIS MASTER PURCHASE AGREEMENT (the “**Agreement**”) entered into as of _____ by and between MERCY CORPS, a State of Washington, U.S.A. nonprofit corporation having its principal office in Portland, Oregon, U.S.A. (“**Mercy Corps**”) and _____ (“**Supplier**”) is as follows:

- 1. Master Agreement and Purchase Order Issuance and Acceptance.** From time to time during the term of this Agreement, Mercy Corps may desire to purchase goods from Supplier at the Specifications and Prices specified in this Agreement. Should Mercy Corps desire to purchase goods from Supplier, Mercy Corps’ Authorized Representative will issue Purchase Orders substantially in the form attached hereto as Exhibit A (each, a “**Purchase Order**” or “**PO**”). Supplier must notify Mercy Corps within three business days if it rejects a Purchase Order or requires changes to a Purchase Order.
- 2. Additional Terms and Defined Terms.** Additional Terms are specified in Schedule I hereto (the “**Additional Terms**”). The terms in Schedule I are incorporated in this Agreement by this reference. The following additional defined terms are included in Schedule I: Authorized Representative, Delivery Date, Delivery Location, Delivery Terms, Donor Terms, Goods, Packing Requirements, Pricing, and Specifications. “**Agreement**” means this Master Purchase Agreement, the Additional Terms in Schedule I and each Purchase Order, in each case, as amended, modified or supplemented from time to time. Additional terms may be defined throughout this Agreement.
- 3. Purchase and Sale of Goods.** Supplier will sell to Mercy Corps, and Mercy Corps will purchase and pay the Price(s) for, the Goods in accordance with the terms and conditions set forth in this Agreement and each Purchase Order. The Prices stated in the Additional Terms shall remain valid and apply to all Purchase Orders issued under this Agreement
- 4. Non-Exclusivity.** This Agreement is not intended to create an exclusive relationship between the parties. Unless the Additional Terms specify a Minimum Quantity of Goods, Mercy Corps is not obligated to issue any Purchase Order(s) to Supplier. If the Additional Terms specify a Minimum Quantity of Goods, Mercy Corps shall be obligated only to issue a PO(s) for the Minimum Quantity.
- 5. Specifications.** The Goods must strictly comply with or exceed the Specifications listed in Schedule I. No deviation, substitution or change is permitted without Mercy Corps’ prior written consent.
- 6. Purchase Order Amendments.** Mercy Corps may suspend Supplier's performance, increase or decrease the ordered quantities, or make changes for Mercy Corps’ reasonable business needs by written notice to Supplier (each, a “**Purchase Order Amendment**”). Unless mutually agreed, a Purchase Order Amendment does not apply to change the Goods timely and fully delivered and accepted before the date of the Purchase Order Amendment. If any change causes an increase or decrease in the cost of, or the time required for, Supplier's performance, an equitable adjustment may be made in the price or delivery schedule or both, if such adjustment is set forth in a Purchase Order Amendment signed by the Authorized Representative.

7. Inspection, Acceptance and Rejection.

- a. All Goods will be subject to Mercy Corps' inspection and testing (which may be done by a third party authorized by Mercy Corps), at any time and place, including the period of manufacture/production/creation and before final acceptance. If Mercy Corps inspects or tests at Supplier's premises, Supplier, without additional charge, will provide all reasonable facilities and assistance for the safety and convenience of Mercy Corps' inspectors. No inspection or testing done or not done before final inspection and acceptance will relieve Supplier from responsibility for defects or for other failure to meet the requirements of this Agreement. Notwithstanding any prior inspections or payments made, all Goods will be subject to final inspection and acceptance at the Delivery Location within a reasonable time after delivery (but in no event, less than three days after the date of delivery).
- b. Acceptance will occur only when the Authorized Representative delivers written, signed notice of acceptance to Supplier in the form of a goods received notice (“GRN”) and such notice has been signed by Supplier’s representative. The GRN must include: (1) the GRN number and the packing slip number; (2) the Contract number and Purchase Order number; (3) a description of the Goods; (4) the quantity delivered; (5) final inspection date and location; (6) quantity accepted; and (7) quantity rejected or over-shipped.
- c. If any delivery, documentation or the Goods delivered do not comply with all of the terms and conditions of this Agreement, Mercy Corps may do one or more of the following: (1) reject such nonconforming Goods, accept conforming Goods and reduce the purchase price by such amount as Mercy Corps determines in good faith reflects the value to Mercy Corps of the accepted Goods, (2) accept such nonconforming Goods and reduce the purchase price by such amount as Mercy Corps determines in good faith reflects the reduced value to Mercy Corps of such nonconforming Goods; (3) reject all Goods; and/or (4) terminate this Agreement without any further obligation on Mercy Corps’ part.
- d. If any Goods are finally accepted, Mercy Corps will only pay for the quantity accepted up to the quantity specified in this Agreement. Mercy Corps will in no event pay for quantity above the amount provided for in this Agreement or accepted. Mercy Corps or its agent will hold over-shipments and non-conforming shipments at Supplier's risk and expense for a reasonable time awaiting Supplier's instructions. Supplier will bear the expense of return charges, storage charges and other expenses for over-shipped quantities and Goods not accepted.

8. Packing. All Goods will be prepared for shipping and delivery and will be shipped in accordance with the Packing Requirements listed in Schedule I. Price based on weight will include net weight only. Supplier will not charge Mercy Corps for packaging or pre-shipping costs, such as boxing, crating, handling damage, drayage, or storage. Supplier will mark all containers with necessary handling and shipping information, Contract Number, Purchase Order number date of shipment, and names of the consignee and consignor. A packing list, and other documentation required for domestic or international transit, regulatory clearance or identification of the Goods will accompany each shipment.

9. Transportation, Shipment and Delivery. Shipment/transportation will be in accordance with the Delivery Terms, Delivery Date, and Delivery Location in Schedule I and corresponding POs. Mercy Corps will not be charged for shipping, delivery, loading or unloading costs unless otherwise specified in the Delivery Terms.

10. Risk of Loss. Supplier will bear all risk of loss, damage, or destruction to the Goods, in whole or in part, occurring before final acceptance by Mercy Corps at the Delivery Location; provided, Mercy Corps is responsible for any loss caused by its gross negligence.

11. Taxes, Duties and Expenses.

- a. All taxes, duties and other governmental charges with respect to the manufacture/production/creation of the Goods and the delivery of the Goods to Mercy Corps in accordance with this Agreement will be the liability of, and borne solely by, Supplier. If the law requires Mercy Corps to withhold taxes from payments to Supplier, Mercy Corps may withhold those taxes and pay them to the appropriate taxing authority. Mercy Corps will deliver to Supplier an official receipt for such taxes. Mercy Corps will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.
- b. Supplier is responsible for all expenses incurred by it in performing under this Agreement.

12. Invoicing and Payment.

- a. Mercy Corps will have no obligation to make any payment to Supplier with respect to the Goods until final acceptance in accordance with the Inspection, Acceptance and Delivery clause of this Agreement and delivery of an invoice that fully complies with the requirements specified in this Agreement. Supplier may only include Goods on an invoice after Supplier receives a GRN. Invoices must be submitted within 60 days of Supplier's acceptance of a GRN. Mercy Corps will have no obligation to pay an invoice submitted after 60 days or to pay an invoice amount that Mercy Corps disputes in a written notice to Supplier. Each invoice must contain or attach the following: (1) a copy of the signed GRN; (2) Supplier's name and address; (3) description of the Goods delivered, delivery date, quantity, unit price and total price to be paid; (4) all information necessary for Mercy Corps to implement payment via the Payment Terms (e.g., name of representative to address payment to, address, bank account information as applicable for the method of payment); (5) the Contract Number and Purchase Order number; (6) packing slip number; (7) taxes and duties (only if payable by Mercy Corps per the terms of this Agreement); (8) Delivery Location and Delivery Date; and (9) any other information reasonably required by Mercy Corps. Invoices will only be deemed received on the date they are delivered to the Authorized Representative pursuant to the Payment Terms.
- b. Mercy Corps will make payment in accordance with the Payment Terms within 30 days of receipt of Supplier's fully conforming invoice. Payment of an invoice will not constitute acceptance of Goods, and is subject to adjustment for errors, shortages, defects or other failure of Supplier to meet the requirements of this Agreement. Mercy Corps may set-off amounts owed to Mercy Corps against an amount Mercy Corps owes to Supplier or Supplier's affiliated companies, and Mercy Corps will provide notice to Supplier within a reasonable time after the setoff.

13. Representations, Warranties and Additional Covenants. Supplier represents and warrants to Mercy Corps and covenants with Mercy Corps as follows.

- a. Supplier has full rights and authority to enter into and perform its obligations under this Agreement. Supplier's performance will not violate any agreement or obligation between Supplier and any third party.

- b. The Goods and all documentation required will meet each of the standards and specifications set forth in this Agreement. The Goods are merchantable and fit for their intended purpose, comply with all applicable law and are free from all defects in material and workmanship.
- c. Supplier will deliver good and marketable title to the Goods free and clear of all liens, claims, encumbrances and interests of any other person, entity or government. The Goods will not infringe on any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- d. Supplier will comply with all applicable law, regulations and rules in the performance of its obligations under this Agreement.
- e. Supplier has not, and will not, engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism, including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or the United Nations Security designation list (http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).
- f. Supplier will comply with and train its employees in all applicable laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Supplier has not and will not offer or give any employee, agent, or representative of Mercy Corps anything of value to secure any business from Mercy Corps or influence such person to alter the terms, conditions, or performance of any contract with or purchase order from Mercy Corps, including but not limited to this Agreement.
- g. Supplier, including its owners or employees, does not own, directly or indirectly, any other company that was competing for award of this Agreement or any Purchase Order. Supplier did not seek or obtain confidential information related to the award of this Agreement or any Purchase Order from any Mercy Corps employee, agent or representative. Supplier did not collude or conspire with any other individual or entity to limit competition for the award of this Agreement or any Purchase Order, to set prices being offered or in any other way to interfere with free and open competition.
- h. Supplier is not owned in whole or in part, directly or indirectly, by any immediate or extended family member of any Mercy Corps employee, agent or representative, or, if so owned, Supplier fully disclosed such relationship and any potential conflict of interest has been waived, in writing, by Mercy Corps.
- i. Supplier has not engaged in, and will not engage in, any of the following conduct: (A) trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime); (B) procuring a commercial sex act; or (C) using forced labor.
- j. Supplier is not the subject or any governmental or donor investigation and has not been debarred or suspended by any government, governmental agency or donor.

14. Independent Contractor. The parties intend to be independent contractors. Supplier will be solely responsible for and have control over the means, methods, techniques, personnel and procedures for supplying goods. Neither party will be deemed an agent or partner of the other party.

15. Confidentiality. Supplier will maintain the confidentiality of: (i) any information Mercy Corps provides to Supplier that Mercy Corps identifies as confidential; (ii) the terms and conditions of this Agreement; and (iii) nonpublic information regarding Mercy Corps' policies and practices. Upon Mercy Corps' request, Supplier will return to Mercy Corps all confidential information provided by Mercy Corps to Supplier.

16. Indemnification. Supplier will indemnify Mercy Corps and each of its officers, directors, employees, representatives and agents (each, an "**Indemnitee**"), and hold them harmless from, any and all losses, claims, damages, liabilities, any government or donor investigations, fines or penalties and related expenses (including incidental and consequential damages and reasonable attorneys' fees, whether incurred at the investigative, trial or appellate level or otherwise) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Supplier arising out of, in connection with, or as a result of this Agreement, any failure by Supplier to fully perform its obligations under this Agreement or any breach by Supplier of any of its representations and warranties under this Agreement, provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence or willful misconduct of such Indemnitee.

17. Termination and Remedies.

- a. Provided no Purchase Order is outstanding and remains to be performed by either party, this Agreement may be terminated by either party at any time upon written notice to the other party.
- b. Any Purchase Order may be terminated under the following circumstances:
 - i. by both Parties on mutual written agreement of the Parties;
 - ii. by either Party for its convenience with written notice and after the Termination Notice Period specified in the Additional Terms has expired;
 - iii. by Mercy Corps immediately upon written notice in the event Mercy Corps' donor(s) terminates or withdraws funding that Mercy Corps would use to pay Supplier for the Goods;
 - iv. by either Party due to the non-terminating Party's breach of this Agreement and failure to correct such breach within 15 days prior notice of such breach;
 - v. be either Party upon written notice if a force majeure event, including any not reasonably foreseeable war, insurrection, change in law or government action or inaction, strike, natural disaster or similar event, prevents the terminating Party from being able to fulfill its obligations under this Agreement; or
 - vi. by Mercy Corps immediately upon written notice if Mercy Corps using its sole discretion determines that Supplier has or will breach any of its warranties, covenants or representations in this Agreement, in which case Mercy Corps may withhold any and all amounts owed to Supplier until such breach is remedied.

In the event termination is due to Mercy Corps' breach of this Agreement, by Mercy Corps for Mercy Corps convenience, due to force majeure event, or due to loss of funding, Mercy Corps will be obligated to pay Supplier for its reasonable, pro-rated costs of work completed and expenses properly incurred prior to termination.

If Mercy Corps determines that Supplier has or will breach any of its warranties, covenants or representations in this Agreement, Mercy Corps may, in addition to any other remedies for such breach available at law or in equity, (i) terminate this Agreement; (ii) reject any Goods delivered; (iii) return any Goods already accepted and obtain full repayment for any amount paid for such Goods; (iv) if Supplier breaches Section 13(j), withhold payment until such investigation, suspension or debarment is lifted; and (v) if Supplier breaches any of Section 13(e), (f), (g), (h) or (i), not pay for any Goods that have been accepted but that have been consumed or otherwise cannot be returned to Supplier and report the breach to Mercy Corps donors and appropriate governmental authorities.

18. Dispute Resolution. Any unresolved dispute or claims will be settled by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators will be one. The place of arbitration will be Portland, Oregon. The language of the arbitration will be English.

19. Access to Books and Records. Mercy Corps, its donors (including, if applicable, USAID, and the Comptroller General of the United States) and any of their respective representatives will have access to any books, documents, papers and records of Supplier that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions for a period of seven years following the completion of the final PO issued by Mercy Corps under this MPA.

20. Additional Donor Terms and Conditions. The Donor Terms (if any) are incorporated in this Agreement by reference and are fully binding on Supplier and Mercy Corps. In the event of a conflict between the Donor Terms and any other provision of this Agreement or any other document between Supplier and Mercy Corps, the Donor Terms will prevail.

21. Miscellaneous.

- a. This Agreement and the rights and obligations of the parties hereto will be governed by and construed in accordance with the laws of the State of Oregon (exclusive of the United Nations Convention on Contracts for the International Sale of Goods), without regard to the conflict of laws provisions thereof.
- b. No right or obligation under this Agreement (including the right to receive monies due) will be assigned without the prior written consent of Mercy Corps. Any assignment without such consent will be void. Mercy Corps may assign its rights under this Agreement.
- c. All notices provided for herein will be in writing and will be delivered by hand or overnight courier service, email or fax in accordance with each party's contact information set forth in the applicable Purchase Order. Notices will be deemed to have been given when received, provided that notices sent by email or fax will be deemed received when sent (except that, if not sent during normal business hours for the recipient, will be deemed received at the opening of business on the next business day for the recipient).
- d. Time is of the essence of each and every obligation of Supplier under this Agreement.



- e. If any provision of this Agreement is prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.
- f. Except as otherwise provided above, this Agreement may be amended or modified only by a written document signed by both parties. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.
- g. No failure on the part of Mercy Corps to exercise, and no delay in exercising, any right, power, privilege or remedy under this Agreement will operate as a waiver thereof; nor will any single or partial exercise of any such right, power, privilege or remedy preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, powers, privileges and remedies that may otherwise be available to Mercy Corps.
- h. The warranty, representations, dispute resolution, confidentiality and indemnification provisions of this Agreement will survive final acceptance of the Goods, payment of the purchase price and the termination, cancellation or expiration of this Agreement.
- i. In the event the terms of the Master Purchase Agreement conflict with any term in the Additional Terms or any PO, the terms in the Master Purchase Agreement shall prevail over the terms of the Additional Terms or PO unless the contradictory terms in the Additional Terms or PO specifically state that they are intended to override or amend the terms of the Master Purchase Agreement and specifically state the term(s) of the Master Purchase Agreement being amended or overridden. In the event that the terms of the Additional Terms and PO conflict, the terms in the Additional Terms shall prevail unless the terms of the PO specifically state that they are intended to override or amend the Additional Terms and specifically state the term(s) in the Additional Terms being amended or overridden.

IN WITNESS WHEREOF, this Master Purchase Agreement has been duly executed as of the date first written above.

MERCY CORPS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



SCHEDULE I

ADDITIONAL TERMS

1. **Term of the Agreement:** [/] or until the final Purchase Order agreed to prior to the end of the [] term has been fully completed and final payment made, whichever is later.

2. **Description of the Goods:**

3. **Specifications:** The Goods must all strictly adhere to the following specifications:

4. **Pricing:**

a. **Unit Price(s):**

The Prices for the Goods shall remain valid and shall neither go up or down during the term of this Agreement.

5. **Minimum and/or Maximum Quantity (if any):**

6. **or Payment Terms (if any):**

7. **Packing Requirements:** (the “Packing Requirements”).

8. **Delivery Location:** Will be as specified in the individual PO form (the “Delivery Location”).

9. **Delivery Terms:**

10. **Authorized Representatives and Contact Information:**

a. **Mercy Corps:** Only the following Mercy Corps employees are authorized to agree to any amendment of this Purchase Order and any related Change Order:

Attn: _____
Fax: _____
Email: _____

Only the following Mercy Corps employees are authorized to accept or reject Goods or sign on any GRN with respect to this Purchase Order.

Attn: _____
Fax: _____
Email: _____



b. **Supplier:** Supplier’s authorized representative for all purposes is:

Attn: _____
Fax: _____
Email: _____

11. [Liquidated Damages

12. [Donor Terms: The terms set forth in Schedule II (the “**Donor Terms**”) are hereby incorporated in this Purchase Order by reference.]

With their signatures below the Parties do hereby agree to the Additional Terms to the Master Purchase Agreement stated herein.

DATED: _____

MERCY CORPS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



SCHEDULE II

Donor Terms

Add the appropriate “Donor Terms”:

EXHIBIT A
FORM PURCHASE ORDER

[TO ATTACH]