

1. Invitation to Tender

Tender Name: Process of Master Service Agreement for IMTA (Informal Money Transfer Agent) Transaction for Mercy Corps Afghanistan.		Tender No: KBL-0064
Location: Kabul, Afghanistan.	Correspondence Language(s): English	
<p>About Mercy Corps:</p> <p>Mercy Corps works in places of transition, where conflict, disaster, political upheaval, or economic collapse present opportunities to build a more secure, productive, and just communities. Providing emergency relief in times of crisis, we move quickly to help communities recover and build resilience to future shocks, and promote sustainable change by supporting community-led and market-driven initiatives. Recognizing both the great potential and the complex challenges faced by Afghanistan, since 1986 Mercy Corps has been implementing a range of humanitarian assistance and development programs tailored to the specific needs of the country and of those communities where we work.</p> <p>Mercy Corps has been working in Afghanistan continuously since 1986 with a large portfolio of programs addressing the promotion of sustainable licit livelihoods, agriculture development, youth vocational training, Renewable Energy and natural resource management; it has helped more than 2.5 million Afghans through these wide-range of community-based agriculture and economic development programs. Mercy Corps is working in Kabul, Kandahar, Herat, Paktika and Mazar-e-Sharif .</p> <p>This long-term agreement (Master Service Agreement) is for the purpose of Processing MCA transactions through IMTA (informal money transfer agent).</p> <p>Brief Summary Description of Project:</p> <p>Processing MCA transactions through IMTA "informal money transfer agent" cash services as per attached locations and SOW.</p>		

Tender Package Available from:
19th December 2022

Tender Package Pickup Location:
Mercy Corps Afghanistan Kabul Office at House # 31, Heratian's Mosque Street, Behind Kabul Bank, Shahr-e-Naw, Kabul, Afghanistan. Service provider can also request through email: af-tender-questions@mercycorps.org Or they can also download from Mercy Corps Global Website: <https://www.mercycorps.org/tenders>

Deadline for Offer Submission: 04 th January 2023 at 04:00 P.M.	Submit Offers to: Mercy Corps Afghanistan Kabul Office at house # 31, Heratian's Mosque Street, Behind Kabul Bank, Shahr-e-Naw, Kabul, Afghanistan, (Please clearly mark your envelopes with Tender # 0064 descriptions) Soft Proposal(s) can be submitted to: tenders@mercycorps.org (Please indicate tender# and description in the subject line)
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Mercy Corps reserves the right to accept or reject any late offers

Questions and Answers (Q&A)	
If any, Submit Questions in writing to: af-tender-questions@mercycorps.org	
Last Day for Questions: 29-Dec-2022 by 04:00 P.M.	Questions will be answered by: 02-Jan-2023 by 04:00 P.M.
Questions will be answered through: All prospective bidders will access consolidated question and answers on the website alongside the tender package by 02 January, 2023	

Documentation Checklist		
These documents are contained within this tender package:	✓	Invitation to Tender (This Document)
	✓	General Conditions for Tender
	✓	Criteria and Submittals
	✓	Price Offer Sheet
	✓	Supplier Information Form
	✓	SoW (Scope of Work)
	✓	Sample MSA (Master Service Agreement)

2. General Conditions for Tender

Mercy Corps invites offers for the goods, services and/or works described and summarized in these documents, and in accordance with procedures, conditions and contract terms presented herein. Mercy Corps reserves the right to vary the quantity of work/materials specified in the Tender Package without any changes in unit price or other terms and conditions and to accept or reject any, all, or part of submitted offers.

2.1 Mercy Corps' Anti-Bribery and Anti-Corruption Statement

Mercy Corps strictly prohibits:

- *Any form of bribe or kickback in relation to its activities*
This prohibition includes any *request* from any Mercy Corps employee, consultant or agent for anything of value from any company or individual in exchange for the employee, consultant or agents taking or not taking any action related to the award of a contract or the contract once awarded. It also applies to any *offer* from any company or individual to provide anything of value to any Mercy Corps employee, consultant or agent in exchange for that person taking or not taking any action related to the award of the contract or the contract.
- *Conflicts of interests in the awarding or management of contracts*
If a company is owned by, whether directly or indirectly, in whole or in part, any Mercy Corps employee or any person who is related to a Mercy Corps employee, the company must ensure that it and the employee disclose the relationship as part of or prior to submitting the offer.
- *The sharing or obtaining of confidential information*
Mercy Corps prohibits its employees from sharing, and any offerors from obtaining, confidential information related to this solicitation, including information regarding Mercy Corps' price estimates, competing offerors or competing offers, etc. Any information provided to one offeror must be provided to all other offerors.
- *Collusion between/among offerors*
Mercy Corps requires fair and open competition for this solicitation. No two (or more) companies submitting bids can be owned or controlled by the same individual(s). Companies submitting offers cannot share prices or other offer information or take any other action intended to pre-determine which company will win the solicitation and what price will be paid.
- *Any form of exploitation, abuse, human trafficking or internal sexual misconduct*
Mercy Corps requires its partners to adhere to its Safeguarding policies including the its policies on Child Safeguarding, Prevention of Sexual Exploitation and Abuse of Beneficiaries and Community Members, Anti-Trafficking and Sexual Misconduct (available at <https://www.mercycorps.org/who-we-are/ethics-policies>). Companies will be expected to ensure that they have the capacity to abide by these policies, that their employees and subcontractors understand these policies, and that they communicate to its employees and subcontractors the duty to report any violation or suspected violation. Mercy Corps will not engage with a company that is found to be in violation of these policies.

Violations of these prohibitions, along with all evidence of such violations, should be reported to:

<http://mercycorps.org/integrityhotline>

Mercy Corps will investigate allegations fully and will take appropriate action. Any company, or individual that participates in any of the above prohibited conduct, will have its actions reported to the appropriate authorities, will be investigated fully, will have its offer rejected and/or contract terminated, and will not be eligible for future contracts with Mercy Corps. Employees participating in such conduct will have his/her employment terminated.

Violations will also be reported to Mercy Corps' donors, who may also choose to investigate and debar or suspend companies and their owners from receiving any contract that is funded in part by the donor, whether the contract is with Mercy Corps or any other entity.

2.2 Tender Basis:

- All offers shall be made in accordance with these instructions, and all documents requested should be furnished, including any required (but not limited to) supplier-specific information, technical specifications, drawings, bill of quantities, and/or delivery schedule. If any requested document is not furnished, a reason should be given for its omission in an exception sheet.
- No respondent should add, omit or change any item, term or condition herein.
- If suppliers have any additional requests and conditions, these shall be stipulated in an exception sheet.
- Each offeror may make one response only.
- Each offer shall be valid for the period of 120 days from its date of submission.
- All offers should indicate whether they include taxes, compulsory payments, levies and/or duties, including VAT, if applicable.
- Suppliers should ensure that financial offers are devoid of calculation errors. If errors are identified during the evaluation process, the unit price will prevail. If there is ambiguity on the unit price, the Selection Committee may decide to disqualify the offer.
- Any requests for clarifications regarding the project that are not addressed in written documents must be presented to Mercy Corps in writing. The answer to any question raised in writing by any offeror will be issued to that offeror. In some cases Mercy Corps may choose to issue clarifications to all offerors. It is a condition of this tender that no clarification shall be deemed to supersede, contradict, add to or detract from the conditions hereof, unless made in writing as an Addendum to Tender and signed by Mercy Corps or its designated representative.
- This Tender does not obligate Mercy Corps to execute a contract nor does it commit Mercy Corps to pay any costs incurred in the preparation and submission of bids. Furthermore, Mercy Corps reserves the right to reject any and all offers, if such action is considered to be in the best interest of Mercy Corps.

2.3 Supplier Eligibility

Suppliers may not apply, and will be rejected as ineligible, if they :

- Are not registered companies
- Are bankrupt or in the process of going bankrupt
- Have been convicted of illegal/corrupt activities, and/or unprofessional conduct
- Have been guilty of grave professional misconduct
- Have not fulfilled obligations related to payment of social security and taxes
- Are guilty of serious misinterpretation in supplying information
- Are in violation of the policies outlined in Mercy Corps Anti Bribery or Anti Corruption Statement

- Supplier (or supplier’s principals) are on any list of sanctioned parties issued by; or are presently excluded or disqualified from participation in this transaction by: the United States Government or United Nations by the United States Government, the United Kingdom, the European Union, the United Nations, other national governments, or public international organizations.

Additional eligibility criteria, if applicable, are stated in section 3.2 of this tender package.

2.4 Response Documents

Offerors must submit an offer in their own format and ensure it contains all the required documents and information specified in this tender. Where an itemized Price Offer Sheet is included in the tender package, the offeror must complete and submit it with the rest of their offer.

2.5 Acceptance of Successful Response

Documentation submitted by offerors will be verified by Mercy Corps. The winning offeror will be required to sign a contract for the stated, agreed upon amount.

2.6 Certification Regarding Terrorism

It is Mercy Corps’ policy to comply with humanitarian principles and the laws and regulations of the United States, the European Union, the United Nations, the United Kingdom, host nations, and other applicable donors concerning transactions with or support to individuals or entities that have engaged in fraud, waste, abuse, human trafficking, corruption, or terrorist activity. These laws and regulations prohibit Mercy Corps from transacting with or providing support to any individuals or entities that are the subject of government sanctions, donor rules, or laws prohibiting transactions or support to such parties.

3. Criteria & Submittals

3.1 Contract Terms

Mercy Corps intends to issue a: **Fixed Price/Cost** contract to one or several company (ies). The successful offeror(s) shall be required to adhere to the statement of work and terms and conditions of the resulting contract. The anticipated contract is incorporated in **Section 6** herein. By submitting an offer, offerors certify that they understand and agree to all of the terms and clauses contained in **Section 6**.

3.2 Specific Eligibility Criteria

Eligibility criteria must be met and the corresponding supporting documents listed below under “Tender Submittals” **must** be submitted with offers. Offerors who do not submit these documents may be **disqualified** from any further technical or financial evaluation.

Eligibility Criteria:

- The offeror /vendor must be legally registered Ministry of Commerce and Industries or Da Afghanistan Bank.
- The offeror /vendor must have an official bank account out of country.
- Must have a Tax Identification number (TIN) and provide proof of tax clearance

- Must have experience in working with INGOs, UN and Government in providing cash transfer services.

3.3 Tender Submittals

Documents and required information listed in tender submittals are necessary in order to support the eligibility criteria and to conduct technical evaluations of received offers (and due diligence). While absence of these documents and/or information does not denote mandatory disqualification of suppliers, the lack of these items has the potential to severely and negatively impact the technical evaluation of an offer.

Documents supporting the Eligibility Criteria:

- Valid Business Certificates from Ministry of Commerce and industries or Da Afghanistan bank
- Official document showing Bank details.
- Company Profile to show past experience in tender or other, in the form of copies of contracts.
- Completed/ filled tender documents provided by MC
- At least three official references of past clients to conduct reference check
- Tax Registration Certificate or Tax Clearance Certificates

Documents to conduct the Technical Evaluation and additional Due Diligence:

- Accuracy and adequacy of the bids/proposals both financially and in-terms completeness of offered prices for all items (including tender documents which MC provides).
- Price Offer Sheet i-e, competitive pricing and cost effectiveness
- Provision of proofs for past performances (at least three contracts with International - NGOs or other organizations and government institution on providing the same service).
- Provision of three Official reference check for due diligence.
- Geographical coverage for service provision and ability to provide services in MCA targeted areas i-e, Kabul, Herat, Kandahar and Mazar.

Price Offer:

The Price offer is used to determine which offer represents the best value and serves as a basis of negotiation before award of a contract. No profit, fees, taxes, or additional costs can be added after contract signing. Offerors must show unit prices per quantity as displayed in the Offer Sheet in Section 4. All items must be clearly labeled and included in the total offered price.

The offered prices must be for high quality and standard service/products.

Offerors must not include VAT and customs duties in their

3.4 Currency

Offers should be submitted in: [AFN and USD](#)

Payments will be made in: [AFN and USD](#)

3.5 Tender Evaluation (LPTA Selection Method)

Based on the above submittals, a Mercy Corps Tender Committee will conduct a tender evaluation process. Mercy Corps reserves the right to accept or reject any or all bids, and to accept the offer(s) deemed to be in the best interest of Mercy Corps. MC will not be responsible for or pay for any expenses or losses which may

be incurred by any Offeror in the preparation of their tender.

Evaluations will be conducted as described in the following subsections:

3.5.1 Technical Evaluation

Lowest Price, Technically Acceptable (LPTA)

Mercy Corps Tender Committee will conduct a technical evaluation which will grade technical criteria on a pass/fail basis. Supplier's bids **must meet the minimum technical standard** established here in order to receive a passing mark. Any offerors who receive a failing mark on any criteria will be automatically disqualified from the tender process.

Only offerors who pass all criteria will move on to the next round of evaluation.

Pass/fail technical criteria are as follows:

Technical Criteria	Pass or Fail?
Accuracy and adequacy of the bids/proposals both financially and in-terms completeness of offered prices for all items (including tender documents which MC provides).	
Price Offer Sheet i-e, competitive pricing and cost effectiveness.	
Provision of proofs for past performances (at least three contracts with International - NGOs or other organizations and government institution on providing the same service).	
Provision of three Official reference check for due diligence.	
Geographical coverage for service provision and ability to provide services in MCA targeted areas i-e, Kabul, Herat, Kandahar and Mazar.	

3.5.2 Financial Evaluation and Price/Cost Analysis

All suppliers who passed all technical criteria will move on to the financial evaluation where the lowest price offer(s) will be accepted as the winning offeror(s) assuming the price is deemed fair and reasonable and subject to the additional due diligence in [section 3.5.3](#).

3.5.3 Additional Due Diligence

Upon completion of both the technical and financial evaluations Mercy Corps may choose to engage in additional due diligence processes with a particular offeror or offeror(s). The purpose of these processes is to ensure that Mercy Corps engages with reputable, ethical, responsible Suppliers with solid financials and the ability to fulfill the contract. Additional due diligence may take the form of the following processes (though it is not limited to):

- Reference Checks (Mandatory).
- Physical visit of the company or IMTA. (Mandatory).

4. Offer Form

Offerors must submit their own independent offer including at least (but not limited to):

- All documents requested in the “Eligibility Criteria” section of this Tender Package
- All documents requested in the “Tender Submittals” section of this Tender Package
- All information listed in the “Documents Comprising the Bid” section below

All offers must be duly signed (including position and full name of the signer) and stamped, with the date of completion.

Documents Comprising the Bid

The following information must be included in the offer of any potential offeror:

- ☐ **Cover Letter** explaining interest to be a contracted vendor or supplier. The content of the cover letter shall include the following information:
 - ☐ A detailed specification of the offered goods, services and/or works
 - ☐ Warranty (if necessary and appropriate)
 - ☐ Delivery time
 - ☐ Price validity date (for this purpose and as stated on the advertisement, quote given shall remain unchanged for **120** working days)
- ☐ A Price Offer detailing the unit price only using the **Price Offer Sheet** template provided in
- ☐ Completed and signed Mercy Corps **Supplier Information Form** (template provided in
- ☐ Other important documents offeror feels need to be attached to support their bid

The original bid shall be signed by the offeror or a person or persons duly authorized to bind the offeror to the contract. Financial offer pages of the bid shall be initialed by the person or persons signing the bid and stamped with the company seal. Any interlineations, erasures, or overwriting shall be valid only if they are initialed by the person or persons signing the bid.

5. Technical Specifications

5.1 Background

Mercy Corps works in places of transition, where conflict, disaster, political upheaval, or economic collapse present opportunities to build a more secure, productive, and just communities. Providing emergency relief in times of crisis, we move quickly to help communities recover and build resilience to future shocks, and promote sustainable change by supporting community-led and market-driven initiatives. Recognizing both the great potential and the complex challenges faced by Afghanistan, since 1986 Mercy Corps has been implementing a range of humanitarian assistance and development programs tailored to the specific needs of the country and of those communities where we work.

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This long-term agreement (Master Service Agreement) is for the purpose of Processing MCA transactions through IMTA (informal money transfer agent).

Scope of Work – Informal Money Transfer Services

Mercy Corps (MC) is seeking to contract a Money Transfer Agent (IMTA) to perform transfer services in the following locations: Kabul, Kandahar, Herat, Balkh, Samangan, Takhar, Faizabad, Pol – e-Khomri.

The financial transfers will be in both USD and AFN currency as required and MC will reimburse the provider in USD equivalent where transfer is in local currency. The services sought are for payment of salaries and vendor payments mostly to recipients inside Afghanistan but occasionally to recipients outside Afghanistan.

Key Responsibilities of IMTA

- Transfer of monthly salaries / other payments to individual MC staff in USD or AFN in the various locations.
- Process payments to various vendors in different locations.
- The IMTA will issue a receipt/proof of payment for each, and every transaction carried out on behalf of Mercy Corps which and receipt should be in English local language will not acceptable
- Transfers are to be affected within 2 working days from date of instruction by MC.
- IMTA will periodically invoice Mercy Corps for reimbursement of the transfers made (with supporting receipts) plus service charges based on fees agreed in a service contract

- Sending Invoices to Mercy Corps on time for reimbursement and make sure the exchange rate selected properly
- IMTA should use Da Afghanistan bank exchange rate for AFN currency conversion

Key Responsibilities of Mercy Corps (MC)

- MC will periodically issue payment instructions and recipient details to IMTA.
- MC will reimburse and pay fees to the IMTA's designated bank account out of country after receipt and acceptance of the IMTA's invoice per the conditions agreed in a service contract
- MC will introduce the IMTA to the intended recipients (i.e. vendors/staff / beneficiaries) across all locations.

Other responsibilities of the IMTA and MC to be agreed and included in a service contract /agreement.

The IMTA must have the capacity to communicate and operate in both English and Afghan languages and receive payment instructions from authorised MC staff located either inside or outside Afghanistan.

5.2 Please refer to above Scope of Work (SOW)

Please see attached the price offer sheet which gives full specification and locations of all provinces required under this tender.

6. Sample Contract (Master Service Agreement)

This is the anticipated contract. However, if required, additional terms and conditions may be added by Mercy Corps in the final contract.

Contract No.

MASTER SERVICE AGREEMENT

Contract No. _____

THIS MASTER SERVICES AGREEMENT entered into as of _____ by and between MERCY CORPS, Afghanistan nonprofit corporation having its principal office in Portland, Oregon, U.S.A. ("**Mercy Corps**") and ("**Contractor**") is as follows:

1. Master Agreement; Specific Services. From time to time, Mercy Corps may request services from Contractor. For each occasion on which Contractor is willing to provide requested services, the parties will enter into a task order ("**Task Order**" or "**TO**") which will describe the services to be performed and the period for performance and which will be substantially in the form attached hereto as Exhibit A. Contractor must notify Mercy Corps within the Task Order Offer Period time specified in Schedule I if it accepts a Task Order, rejects a Task Order or requires changes to a Task Order. Mercy Corps may reject any acceptance or request for changes that Mercy Corps receives after the Task Order Offer Period has expired.

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: Task Order Offer Period, Authorized Representative, Key Personnel, Payment Terms, Services, TO and Scope of Work (SOW). "**Agreement**" means this Master Services Agreement and Schedule I, in each case as amended, modified or supplemented from time to time. Other terms may be defined throughout this Agreement as specified.

3. Delivery of Services.

- a. Contractor will perform the Services, and Mercy Corps will pay for the Services, in accordance with the terms and conditions set forth in this Agreement and each TO.
- b. Contractor will perform all Services through the services of Contractor's employees or subcontractors approved by Mercy Corps. Contractor will not delegate or subcontract any Services to be provided to Mercy Corps without Mercy Corps' prior written consent. Contractor shall require its subcontractors, agents, and others retained to perform the services to comply with all applicable terms and conditions of this Agreement in providing such services and shall remain primarily liable to Mercy Corps for the performance of such subcontractor, agent or third party approved by Mercy Corps. Contractor agrees that including the specific individuals named (if any) as Key Personnel in the Additional Terms is a material part of the Agreement. . Contractor will

not change the Key Personnel without prior notice and an amendment to the Additional Terms specifying the change. Mercy Corps may withhold its consent to substitute personnel using its sole discretion.

4. Compliance with TOs and Changes to TOs. Services will be provided strictly in accordance with each TO. No deviation, substitution or change is permitted without Mercy Corps' prior written consent; provided that Mercy Corps may terminate, suspend, increase or decrease the scope of Contractor's performance under a TO by written notice to Contractor specifying the changes. Unless mutually agreed, a change to a TO by Mercy Corps does not apply to Services timely and fully delivered and performed before the date of the change. If any change causes an increase or decrease in the cost of, or the time required for, Contractor's performance, an equitable adjustment may be made in the TO or Payment Terms or both, if such adjustment is set forth in an amendment signed by Mercy Corps' and Contractor's Authorized Representative.

5. Non-Exclusivity. This Agreement is not intended to create an exclusive relationship between the parties. Unless the Additional Terms specify a minimum purchase of services, Mercy Corps is not obligated to issue any Task Order to Contractor. If the Additional Terms specify a minimum purchase of services, Mercy Corps shall be obligated only to issue a TO(s) for the minimum purchase amount.

6. Invoicing and Payment.

- a. Contractor will submit invoices to Mercy Corps in accordance with the invoicing schedule and invoicing delivery terms set forth in the Additional Terms. Each invoice will include (i) the Contract Number and TO number; (ii) Contractor's name and address; (iii) a description of the Services performed, (iv) the dates such Services were performed, (v), if applicable per the Additional Terms, an itemization of the specified increments of time worked, (vi), if applicable per the Additional Terms, properly reimbursable expenses (if any) incurred along with receipts for such expenses; and (vii) such other information as Mercy Corps may reasonably request. Invoices will only be deemed received on the date they are delivered to Mercy Corps' Authorized Representative pursuant to the Payment Terms. If Mercy Corps determines that Services that are the subject of an invoice have not been performed in accordance with the Additional Terms, Mercy Corps may dispute the invoice by sending Contractor notice of such dispute after Mercy Corps receipt of the invoice. Such notice shall clearly state the specific Services disputed, and Mercy Corps' reason for disputing the performance of the Services. If both parties accept the dispute of the invoice, they shall agree in writing as to the steps required of Contractor to ensure that the performance of the disputed Services is subsequently completed in accordance with the Additional Terms, and the time required of Contractor to complete the Services
- b. Except as otherwise provided in the Additional Terms, Mercy Corps will pay each invoice (or adjusted invoice if the subject of dispute) in accordance with the Payment Terms within 30 days after the later of (i) receipt of the invoice or (ii) resolution of the items set forth in the notice of disputed charges.
- c. Mercy Corps may off-set any amount it owes Contractor against any amount Contractor owes Mercy Corps.

7. Taxes, Duties and Expenses.

- a. Except as otherwise provided in the Additional Terms, Contractor is responsible for all expenses incurred by it in performing under this Agreement and all taxes, duties and other governmental charges with respect to the provision of Services. If the law requires Mercy Corps to withhold taxes from payments to Contractor, Mercy Corps may withhold those taxes and pay them to the appropriate taxing authority. Mercy Corps will deliver to Contractor an official receipt for such taxes. Mercy Corps will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.
- b. In the event the Additional Terms do allow for reimbursement of Contractor expenses, such expenses must be listed as acceptable expenses in the Additional Terms or the Task Order and fully documented with receipts and any other documentation reasonably necessary for Mercy Corps to determine the costs were reasonable and properly incurred.

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

- a. Contractor has full rights and authority to enter into and perform its obligations under this Agreement. Contractor's performance will not violate any agreement or obligation between Contractor and any third party.
- b. Contractor has the requisite skills to perform the Services in accordance with this Agreement.
- c. Contractor possesses all governmental and other certifications and licenses necessary to perform the Services in accordance with this Agreement. Performance by Contractor of its obligations under this Agreement will not infringe on any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- d. Contractor will comply with all applicable law, regulations and rules in the performance of its obligations under this Agreement.
- e. Contractor 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. Contractor 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. Contractor 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. Contractor, including its owners or employees, does not own, directly or indirectly, any other company that was competing for award of this Agreement or any TO. Contractor did not seek or obtain confidential information related to the award of this Agreement or any TO from any Mercy Corps employee, agent or representative. Contractor did not collude or conspire with any other individual or entity to limit competition for the award of this Agreement or any TO, to set prices being offered or in any other way to interfere with free and open competition.
- h. Contractor 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, Contractor fully disclosed such relationship and any potential conflict of interest has been waived, in writing, by Mercy Corps.
- i. Contractor 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. Contractor is not the subject or any governmental or donor investigation and has not been debarred or suspended by any government, governmental agency or donor.
- k. Contractor understands that it is subject to Mercy Corps' Child Safeguarding, Prevention of Sexual Exploitation and Abuse of Beneficiaries and Community Members, Anti-Trafficking and Sexual Misconduct policies (available at <http://www.mercycorps.org/who-we-are/ethics-policies>). Contractor must report any violation or suspected violation of these policies in relation to the Contractor's activities under this contract to Mercy Corps, which may be done via its Integrity Hotline website (mercycorps.org/integrityhotline). Contractor will ensure that it has the capacity to abide by these policies, that its employees and subcontractors understand these policies, and that it communicates to its employees and subcontractors the duty to report. Contractor understands and agrees that a violation of these policies may, in addition to any other remedies available under this Contract or at law, result in suspension or immediate termination of this Contract and may also result in Contractor being deemed ineligible for future contracts with Mercy Corps.
- l. Contractor and those performing services on Contractor's behalf have the necessary knowledge, qualifications, licenses, permits, ability and expertise to perform the services and comply fully with the terms of the Agreement.

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

10. Work Product and Intellectual Property Rights.

- a. "Work Product" means any and all (1) intellectual property, intellectual property rights, materials, tangible personal property and other work product that Contractor creates (or has created), alone or jointly with one or more other persons, (a) that relates to any

TO, (b) that results from or arises out of any services performed by Contractor for Mercy Corps, (c) for which Contractor used equipment, supplies, facilities or trade secret information of Mercy Corps in creating such work product, or (d) that is derived or otherwise created from any intellectual property, intellectual property rights, materials, tangible personal property, or other assets of Mercy Corps; and (2) materials that contain, embody, disclose, reflect, or refer to any of the foregoing.

- b. Mercy Corps will be the sole owner of all Work Product. To the extent allowed by applicable law, all Work Product that consists of subject matter of U.S. or any other country's copyright laws will constitute "works made for hire" under applicable copyright laws. Contractor will not provide Work Product to any person other than employees or agents of Mercy Corps. Contractor will hold all Work Product in trust for Mercy Corps. All Work Product will be deemed to be Confidential Information of Mercy Corps and subject to the provisions of Section 10.
- c. Contractor will promptly disclose in writing to Mercy Corps all Work Product that Contractor creates, alone or jointly with others, in the performance of its obligations under this Agreement.
- d. Contractor hereby irrevocably assigns and transfers to Mercy Corps (i) all rights, title and interest in all Work Product, (ii) all related rights and remedies, and (iii) all claims (for damages or otherwise) and causes of action with respect to any Work Product.
- e. Contractor hereby irrevocably waives and agrees never to assert any Moral Rights that may exist anywhere in the world in or with respect to any Work Product, including claims for damages and other remedies. "Moral Rights" means any and all right to claim authorship to or to object to any distortion, mutilation or other modification or other derogatory action in relation to a work, whether or not such action would be prejudicial to the author's reputation, and any similar right, existing under common or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "*moral right*".
- f. Contractor warrants and represents that (i) it has the rights to any Work Product created under this Agreement; (ii) no part of the works produced or furnished by the Contractor under this Agreement will defame or libel, or infringe or violate any copyright, trade secret, trademark, patent, invention, or other proprietary or personal right of any third party; and (iii) any media containing any digital program which is included in the works produced or furnished by Contractor will be free from defects in material and workmanship and will contain no virus or disabling device or content that could interfere with continuous performance of such computer program.

11. Confidentiality and Data Security Contractor agrees and warrants that it will maintain in strict confidence Confidential Information. The term "Confidential Information" includes (i) any information Mercy Corps provides to Contractor that Mercy Corps identifies as confidential; (ii) the terms and conditions of this Agreement (including all Statements of Services); (iii) nonpublic information concerning the affairs, activities, policies, proposals, projects, employees, donors or potential donors, finances, property or method(s) of operation, trade secrets, know-how and similar information of Mercy Corps, its affiliates, as well as any third party and its affiliates with which Mercy Corps may collaborate, and (iv) any Mercy Corps

information that contains personally identifiable information hereby defined as information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (referred to as "PII"). Contractor agrees to the following:

a. Contractor will comply with the Mercy Corps' Responsible Data Policy and all Federal, State and applicable laws and regulations governing the confidentiality and privacy of the information provided under this Agreement.

b. Contractor will treat Confidential Information with the same standard of care that it may use to maintain its own confidential information, provided that the standard is not negligent. This includes maintaining appropriate technical and organizational measures to protect Confidential Information against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.

c. Contractor agrees to the implement and follow additional data security requirements concerning PII and hereby represents and warrants the following:

- 1) At all times during the term of this Agreement, with respect to PII, Contractor is capable of providing, and will maintain, reasonable physical, technical and administrative safeguards appropriate for any PII received from Mercy Corps, or created or received on Mercy Corps' behalf:
- 2) Contractor will ensure that any transmission specifically of donor data containing PII between Mercy Corps and Contractor is conducted via secure FTP or secure/encrypted email, or other mutually agreed upon secure file sharing platform; and
- 3) Contractor will maintain sufficient procedures to detect and respond to any attempted unauthorized acquisition or use of PII in paper or electronic form or interference with information system operations affecting electronic PII.

d. Contractor agrees to use Confidential Information only as required by to perform its services for Mercy Corps under this Agreement, and will not reveal it to a third party or use for any other purpose without the prior written consent of Mercy Corps. Except as otherwise authorized in advance by Mercy Corps, Contractor will not provide to any third party either access to, or information about, Mercy Corps systems, platforms, and other mechanisms without the express written permission in each instance.

e. At the termination of the Agreement, Contractor will return to Mercy Corps all Confidential Information provided by Mercy Corps to Contractor, or otherwise take appropriate measures as requested by Mercy Corps to remove any copies of Confidential

Information in Contractor's possession and cause its subcontractors, agents, and others involved in the services to do the same.

12. Indemnification. Contractor 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 Contractor arising out of, in connection with, or as a result of this Agreement, any failure by Contractor to fully perform its obligations under this Agreement or any breach by Contractor 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.

13. Termination and Remedies.

- a. Provided no TO is outstanding and remains to be performed by either party, this Agreement may be terminated by either party upon 30 days prior written notice to the other party.
- b. Any TO 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 Contractor under the Additional Terms;
 - 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 Contractor 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 Contractor until such breach is remedied.

In the event of termination due to Contractor's breach or by Contractor for Contractor's convenience, Mercy Corps will not be obligated to pay Contractor for any partially completed work. In the event termination is due to Mercy Corps' breach, 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 Contractor for its reasonable, pro-rated costs of work completed and expenses properly incurred prior to termination. However, Mercy Corps will not be responsible for any expenses incurred in anticipation of termination or suspension.

If Mercy Corps determines that Contractor 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, terminate this Agreement.

14. 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.

15. 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 Contractor 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 TO issued by Mercy Corps under this MSA.

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

17. 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 on the Additional Terms. 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 Contractor 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 the termination, cancellation or expiration of this Agreement.
- i. In the event that there is a conflict in term between this Master Services Agreement and any TO, the terms in the Master Services Agreement shall prevail unless the changed terms in the TO specifically state the section of the Master Services Agreement or Additional Terms that the TO is changing, in which case the new terms in the TO shall prevail only as to that TO.



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

MERCY CORPS

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Tender Package — Request for Bid (RFB)



SCHEDULE I

ADDITIONAL TERMS

1. Term: This Agreement shall have an effective date of XXX and, unless earlier terminated in accordance with Section 13, an expiration date of XXX *[1 year]*.

2. Offer Period: *[xxx]* business days (“**Task Order Offer Period**”).

3. Services: In accordance with the terms of the Agreement, Contractor agrees to perform the following services in the following manner.

a. **Background:** *[Include background information on the program(s) under which this contract falls, identifying where in the program objectives these services will be supporting. Describe the context in which the contract will be working. This may be similar to what was included in the RFQ/RFP.]*

b. **Scope of Work:** *[Include a narrative description of the work being performed under this contract that outlines the general tasks which will be requested for under task orders. Include a detailed description of the individual deliverable(s)/Task Orders, if known, the standard the work must be completed to, any specifications, how it must be completed, etc. Deliverables, if known, should be as tightly defined as possible to ensure that we receive the intended value and so as to limit miscommunication and litigation. If deliverables are not yet known, be as descriptive as possible as to the types of work or deliverables that will be done. If possible, use illustrative deliverables or task orders.]*

The term “**Services**” means all services, including delivery of all deliverables, described in all Task Orders.

4. Pricing: *[include type of pricing, e.g. fixed price per TO, fixed price per deliverable type, cost reimbursable, or fixed daily rates plus expenses, etc. Refer to the Service Agreement template for more guidance regarding Cost Reimbursable or Time and Materials pricing.]*

5. Invoicing & Payment Terms: *[Upon acceptance of each Task Order or deliverable] [Within *[X]* days at the end of each month]* Contractor will submit an Invoice in accordance with pricing as specified in the Agreement. Mercy Corps will make payment to Contractor for all sums not in dispute within 30 days of receipt of Contractor’s invoice(s) (the “**Payment Terms**”).

6. Key Personnel: *[if applicable, include a list of the Contractor’s personnel (either by name or position, ideally both) that are key to the bargain and the project and that the Contractor cannot change without prior approval. If not applicable, note “Not Applicable” here.] (the “Key Personnel”).*

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7. Reimbursable Expenses: *[If applicable, include a description of the expenses that the Contractor can incur and charge Mercy Corps for above and beyond the price for services. If not applicable, note "Not Applicable" here].*

8. Authorized Representatives and Contact Information:

- a. **Mercy Corps:** Only the following Mercy Corps employees are authorized to agree to any amendment of the Agreement, a new Task Order or an amendment to a Task Order:

Attn: _____
Fax: _____
Email: _____

Only the following Mercy Corps employees are authorized to receive invoices, accept or reject Services or sign SCRs.

Attn: _____
Fax: _____
Email: _____

- b. **Contractor:** Contractor's authorized representative for all purposes is:

Attn: _____
Fax: _____
Email: _____

9. Termination for Convenience Notice Period: _____ (the "Termination Notice Period").

10. Donor Terms: *[If applicable, include the following statement here: The Donor Terms set forth in Schedule II to the Agreement are hereby incorporated in the Agreement by reference].*



SCHEDULE II

OTHER CONTRACT PROVISIONS REQUIRED BY LAW OR MC'S DONORS

Mercy Corps, in accordance with donor regulations, requires certain certifications and provisions, set forth herein, to be included in all contracts.

1. The Service Provider acknowledges that Mercy Corps has reporting obligations to its donors. Accordingly, the Service Provider consents to Mercy Corps sharing information about the Service Provider or the Services with its donors, including but not exclusively, the US Department of State, the European Union and the United Nations as required.
2. The Service Provider will be responsible for holding all invoices, receipts and financial and accounting documents relating to this Contract for at least seven years following final payment made under this Contract.
3. Mercy Corps, its donors, including but not exclusively, the US Department of State, the Inspector General of the United States, the Comptroller General of the United States, the European Union, United Nations or any of their duly authorized representatives have the right of timely and unrestricted access to the location where the Service Provider is based or any location where the services are being implemented and to any books, documents, papers and records (including in electronic format), of the Service Provider that are pertinent to this Contract, in order to make monitoring, evaluation, audit, examinations, excerpts and transcripts and copies of such documents. This right also includes timely and reasonable access to a Service Provider's personnel for the purpose of interview and discussion related to such documents. Such verification or audit may take place at any time during this Contract and up to seven years after final payment made under this Contract.
4. The Service Provider recognizes that Mercy Corps has a zero tolerance approach to bribery and corruption. The Service Provider will comply with all relevant anti-bribery and anti-corruption laws (including the UK Bribery Act 2010) and comply with the principles of Mercy Corps' Anti-Corruption and Anti-Bribery Policies or equivalent policies, including: (a) ensuring that its staff are aware that they must not accept or offer a bribe or facilitation payment; and (b) reporting immediately to Mercy Corps any bribery issues which the Service Provider becomes aware of during this Contract; and, at the reasonable request of Mercy Corps, confirming in writing that they have complied with this Clause and provide any information reasonably requested in support of such compliance.

Mercy Corps recognizes that in complying with this clause the Service Provider is not expected to risk life, limb or freedom.

If any illegal or corrupt practices were or are committed in the award or execution of this Contract, including if any offer, gift, payment, contribution or benefit of any kind was accepted as an inducement or reward for the award or execution of this Contract, this Contract will be cancelled with immediate effect, in which case Mercy Corps will return to the Service Provider any items delivered and the Service Provider will return to Mercy Corps any funds paid (at each of their own cost, unless otherwise agreed).

5. The Service Provider shall take all reasonable precautions to avoid any conflict of interests and shall inform Mercy Corps without delay of any situation constituting or likely to entail a conflict of interests. There is a conflict of interests where the impartial and objective exercise of the functions, tasks and activities under this Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person or party.

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6. The Service Provider acknowledges that under no circumstances nor for any reason whatsoever will MC Donors, including but not exclusively, the US Department of State, the European Union and the United Nations, be held liable for damages as a result of or responsible for in relation to the work pursuant to the activities of the Service Provider under this Contract
7. The Service Provider is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Contractor to ensure compliance with these Executive Orders and laws. In addition, the Contractor must verify that no support or resources are provided to individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml)
8. The Service Provider certifies that it will not and has not used any funds received directly or indirectly from the U.S. Government to pay to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of U.S. Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this Contract or any other U.S. government funded project.
9. The Service Provider certifies that neither it nor its principals are presently excluded or disqualified from participation in this transaction by any US Government department or agency.
10. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this contract may be used to promote, support, or advocate for the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked. The Service Provider does not promote, support, or advocate the legalization or practice of prostitution.
11. Mercy Corps has the right to terminate this Contract, without penalty, if the Service Provider or its employees, or any Subcontractor or its employees, engage in any of the following conduct:
 - (i) 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) during the period of this Contract;
 - (ii) Procure a commercial sex act during the period of time that this Contract is in effect; or
 - (iii) Use forced labor in the performance of the Contract.
12. The Service Provider acknowledges that Mercy Corps must comply with its donors' principles of Ethical Procurement including adhering to the minimum ethical standards of the avoidance of child labour, and the respect of basic social rights and working conditions based on international labour standards.
13. The Service Provider acknowledges that, under the Donor Contract, the recipients of funds are required to have a robust child protection policy and mechanisms to monitor its adherence and that it is important that a focus on child protection is maintained throughout the lifecycle of the project. The donor reserves the right to ask for the relevant child protection policy and mechanisms and test that they are implemented during the life of the project.

14. The Contractor must inform its employees working under this contract in the predominant native language of the workforce that they are afforded the employee whistleblower rights and protections provided under 41 U.S.C. § 4712. The Contractor agrees to incorporate the terms of “this schedule II” word-for-word in all of its sub-contracts funded under this Contract, if any.

7. Attachments to the Tender Package

Attachment 1 -[Supplier Information Form](#).

Attachment 2 -[Price Offer Sheet Form](#).