



SERVICE CONTRACT

Contract No. _____

THIS SERVICE CONTRACT entered into as of _____ by and between MERCY CORPS EUROPE a nonprofit corporation having its principal office in Edinburgh, U.K. (“Mercy Corps Europe”) and _____ (“Contractor”) is as follows:

1. Defined Terms. Each of the following terms has the meaning given to such term on Schedule I attached hereto: Authorized Representative, Payment Terms, Services and SOW. “Contract” means this Service Contract as amended, modified or supplemented from time to time taken together with its Schedules. Additional terms may be defined throughout this Contract.

2. Delivery of Services.

- a. Contractor will perform the Services, and Mercy Corps will pay for the Services, in accordance with the terms and conditions and within the Performance Period set forth in this Contract and the Statement of Services.
- b. Contractor will perform all Services through the services of Contractor’s employees. Contractor will not delegate or subcontract any Services to be provided to Mercy Corps without Mercy Corps’ prior written consent. Contractor agrees that including the specific individuals named (if any) as Key Personnel in Schedule I is a material part of the bargain. Contractor will not change the Key Personnel without prior notice and an amendment to this Contract specifying the change. Mercy Corps may withhold its consent to substitute personnel using its sole discretion.

3. Compliance with SOW and Changes to the SOW. Services will be provided strictly in accordance with the SOW. 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 the SOW by written notice to Contractor specifying the changes. Unless mutually agreed, change to the SOW by Mercy Corps does not apply to change 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 SOW or Payment Terms or both, if such adjustment is set forth in an amendment signed by Mercy Corps’ and Contractor’s Authorized Representative.

4. 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 Statement of Services (Schedule I). Final invoices must be submitted within 60 days of the end date of the Contract. Contractor recognizes that in many cases Mercy Corps’ donor will not reimburse Mercy Corps for invoices submitted beyond 60 days after the termination of a contract and therefore Mercy Corps will have no obligation to pay any portion of invoices received more than 60 days after the end date of the Contract. Each invoice will include (i) the Contract Number; (ii) Contractor’s name and address; (iii) a description of the Services performed, (iv) the dates such Services were performed, (v) a pricing calculation based on the payment terms,

(vi) properly reimbursable expenses (if any) incurred along with receipts for such expenses (if applicable) for all individual expenses exceeding \$25 USD, and (vii) such other information as Mercy Corps may reasonably request. Invoices will only be deemed received on the date they are delivered to the Authorized Representative pursuant to the Payment Terms (see Schedule I). If Mercy Corps determines that Services that are the subject of an invoice have not been performed in accordance with the Statement of Services, 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 Statement of Services, 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.

5. Taxes, Duties and Expenses.

- a. Except as otherwise provided in the Statement of Services, Contractor is responsible for all expenses incurred by it in performing under this Contract 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 notice for such taxes. Mercy Corps will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.
- b. In the event Statement of Services does allow for reimbursement of Contractor expenses, such expenses must be reasonable and included in the scope of allowable expenses stated in Schedule I and fully documented with receipts and any other documentation reasonably necessary for Mercy Corps to determine the costs were reasonable and properly incurred.

6. 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 Contract. 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 the SOW.
- c. Contractor possesses all governmental and other certifications and licenses necessary to perform the Services. Performance by Contractor of its obligations under this Contract 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 Contract.
- 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 Contract.
- g. Contractor, including its owners or employees, does not own, directly or indirectly, any other company that was competing for award of this Contract. Contractor did not seek or obtain confidential information related to the award of this Contract 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 Contract, 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.

7. 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.

8. 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 SOW under this Contract, (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 9.
- 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 Contract.
- 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*".

9. Confidentiality. Contractor will maintain, and cause each of its employees and others it involves in performing its obligations under this Contract to maintain, the confidentiality of: (i) any information Mercy Corps provides to Contractor that Mercy Corps identifies as confidential; (ii) the terms and conditions of this Contract; and (iii) nonpublic information regarding Mercy Corps' policies and practices. Upon Mercy Corps' request, Contractor will return to Mercy Corps all confidential information provided by Mercy Corps to Contractor.

10. 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 Contract, any failure by Contractor to fully perform its obligations under this Contract or any breach by Contractor of any of its representations and warranties under this Contract, 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.

11. Termination. This Contract may be terminated under the following circumstances:

- a. by both Parties on mutual written agreement of the Parties;
- b. by either Party for its convenience with written notice and after the Termination Notice Period specified in Schedule I has expired;
- c. 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 this Contract;
- d. by either Party due to the non-terminating Party's breach of this Contract and failure to correct such breach within 15 days prior notice of such breach;
- e. 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 Contract; or
- f. 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 Contract, 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 of this Contract 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 of this Contract, 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.

[ALTERNATIVE CLAUSE IF USING LIQUIDATED DAMAGES -DELETE IF NOT APPLICABLE]: [If Mercy Corps determines that Contractor has or will breach any of its warranties, covenants or representations in this Contract, Mercy Corps may terminate this Contract. Contractor's breach of its obligations under this Contract will result in Mercy Corps incurring damages in an amount that will be difficult to establish and leave Mercy Corps without an adequate remedy. Accordingly, the parties agree that the following liquidated damages are reasonable in light of the anticipated harm caused by any such breach: *[insert dollar amount or other formula for determining the amount of damages]*].

12. 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.

13. 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 Contract for the purpose of making audits, examinations, excerpts and transcriptions for a period of seven years following the completion of the Contract.



14. Additional Donor Terms and Conditions. The Donor Terms (if any) are incorporated in this Contract 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 Contract or any other document between Contractor and Mercy Corps, the Donor Terms will prevail.

15. Miscellaneous.

- a. This Contract 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 Contract (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 Contract.
- 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 Schedule I. 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 Contract.
- e. If any provision of this Contract 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 Contract.
- f. Except as otherwise provided above, this Contract may be amended or modified only by a written document signed by both parties. This Contract constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous Contracts 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 Contract 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 Contract 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 Contract will survive the termination, cancellation or expiration of this Contract.



IN WITNESS WHEREOF, this Service Contract has been duly executed as of the date first written above.

MERCY CORPS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____