

1. Invitation to Tender

Tender Name: De-risking mechanism to decarbonize humanitarian operations		Tender No: HQ400
Location: Remote	Correspondence Language(s): English	
Brief Summary Description of Project: Based on the foregoing and background documentation, Mercy Corps intends to recruit a consulting firm to conduct a deeper study of the energy service de-risking sector and to support the design of a de-risking facility to decarbonize humanitarian operations.		

Tender Package Available from: (17 / May / 2023)	Tender Package Pickup Location: (Mercy Corps website: Tenders Mercy Corps)
Deadline for Offer Submission: (7 / June/ 2023; 23:59 UK)	Submit Offers to: Submit your proposal with a digital format using the following email: tenders@mercy Corps.org

Mercy Corps reserves the right to accept or reject any late offers

Questions and Answers (Q&A)	
If any, Submit Questions in writing to: Gabriel Suarez / gsuarez@mercy Corps.org	
Last Day for Questions: (31 / May/ 2023; 23:59 UK)	Questions will be answered by: (2 / June/ 2023; 23:59 UK)
Questions will be answered through: Posted on the Mercy Corps webpage: Tenders Mercy Corps	

Documentation Checklist		
These documents are contained within this tender package:	✓	Invitation to Tender
	✓	General Conditions for Tender
	✓	Criteria and Submittals
	✓	Price Offer Sheet
	✓	Supplier Information Form
	✓	Scope of Work

2. General Conditions for Tender

Mercy Corps invites proposals 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 proposals 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.

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 [180 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 proposals. Furthermore, Mercy Corps reserves the right to reject any and all proposals, 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 can either utilize the response documents contained in this tender package to submit their offer or they can submit an offer in their own format as long as it contains all the required documents and information specified by this tender.

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 **Fixed Price** contract to one or several company(ies) or organization(s). 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 must be legally registered;
- The offeror must be in good standing with its governing tax authority;

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:

- Legal Business Registration
- Latest Tax Registration Certificate

Documents to conduct the Technical Evaluation and additional Due Diligence:

- Company Profile, 2-page max
- References from previous work projects (including contact information)
- CVs of all key personnel allocated, 3-page max per personnel;
- Technical proposal, including project timeline;
- Detailed budget.

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. As a Fixed-Price contract, the price of the contract to be awarded will be an all-inclusive fixed price basis, either in the form of a total fixed price or a per-unit/deliverable fixed price. No profit, fees, taxes, or additional costs can be added after contract signing. Offerors must show unit prices, quantities, and total price, as displayed in the

Offer Sheet in Section 4. All items must be clearly labeled and included in the total offered price.

Offerors **must** include VAT and customs duties in their offer

3.4 Currency

Offers should be submitted in: USD

Payments will be made in: USD

3.5 Tender Evaluation (Trade-Off 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 proposals, 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 Scoring Evaluation

Trade-Off Method

Mercy Corps Tender Committee will conduct a technical evaluation which will grade technical criteria on a weighted basis (each criteria is given a percentage, all together equaling 100%). Offeror's proposals should consist of all required technical submittals so a Mercy Corps committee can thoroughly evaluate the technical criteria listed herein and assign points based on the strength of a technical submission.

Award criteria shall be based on the proposal's overall **"value for money"** (quality, cost, delivery time, etc.) while taking into consideration donor and internal requirements and regulations. Each individual criteria has been assigned a weighting prior to the release of this tender based on its importance to Mercy Corps in this process.

Offeror(s) with the best score 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 3.5.2](#).

When performing the Scoring Evaluation, the Mercy Corps tender committee will assign points for each criteria based on the following scale:

Point	Rationale
0	Not acceptable; has not met any part of the specified criteria
1-4	Has met only some minimum requirements and may not be acceptable
5	Acceptable
6-9	Acceptable; has met all requirements and exceeds some
10	Acceptable; has exceeded all requirements

Evaluation Criteria	Weight (%)	Possible Points (1 to 10)	Weighted Score
	(A)	(B)	(A*B)
Technical Proposal	35%	10	XX
Proven experience in access to finance for the off-grid energy sector is key, including providing technical assistance to private companies and designing creative financing mechanism	15%	10	XX
C&I experience	15%	10	XX
Price / Cost	10%	10	XX
Presence or experience in Nigeria and Niger, either directly or through a partner	10%	10	XX
A comprehensive understanding of UN and NGOs procurement procedures	5%	10	
Expertise in humanitarian energy challenges	5%	10	XX
Fluency in French	5%	10	
TOTAL POSSIBLE SCORE:	100%	80	

3.5.2 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 supplier or supplier(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
- Examples of previous similar work
- Other appropriate documented method giving Mercy Corps increased confidence in the supplier's ability to perform

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 Proposal” 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 Proposal

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

- ☐ **Cover Letter** explaining interest to be a contracted vendor or supplier, and the details of the Proposal. The content of the cover letter shall include the following information:
 - ☐ A detailed specification of the offered services (Proposal)
 - ☐ Delivery time
 - ☐ Price validity date (for this purpose and as stated on the advertisement, quote given shall remain unchanged for 180 working days)
- ☐ A Price Offer detailing the unit price only, using the **Price Offer Sheet** template provided in annex 2
- ☐ Completed and signed Mercy Corps **Supplier Information Form** (template provided in annex 1)
- ☐ Other important documents offeror feels need to be attached to support their proposal

The original proposal 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 proposal shall be initialed by the person or persons signing the proposal 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 proposal.

5. Scope of Work

5.1 Background

Mercy Corps is a leading international non-profit organization powered by the belief that a better world is possible. Our team of more than 6,000 humanitarians works in over 40 countries to help people triumph over adversity and build stronger communities from within. Mercy Corps fully leverages the expertise of our Energy 4 Impact (E4I) energy access platform to increase access to climate-smart, sustainable energy, improving the lives of millions around the world.

Since the [Global Platform for Action on Sustainable Energy in Displacement Settings \(GPA\)](#) was established in 2018, Mercy Corps has been a very active Steering Committee member, with a focus on strengthening energy access market systems in support of livelihoods and economic opportunities in displacement settings. Currently, Mercy Corps has doubled down on its collaboration with the GPA to provide thought leadership in the decarbonization of humanitarian operations. This effort builds on Mercy Corps' Enter Energy initiative and on the funding of our own [Sustainability Report](#) that lays a roadmap for halving our emissions by 2023. Our first-hand experience informs the collaboration with the GPA in the implementation of the German Foreign Office-funded "[Decarbonising Humanitarian Energy Multi-Partner Trust Fund](#)" (DHE) program. Specifically, Mercy Corps is supporting the design of the "De-Risking Facility" component which is "seeking to protect an energy service provider's capital investment from the standard contractual termination clause", which is a precondition of all long-term agreements with the United Nations and some NGOs, including power purchase agreements (PPAs) and leasing agreements. A fund that would cover this risk would allow energy service companies to finance, install, and manage renewable energy solutions in a manner that is more cost-effective than presently possible and could support the scale-up of the energy transition by removing the need for humanitarian actors to self-finance through grants from donors.

While the energy assessments to support the transition from diesel generators to cleaner energy sources at partner offices, facilities, and/or operational activities (e.g. water pumping, medical facilities, schools, community spaces, etc.) would be provided through a technical assistance programme (i.e. the Centralised Clean Energy Service), and a grant to offset part of the costs associated with energy efficiency measures would be paid directly out of the DHE, the decarbonization through solar PV solutions to replace diesel generators (generally rooftop-mounted) is foreseen through energy service contracts, where energy companies would cover the initial capital investment (CAPEX) and operational expenditure (OPEX), and own and operate the renewable energy systems. In turn, humanitarian organizations would enter into third-party agreements (e.g. PPAs, asset leasing, energy service agreements) with the energy companies by switching their current spending for diesel-based energy generation to monthly installments to the new energy providers. It is estimated that at least 22 million EUR CAPEX is required for these installations. Based on the [de-risking study conducted for Shell and GPA in 2019](#) (to be re-validated) third party energy providers would require a de-risking facility of about 2,2 million EUR to manage the contract termination and other risks effectively.

The main objectives of the De-risking financial facility will be:

- *Reduce contract default/payment risks:* De-risking financial facilities are designed to reduce risks borne by private sector energy companies and make energy investments more attractive to private investors. The initial scoping phase would identify and evaluate potential electrification projects of humanitarian operations (e.g. offices, guesthouses, warehouses) that face significant risks and barriers to private sector investment, such as political instability, regulatory uncertainty, or lack of financing,¹ and the use of contractual termination clauses in long term agreements with humanitarian organizations. The Consulting Firm would conduct a comprehensive risk assessment of the identified projects and develop strategies to manage and mitigate the risks involved.
- *Mobilize private capital/investment:* The facility aims to mobilize private sector investment in the energy sector by addressing the barriers to investment. The facility would be designed to attract investment from various sources, including philanthropic organizations, impact investors, and public-private partnerships, to support energy projects in humanitarian contexts.

- *Accelerate humanitarian energy access:* By increasing investment, the facility aims to accelerate energy access and contribute to the achievement of Sustainable Development Goal 7 starting from humanitarian operations.

Based on the foregoing and background documentation², *Mercy Corps intends to recruit a consultant/consulting firm to conduct a deeper study of the energy service de-risking sector and to support the design of a de-risking facility to decarbonize humanitarian operations.*

The design of the financial facility should enable UN agencies and NGOs to enter into agreements with renewable energy companies to meet their electricity needs, while addressing financial risk. The facility should be structured to maximize the benefits for the humanitarian sector, while balancing the risks for energy companies and investors. An effective design should include:

- Clear eligibility criteria for projects to be solarized;
- Robust risk assessment and mitigation mechanisms;
- Flexible financial structures to address different types of risks ; and
- Transparent monitoring and evaluation processes.

5.2 Scope of Work

DETAILED TASKS TO BE PERFORMED:

The detailed tasks and deliverables to be completed by the Consulting Firm are:

PART 1: Desk research and interviews, including market mapping and gap analysis.

- A. **A) Market mapping**
 - B. i. Collate and review the literature on relevant de-risking facilities, with a specific focus on applicability to the broadest legal framework possible while maintaining financial viability for humanitarian agencies. The mapping will include high-level data and information, where available, on size and type of facility, key criteria and focus areas, structure type (including legal registration details, as available), brief learnings and insights on successes and challenges, and partners involved.
 - C. ii. Map de-risking energy access initiatives globally, with a specific focus on West Africa (Nigeria and Niger). Facilities designed to de-risk “behind-the-meter” commercial and industrial (C&I) projects should be specifically analyzed to determine how they functioned to manage informational, technical, regulatory, and financial risks.
 - D. iii. Hold 20-25 expert consultations (including UN and humanitarian organizations, energy companies, commercial and development banks, multilateral development institutions, and investment funds, governmental actors) to a) better understand humanitarian organizations’ decarbonization needs and b) energy company de-risking requirements to meet humanitarian organizations’ needs.
 - E. iv. Consolidate insights from these stakeholder consultations, and draw out key learnings.
- F. **Deliverables:** *Deck on mapping/overview of de-risking facility for decarbonization of humanitarian operations (PPT, 10-15 slides), summarizing key findings and learnings*

- A. **B) Guiding principles and opportunity analysis**
 - B. iv. Conduct an analysis to understand what are the main guiding principles that will need to feature in the de-risking facility for it to be successful in addressing humanitarian organizations' and energy companies' needs.
 - C. v. Assess risks and identify risk mitigation measures for decarbonizing facilities in humanitarian settings (i.e. solar facilities)

D. vi. Quantify the financial and sustainability advantages of switching from diesel to renewable energy generation for humanitarian operations

E. vii. Develop key insights, recommendations, and identify needed research on a) how the de-risking facility should be structured to effectively attract reputable energy companies in fragile markets and humanitarian settings - this would take into account the different regulatory systems (current and emerging) in the Global South and also in the pilot countries (Niger and Nigeria) and analyze the cost-opportunity and applicability for national and international energy companies; b) whether to create a new facility or complement an existing facility; c) what indicative facility size (if new facility), and what ecosystem support services are required to improve economic sustainability and high-value impact outcomes

Deliverables:

- *Guiding principles analysis deck (PPT, 10-15 slides), summarizing key findings and insights as described in points above, and building from market mapping deck*
- *A stakeholder workshop to align on the facility type so we can dive into the design work in Part 2; this will result in a PPT (~15 slides) summarizing feedback inclusive of specific recommendations on de-risking facility structure, capitalization requirements and key considerations for success*

PART 2: Selection and coordination of a third-party fund manager to design de-risking facility

1. Drawing on Part 1, the Consulting Firm will design the tender request materials that will guide the selection of a third-party solution provider to design the de-risking facility in accordance with Mercy Corps' procurement procedures. The Consulting Firm will provide technical assistance to the selected solution provider to ensure that the facility set-up is relevant to the context and needs of stakeholders:

1. i. In coordination with the Mercy Corps procurement department, E4I and the GPA, lead the development of the background tender documents and coordinate the selection process.

2. ii. Onboard and coordinate the selected solution provider to design the de-risking facility and ensure the service provider delivers the tasks per quality and time. *It is to be noted that Mercy Corps retains the right to break down the fund-design phase from the roll-out phase.* The design of the facility will include figures on the economics and what social impact can be achieved at different fund sizes.

3. iii. Provide technical advisory (technical guidance, inputs, reviews) to selected third-party solution provider

4. iv. Design and deliver a co-design workshop together with the 3rd party fund developer and relevant stakeholders to discuss, review and refine the fund design and structure, and align on next steps.

v. Supervise the third-party solution provider to deliver a high-level implementation plan and roadmap to set up and launch the fund; identify key next steps that need to be performed, and for each, provide a brief summary (2-3 lines) on what this should entail e.g. on full legal review, partnerships strategy (fund managers, co-funders, etc.), pilot planning and geographical focus selection, governance and operational framework development, detailed M&E framework, financial modelling and value for money assessments, risk management, team structure, pipeline development, and exit strategy.

vi. Prepare a draft Private Placement Memorandum for the fund to be the operational document to launch the fund, with a full description of the market opportunity, fund strategy, target size, team, competitive niche, etc.

1.

Deliverables:

- *Tendering documentation as per Mercy Corps procurement procedures (in coordination with Mercy Corps team)*
- *Supervise the third-party solution provider to provide an implementation roadmap (PPT, 15-20 slides), consolidating key insights and recommendations as described above*

- *Design and deliver a workshop, co-created and co-facilitated with the selected solution provider including presentations for the workshop. Our expectation is to together align on the stakeholder list, as appropriate.*

PROPOSED METHODOLOGY

The Consulting Firm should further refine the methodology for the assessment. In summary, we foresee the following key activities to achieving the goals of the assessment:

- Desk study of existing data, reports, and case studies
- Key informant interviews (KIIs) with private sector energy companies, humanitarian energy players, humanitarian organizations (including UN and NGOs), financial institutes, and any other relevant primary data collection exercise (e.g., FGDs, surveys) to understand the barriers, risks, and needs of the key actors in the value chain.
- Analysis and summary of findings and reporting
- Design and lead tendering process for the selection of the third-party solution provider. *It has to be noted that Mercy Corps retains the right to break down the fund-design phase from the roll-out phase.*
- Collaboratively design the fund structure with third-party solution provider (fund manager), Mercy Corps, and GPA

LEVEL OF EFFORT

The engagement will be for a maximum of 60 days.

TIMELINE

The below timeline can be slightly modified, however the presentation of the facility presentation must occur as indicated:

	June				July				Aug				Sept				Oct				Nov				Dec						
Task	5	12	19	26	3	10	17	24	31	7	14	21	28	4	11	18	25	2	9	16	23	30	6	13	20	27	4	11	18	25	
Part 1: Desk research																															
Market apping																															
Guiding principles and opportunity analysis																															
Part2: Selection of fund manager and facility co-design																															
RfA and selection																															
Facility co-design																															
Facility presentation																															

ASSESSMENT GOVERNANCE AND IMPLEMENTATION

During the delivery of services, the Consulting Firm shall be under the direct supervision of the Energy Access Technical Support Unit (TSU) Director, and working closely with the TSU and E4I team. The GPA team will also be involved in the review of key documents and intervention designs.

Required Expertise

- Proven experience in access to finance for the off-grid energy sector, including C&I solar, is key including providing technical assistance to private companies and designing creative financing mechanisms
- Experience with de-risking structures, including political risk insurance, etc., is a plus.
- A comprehensive understanding of UN and NGOs procurement procedures
- Expertise in humanitarian energy challenges is a plus
- Presence or experience in Nigeria and Niger, either directly or through a partner is a plus
- Fluency in French is a plus

6. Sample Contract

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

This service contract made on _____ between **Mercy Corps**, nonprofit corporation having its office in Addis Ababa, Ethiopia, Yeka Sub-City, Kebele 08, House No. 377; around Hayahulet, and represented by Mr. Melaku Yirga, Country Director; hereinafter called the “**Client** And _____, Addis Abeba, Tel. No _____ hereinafter called **Service Provider**

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.
- 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 <https://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 (www.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. **Independent Contractor.** The parties intend to be independent contractors

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 "Indemnatee"), 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 Indemnatee or asserted against any Indemnatee 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 Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence or willful misconduct of such Indemnatee.

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.

Penalty Clause:

In the case that the Supplier fails to meet the agreed delivery period, unless a strong valid justification is presented and submitted officially by the supplier for the delay, the Supplier shall be liable to pay penalties of 0.05% of the value of the services for every day of the delay. Should the Supplier exceed the agreed delivery period by more than 20 days, Mercy Corps shall have the right to terminate this Agreement and request that the remaining balance of the advance paid to the Supplier be paid back.

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 Ethiopia Addis Ababa. 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.

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SCHEDULE I: ADDITIONAL TERMS

Statement of Services – Fixed Price

1. Scope of Work (insert)

2. Performance Period: The start date of this Contract is XXX and, unless earlier terminated in accordance with Section 11, has an end date of XXX. The individual due dates of each deliverable are as follows:

Deliverable #	Deliverable Description	Deliverable Due Date

3. Pricing: This is a firm and fixed price Contract that includes a ceiling amount of XXX for Services rendered under this Contract. Payments will be made according to the deliverables schedule below:

Deliverable #	Deliverable Description	Deliverable Price	Total Contract Price

Invoicing and Payment Terms: Contractor will submit an Invoice in accordance with pricing as specified in the Contract. 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").

Key Personnel: *[if applicable, include a list of the Contractor's personnel that are key to the bargain and the project and that the Contractor cannot change without prior written approval. If not applicable, note "Not Applicable" here.] (the "Key Personnel").* _____

Authorized Representatives and Contact Information:

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Mercy Corps: *Only the following Mercy Corps employees are authorized to agree to any amendment of this Contract:*

Contractor: *Contractor's authorized representative for all purposes is:*

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

Termination for Convenience Notice Period: *5 days* (the "Termination Notice Period")

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

MERCY CORPS

Firm

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Sign: _____

Sign: _____

Finance Review:

Name: _____

Title: _____

Date: _____

Sign: _____

7. Attachments to the Tender Package

Attachment 1 -Supplier Information Form template

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The information provided will be used to evaluate the Company before contracting with the Mercy Corps.

Please complete all fields.

Supplier Information

Company Name	
Any other names company is operating under (Acronyms, Abbreviations, Aliases)	
Previous names of the company	
Address	
Website	
Phone/Fax Numbers	Phone: Fax:
Primary Contact	Name: Phone Number: Email Address:
# of Staff	
# of Locations	
Avg. Value of Stock on Hand (USD)	
Government - owned (yes/no)	

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Name(s) of Board of Directors	
Name(s) of Company Owner(s)	
Parent companies, if any	
Subsidiary or affiliate companies, if any	

Financial Information

Bank Name and Address	
Name under which company is registered at bank	
Payment Terms	Payment By: <u>Check</u> Yes No <u>Wire Transfer</u> Yes No
Specify Standard Payment Terms (Net15, 30, etc.)	

Product/Service Information

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List Range of Products/Services Offered	
Basis For Pricing (Catalog, List, etc.)	

References

Client Name:	<u>Contact Name, Phone, Email Address:</u>
Client Name:	<u>Contact Name, Phone, Email Address:</u>
Client Name:	<u>Contact Name, Phone, Email Address:</u>

Supplier Self-Certification of Eligibility

Company certifies that:

1. It, its affiliates and subsidiaries, owners, officers, directors and key employees (to the best of its knowledge) are not the subject of any government's sanctions, designations, donor rules or prohibitions, or laws prohibiting transactions with

it/them. It is not the subject of any donor government investigation into its misconduct with any other recipient of that donors funding.

2. It, its affiliates and subsidiaries, owners, officers, directors and key employees have not and do not engage in any form of terrorism or attacks on civilians and do not provide any form of material support or financial resources for individuals or organizations that do engage in any form of terrorism or deliberate attacks on civilians.
3. It, its affiliates and subsidiaries, owners, officers, directors and key employees have not and do not engage in weapons or drugs manufacture, transport, sale or distribution.
4. It is not in default on any material credit agreement, bankrupt or being wound up, are having its affairs administered by the courts, have entered into arrangements with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations.
5. It has not been determined to be in breach of a material contract by any legal body anytime within the past 2 years.
6. It pays taxes as and when due and is not currently the subject of any investigation or proceeding related to back-owed taxes.
7. It provides workers compensation insurance to its workers in accordance with the laws of the countries where it operates.
8. It pays social security obligations as required in the countries where it operates.
9. It, its owners, officers and directors have not been convicted of an offense concerning its professional conduct and has not engaged in grave professional misconduct.
10. It, its affiliates and subsidiaries, owners, officers, directors and key employees have not been the subject of criminal investigation or judgement for fraud, corruption, human trafficking, spying, weapons transport or smuggling, sexual exploitation or abuse, internal sexual misconduct, abuse or exploitation of children, involvement in a criminal organization or any other criminal activity.
11. It treats its employees with dignity and respect and maintains social operating standards, including: working conditions and social rights; avoidance of child labor, bondage, forced labor, human trafficking or exploitation; assurance of safe and reasonable working conditions; freedom of association; freedom from harassment (including sexual harassment), exploitation, abuse, bullying and discrimination; protection of basic social rights of its employees and Mercy Corps beneficiaries.
12. To the best of its knowledge, no Mercy Corps employee, officer, consultant or other party related to Mercy Corps has a financial interest in the Company's business activities, nor is any Mercy Corps employee related to any owner, officer, director or employee of the company, and, if so, it will ensure that the relationship is disclosed to Mercy Corps and will not be used for improper influence. Discovery of an undisclosed Conflict of Interest will result in immediate revocation of the Company's Authorized Supplier status and disqualification of Company from participation in future Mercy Corps procurement.
13. It understands that attempting to or agreeing to provide anything of value to any Mercy Corps employee, agent or representative for the purpose of encouraging that person to award Company a contract or take or not take any action related to any contract will result in immediate termination of any agreement. Company certifies that it does not engage in such conduct.
14. It understands that Mercy Corps seeks fair and open competition and the fairest price available and that any attempt by company to subvert fair and open competition, including working with other bidders to fix prices, working to exclude competition, seeking confidential information from Mercy Corps or other bidders, using multiple related or controlled companies to give the appearance of competition, or any similar activity, will result in termination of any agreement. Company certifies that it does not engage in such conduct.
15. It understands that Mercy Corps prohibits any of its partners or suppliers from bribing public officials and certifies that it does not do so.
16. It is not conducting business under other names or aliases that have not been declared to Mercy Corps.

If the Company cannot certify to any of the above it should explain why not. Mercy Corps may take the individual circumstances into account for some situations. However, any false certification could be grounds for immediate disqualification and termination of any future agreement.

By signing the Supplier Information Form you certify that your Company is eligible to supply goods and services to major donor funded organizations and that all of the above statements are accurate and factual.

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Company Name: _____

Name of Representative: _____

Title: _____

Signature: _____

Date: _____

FOR MERCY CORPS USE ONLY

Following documents have been provided [Update according to sections 3.3 and 4 of the Tender Package]:

Documents	
Legal Business Registration	
Latest Tax Registration Certificate	
<i>[Insert other supporting document as per Tender Package]</i>	
<i>[Insert other supporting document as per Tender Package]</i>	
Company Profile	
References from previous work projects	
<i>[Insert other supporting document as per Tender Package]</i>	
<i>[Insert other supporting document as per Tender Package]</i>	
<i>[Insert other supporting document as per Tender Package]</i>	
<i>[Insert other supporting document as per Tender Package]</i>	
<i>[Insert other supporting document as per Tender Package]</i>	

I _____ an employee of Mercy Corps having completed and reviewed this form confirm the accuracy of information provided:

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Name _____

Title _____

Signature _____

Date* _____

*Supplier to be re-authorized one year from this date.

Attachment 2 -Price Offer Sheet template

Price Offer Sheet				
Item Description	Quantity	Unit of Measure	Unit Price	Total Price
Total before tax:				
VAT (if applicable)				
Total:				
Company Name:				
Name of Representative:				
Title:				
Signature:				
Date:				
Tender #:				