

1. Invitation to Tender

Tender Name: Office internet subscription for 24 months for KRT, NYL, SKS, GRD Offices	Tender No: KRT-1008
Location: Khartoum, Sudan	Correspondence Language(s): English
Brief Summary Description of Project: Internet for all offices	

Tender Package Available from: 30 / November /2022; 9:00AM	Tender Package Pickup Location: Mercy Corps Khartoum office- Altaeif area or online at www.sudanbid.com
Deadline for Offer Submission: 6/ December/ 2022; 3:30 PM	Submit Offers to: Mercy Corps Khartoum office- Altaeif area, or through email to sd-tenders@mercycorps.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: sd-tenders@mercycorps.org	
Last Day for Questions: (4/December/2022; 3:30PM)	Questions will be answered by: (6/December/2022; 3:30PM)
Questions will be answered through: sd-tenders@mercycorps.org	

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/Technical Specifications/BoQ
	✓	Sample Contract

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://mercy Corps.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 90 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 contract to one company. 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
- The offeror must have a trading license.
- The offeror must have Bank details in the business name.
- The offeror must provide a company profile minimum showing details of establishment and official operating premises and services offered.

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:

- Copy of Registration documents.
- Copy of Taxation Certificate.
- Copy of Bank account information.
- Minimum three references
- List of personnel assigned to support MercyCorps Europe
- Copy of Company Profile, two page maximum.
- Recommendation/reference letters from current/past customers
- Price offer with payment terms and conditions.

Documents to conduct the Technical Evaluation and additional Due Diligence:

- Company Profile, 2-page max
- References from previous work projects (including contact information)
- Reference Checks
- Example: Supplier's facility visits

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 if applicable

3.4 Currency

Offers should be submitted in: USD

Payments will be made in: 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?
Must be a registered company/Firm providing internet/Data services through Microwave or Fibre optics or both	
Must have been operational for at least 1 year	
Must have bank account in the business name	
Must be tax compliant	
Must provide a Price offer with payment terms and conditions.	
Must provide a Price offer with payment terms and conditions.	
Must be able to demonstrate that they can provide services even when there is outage of internet (Screen print of uptime between 21 st Oct to 26 th Oct 2022)	

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
- Example: Supplier's facility visits
- Having supplier that he can keep the internet service alive during the conflicting situation is one of the security regulations to ensure stable communication

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 180 working days)
- A Price Offer detailing the unit price only using the **Price Offer Sheet** template provided in **section 7**
- Completed and signed Mercy Corps **Supplier Information Form** (template provided in **section 7**)
- 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. Scope of Work/Technical Specifications

5.1 Background

Add a brief description of the program context and how the goods / services / works will be used.

5.2 Scope of Work

STATEMENT OF SERVICES – FIXED PRICE

Provision of internet services

Term: This Agreement shall have an effective date of XXX and, unless earlier terminated in accordance with Section 13, expiration date of XXX

Offer Period: Two years from effective date of this contract. No services can be ordered beyond the expiration date of agreement. Completion of ordered services and related payment may go beyond the expiration date of agreement.

Services: In accordance with the terms of the agreement, contractor agrees to perform the following services in the following manner.

a. Background: Mercy Corps is a registered International Non-Governmental Organization that has been operating in Sudan since 2006. Working in cooperation with communities to help build local capacity and support for economic development, Mercy Corps provides creative, transferable solutions through targeted emergency assistance, capacity building, and community driven development. Mercy Corps' program and projects are financed by various International Donors including but not limited to USAID, SIDA

b. Scope of Work: Provision of internet connection to Mercy Corps offices in Sudan.

The term "Services" means all services, including delivery of all services described in matrix below and in attached copy of Contractor's price offer and SLA forms attached.

The service provider will provide and maintain a dedicated symmetrical internet bandwidth link with a public IP and an availability of 99% uptime over each year at locations listed below: -

Ref.

Mercy Corps Office	Address	Connection type	Bandwidth

Khartoum Office	Al-Taif, house No. 39-Block No. 22-Khartoum Sudan	Fibre Optics/ Microwave Wireless subscriber	15 MB
Nyala Office	Nayala South-Darfur Almazad Arya house No 10	Fibre Optics/ Microwave Wireless subscriber	10 MB
Gedaref Office	South-Kordofan Emtedad AlGaser house	Fibre Optics/ Microwave Wireless subscriber	10 MB
Kadugli South-Kordofan office	AlGadaref Almydan Arya house no. 45	Fibre Optics/ Microwave Wireless subscriber	10 MB

The service provider will shift the services by installing devices similar to the old ones and will receive the old devices upon installing the devices and completing the shifting

Support and Maintenance Services

The service provider will provide to Mercy Corps the following support and maintenance services:

Assign Mercy Corps a dedicated Account Relationship Manager to serve as focal contact person.

Assign Mercy Corps a dedicated solution engineer to handle technical issues.

Inform Mercy Corps of any scheduled maintenance activities that are likely to disrupt Services at least 7 days prior to the maintenance being performed

Carry out schedules maintenance that is likely to disrupt Services either between midnight and 7:00 Am or at a time agreed with Mercy Corps in advance of maintenance being performed.

Access to online web-based monitoring system.

Monthly reporting and quarterly performance reviews

Support Mercy Corps in line with escalation matrix in Annex 1 will be followed for all fault reporting.

Inform Mercy Corps' Contact Person of any planned Maintenance which may result in a disruption of the Service of more than five (5) minutes according to the applicable ITU-T standard at least two (2) working days prior to the said maintenance, stating: -

The scheduled starting time of the planned Maintenance shall, as far as possible, be fixed in consultation with the Customer and shall be between 19:30 and 07:00, on weekends and all recognized Sudan's public holidays, from 19:30 until 07:00 on the day after.

The expected duration of the work in question; and



The expected degree of disruption to the extent that The service provider shall be able to determine.

The expected duration of routine Maintenance over a period of one (1) year shall not exceed a maximum of seventy-two (72) hours.

Dealing with Failure

The service provider shall deal with failures in a timely and professional manner.

Mercy Corps shall immediately inform The service provider by telephone or email of any failures which have been discovered. In this regard, any communication between the parties shall be made exclusively by the persons referred to in Section 6 of Schedule I below. Should this requirement not be fulfilled, no Failure shall be deemed to have been registered. When reporting a Failure, Mercy Corps shall provide The service provider with the necessary information to identify the Internet Link in question as well as any other information which The service provider has specified at any time in advance. Mercy Corps shall confirm any notification made by telephone by email. The service provider shall register any Failure reported by the Customer and accordingly issue a reference number to the Customer.

Upon receiving such report, The service provider will log the details of the call in The service provider's service management system, a reference number given to Mercy Corps as well as updates from time to time on the status of the Failure and/or the repair thereof.

The Customer shall, in respect of the repair of the Failure, be obliged to provide The service provider with any cooperation which can reasonably be expected in as far as it shall be deemed necessary to expedite the successful completion of repairs.

In the event that it is established that the cause of the Failure is not arising out of The service provider's Network, The service provider shall inform the Mercy Corps as soon as possible of this finding. In such case, Mercy Corps shall be solely responsible for repairing the Failure. In this regard, The service provider shall provide the Mercy Corps with any information which is reasonably expected to be available on the nature and location of the Failure.

The service provider shall inform the Mercy Corps by telephone once the Failure has been rectified and also confirm the same by email. The service provider may provide a Root Cause Analysis Report (RCA) if requested by Mercy Corps. For all intents and purposes material to this SLA, the time of notification of rectification of the Failure shall be deemed to be: The time of the notification by telephone, in case Mercy Corps is reached; or, if Mercy Corps could not be reached via telephone, the time when such confirmation was made by email.

If any failure or degradation is caused due to changes made on the Network or any new peripherals configured by the Mercy Corps, The service provider will not be held accountable to the failure and will not be obliged to compensate the Mercy Corps.



Pricing: Prices for all services to be provided under this contract will be fixed at rates in Schedule II of this contract.

Invoicing & Payment Terms: Within 30 calendar days of the end of each month, contractor will submit an invoice in accordance with pricing as specified in this agreement. Mercy Corps will make payment to contractor for all sums not in dispute within 30 calendar days of receipt of contractor's invoice(s) (the "Payment Terms").

Authorized Representatives and Contact Information:

Mercy Corps: Only the following Mercy Corps employees are authorized to agree to any amendment of the Agreement:

Country Director

Only the following Mercy Corps employees are authorized to receive invoices, accept or reject services:

Senior IT officer

Contractor's authorized representative for all purposes is:

The service provider representative

Contact person for Mercy Corps orders will be

Senior IT Officer

Termination for Convenience and Non-performance Notice Period: (the "Termination Notice Period")

This Contract may be terminated by either party at any time with 30 calendar days' prior written notice. Any direct costs or expenses incurred by the contractor prior to termination will be paid by the Mercy Corps subject to the terms of this contract. Any item(s) in process of being worked on will be completed.

This contract may be terminated by MC based on failure or non-performance by the service provider within a period of 15 calendar days.

Mercy Corps may also terminate this agreement upon written notice for its convenience or due to circumstances outside of the contractual parties' control (force majeure) including war activity in project area that forces the suspension of all activities for the foreseeable future, or unforeseen governmental interference that make it impracticable for Mercy Corps to continue its work.

Donor Terms: The Donor Terms set forth in Schedule III to the Agreement are hereby incorporated in the agreement by reference.



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.

Sample Contract

MASTER SERVICE AGREEMENT

Contract No. _____

THIS MASTER SERVICES AGREEMENT entered into as of _____ by and between MERCY CORPS, a State of Washington, U.S.A. nonprofit corporation having its principal office in Portland, Oregon, U.S.A. ("**Mercy Corps**") and _____ ("**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 of 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 Task Order 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: _____

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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:
- b. Scope of Work:

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

4. **Pricing:**
5. **Invoicing & Payment Terms:** 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:**
7. **Reimbursable Expenses:**
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: _____

Tender Package — Request for Bid (RFB)



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:** The Donor Terms set forth in Schedule II to the Agreement are hereby incorporated in the Agreement by reference].

SCHEDULE II

DONOR TERMS

EXHIBIT A

FORM TASK ORDER - FIXED PRICE

Task Order No. _____

1. **Contractor:** _____.
2. **Master Service Agreement No.:** _____.
3. **Statement of Work (the “SOW”):** In accordance with the terms of the above-referenced Master Services Agreement, Contractor agrees to perform the following services in the following manner:
 - a. Task Order Scope of Work:
 - b. Deliverables: The Contractor shall deliver the following deliverables in accordance with the schedule set in Section 4 below:
 - i. Deliverable 1:

Tender Package — Request for Bid (RFB)



ii. Deliverable 2:

4. **Performance Period:** This Task Order shall have an effective date of XXX and, unless earlier terminated in accordance with Section 13 of the Agreement, an expiration date of XXX. The individual due dates of each deliverable are as follows:

Deliverable #	Deliverable Description	Deliverable Due Date

5. **Price:** This is a fixed price Task Order. Mercy Corps agrees to pay Contractor no more than *[describe the price per deliverable]* for services rendered under this Task Order. Payment for deliverables will be made according to the schedule below: *[Refer to the Service Agreement template for more guidance regarding Cost Reimbursable or Time and Materials payment and pricing terms.]*

Deliverable #	Deliverable Description	Deliverable Price	Total Price

Tender Package — Request for Bid (RFB)



IN WITNESS WHEREOF, this Task Order has been duly executed by the parties' Authorized Representatives as of the date written below.

DATED: _____

MERCY CORPS

CONTRACTOR

Name:

Name:

Title:

Title

For Mercy Corps internal purpose only				
PR Number	Fund Code	GL Account	LIN Code	Office Code

7. Attachments to the Tender Package

Attachment 1 -Supplier Information Form template

Company Name	
Any other names company is operating under (Acronyms, Abbreviations, Aliases)	

Tender Package — Request for Bid (RFB)



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

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, 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 exploitation, abuse, 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 use 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

Tender Package — Request for Bid (RFB)



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.

Company Name: _____

Name of Representative: _____

Title: _____

Signature: _____

Date: _____

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

Name _____

Title _____

Signature _____

Date* _____

Tender Package — Request for Bid (RFB)



Attachment 2 -Price Offer Sheet template

Price Offer Sheet					
S/ No	Item Description.	Qty	UOM	Unit Price/ MB	Total Price/ MB
1	Khartoum Office 20 MB Speed Fibre optics/ Microwave Wireless subscriber,	20	MBs		
2	Nyala Office 15 MB Fibre optics/ Microwave Wireless subscriber,	15	MBs		
3	Gedaref Office 15 MB Fibre optics/ Microwave Wireless subscriber,	15	MBs		
4	Kadugli South-Kordofan office 15 MBs Fibre optics/ Microwave Wireless subscriber,	15	MBs		
	Service.	1	Unit		
	Equipment	1	Unit		
	Installation	1	Unit		
	Total before tax:				
	VAT (if applicable)				
	Total:				
	Validity of offer				
	Delivery period				
	Payment terms (No cash payments)				
	Duration of credit in number of days. State credit days				
	Company Name:				
	Name of Representative:				
	Title:				
	Signature:				
	Date:				
	Tender #:				