

ITB ID: ITB/CHAI/RUTF/0124

ITB Date: 17<sup>th</sup> July 2024

# Invitation to Bid (ITB)

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Selection of Manufacturer for Supply of  
Competitively Priced UNICEF-Approved Ready-To-  
Use Therapeutic Foods (RUTF) Formulation to  
Ghana

## 1. Invitation to Bid: Letter of Invitation

Dear Bidder,

Clinton Health Access Initiative Inc. (hereinafter referred to as CHAI) invites responses to this Invitation to Bid (“ITB”) from Bidders, for “Selection of Manufacturer for Supply of Competitively Priced UNICEF-Approved Ready-To-Use Therapeutic Foods (RUTF) Formulation to Ghana” as per the Terms of Reference and Scope of Work provided in this ITB, respectively.

CHAI is working on a three-year program in Ghana to scale-up and improve the efficiencies of the Community-based Management of Acute Malnutrition (CMAM) program. The goal is to enhance nutritional treatment for children suffering from severe wasting by updating guidelines and training manuals to align with the revised WHO recommendations on the prevention and management of wasting. This includes operationalizing these guidelines in accordance with national priorities, building the capacity of health providers for better early diagnosis and treatment of acute malnutrition, and identifying domestic financing mechanisms for the procurement of RUTF. During the program CHAI will be facilitating catalytic procurement of RUTF to increase existing treatment coverage and is seeking qualified manufacturer for the same.

By responding to this ITB, the Bidder agrees to follow all instructions, specifications, and service guidelines as described in this ITB. CHAI reserves the right to reject any or all bids. All costs incurred by the Bidder in relation to the preparation of the bid shall be borne by the Bidder and CHAI shall not be responsible and/or liable to bear the said costs under any circumstance. CHAI is not obligated to accept the bid with the lowest price.

CHAI, through its strict procurement procedures, ensures the safety and confidentiality of all the documents received. CHAI also ensures a fair and competitive evaluation process while awarding the contract to the successful vendor. All bids must be submitted to [nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org) with name in the format <ITB/CHAI/RUTF/0124\_Bidder Name\_Date (ddmmyyyy)>.

We greatly appreciate your efforts and look forward to working with your team.

Yours sincerely,

Procurement Desk

Clinton Health Access Initiative Inc.

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## 2. ITB Notice

### 2.1. Invitation to Bid

CHAI invites interested and capable manufacturers/bidders to submit a bid for “Selection of Manufacturer for Supply of Competitively Priced UNICEF-Approved Ready-To-Use Therapeutic Foods (RUTF) Formulation to Ghana”.

The following table outlines the important dates in the procurement process.

#### Summary of deadlines

ITB ID	ITB/CHAI/RUTF/0124
Release of ITB	17 <sup>th</sup> July 2024
Last date of submission of written queries for clarification	24 <sup>th</sup> July 2024
Last date for Q&A communication between CHAI and manufacturers	26 <sup>th</sup> July 2024
Last date for ITB submission	2 <sup>nd</sup> August 2024
ITB Award	23 <sup>rd</sup> August 2024

Note: The Bidders can approach CHAI for any queries as per the timeline mentioned in the table above. CHAI will respond to all queries received by the last Q&A date via a Q&A document that will be published and shared with all bidders simultaneously.

The bid must be submitted electronically via email at the email address [nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org) latest by **2<sup>nd</sup> August 2024 by 23:59 GMT.**

For any queries in relation to this ITB, kindly address your mail to [nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org) latest by **23:59 GMT, 24<sup>th</sup> July 2024.**

If and when required (during initial bid evaluation), opportunity may be given to **eligible bidders** to provide a **Best and Final Offer** before the closure of the bid evaluation process.

### 2.2. About CHAI

The Clinton Health Access Initiative, Inc. (CHAI) is a global health organization committed to catalyzing access to high-quality, low-cost drugs and diagnostics and strengthening integrated health systems in resource-limited settings.

CHAI works at the intersection of the private and public sectors to break the cycle of malnutrition and ensure that vulnerable populations receive high-quality, nutritious food. CHAI is working on a three-year program in Ghana to scale-up and improve the efficiencies of the Community-based Management of Acute Malnutrition (CMAM) program. The goal is to enhance nutritional treatment for children suffering from severe wasting by updating guidelines and training manuals to align with the revised WHO recommendations on the prevention and management of wasting. This includes operationalizing these guidelines in accordance with national priorities, building the capacity of health providers for better early diagnosis and treatment of acute malnutrition, and identifying domestic financing mechanisms for the procurement of RUTF. During the program CHAI will be facilitating catalytic procurement of RUTF to increase existing treatment coverage and is seeking qualified manufacturer for the same.

For more information on CHAI, please visit: [www.clintonhealthaccess.org](http://www.clintonhealthaccess.org)

### 3. Background

#### 3.1. Summary of Target Product

Undernutrition of mothers and children is the number one risk factor for disability-adjusted life years (DALYs) lost in LMICs. Undernutrition manifests in various conditions, including stunting, wasting, and micronutrient deficiencies, that directly and indirectly result in the ill health and premature death of mothers and children.

Deficiencies in vitamins and minerals, coined “hidden hunger”, can go unnoticed, while more acute and chronic forms of undernutrition, like wasting (low weight-for-height) and stunting (low height-for-age), respectively, are more readily visible. Severe acute malnutrition (SAM), defined by a very low weight for height, is the most dangerous form of malnutrition; one in five deaths among children under 5 is attributed to SAM.

The WHO recommends RUTF for the nutritional recovery of children with uncomplicated SAM in both community and hospital settings. RUTFs are shelf-stable protein- and energy-dense food supplements, typically made using peanuts, oil, sugar, powdered milk, vitamins and minerals. RUTFs provide sufficient energy and nutrients that allow children to gain weight and recover. Compared to inpatient care, treating medically uncomplicated SAM cases through community-based management of acute malnutrition (CMAM) can achieve greater recovery and survival rates. Between 286,000 and 365,000 lives could be saved annually if SAM treatment reached 90% coverage through CMAM. The RUTF product is expected to meet specifications and have UNICEF approval for ‘S0000240 Therapeutic spread 92g sachets/CAR-150, RUTF paste’ ([link](#)).

< This ITB is open to manufacturers (Companies) with RUTF formulation and production facility with UNICEF approval. An interested Company should be willing to share data on critical quality product attributes and certifications.>

#### 3.2. Procurement Requirement

Pursuant to the above plan, CHAI plans procurement of 29,000 cartons of RUTF to reach roughly 27,200 SAM infants and children distributed between 2024 and 2026 (13,000 in Q4 2024, 12,000 in Q3 2025, 4,000 in Q3 2026). Under this activity, CHAI will support the government to strengthen and improve the distribution network to ensure the availability of RUTF at all points of care. Bidders may kindly refer to the Scope of Work (as defined in this ITB).

#### 3.3 Scope of Work

This scope of work includes the following activities:

- Manufacturer prepares a production and supply plan that ensures the capacity to supply qualified orders (minimum size to be determined as part of the project plan) with a manufacturing lead time of no more than 90 days; and
- For qualified orders, manufacturers supply RUTF for treatment of infants and children with SAM around \$28 per carton (150 sachets) Free on Board (FOB) to Ghana.
- Manufacturer delivers RUTF to Port of Tema, Ghana in line with below delivery schedule.

Delivery Timeline*	Number of Cartons of 150 sachets each
Q4 2024	13,000
Q3 2025	12,000
Q3 2026	4,000

\*Note, the RFP award will encompass a contract period of three years, subject to the following conditions:

2024: The volume and scope for the first year are fully funded and guaranteed upon award of the contract.

Years 2025 and 2026: The volumes for the second and third years are subject to funding approval, which will be confirmed on an annual basis. While the intent is to maintain continuity and consistency in volumes, actual volumes for these years may be adjusted based on available funding and budgetary constraints.

Under the proposed agreement, the Manufacturer must agree to a Cost, insurance, and freight (CIF) cost and associated terms and supply conditions that are acceptable to procuring organization (CHAI). This FOB price should be immediately effective from the day an agreement is concluded and signed by all parties (Manufacturer/Bidder & CHAI).

### 3.4. Definitions

- **Agreement:** The agreement for the supply of RUTF to be executed between the Selected Manufacturer and CHAI.
- **Bidder:** Any organization that qualifies the ITB requirements and is shortlisted for CHAI's procurement process for this ITB.
- **Contract:** The terms, conditions and requirements set out in this ITB along with its annexures and appendixes, the Respondent's bid in response to this ITB, the Letter of Acceptance that may be issued by CHAI and the Agreement.
- **RUTF:** Ready-To-Use Therapeutic Foods that meets product specification sheet published by UNICEF on 21<sup>st</sup> July 2022 (version 4.1) - [link](#).
- **Letter of Acceptance:** The letter that may be issued by CHAI accepting any binding bid made by any Respondent and shall be tantamount to notification of award of the contract to the Selected Vendor.
- **Respondent:** Bidder who responds to this ITB with a complete bid. The Respondent may be a supplement or generic drug manufacturer.
- **Scope of Work:** Work described in section 3.3 of this ITB, which is to be read conjunctively with other requirements set out in this ITB.
- **Selected Manufacturer:** Respondent whose bid is accepted by CHAI through a Letter of Acceptance.
- **CHAI:** Clinton Health Access Initiative Inc.

## 4. General Instructions and Considerations

CHAI will manage the ITB process

#### 4.1. ITB

- i. All bids should be submitted in English and signed by an authorized representative of the Responder (Form A and Form B in Annex A and Annex B).
- ii. Bids should be submitted via email with the subject line <ITB/CHAI/RUTF/0124\_Bidder Name\_Date (ddmmyyyy)> to [nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org)
- iii. Bids received after the stipulated closing date will be deemed invalid.

#### 4.2. Question and Answers

- i. A formal period during which questions regarding this ITB are answered will be held for five days following email communication to interested bidders. Questions should be addressed to: [nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org)
- ii. Enquiries must be received by the stipulated deadline. All questions and answers will be shared with all EOI respondents.
- iii. Telephone enquiries are not permitted.

#### 4.3. Eligibility

The ITB is open to companies who meet ALL of the following criteria:

- i. Manufacturers has a UNICEF approved RUTF production facility product meeting [technical specification published on 21st July 2022](#) and CXG 95-2022 Guidelines for Ready-To-Use Therapeutic Foods (RUTF);
- ii. Manufacturers' production facilities operate under current Good Manufacturing Practice (GMP), Good Hygiene Practices (GHPs), and FSSC 22000;
- iii. Manufacturer must agree and share any recent regulatory authority inspection reports (e.g., UNICEF approval certificate/email) and subsequent correspondence related to major or critical observations, including corrective and preventative action plans, if they are selected for the award;
- iv. Manufacturers must agree to host and pass an independent quality audit if they are selected as a finalist for the award.

#### 4.4. Costs of Preparing Documents

All costs associated with preparing and submitting a bid will be borne by the Respondent.

#### 4.5. Confidentiality of Submitted Bids

Information which the Respondent considers to be proprietary should be clearly marked as such. All such information will be treated as confidential and used by the CHAI team for assessment purposes only.

#### 4.6. Disclosure

Information relating to the examination, clarification, and evaluation of responses shall not be disclosed to Respondents or any other persons not officially concerned with such process.

#### 4.7. Terms and Conditions of Agreement

Although terms and conditions for the development contract will be finalized during the negotiation process after final manufacturer(s) have been selected, a sample of CHAI's standard terms and

conditions has been attached to this document (Annex C) for reference. A formal agreement including these terms will be executed by CHAI and the selected Manufacturer prior to initiation of supply.

#### **4.8. Reservation of Rights by CHAI**

4.8.1. Any bid/response to this ITB shall become the property of CHAI and CHAI reserve the rights in its sole discretion to:

- i. To accept or reject all bids and/or to annul the ITB process, wholly or partly without assigning any reasons whatsoever and without incurring any liability. CHAI shall not be obligated to inform the affected Respondent(s) of the ground(s) for CHAI's actions prior to contract award or otherwise.
- ii. Amend, delete, modify or revoke this ITB at any time without prior notice to any Bidder. CHAI also reserves the right to add, modify, alter and/or revoke any terms and conditions of this ITB as it deems necessary at its sole discretion without prior notice to any Bidder.
- iii. CHAI reserves the right to extend the dates for submission of bids/responses to this ITB.
- iv. CHAI reserves the right to issue an award based on the evaluation of offers without discussion or prior notice to any Bidder.
- v. CHAI reserves the right to add, modify, alter or revoke any of the criteria mentioned in the ITB.

#### **4.9. ITB not an offer: This ITB represents only a definition of requirements.**

4.9.1. This ITB must not be construed as a recommendation, offer or invitation to enter into a contract, agreement, or any other arrangement. This ITB is an invitation for the submission of binding offers/ bids and does not legally obligate CHAI to accept any of the submitted bids in whole or in part, nor is CHAI obligated to select the lowest-priced bid. This ITB is not an offer to contract but an invitation to offer.

4.9.2. Neither does the issuance of this ITB nor does the receipt or acknowledgement of a bid of any Respondent create or give rise to any contractual obligations of CHAI. This ITB does not create any binding legal relationship between any of the Respondent(s) and CHAI until and unless CHAI issues a formal Letter of Acceptance accepting an offer of a Selected Vendor.

4.9.3. The issuance of the Letter of Acceptance by CHAI shall be tantamount to notification of the award of the contract by CHAI and shall constitute the signing of the Agreement. The signing of the Agreement between CHAI and the Selected Vendor shall signify the commencement of the execution of the Scope of Work.

4.9.4. If the Selected Vendor fails to execute the Agreement pursuant to the terms of this ITB, CHAI shall terminate/revoke its Letter of Acceptance without giving any notice, in addition to any other rights available to it under this ITB, including forfeiture of the bid security. In the event that CHAI terminates or revokes its Letter of Acceptance, CHAI shall be free to award the Contract to any of the other Respondents who have submitted a responsive bid.



## 4.10. Authorized Signatory

4.10.1. The Respondent(s) shall indicate in their cover letter the authorized signatories who can discuss and correspond with CHAI, with regard to this ITB and the obligations under the Agreement to be executed.

4.10.2. In the case of a company, the Respondent(s) at the time of submitting its bid shall provide a power of attorney or a company secretary-certified copy of the resolution of their Board, authorizing an official or officials of the company to negotiate, discuss, sign agreements/contracts with CHAI.

4.10.3. In case the Respondent is a Limited Liability Partnership ('LLP'), then the Respondent at the time of submitting its bid shall submit a power of attorney authorizing a partner, an official or officials of the LLP to negotiate, discuss, sign agreements/contracts with CHAI.

## 5. Bid Requirement

Responders should provide the following information in the bid response to this ITB:

- i. Completed forms found in Annex A, Annex B, Annex C and Annex D
- ii. Completed ITB Excel questionnaire ("CHAI\_RUTF\_ITB\_July\_2024\_questionnaire") – separate attachment to ITB
- iii. Separate Word document outlining the Responder's plan and timeline for RUTF supply (the activities described in Section 3.3 above). Included in this document should be a discussion of the Responder's capacity to manufacture the product, a timeline (or Gantt chart) highlighting the manufacturing plan and quality testing timeline to meet delivery timelines, and a risk mitigation plan to prevent delays. This document should be no longer than two pages in length.
- iv. Technical Documents
  - a. Proof of UNICEF-approved RUTF production facility and UNICEF-approval on product meeting technical specification published on 21st July 2022 ('[S0000240 Therapeutic spread 92g sachets/CAR-150, RUTF paste](#)') and CXG 95-2022 Guidelines for Ready-To-Use Therapeutic Foods (RUTF);
  - b. Quality certification and inspection reports for production facility for last 3 years or since first inspection whichever is later (one of GMP, GHPs, or FSSC 22000, UNICEF inspections)
- v. Financial Requirements
  - a. Free on Board (FOB) price for RUTF carton of 150 sachets of 92g RUTF
  - b. Free Carrier (FCA) price for RUTF carton of 150 sachets of 92g RUTF
  - c. CIF cost to Port of Tema, Ghana including breakup of different costs such as FOB, Freight and Insurance cost

CHAI reserves the right to request additional information, arrange interviews with the Responder, visit the Responder's premises and facilities, and conduct an audit to verify the information provided.

## 6. Conflict of Interest

6.1.1. Respondent(s) must disclose in their bid details of any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest or any circumstance that may raise justifiable doubts as to the independence or impartiality of CHAI in relation to this competitive selection process. This disclosure must extend to all personnel/resources proposed to undertake the work.

6.1.2. In the event that a Respondent identifies any potential conflict or any circumstance that may raise justifiable doubts as to the independence or impartiality of CHAI in relation to this competitive selection process then the Respondent must disclose such conflict of interest and/or circumstance(s) and state how they intend to avoid any impact arising from such conflict or circumstance. CHAI reserves the right to reject any bids which, in CHAI's opinion, give rise to, or could potentially give rise to, a conflict of interest or any circumstance that may raise justifiable doubts as to the independence or impartiality of CHAI in relation to this competitive selection process.

6.1.3. For the purposes of this provision, please be advised that the organizations that are relevant for any disclosure in accordance with this provision, including the below organizations and any association of the Respondent with the below organization(s) must be disclosed:

- Clinton Health Access Initiative Inc. (CHAI)

## 7. General Disclosures

### 7.1. Respondent(s) must disclose:

7.1.1. If the Respondent(s) or any of its directors, partners or key-personnel are or have been the subject of any proceedings or other arrangements relating to bankruptcy, insolvency or financial standing of the Respondent including but not limited to the appointment of any officer, such as, a receiver or resolution professional (interim or otherwise) in relation to the Respondent's personal or business matters or an arrangement with creditors or of any other similar proceedings.

7.1.2. If the Respondent(s) or any of its directors, partners or key-personnel have been convicted of, or are the subject of any proceedings, relating to:

- i. Criminal offence or any other offence.
- ii. Professional misconduct before any authority or professional body.
- iii. Corruption including the offer or receipt of any inducement of any kind in relation to obtaining any contract, with CHAI, or any other contracting body or authority.
- iv. Failure to fulfil any obligations in any jurisdiction relating to the payment of taxes; or
- v. Red listing / Blacklisting/ Debarring by any organization, government authority, statutory authority, regulatory authority, or public sector undertaking.

### 7.2. Changes in circumstances

7.2.1. Respondent(s) must fairly and promptly notify CHAI in writing of any change in circumstance(s) that may effectively disqualify the Respondent or raise any justifiable doubts in relation to the respective Respondent's eligibility for this ITB.

## 8. Bid Validity

8.1.1. Bids should remain valid for the period of at least six (6) months from the last date for submission of the bid as prescribed by CHAI. A bid valid for a shorter period of time shall be rejected by CHAI as non-responsive. In case the last date of submission of bids is extended, the Respondent(s) shall ensure that validity of bid is reckoned from modified date for submission.

## 9. Evaluation Process

CHAI would form an evaluation committee to review all the bids.

To be considered for an award, the Manufacturer must meet the eligibility criteria specified in Section 4.3 and demonstrate the availability of the required production and distribution structures to meet the demands of supplying RUTF Ghana as indicated in the ITB.

CHAI will then assess each eligible bid meeting above criteria on financial bid. The lowest FOB priced supplier that meets eligibility criteria specified in Section 4.3 and demonstrates the availability of the required production and distribution structures to meet the demands of supplying RUTF Ghana as indicated in the ITB, would get the award.

In case multiple bids have similar financial bid and are the lowest FOB-price offer, CHAI would compare CIF cost quoted by bidder.

CHAI anticipates awarding the order to one supplier in Q2/Q3 2024. Based on the current anticipated timeline, it is expected that the awarded manufacturer will already have UNICEF technical approval for product and production facility at time of bid.

### 9.1. Technical Requirements

- i. Facility and Product approval report provided by UNICEF for 'S0000240 Therapeutic spread 92g sachets/CAR-150'

### 9.2. Financial Requirements

- i. FOB price for RUTF to be around \$28/carton FOB (150 sachets)
- ii. CIF cost to Port of Tema, Ghana including breakup of different costs such as FOB, Freight and Insurance cost

## 10. Annexure A – Forms to completed by responders

### FORM A: Forms to be Completed by Responders

This form must be completed, signed, and returned to CHAI at:

[nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org)

### DECLARATION

We, the undersigned, having read the “Invitation to Bid” (ITB) for Selection of Manufacturer for Supply of Competitively Priced UNICEF-Approved Ready-To-Use Therapeutic Foods (RUTF) Formulation to

Ghana”, submit our bid, which includes the information requested in Section 5. We confirm that all the information provided is correct.

We confirm that we are interested in entering into discussions for a possible collaboration with CHAI on the supply of RUTF according to the terms of this ITB.

We understand that CHAI’s issue of the ITB and the bid we submit is not a commitment by either party to enter into such discussions or collaboration. We further understand that CHAI reserves the right to discuss and collaborate with one or multiple parties, no parties, or to cancel the ITB at its sole discretion.

This ITB and any bids thereto shall be the property of CHAI.

Name of authorized representative:

Title:

Signature:

Date:

Company name:

Postal Address:

Telephone No.:

Email Address:

## **11. Annexure B – Quality Audit Agreement**

This form must be completed, signed, and returned to CHAI at:

[nutrition.procurement@clintonhealthaccess.org](mailto:nutrition.procurement@clintonhealthaccess.org)

### **DECLARATION**

Responder agrees that if selected for the ITB award, permission will be given to CHAI to conduct a quality audit in order to assess that the supplier is operating under GMP.<sup>1</sup> This will be a general GMP and Quality Systems audit, most likely performed by an independent third-party consultant. This audit will be scheduled directly with the supplier after the award has been granted.

Name of authorized representative:

Title:

Signature:

Date:

Company name:

<sup>1</sup> In line with GUIDELINES FOR READY-TO-USE THERAPEUTIC FOODS CXG 95-2022, RUTF should meet the provisions of CODEX guidelines and be prepared and handled in accordance with the appropriate sections of the General Principles of Food Hygiene (CXC 1-1969), and Code of Hygienic Practice for Low-Moisture Foods (CXC 75-2015), and other relevant Codex texts. The product should comply with any microbiological criteria established in accordance with the Principles and Guidelines for the Establishment and Application of Microbiological Criteria Related to Foods (CXG 21-1997). The ingredients and final product should be prepared, packed, and held under sanitary conditions and should comply with relevant Codex texts.

## 12. Annexure C - CHAI's standard terms and conditions for contracts

### Standard Terms and Conditions for CHAI Contracts

The Manufacturer will come to an agreement with CHAI on the terms of the commercialization support and the milestones that need to be reached for funding to be provided by CHAI. This will include regular financial and product-specific milestone reporting requirements. CHAI will determine disbursement requirements.

In addition to the terms and conditions in Activity 2.3 of the Project Plan relating to RUTF quality, safety, and compliance of the UNICEF certification, confidentiality, and other standard terms and conditions, the Commercialization Support Agreement between CHAI and Supplier will include, but will not be limited to, these sample terms:

1. Manufacturer agrees that it shall meet the following qualifications at all times during the Term of the Agreement and for the duration of its participation in the Project:

a) Manufacturing Quality Compliance with WHO (Geneva) or FDA GMP standards applicable to the manufacture or supply of the Product, including, but not limited to, adherence to certain minimum manufacturing and quality control standards necessary for the Supplier to manufacture and supply the Product as well as possession of all applicable certifications and approvals from any certifying industry organization or national regulatory authority.

b) Financial Stability Maintenance, on a financial basis, of positive net worth and adequate cash flow to ensure that Supplier is capable of paying for the resources necessary for Supplier to manufacture and supply the Products.

c) Compliance with Laws Compliance with all applicable laws, regulations, and conditions relevant to Supplier's operations and performance under the Commercialization Support Agreement.

d) Compliance with Labor Codes Compliance with its Internal Code of Conduct that is compliant with the International Labor Organization's "Standards and Fundamental Principles and Rights at Work" and the Fair Labor Association's "Workplace Code of Conduct".

2. Indemnification. Supplier agrees to indemnify, defend, and hold CHAI ("Indemnified Parties") harmless from and against any claims, losses, liability, obligations, lawsuits, deficiencies, damages, or expenses of whatever nature, whether known or unknown, accrued, absolute, contingent or otherwise, including, without limitation, interest, penalties, attorney's fees, costs of investigation and all amounts paid in defense or settlement of the foregoing (collectively, "Loss"), suffered or incurred by the Indemnified Parties as a result of the occurrence of, or arising out of, any breach of this Agreement by Supplier, including, but not limited to, any of Supplier's representations and warranties contained herein.

a) Manufacturer also agrees to indemnify, defend, and hold the Indemnified Parties harmless from and against any Loss suffered or incurred by the Indemnified Parties arising out of or relating to any (i) third-party product liability claim against any Product; (ii) defects in any Product supplied; or (iii) non-compliance by such manufacturer or supplier with any technical requirements applicable to any Products supplied.

b) Manufacturer also agrees to indemnify, defend, and hold the Indemnified Parties from and against all claims, damages, losses, costs, and expenses arising out of the alleged infringement of a patent, design, tradename, or trademark arising under or relating to the Commercialization Agreement.

3. Dispute Resolution. Any dispute arising out of or relating to the Commercialization Support Agreement, or the transactions contemplated hereby or any breach of the same shall be settled by final and binding arbitration. Any arbitration conducted pursuant to this provision shall be conducted in New York, New York, USA, and shall be conducted in the English language in accordance with the International Arbitration Rules established by the American Arbitration Association.

#### 4. Loss, Fraud, Bribery, Corruption and Conflicts of Interest

a) The Parties confirm that no official, employee, or officer of the other Party has received or will be offered any individual benefit arising from this Agreement.

b) The Manufacturer will take all measures to prevent conflicts of interest arising that may have an impact on the implementation of the Project and will promptly declare to CHAI and proactively manage any such conflicts of interest.

c) The following may be deemed by CHAI to be a material breach of this Agreement: (i) failure by the Grantee to report to CHAI any known or suspected cases of loss, bribery, fraud, or other corrupt practices; (ii) confirmed serious or repeated instances of loss, bribery, fraud, or other corrupt practices; (iii) failure to declare and/ or proactively manage any conflicts of interest; (iv) the giving to or receiving by an official, employee, or officer of the Manufacturer of any individual benefit in connection with this Agreement.

#### 5. Marks

a) This Agreement shall not be construed to grant Partner any license to use CHAI's name or logo, both current and future, in any format ("CHAI Marks"). Any requests for use of CHAI Marks shall be submitted in writing to CHAI. CHAI shall have the right, in its sole discretion, to grant Partner any usage rights of CHAI Marks. An authorized CHAI representative must document such a grant in writing for it to be valid.

6. This Agreement shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to applicable conflict of laws provisions

### **13. Annexure D - Letter of Undertaking from manufacturer /bidder**

(This letter should be on the letterhead of the bidder duly signed by an authorized signatory)

To,  
Clinton Health Access Initiative, Inc.

Sir,

Subject: Invitation to Bid (ITB) for Selection of Manufacturer for Supply of Competitively Priced UNICEF-Approved Ready-To-Use Therapeutic Foods (RUTF) Formulation to Ghana

We ..... (Name of the bidder) who are established and reputable manufacturers/ bidders of [INSERT NATURE OF SERVICES/PORTFOLIO OF PRODUCTS PROVIDED] having factories/ offices at ..... and ..... do hereby authorize M/s [INSERT NAME OF THE RESPONDENT], who is the Respondent submitting its offer pursuant to the Invitation to Bid (“ITB”) issued by Clinton Health Access Initiative (CHAI) to submit an offer and negotiate and conclude a contract with you to Supply Ready-To-Use Therapeutic Foods (RUTF) manufactured/ developed by us against the Invitation to Bid received from CHAI by the Respondent and we have duly authorised the Respondent for this purpose.

We undertake to perform the obligations as set out in the ITB in respect of such services and hereby extend our support and services through M/s [INSERT NAME OF THE RESPONDENT] during the contract period as per terms and conditions of the ITB.

We assure you that in the event of M/s [INSERT NAME OF THE RESPONDENT] not being able to fulfill and discharge its obligation in respect of the terms defined in the ITB then ..... (Name of the bidder) would continue to meet these either directly or through alternate arrangements without any additional cost to CHAI.

Dated this .....by .....2024

Yours faithfully,

Authorized Signatory

Name:

Designation:

Respondent’s Corporate Name

Address

Email and Phone #

=== End of ITB ===