

**Request for Consultant's Qualifications
EoI/ IC/GEO-2013-02**

MILLENNIUM CHALLENGE ACCOUNT – GEORGIA



On Behalf of:

**THE GOVERNMENT OF Georgia
Funded by**

**THE UNITED STATES OF AMERICA
Through**

THE MILLENNIUM CHALLENGE CORPORATION

Procurement of Individual Consultant

**for the
Development and Implementation of Operations and
Maintenance (O&M) Program for Public Schools in
Georgia**

Date: December 26, 2013

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Section 2 Forms

This section provides the following forms:

- EOI Form 1: Expression of Interest; and
- EOI Form 2: Curriculum Vitae;

Section 3 Terms of Reference

Section 4 Form of Contract

This section contains the form of contract to be concluded in connection with the consultant services and includes the following sections:

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SECTION 1

Request for Consultant's Qualification

REQUEST FOR CONSULTANT'S QUALIFICATIONS

EoI/ IC / GEO-2013-02

For the Development and Implementation of Operations and Maintenance (O&M) Program for Public Schools in Georgia

MCA-Georgia (the “**Client**”) requires the services of an individual consultant to provide the following services:

The Consultant will be expected to develop the following:

- 1) An assessment of the current facilities O&M situation and institutional capacity at various levels to implement an O&M strategy, and an analysis of O&M needs, including fixed equipment, personnel at different organizational levels, and budget;
- 2) A multi-year national framework with an implementation structure, operational plan, and budgetary processes to address the O&M needs of public school facilities in Georgia; Budget implications should be provided in relation to how the current school funding system can be impacted by the new O&M program, if at all, based on the current school funding mechanism; followed by recommendations on addressing these impacts.
- 3) A facilities O&M Management Program, supported by an industry-accepted and context appropriate automated software system to be procured separately by MCA-Georgia and operated by ESIDA;
- 4) A detailed facilities O&M Plan and budget for executing the program developed under task 2 during the first three years;
- 5) Develop recommendations for training strictly for facilities O&M.

The facilities O&M program development will include the following aspects:

- Stakeholder consultation process that ensures the facilities O&M program optimizes educational outcomes and reflects the capacity of ESIDA and other actors, has been appropriately aligned to public school infrastructure needs and the priorities and resources of the Government of Georgia;
- Strategic framework for implementing the facilities O&M program with the appropriate policy, legal, regulatory and institutional environment;
- Multi-year facilities O&M program with annual work plan that links to annual budgets, for both ESIDA and schools as appropriate;
- Maintenance performance standards and operational plans that take into consideration environmental, health, safety, energy efficiency, sustainability aspects and educational outcomes;
- Institutional arrangements for implementing the facilities O&M program with the appropriate level of technical capacity and management systems at the different institutional levels (national, regional, school, etc.), including potential engagement and/or partnership with the private sector;

Early implementation activities will focus on developing an O&M culture at ESIDA, including the establishment of communications, reporting, training, management systems, and performance monitoring and evaluation processes to ensure effective and efficient implementation. Following these initial implementation activities, ESIDA will scale-up and lead annual O&M program development on a national level. MCC would support this effort via an incentive fund to complement the financing of O&M activities planned and implemented by GOG. This funding will be contingent upon satisfactory GOG adoption and implementation of the O&M program.

Location: *Tbilisi, Georgia*

Anticipated Start Date: *January 31, 2014*

Duration of Assignment: *12 months* (The expected Level of Effort for the International Consultant is **7.0 person-months** during this time period.)

Before applying, interested consultants should review the Terms of Reference (“**TOR**”) (attached to this Request for Consultant’s Qualifications as Section 3), which describes the assignment in detail.

The required qualifications for the individual consultant (“**Consultant**”) to be considered are indicated more fully in the TOR. To be considered for this individual consultancy, it is essential that a candidate have a Bachelor’s degree in technical fields such as architecture or engineering, with over 10 years of practical experience and in-depth knowledge of planning and implementing O&M programs for schools or similar educational facilities, preferably in the context of developing countries. Specific experience in the development and/or assessment of school O&M financing and operational schemes is critical. He/she must be a self-starter with excellent leadership and communication skills and capable of writing in a concise and effective manner. English language skills are a must. Experience in the Eastern Europe, the Caucasus, or CIS countries is a plus. Interested Consultants should refer to the TOR for a more complete list of required and desired qualifications.

The selection shall be carried out in accordance with the procedures set forth in “*the MCC Program Procurement Guidelines*” (see the Procurement page on www.mcc.gov” for the selection guidelines). The selected Consultant will sign a contract (a form of the contract is attached to this Request for Consultant’s Qualifications as Section 4) on the basis of a **lump sum fixed price/fee**.

Application Procedure

To be considered for this assignment, interested Consultants must complete the Expression of Interest Forms 1 and 2 (each attached to this Request for Consultant’s Qualifications as Section 2) and send their responses by email to:

MCA-Georgia

Att.: **Dimitri Kemoklidze**

Procurement Director

Email: procurement@mcageorgia.ge

Deadline for submission of responses: ***January 20, 2014, 6:00 p.m. local time in Georgia.***

Source of Funds; Compact Terms and Conditions: The United States of America, acting through the Millennium Challenge Corporation (“**MCC**”) and *Georgia* (the “**Government**”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in *Georgia* (the “**Compact**”) in an amount not to exceed one hundred forty million U.S. Dollars (US\$140,000,000). Before that, the parties executed a Grant and Implementation Agreement on July 13, 2012, (the “**609(g) Agreement**”) that sets forth the general terms and conditions on which MCC will provide funding not to exceed two million seven hundred thousand U.S. Dollars (US\$2,700,000) under the authority of Section 609(g) of the United States Millennium Challenge Act of 2003, as amended, (the “**Act**”), which activities will facilitate the development and implementation of a proposed Millennium Challenge Compact described as above.

The Government, acting through the Client, intends to apply a portion of the MCC Funding (the “**609(g) Agreement**”) to eligible payments under a contract for which this Request for Consultant’s Qualifications is issued (the “**Contract**”).

Any payments made under the proposed Contract will be subject, in all respects, to the terms and conditions of the “**609(g) Agreement**”, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government and the Client shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

The Compact and its related documents are available at www.mcc.gov . The “609(g) Agreement” is available on the MCA-Georgia’s website at www.mcageorgia.ge

Conflict of Interest: The Client requires that the selected Consultant provide professional, objective, and impartial advice and at all times hold the Client’s interests paramount, strictly avoid conflicts with other assignments or their own corporate interests, and act without any consideration for future work. A Consultant may not engage in conflicting activities. For example, a person or entity that has been engaged by the Client to provide goods, works or services other than consulting services for a project, as well as any of its affiliates, is disqualified from providing consulting services related to those goods, works or services. In addition, a Consultant may not engage in conflicting assignments, meaning a Consultant will not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the Client or for another client. Finally, a Consultant may not have a conflicting relationship, meaning a Consultant that has a business or family relationship with a member of the Client’s Supervisory Board or staff, or with the Procurement or Fiscal Agent (as defined in the Compact or related agreements) who is directly or indirectly involved in any part of (i) the preparation of the TOR, (ii) the selection process for the assignment, or (iii) the supervision of the Contract, may not be awarded the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the selection process and the performance of the Contract.

No member of the Client’s Supervisory Board or current employee of the Client may work as, or on behalf of, the Consultant. No current employees of the Government may work as Consultants under their own ministries, departments or agencies.

Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Client, or that may reasonably be perceived as having this effect. Failure to disclose any such situations may lead to the disqualification of the Consultant or the termination of the Contract.

Fraud and Corruption: MCC requires that all beneficiaries of MCC Funding, including the Client and any bidders, suppliers, contractors, subcontractors and consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Client:

- (a) will not consider a prospective Consultant for award of the Contract if it determines that the Consultant has, directly or through an agent, engaged in any of the actions defined in Section 1.9.2 of the Contract (“**Fraud and Corruption**”) in competing for the Contract;
- (b) has the right to sanction a Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Consultant has, directly or through an agent, engaged in Fraud and Corruption in competing for, or in executing such a contract; and
- (c) has the right to require that a provision be included in the Contract requiring the selected Consultant to permit the Client, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a Proposal or performance of the Contract, and to have such accounts and records audited by auditors appointed by MCC or by the Client with the approval of MCC.

In addition, MCC has the right to cancel all or any portion of the MCC Funding allocated to the Contract if it determines at any time that representatives of a beneficiary of the MCC Funding engaged in Fraud and Corruption during the selection process or the execution of the Contract, without the Client or the beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

MCC may also invoke, on its own behalf, any of the rights identified for the Client in (a)-(c) above.

Eligibility: In addition to the restrictions described above, neither a Consultant, nor anyone affiliated with a Consultant may be any person or entity that has been declared ineligible for participation in a procurement in accordance with the procedures set out in Part 10, Eligibility Verification Procedures in the MCC Program Procurement Guidelines that can be found on MCC's website at www.mcc.gov. This would also remove from eligibility for participation in a procurement any person or entity that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States. The countries subject to these sanctions and restrictions are subject to change from time to time and it is necessary to refer to the web sites identified in the MCC Program Procurement Guidelines referenced above for the most current listing of sanctioned and restricted countries.

Prospective Consultants not otherwise made ineligible for a reason described above shall nonetheless be excluded if:

- (a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of such Consultant;
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of such Consultant or any payments to persons or entities in such country; or
- (c) such Consultant is otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on the MCC website at www.mcc.gov.

Past Performance: The Client will undertake a review of a prospective Consultant's past performance based on the information provided on the Consultant's EOI Form 2 (Curriculum Vitae). The Client reserves the right to contact other sources as well as a means to check references and relevant experiences. In addition, in accordance with the MCC Program Procurement Guidelines, a prospective Consultant's past performance on MCC-funded contracts will be considered.

Taxes: Except as may be exempt pursuant to the 609(g) Agreement or the Compact, a Consultant (including its associates, if any), Sub-Consultants, and their respective Personnel shall be subject to certain Taxes (as defined in the 609(g) Agreement or the Compact) under applicable law (now or hereafter in effect). The Consultant, (including its associates, if any), Sub-Consultants and their respective Personnel shall pay all such Taxes. In the event that any Taxes are imposed on the Consultant, its associates, Sub-Consultants, or their respective Personnel, the Contract price shall not be adjusted to account for such Taxes. The MCA-Georgia shall have no obligation to pay or compensate the Consultant, its associates, Sub-Consultants, or their respective Personnel for any Taxes.

Right to Accept or Reject Expressions of Interest: The Client reserves the right to accept or reject any Expression of Interest, and to annul the procurement process and reject all Expressions of Interest at any time, without thereby incurring any liability to any potential Consultant or any obligation to inform the affected Consultant or Consultants of the grounds for the Client's actions.

Challenges by Consultants: Any Consultant has the right to complaint and appeal, but must do so in the manner. The bid challenge shall be addressed to:

Millennium Challenge Account- Georgia
Dimitri Kemoklidze
Procurement Director
4 Sanapiro str.,
Tbilisi, 0105, Georgia
Telephone: +995591199996
Email: dkemoklidze@mcageorgia.ge

SECTION 2

Forms

EOI Form 1: Expression of Interest

[insert Location, Date]

To: Mr. Dimitri Kemoklidze

MCA-Georgia's Procurement Director

Dear Sir,

Re: Procurement of Individual Consultant for the Development and Implementation of Operations and Maintenance (O&M) Program for Public Schools in Georgia

Ref: EoI/ IC / GEO-2013-02

I, the undersigned, offer to provide the consulting services for the above mentioned assignment in accordance with your Request for Consultant's Qualifications dated ***on 26th of December, 2013*** and this Expression of Interest.

I am hereby submitting my Expression of Interest, which will be open for acceptance for a period of 60 (sixty) days.

I hereby declare that all the information and statements made in this Expression of Interest are true and accept that any misrepresentation contained in it may lead to my disqualification.

If negotiations are held during the initial period of validity of the Expression of Interest, I undertake to negotiate on the basis of my availability for the assignment.

My Expression of Interest is binding upon me and subject to the modifications resulting from contract negotiations, and I undertake, if my Expression of Interest is accepted, to initiate the consulting services related to the assignment not later than ***[insert the date on which you will be available to commence with the assignment]***.

I understand you are not bound to accept any Expression of Interest that you may receive.

Yours sincerely,

Authorized Signature

Name and title of Signatory

Address of Consultant

Telephone number(s) of
Consultant

E-mail address of Consultant

Other contact information (e.g.,
website)

EOI Form 2: Curriculum Vitae (CV)

1. Name *[Insert full name]*
2. Date of Birth *[Insert birth date]*
3. Nationality *[Insert nationality]*
4. Education *[Indicate college/university and other specialized education, giving names of institutions, degrees obtained, and dates of obtainment]*
5. Membership in Professional Associations *[Indicate relevant memberships]*
6. Other Training *[Indicate appropriate postgraduate and other training]*
7. Countries of Work Experience *[List countries where the consultant has worked in the last ten years]*
8. Languages *[For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]*

Language	Speaking	Reading	Writing
9. Employment Record *[Starting with present position, list in reverse order every employment held by the consultant since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]*

From: *[insert year]* To: *[insert year]*

Employer: *[insert name and contact information]*

Position(s) held: *[indicate position held]*
10. Work undertaken that best illustrates capability to handle the tasks assigned: *[Among the assignments in which the consultant has been involved, indicate the following information for those assignments that best illustrate his/her capability to handle the tasks listed in the TOR]*

Name of assignment or project: *[insert as appropriate]*

Year: *[insert appropriate year]*

Location: *[insert location where work was performed]*

Client: *[insert name and contact information]*

Main project features: *[enter a brief description of the project]*

Position held: *[indicate position]*

held]

Activities performed: *[enter a
brief description of activities you
performed]*

11. References: *[List at least three individual references with substantial knowledge of your work. Include each reference's name, title, phone and e-mail contact information. Please note that the Client reserves the right to contact other sources as well as to check references, in particular for performance on any relevant MCC-funded projects.*

12. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

I, the undersigned, hereby declare that I agree to participate in the above-mentioned assignment. I further declare that I am able and willing to work for the period foreseen in the above referenced Request for Consultant's Qualifications.

Signature

Date

SECTION 3

Terms of Reference

1. Introduction

On December 19, 2012, MCC's Board of Directors re-selected Georgia as eligible for MCC assistance for a second compact. An analysis of economic growth in Georgia conducted by the Government of Georgia ("GoG") in 2011 identified human capital as a binding constraint to continued growth.

The GoG and MCC signed a Compact on July 26, 2013 that aims to address the quality of human capital in Georgia, including a package of investments in the general education component seeking to improve general education quality in Georgia through infrastructure enhancements to the physical learning environment, training for educators and school managers, and support to education assessments.

Georgia has achieved sustained policy progress and economic growth, implementing sweeping reforms that have strengthened public finances, improved the business environment, and enhanced social protection and social services. However, poverty rates remain high, increasing from 22.7 percent to 24.7 percent after the 2008 conflict with Russia. Poverty in Georgia is driven by high unemployment, which can be attributed in part to a disparity between the demands of the Georgian labor market and the skills possessed by Georgians upon graduation. The second Compact seeks to address that disparity by funding investments in the education sector that will help Georgians obtain the type of quality education and job skills that subsequently lead to higher employment rates.

The Improved General Education Quality project of the second Compact seeks to improve general education quality in Georgia through infrastructure enhancements to the physical learning environment, training for educators and school managers, and support to education assessments. The three activities are targeted to improve math and science learning in particular, and aim to improve the pipeline of future students pursuing science and technology tertiary education and later entering the labor market.

These Terms of Reference are focused on the Improved Learning Environment Infrastructure Activity which will involve the full internal and external rehabilitation of dilapidated school facilities, utility upgrades, and provision of laboratories for approximately 130 existing Georgian public schools. The planned rehabilitations address key elements correlated with improved educational performance associated with human comfort such as: temperature, indoor air quality, and adequate lighting, as well as the provision of new furniture and equipment.

Two key lessons learned from the first Compact include: (i) early planning for operations and maintenance ("O&M") and (ii) working with high capacity Georgian government implementing entities where possible. In the second Compact, the importance of and planning for post-compact O&M of rehabilitated Georgian schools was specifically agreed upon during the Compact development phase. The first Compact demonstrated the Government of Georgia's high capacity for implementing a sophisticated investment program. The second Compact builds on this experience by giving technical responsibility for implementation to domestic institutions responsible for the long-term sustainability of the investments.

A. Georgian School Operations & Maintenance (O&M)

The Compact seeks to establish a holistic, integrated program for the operations and maintenance for the schools that will include all of the aspects of integrated functions devoted to the coordination of operation and maintenance of space, infrastructure, equipment (including, IT, lab and pedagogical equipment), furniture, administrative and support facilities (such as library and cafeteria), supplies, materials and associated assets, properties and activities that optimize school efficiency and usage. This Consultancy will focus on one major element of O&M, namely the physical infrastructure and built elements of schools, while issues such as school furniture and educational materials will be addressed under a separate consultancy service that will be procured at a later stage.

School facilities, as it relates to these Terms of Reference (TOR), are defined as the school's physical infrastructure, the entire built environment and installed systems/equipment (eg. heating and electric systems), and will be referred to as 'facilities' in the document going forward. This definition of facilities includes the day-to-day activities necessary for the building and its systems and equipment to perform their intended functions effectively and efficiently. The results and recommendations of this consultancy shall contribute to the integrated approach to school operations and maintenance.

O&M facilities planning should address a) facility operations for optimum learning environment and energy efficiency; b) on-going maintenance, which includes a actions performed by school management on a recurring basis that address routine maintenance needs c) a program for preventative maintenance, aimed at increasing the service life of significant physical assets, and d) a program for component renewal/replacement of physical assets at the end of their useful life. A preventive maintenance program refers to the organized and planned performance of periodic maintenance activities in order to prevent system or production problems or failures from occurring. This is in direct contrast to deferred maintenance or reactive maintenance (diagnostic or corrective maintenance), which is conducted to correct an existing problem. Component renewal/replacement includes the replacement of roofs; electrical distribution systems; heating and cooling systems, the rehabilitation of windows and/or replacement of windows and doors, sanitary facilities, and insulation, among others.

Currently, Georgia lacks a systematic and comprehensive O&M Program to effectively operate and maintain its 2,082 general education public school facilities in a sustainable manner. The due diligence process for the second Compact has clearly identified that one of the key factors that contributed to the deterioration of existing schools is the absence of infrastructure maintenance. A well-designed O&M program should prolong service life and enhance energy efficiency for Georgian schools, in both new and older buildings, without significant investment, and should ensure a safe, healthy and clean environment for students and teachers alike. An O&M management program should be developed for Georgia's general education school facilities based on objective condition assessment ratings, prioritization methodologies, be linked to budgets, and have the necessary implementation structure including equipment, human resources and training. It should suggest what the budget implications are and how the current school funding system can be impacted by an O&M program, if at all.

To accomplish this, the Ministry of Education and Science (MES) has mandated the Education and Science Infrastructure Development Agency (ESIDA) (an agency under the MES responsible for construction and infrastructure management of Georgian general education facilities) to develop and implement a systematic and comprehensive, multi-year O&M program that focuses on all existing public school facilities, and can accommodate new facilities and components to be added in the future.

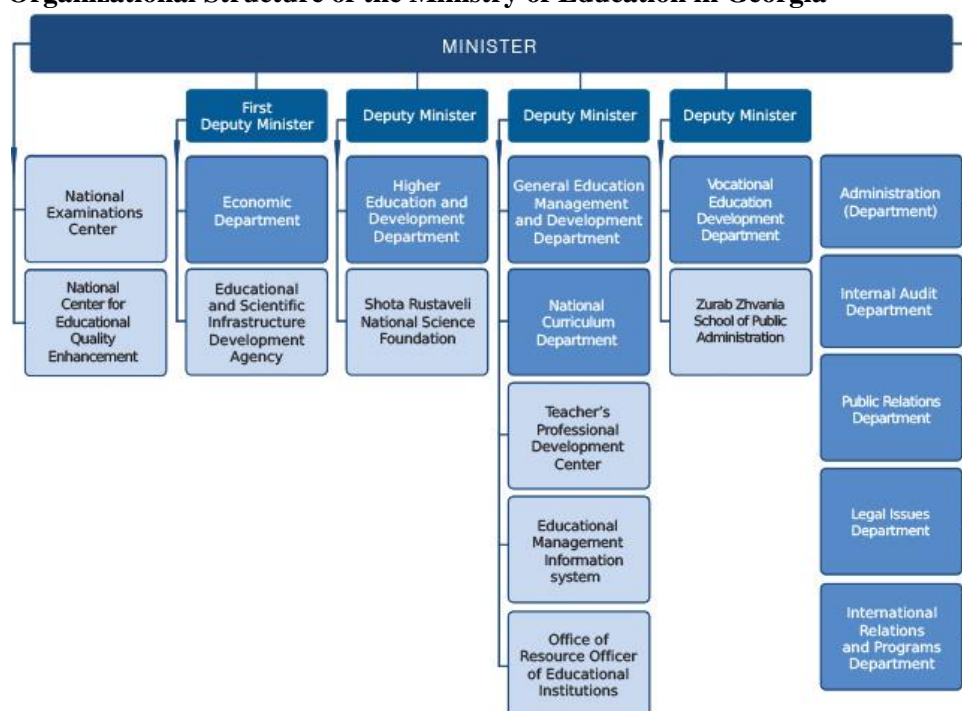
The sheer number of buildings within the Georgia public school inventory, geographical distribution, and the diverse types of equipment and components housed suggest the need for an O&M program that is localized while maintaining efficient and effective coordination with the relevant national/regional level governmental organizations. Although the specifics of individual O&M programs may vary on a school by school basis, the national O&M program should integrate a variety of administrative and support activities such as planning, budgeting, procurement, implementation, assessment, and training.

The existing institutional framework for the public education sector in Georgia is briefly described below.

B. Description of Georgia Education Governmental Entities

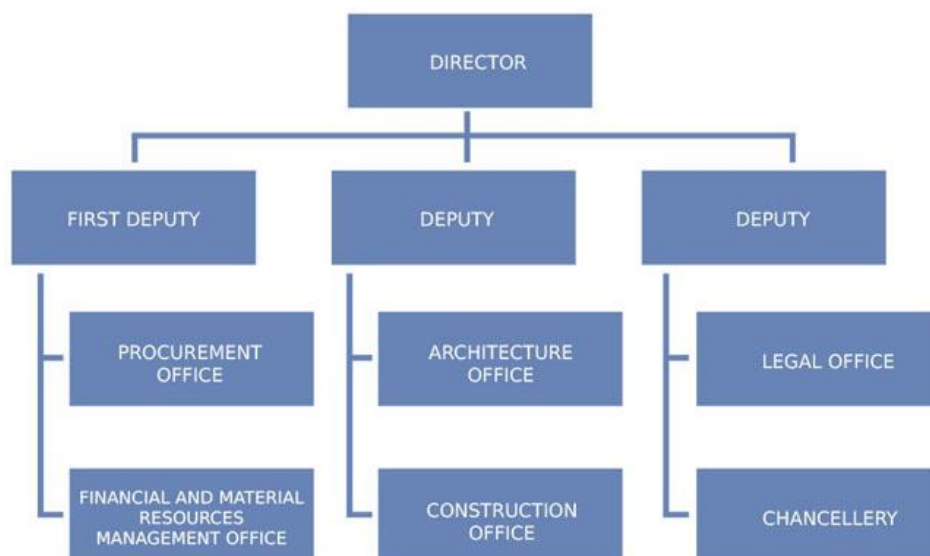
The MES is the GOG entity responsible for education system in Georgia. ESIDA works under MES, as demonstrated by the following diagram:

Organizational Structure of the Ministry of Education in Georgia



Under MES, ESIDA manages the GOG school rehabilitation activities in all regions of the country including Adjara¹. ESIDA has seven divisions, including Construction, Procurement and Finance, totaling approximately 50 employees.

Organizational Structure of ESIDA



An Education Resource Center (ERC) is located in each district as a liaison office between the MES and the local schools. The ERCs are involved in many of the recent MES reform efforts, including testing and certification activities. The ERCs could possibly play a more active role in school rehabilitation efforts and/or future O&M activities, but they are generally quite small, with two to three staff members, including administrative support personnel.

¹ Consultant will be also required to include Adjara Autonomous Republic's public schools for introducing to O&M practices. Further consultations with the Adjara government through MOES may be required.

C. Objective of the Assignment

The Consultant will be expected to develop the following:

- 1) An assessment of the current facilities O&M situation and institutional capacity at various levels to implement an O&M strategy, and an analysis of O&M needs, including fixed equipment, personnel at different organizational levels, and budget;
- 2) A multi-year national framework with an implementation structure, operational plan, and budgetary processes to address the O&M needs of public school facilities in Georgia; Budget implications should be provided in relation to how the current school funding system can be impacted by the new O&M program, if at all, based on the current school funding mechanism; followed by recommendations on addressing these impacts;
- 3) A facilities O&M Management Program, supported by an industry-accepted and context appropriate automated software system to be procured separately by MCA- Georgia and operated by ESIDA;
- 4) A detailed facilities O&M Plan and budget for executing the program developed under task 2 during the first three years;
- 5) Develop recommendations for training strictly for facilities O&M.

The facilities O&M program development will include the following aspects:

- Stakeholder consultation process that ensures the facilities O&M program optimizes educational outcomes and reflects the capacity of ESIDA and other actors, has been appropriately aligned to public school infrastructure needs and the priorities and resources of the Government of Georgia;
- Strategic framework for implementing the facilities O&M program with the appropriate policy, legal, regulatory and institutional environment;
- Multi-year facilities O&M program with annual work plan that links to annual budgets, for both ESIDA and schools as appropriate;
- Maintenance performance standards and operational plans that take into consideration environmental, health, safety, energy efficiency, sustainability aspects and educational outcomes;
- Institutional arrangements for implementing the facilities O&M program with the appropriate level of technical capacity and management systems at the different institutional levels (national, regional, school, etc.), including potential engagement and/or partnership with the private sector;

Early implementation activities will focus on developing an O&M culture at ESIDA, including the establishment of communications, reporting, training, management systems, and performance monitoring and evaluation processes to ensure effective and efficient implementation. Following these initial implementation activities, ESIDA will scale-up and lead annual O&M program development on a national level. MCC would support this effort via an incentive fund to complement the financing of O&M activities planned and implemented by GOG. This funding will be contingent upon satisfactory GoG adoption and implementation of the O&M program.

2. Scope of Services

The scope of work includes:

- Task I** – Desk Reviews and Stakeholder Consultations. Drafting Inception report, reflecting work plan of the tasks, timeline and resources needed for introduction of O&M practices for the Georgian Public Schools;
- Task II** – Development of a National-Level facilities O&M Strategy/Planning Framework and

Implementation Structure.

Task III – Design and Development of a facilities O&M Management Program, including a 3-Year Rolling facilities O&M Plan, and recommendations for training

Task IV – Support during Early Implementation Phase of the Facilities O&M Program.

A. Task I – Desk Reviews and Stakeholder Consultations. Drafting Inception report, reflecting work plan of the tasks, timeline and resources needed for introduction of O&M practices for the Georgian Public Schools;

Task I. a: The Consultant shall conduct desk reviews of relevant studies, documents and data/information regarding existing practices and standards in both public and private schools, donor support activities, relating to the operations and maintenance planning of Georgian school facilities, in order to establish a comprehensive and thorough understanding of the existing O&M situation. In addition, the Consultant shall assess international best practices and policies based on experience of the countries with similar conditions, for school O&M programs that could be adapted to the Georgian context. Based on the reviewed materials, the consultant will produce inception report, which will include methodology, approach and work plan detailing the tasks and timeline and resources needed for introduction of O&M practices for the Georgian Public Schools.

Working closely with ESIDA management, the Consultant shall:

- Evaluate the current ESIDA system of data collection from the schools and ERCs with respect to facilities. Define the methodology for conducting an inventory of school facilities to be maintained.
- Acquire all relevant existing data from ESIDA and EMIS, Analyze data, in order to identify gaps in data content. Create an O&M data collection questionnaire to fill in the gaps. O&M data collection questionnaire should be arranged in simple user friendly way, with available answers and additional comment spaces, when required. ESIDA will be responsible for completing and providing the consultant with O&M data collection questionnaires in two weeks period.
- Visit at least 30 schools in Tbilisi and in various regions and assess conditions of fully rehabilitated / newly constructed, partially rehabilitated and non-rehabilitated schools and perform necessary field investigations to determine the current serviceable or working conditions of school facilities, fixtures, and fixed equipment. Information should be organized in a user-friendly database format for insertion into the O&M management program (Task III). Composition of schools should be agreed between ESIDA and Consultant in consultation with MCA-Georgia. The Consultant shall be supported by ESIDA on all logistical arrangements related to this task.

Task I. b: The Consultant shall review legal, policy, regulatory, institutional, management and budgetary processes that are currently governing O&M activities in Georgia. In conducting this review, the Consultant shall clearly identify constraints and challenges, as well as opportunities, in the existing GoG environment. The Consultant shall conduct a detailed review of existing assessments on the process for defining and allocating the education budget at the national and local levels, including a description of the transfer of budget down to the school level. The Consultant shall review and report on budgets allocated for all school facilities upkeep, maintenance, and improvements. Based on the review of information, the Consultant will develop discussion points/recommendations with regards to improvements that may be made in terms of the budgeting process, administration, and allocation of funds.

Task I. c: With support from ESIDA, the Consultant shall first review the results of the stakeholder consultation process conducted by USAID in 2012, Compact Design Study by Luis Berger in 2013 and then develop a comprehensive stakeholder consultation plan with necessary supplementary forms (questioners, checklists, database, etc.) to support facilitators on consultations, and conduct meetings with relevant entities. This may include the MES, ESIDA, regional and district level governments and/or municipalities, educational resource centres, the Ministry of Environment, as well as school principals, private sector representatives and other stakeholders. Participation of women and vulnerable groups in the stakeholder consultation process should be assured. The Consultant shall inform the stakeholders of the goals and objectives of the facilities O&M program and solicit inputs and issues of concern, ideas, and suggestions that will be useful in formulating the facilities O&M program. By the due date of this deliverable the Consultant will prepare a report summarizing the results of the stakeholder consultations.

Task I Deliverables:

- Inception report, that includes methodology, approach and work plan detailing the tasks and timeline and resources needed for introduction of O&M practices for the Georgian Public Schools;
- Stakeholder Consultation Plan;
- O&M data collection questionnaire;
- Stakeholder Consultation Results Report; Georgia O&M conditions assessment, including: analysis of Georgian public school existing conditions, and a final results report;
- Report detailing experiences from developing or transition countries, and international best practices on policies, budget and institutional processes for facilities O&M;
- Review of educational budget assessment regarding facilities O&M and preparation of discussion points on potential budget modifications at both the national and school level.

B. Task II – Development of National-Level Facilities O&M Strategy/Planning Framework and Implementation Framework

Task II. a: Based on the outputs of Task I, and in consultation with ESIDA, the Consultant shall develop a strategy for developing and implementing a facilities O&M program. The strategy shall clearly state the goals and objectives of the O&M program, the legal, policy and regulatory framework, the roles and responsibilities of the various stakeholders including district and national level governmental organizations, non-governmental and community organizations, school administrators, as well as private sector. The Consultant shall also evaluate alternative implementation approaches, structures, and geographic deployment strategies (i.e., central, regional, distributed) for implementing the program. The strategy shall recommend specific policies and institutional arrangements for delivering all categories of maintenance to the schools. The strategy shall propose funding mechanisms and a procurement program to support routine and preventative maintenance, as well as component renewal/replacement. The Consultant shall develop a plan for rolling out the proposed strategy, including the timeline, and a list of parties involved. The Consultant shall identify training needs strictly focusing on facility aspects and provide recommendations to address them.

Task II. b: Present and analyze at least three alternative national-level implementation structures and operational plans that include suitable institutional responsibilities and arrangements, maintenance standards and procedures for the performance of the facilities O&M work programs, and recommend

the optimal arrangement, taking into consideration the geographic distribution, school sizes and available resources.

Task II. c: The Consultant shall organize a minimum of three presentations and facilitate discussions to selected stakeholders in order to present the various alternatives and recommended facilities O&M strategy/framework, solicit feedback and comments, and develop the most preferred implementation structure. The selected stakeholders could be representatives of any party listed under Task I. c above.

Task II Deliverables:

- O&M Facilities Strategy/Framework for Georgia including comparison of alternative structures and operational plans.
- Consultation process on draft facilities O&M Strategy/Framework including Power Point Presentation and support materials;
- Delivery and facilitation of three (3) workshops to stakeholders.

C. Task III – Design and Develop School Facilities O&M Management Program

Task III. a: Based on the proposed O&M Strategy/Planning Framework, the Consultant shall develop an O&M management program for general education school facilities. The facilities O&M program shall take into consideration best international O&M practices while ensuring that the appropriate mix of capital and labor intensive methods are applied to ensure sustainability at the local level. Proposed work standards, methods, operations and maintenance procedures, as well as fixed equipment, tools, and materials must comply with appropriate health and safety and environmental guidelines, and incorporate energy efficiency and recycling practices. The Consultant will need to identify and suggest internationally accepted relevant best practice and standards, based on experience of the countries with similar conditions, to be adopted by the MoES or its designated entities. The Consultant will propose an industry-standard automated software to manage, organize and maintain the facilities O&M program.

The Consultant shall organize the development of the facilities O&M management program in two distinct phases:

Relative to budgeting needs, and based on the information assembled and analyzed in previous work, the Consultant shall:

- Compare required funding versus available funding (per the current GoG budget) and develop detailed budgeting procedures to determine budgetary limitations. Distinguish between the budget needs at the national, district, and school levels.
- Establish priorities for maintenance functions; defining priority tiers for various maintenance tasks.
- Recommend an allocation of MES resources for facilities O&M, given the maintenance priorities and budgetary realities.

For implementation modalities, the Consultant shall:

- Develop a master facilities O&M schedule that includes a timeline that defines when various types of scheduled maintenance should be performed, and who should be responsible to perform the activity;
- Develop mechanisms to gauge the effectiveness of facilities O&M programs and monitor results, and develop tools to assess the relevant maintenance department's success in achieving its objectives and providing adequate services to schools;

- Based on selected structure and operational plan, develop required resource needs at the different institutional levels to implement the plan;
- Develop methods, and recommend the appropriate system/platform to record, assemble, analyze, and maintain school facilities O&M data;
- Develop a Facilities Inspection Manual and Guidelines, which will establish standards and procedures for school-level facilities O&M. The Guidelines shall complement the Sustainable Guidebook and school-specific O&M plan being developed by the school rehabilitation design consultant (see Section 3).

Task III. b: On an annual basis, MCC will evaluate ESIDA's O&M performance against an established plan in order to approve funding for O&M activities in the following year. Under this task, the Consultant shall:

- Develop a 3-year rolling O&M Plan and assist in establishing performance benchmarks related to facilities management.

Task III. c: The Consultant, in coordination with the Teachers and/or any other training activity of the Compact, shall develop an school facility 'O&M Training Plan' which identifies relevant officials that should be trained in facilities O&M, training modules for these officials, and a plan for additional trainings that may be required in the future. The Consultant shall propose which GoG entities should receive training at this initial phase, such as ESIDA, ERCs and/or school principals and other stakeholders, as based on national and regional locations and management structures. The Consultant shall facilitate trainings for relevant officials to include the following activities:

- Training modules shall discuss the National facilities O&M Strategy, and the facilities O&M Management Program:
 - Facilities Maintenance Strategy and Policies;
 - 3-year rolling facilities O&M Plan;
 - Facilities Inspection Manual and Guidelines, including environmental and health and safety considerations;
 - Maintenance management database and records.
- Facilitate a 'training of trainers,' for which candidates will be determined.
- All trainings must be recorded with audio/visuals to allow for future use of training sessions, the cost of which will be borne by MCA- Georgia. Logistical support (setting up the training, invitations, and travel expenses) shall be provided by ESIDA and MCA- Georgia.

Task III Deliverables:

- Facilities O&M Management Program with supporting automated software system and including all other components described;
- 3-Year Rolling facilities O&M Plan;
- Propose several performance benchmarks for measuring GoG progress with respect to adoption and implementation of the facilities O&M Management Program at the national level;
- Facility Inspection Manual and Guidelines, including environmental and health and safety considerations.
- O&M Training Plan, including training modules, materials and a ready manual for future trainings.

D. Task IV – Support during Initial Implementation Phase Facilities O&M Program

Task IV.a: ESIDA has the primary responsibility for implementing and operationalizing the facilities O&M management program developed under the above tasks. The Consultant shall assist ESIDA O&M staff in this effort by providing guidance and advice on the proper implementation of the computer-based O&M management systems and ensure that the facilities O&M program is launched

in a manner that is consistent with the strategic objective and framework of the program.

Task IV.b: During the initial implementation phase, the Consultant shall apply the monitoring and feedback procedures developed as part of Task III. Based on the results, the Consultant shall recommend improvements that could be made to the system and next steps.

Task IV Deliverables:

- Initial phase facilities O&M Implementation and Monitoring Report;
- Final facilities O&M Program and Development and Implementation Report with Recommendations for Next Steps and Improvements.

3. Consultation and Coordination with School Rehabilitation Design Firm, ESIDA and other Program Activities

The Consultant shall coordinate with ESIDA on all tasks. ESIDA, with support from MCA-Georgia, will carry out the logistics for implementing the facilities O&M management program. ESIDA and MCA-Georgia will provide technical review and approval of all deliverables.

ESIDA shall review and approve all deliverables. After ESIDA's acceptance of the deliverables provided by the Consultant, MCA-Georgia shall review and approve all deliverables for payment and purchase the software system to be used for the management program.

The O&M Consultant shall coordinate with MCA-Georgia leads on Infrastructure, Environment and Social Performance, General Education, Monitoring & Evaluation, Social and Gender, as well as the school rehabilitation design firm, school laboratory design consultant, General Education design firm and others, as may be required. The Consultant shall attend at least two meetings per month with MCA-Georgia and provide brief monthly updates through reports.

The Consultant shall work closely with the school rehabilitation design firm that has been hired by MCA-Georgia to design the first tranche of schools (37 schools) and produce the tender documents for their rehabilitation. The school rehabilitation design firm will develop a Sustainable Schools Guidebook which will include information on water supply and sanitation systems, waste management and recycling (if applicable), energy usage and heating systems, landscaping, and other issues, especially those related to rehabilitation of infrastructure and systems at schools. The guidebook will also include information on the necessary budget and technical resources needed for the operation and maintenance of these activities. The estimated budgets developed under this activity will be important inputs to the O&M Consultant in developing a national strategic facilities O&M program. The Guidebook will contain guidance that can be applied across all Georgian schools, and will complement the site-specific O&M Manuals to be developed as part of post-construction services.

4. Deliverables and Payments Schedule

Tasks	Deliverables	Delivery Date (Months from Effective Date of Contract)	% of Total Payment
I	a) Inception report, that includes methodology, approach and work plan detailing the tasks and timeline and resources needed for introduction of O&M practices for the Georgian Public Schools; b) Stakeholder Consultation Plan c) O&M data collection questionnaire d) Report detailing experiences from developing or transition countries, and international best practices on policies, budget and institutional processes for facilities O&M.	a) 1 month b) 1 month c) 1 months d) 2 months e) 3 months f) 3.5months g) 3.5months	a), b) and c) 10% d) and 5% e) 5% f) ,g)10%

	e) Stakeholder Consultation Results Report f) Review of educational budget assessment regarding facilities O&M and preparation of discussion Points on potential budget modifications at both the national and school level. g) Georgia O&M conditions assessment, including: analysis of Georgian public school existing conditions, and a final results report		
II	a) Facilities O&M Strategy/Framework for Georgia including comparison of alternative structures and operational plans b) Consultation process on draft facilities O&M Strategy/Framework including Power Point Presentation and support material c) Delivery and facilitation of three (3) stakeholders presentation	a) 4.5 months b) 5 months c) 5 months	a) 10% b) 5% c) 5%
III	a) Facilities O&M Management Program with supporting automated software system and including all other components described b) 3-Year Rolling facilities O&M Plan c) Propose several performance benchmarks for measuring GoG progress with respect to adoption and implementation of the facilities O&M Management Program at the national level; d) Facility Inspection Manual and Guidelines, including environmental and health and safety considerations; Environmental, Health and Safety Practice and Standards for schools. e) "O&M Training Plan" including training modules, materials and a ready manual for future trainings.	a) 7 months b) 9 months c) 9 months d) 9 months e) 9 months	a) 10% b) 10% c) 10% d) 5% e) 5%
IV	a) Initial phase facilities O&M Implementation and Monitoring Report b) Final facilities O&M Program and Development and Implementation Report with Recommendations for Next Steps and Improvements	a) 11 months b) 12 months	a) 5% b) 5%

5. Reporting Requirements

The Consultant will report to the ESIDA O&M specialist, and the MCA-Georgia Chief Infrastructure Engineer and MCA- Georgia Environmental and Social Performance Director. Succinct reporting is expected for all deliverables.

All deliverables shall be submitted in electronic form and in hard copy as necessary and/or as required by MCA- Georgia. Deliverables will be considered "draft" upon initial receipt. For every submission, MCA- Georgia will consolidate the review of the different parties and provide comments within 10 business days. The Consultant shall appropriately address MCA- Georgia's consolidated concerns and provide final deliverables within five business days of receiving MCA- Georgia's comments.

Inception Report: The Consultant shall submit an inception report 1 month after the effective date of the contract. The inception report shall be developed by the Consultant and be submitted to ESIDA and MCA-Georgia. The inception report shall specify target dates, tasks to be undertaken as well as resources needed for the completion of each task.

Monthly Progress Report: The Consultant shall produce a detailed monthly progress report to ESIDA and MCA- Georgia describing the overall progress against the work plan, status of the O&M planning, development and implementation process, including work accomplished, potential risks and schedule issues with suggested mitigation measures. The status update report shall not exceed three (3) pages.

Final Report: The Consultant shall produce a Final Report that consolidates and summarizes all the monthly reports and documents of all activities that were undertaken, including lessons learned from the development of the facilities O&M program as well as recommendations for fully scaling up the

implementation of the Georgian school O&M program.

6. Duration of the Assignment

The duration of the assignment is 12-months from Notice to Proceed. The expected Level of Effort for the International Consultant is **7.0 person-months** during this time period.

7. Consultant's Qualification

The consultant must have a Bachelor's degree in technical fields such as architecture or engineering, with over 10 years of practical experience and in-depth knowledge of planning and implementing O&M programs for schools or similar educational facilities, preferably in the context of developing countries. Specific experience in the development and/or assessment of school O&M financing and operational schemes is critical. He/she must be a self-starter with excellent leadership and communication skills and capable of writing in a concise and effective manner. English language skills are a must. Experience in the Eastern Europe, the Caucasus, or CIS countries is a plus. The consultant should consider the use of hired translation services, local or international technical inputs, and/or stakeholder consultation assistance during his or her missions to Georgia (not to exceed 10% of project budget.)

8. Resources to be provided by ESIDA & MCA- Georgia

Working space for the Consultant shall be provided in ESIDA's facility in Tbilisi. Computer and other personal electronic devices such as mobile phones, etc., that will be used by the Consultant shall be the responsibility of the Consultant.

ESIDA will provide staff and other necessary resources for condition assessments of selected schools for the purposes of developing the O&M program.

MCA- Georgia will be responsible for purchasing equipment and computer software to be used for the development and implementation of the O&M program.

ESIDA will be responsible for providing facilities, equipment and logistical support for trainings and consultation meetings.

SECTION 4

Form of Contract

Contract Form

Contract No:

Contract for Individual Consultant's Services

Lump-Sum

For the provision of

[Describe Individual Consulting Services]

between

MCA-Georgia

and

[name of Consultant]

Dated:

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Article I. Agreement

This CONTRACT AGREEMENT (this “**Contract**”) made as of the [day] of [month], [year], between MCA-Georgia (the “**Client**”), on the one part, and [full legal name of Consultant] (the “**Consultant**” and, together with the Client, the “**Parties**” and each a “**Party**”), on the other part.

RECITALS

WHEREAS,

- (a) The United States of America, acting through the Millennium Challenge Corporation (“**MCC**”) and the *Georgia* (the “**Government**”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in *Georgia* (the “**Compact**”) in the amount of **140 Million. USD** (“**MCC Funding**”). The Government, acting through the Client, intends to apply a portion of the proceeds of MCC Funding to eligible payments under this Contract. Payments made under this Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government, the Client, and MCC shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and
- (b) The Client has requested the Consultant to provide certain consulting services as described in Appendix A to this Contract (the “**Services**”); and
- (c) The Consultant, having represented to the Client that the Consultant has the required professional skills and technical resources, has agreed to provide such services on the terms and conditions set forth in this Contract.

NOW THEREFORE, the Parties to this Contract agree as follows:

- 1. In consideration of the payments to be made by the Client to the Consultant as set forth in this Contract, the Consultant hereby covenants with the Client to perform the Services in conformity in all respects with the provisions of this Contract.
- 2. Subject to the terms of this Contract, the Client hereby covenants to pay the Consultant, in consideration of the performance of the Services, the Contract Price (as defined below) or such other sum as may become payable pursuant to the provisions of this Contract at the times and in the manner prescribed by this Contract.

IN WITNESS whereof the Parties hereto have caused this Contract to be executed in accordance with the laws of the *Georgia* as of the day, month and year first indicated above.

For MCA-Georgia:

[full legal name of the Consultant]:

Signature

Signature

Name

Name

Witnessed By:

Witnessed By:

Article II. General Terms and Conditions of Contract

1. General Provisions

- 1.1 Definitions Capitalized terms used in this Contract and not otherwise defined have the meanings given such terms in the Compact or related document.
- 1.2 Relationship Between the Parties Nothing contained in this Contract shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant.
- 1.3 Law Governing Contract; Priority of Procurement Guidelines This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the laws and any other instruments having the force of law in **Georgia**, as they may be issued and in force from time to time (“**Applicable Law**”). In the event of a conflict between the “**MCC Program Procurement Guidelines**” and Georgian Law “**MCC Program Procurement Guidelines**” shall prevail.
- 1.4 Interpretation Unless otherwise indicated, throughout this Contract:
- (a) “in writing” means communicated in written form (e.g., by mail, e-mail, or facsimile) delivered with proof of receipt;
 - (b) Except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (c) the headings are for reference only and shall not limit, alter or affect the meaning of this Contract;
 - (d) each Appendix to this Contract is incorporated into this Contract by reference and constitutes an integral part of this Contract; and
 - (e) all references to contracts, agreements, or other documents shall be deemed to mean such contracts, agreements or documents, as the same may be amended or otherwise modified from time to time.

Section 4: Form of Contract

- 1.5 Notices
- 1.5.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in Section 1.5.3, or sent by confirmed facsimile or electronic email, if sent during normal business hours of the recipient Party.
- 1.5.2 A Party may change their address for receiving notice under this Contract by giving the other Party notice in writing of such change to the address specified in Section 1.5.3.
- 1.5.3 The notice address for each party is:
For the Client: 4, Sanapiro Street, 0105, Tbilisi Georgia
For Consultant:
- 1.6 Location
- The Services shall be performed at such locations as are specified in Appendix A to this Contract and, where the location of a particular task is not so specified, at such locations, whether in **Georgia** or elsewhere, as the Client may approve.
- 1.7 Authorized Representatives
- 1.7.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client may be taken or executed by its **Chief Executive Officer**
- 1.8 Taxes and Duties
- 1.8.1 Except as may be exempted pursuant to the Compact or another agreement related to the Compact, available in English at <https://www.mcc.gov/documents/agreements/compact-georgia-ii.pdf>, the Consultant may be subject to certain Taxes on amounts payable by the Client under this Contract in accordance with Applicable Law. The Consultant shall pay all Taxes levied under Applicable Law. In no event shall the Client be responsible for the payment or reimbursement of any Taxes. In the event that any Taxes are imposed on the Consultant, the Contract Price shall not be adjusted to account for such Taxes.
- 1.8.2 The Consultant and the Consultant's eligible dependents shall follow the usual customs procedures of **Georgia** in

importing good into *Georgia*.

- 1.8.3 If the Consultant or any of the Consultant's eligible dependents, do not withdraw but dispose of any goods in *Georgia* upon which customs duties or other Taxes have been exempted, the Consultant (a) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (b) shall reimburse such customs duties and Taxes to the Client if such customs duties and Taxes were paid by the Client at the time the good in question was brought into *Georgia*.
- 1.8.4 Without prejudice to the rights of the Consultant under this Section 1.8, the Consultant will take reasonable steps as requested by the Client or the Government with respect to the determination of the Tax status described in this Section 1.8.
- 1.8.5 If the Consultant is required to pay Taxes that are exempt under the Compact or a related agreement, the Consultant shall promptly notify the Client (or such agent or representative designated by the Client) of any Taxes paid, and the Consultant shall cooperate with, and take such actions as may be requested by the Client, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.
- 1.8.6 The Client shall use reasonable efforts to ensure that the Government provides the Consultant the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Compact or related agreements. If the Client fails to comply with its obligations under this paragraph, the Consultant shall have the right to terminate this Contract in accordance with Section 2.7.5(d).

1.9 Fraud and Corruption Requirements

Definitions

- 1.9.1 MCC requires that all beneficiaries of MCC funding, including the Client and any bidders, suppliers, contractors, subcontractors and consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.
- 1.9.2 As used in this Section 1.9:
- (a) "**coercive practice**" means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract.

- (b) “**collusive practice**” means a scheme or arrangement between two or more parties, with or without the knowledge of the Client, designed to establish prices at artificial, non-competitive levels or to otherwise deprive the Client of the benefits of free and open competition.
- (c) “**corrupt practice**” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including the Client and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution, or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“**FCPA**”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any Applicable Law.
- (d) “**fraudulent practice**” means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation.
- (e) “**obstructive practice**” means:
 - (i) destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and
 - (ii) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact and related agreements.
- (f) “**prohibited practice**” means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of Article III of this Contract.

Measures to
be Taken

- 1.9.3 MCC may cancel the portion of MCC Funding allocated to this Contract if it determines at any time that representatives of the Client, the Consultant or any other beneficiary of the MCC Funding were engaged in coercive, collusive, corrupt,

Section 4: Form of Contract

fraudulent, obstructive or prohibited practices during the selection process or the performance of this Contract, without the Client, the Consultant or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

1.9.4 MCC and the Client may pursue sanction of the Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time MCC determines that the Consultant has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in the performance of, this Contract or another MCC-funded contract.

1.9.5 The Client may terminate (and MCC may cause the Client to terminate) this Contract in accordance with the terms of Section 2.7.2(c) if it determines that the Consultant has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in the performance of, this Contract or another MCC-funded contract.

1.10 Entire Agreement

This Contract contains all of the covenants, stipulations and provisions agreed to by the Parties. No agent or representative of either Party has the authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth in this Contract.

2. Commencement, Completion, Modification and Termination of Contract

2.1 Contract Entry into Force

This Contract shall come into full force, and be legally binding on the Parties in all respects, on *[insert “the date this Contract is signed by the Parties” or insert an alternate date]*.

2.2 Effective Date and Commencement of Services

The Consultant shall commence the Services on *[specify date]*, which shall be defined as the “**Effective Date.**”

2.3 Expiration of Contract

Unless terminated earlier pursuant to Section 2.7, this Contract shall expire *[specify expiration date]*.

2.4 Modifications or Variations

2.4.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. The prior written consent

of MCC is required for modifications that (a) individually, or cumulatively with all previous modifications, increase the value of this Contract by ten percent (10%) or more; or (b) extends the original term of this Contract by 25% or more regardless of any amount of change in the value of the Contract. In addition, if, due to application of the thresholds for MCC review established by the “MCC Program Procurement Guidelines”, this Contract was not previously subject to MCC review, any modifications that, individually or cumulatively with all previous modifications, alter the terms of this Contract such that it becomes subject to MCC review pursuant to such thresholds, the prior written consent of MCC is required for such modifications.

2.5 Force Majeure

Definition

2.5.1 For the purposes of this Contract, “**Force Majeure**” means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a Party, and is not the result of any acts, omissions or delays of the Party relying on such event of Force Majeure, (or of any third person over whom such Party has control), (b) is not an act, event or condition the risks or consequence of which such Party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such Party’s reasonable diligence, and (d) makes such Party’s performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the circumstances.

No Breach of Contract

2.5.2 The failure of a Party to fulfil any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure; provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as practicable (and in no event later than five (5) days after the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure.

Measures to be Taken

2.5.3 Subject to Section 2.5.6, a Party affected by an event of Force Majeure shall continue to perform its obligations under this Contract as far as is reasonably practical, and

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shall take all reasonable measures to minimize and otherwise mitigate the consequences of any event of Force Majeure.

2.5.4 A Party affected by an event of Force Majeure shall provide evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

2.5.5 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.6 During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

(d) demobilize, in which case the Consultant shall be reimbursed for additional costs that the Consultant reasonably and necessarily incurred and, if the Consultant is required by the Client to reactive performance of the Services at the time of restoration of normal conditions, the additional costs the Consultant reasonably and necessarily incurred as part of such reactivation; or

(e) continue with the Services to the extent possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

2.6 Suspension

The Client may, by giving thirty (30) days' written notice to the Consultant, suspend all payments to the Consultant under this Contract if the Consultant fails to perform any of the Consultant's obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (a) shall specify the nature of the failure, and (b) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.7 Termination/ Suspension

By the Client

2.7.1 The Client may terminate this Contract upon written notice to the Consultant and such termination shall become effective immediately upon delivery of the notice (or on

such other date as may be specified by the Client in such notice):

- (f) if the Consultant, in the judgment of the Client or MCC, fails to perform the Consultant's obligations relating to the use of funds set out in Article III. In such event the Consultant shall repay any and all funds so misused within a maximum of thirty (30) days after termination;
- (g) if the Consultant becomes insolvent or bankrupt;
- (h) if the Consultant, in the judgment of the Client has engaged, directly or through an agent, in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for or in the performance of this Contract or another MCC-funded contract;
- (i) if an event exists or occurs that would give rise to the expiration, suspension or termination of the Compact, in whole or in part, in accordance with the terms of the Compact; or
- (j) if suspension or termination is permitted under Applicable Law.

2.7.2 The Client may terminate this Contract upon written notice to the Consultant and such termination shall become effective 30 days after delivery of the notice or on such later date as may be specified by the Client in such notice (except in the case of clause (a) below where termination shall become effective immediately upon expiration of the cure period):

- (k) if the Consultant does not remedy a failure in the performance of the Consultant's obligations under this Contract (other than failure to perform obligations relating to use of funds as set forth in Section 2.7.1(a) of this Contract, which failure shall not be entitled to a cure period) within thirty (30) days after delivery of the notice of termination or within any further period of time approved in writing by the Client;
- (l) if, as the result of an event of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days;
- (m) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (n) if the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant

to Section 6.

2.7.3 The Client may also suspend this Contract if any of the events specified in Sections 2.7.1(d) or (e) occurs. In such case, the Consultant has an obligation to mitigate all expenses, damages and losses to the Client during the period of the suspension.

2.7.4 The Client may exercise any of its rights under this Section 2.7 without prejudice to any other remedies that may be available to the Client for breach of this Contract.

By the
Consultant

2.7.5 The Consultant may terminate this Contract, upon written notice to the Client after the occurrence of any of the events (including the expiration of any time periods) specified in paragraphs (a) through (e) of this Section 2.7.5, and such termination shall become effective 30 days after delivery of the notice (except that in the case of clauses (a) and (d) below the termination shall not take effect if the payment or reimbursement that is the subject of the termination notice is made during such 30 days):

- (o) If the Client fails to pay any money due to the Consultant pursuant to this Contract that is not otherwise subject to dispute pursuant to Section 6 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- (p) If, as the result of an event of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (q) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Section 6.
- (r) If the Consultant does not receive a reimbursement of any Taxes that are exempt under the Compact within one hundred and twenty (120) days after the Consultant gives notice to the Client that such reimbursement is due and owing to the Consultant.
- (s) If this Contract is suspended in accordance with Section 2.7.3 for a period of time exceeding three (3) consecutive months; provided that the Consultant has complied with the Consultant's obligation to mitigate in accordance with Section 2.7.3 during the period of the suspension.

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Payment upon Termination

2.7.6 Upon termination of this Contract pursuant to Sections 2.7.1, 2.7.2 or 2.7.5, the Client shall make, or cause to be made, the following payments to the Consultant:

(t) payment pursuant to Section 5 for Services satisfactorily performed prior to the effective date of termination; and

(u) except in the case of termination pursuant to clauses (a) through (c) of Section 2.7.1 and clauses (a) and (d) of Section 2.7.2, reimbursement of any reasonable cost (as determined by the Client or MCC) incidental to the prompt and orderly termination of this Contract; *provided*, that in the case of suspension of this Contract pursuant to Section 2.7.3, the Consultant has complied with the Consultant's obligation to mitigate in accordance with such Section.

2.8 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Section 2.7, or upon expiration of this Contract pursuant to Section 2.3, all rights and obligations of the Parties under this Contract shall cease, except (a) such rights and obligations as may have accrued on the date of termination or expiration; (b) the obligation of confidentiality set forth in Section 3.3; (c) the Consultant's obligation to permit inspection, copying and auditing of the Consultant's accounts and records set forth in Sections 3.6 and 3.7 and Article III; and (d) any right or obligation which a Party may have under Applicable Law.

3. Obligations of the Consultant

3.1 General

Standard of Performance

3.1.1 The Consultant shall perform the Services and carry out the Consultant's obligations under this Contract with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with third parties.

Law Governing Services

3.1.2 The Consultant shall perform the Services in accordance with Applicable Law.

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| 3.2 | Conflict of Interests | 3.2.1 | The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or the Consultant's own interests. |
| | Consultant Not to Benefit from Commissions, Discounts, etc. | 3.2.2 | The payment of the Consultant pursuant to Section 5 shall constitute the Consultant's only payment in connection with this Contract and, subject to Section 3.2.3, the Consultant shall not accept for the Consultant's own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of the Consultant's obligations under this Contract. |
| | | | Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the "MCC Program Procurement Guidelines" from time to time in effect as posted on the www.mcc.gov website, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client. |
| | Consultant Not to Engage in Certain Activities | | The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Services. |
| 3.3 | Confidential Information; Rights of Use | | |
| | Confidential Information | 3.3.1 | Except with the prior written consent of the Client, or as may be required to comply with Applicable Law, the Consultant shall not at any time (a) communicate to any person or entity any confidential information acquired in the course of the Services, or (b) make public the recommendations formulated in the course of, or as a result of, the Services. |
| | Rights of Use | 3.3.2 | The Consultant shall not, without the previous written consent of the Client, disclose this Contract, or any provision of this Contract, or any specification, plan, drawing, pattern, sample or information provided by or on behalf of the Client in connection therewith, to any person other than a person employed by the Consultant in the performance of this |

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Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

3.3.3 The Consultant shall not, without the previous written consent of the Client, make use of any document or information related to or delivered in connection with this Contract, except for the purpose of performing this Contract.

3.3.4 Any document related to or delivered in connection with this Contract, other than this Contract itself, shall remain the property of the Client and shall be returned (including, except as provided in Section 3.4, all the copies) to the Client on completion of the Consultant's performance under this Contract.

3.4 Documents
Prepared by the
Consultant to be
the Property of
the Client

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant under this Contract shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof in accordance with this Section 3.4 and Section 3.3.4. The Consultant may retain a copy of such documents and software, and use such software for the Consultant's own use with prior written approval of the Client. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

3.5 Insurance to be
taken out by the
Consultant

The Consultant (a) shall take out and maintain, at the Consultant's own cost but on terms and conditions approved by the Client, professional liability insurance, with a minimum coverage of *[insert amount and currency]*, as well as insurance against the risks, and for the coverage specified in Article III, and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.6 Accounting,
Inspection and
Auditing

The Consultant shall keep accurate and systematic accounts and records in respect of the provision of the Services under this Contract, in accordance with the provisions of Article III and internationally accepted accounting principles and in such form

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and detail as will clearly identify all relevant time charges and costs, receipt and use of goods and services and the basis thereof, together with a detailed inventory thereof.

3.7 Reporting Obligations

The Consultant shall maintain such books and records and submit to the Client the reports, documents and other information specified in Article III and Appendix B, in the form, in the numbers and within the time periods set forth therein. The Consultant shall submit to the Client such other reports, documents and information as may be requested by the Client from time to time. Final reports shall be delivered in an electronic form specified by the Client in addition to the hard copies specified in Article III and Appendix B. The Consultant consents to the Client's sharing of the reports, documents and information delivered by the Consultant pursuant to this Contract with MCC and the Government.

3.8 The Client's Prior Approval for Sub-Consultancies/ Consultant Obligations

The Consultant may not enter into any subcontract or sub-consultancy agreement or arrangement for the performance of any part of the Services without the Client's prior approval in writing. If approved, this Contract shall be amended to the extent necessary to reflect such subcontract or sub-consultancy agreement. Notwithstanding any such approval by the Client, the Consultant shall retain full responsibility for the Services and will replace any subcontractor or sub-consultant determined by the Client to be incompetent or incapable in discharging assigned duties or resume performance of the Services, in each case, as requested by the Client.

3.9 Use of Funds

The Consultant shall ensure that the Consultant's activities do not violate provisions relating to use of funds and environmental guidelines, as set out in Article III.

4. Obligations of the Client

4.1 Assistance and Exemptions

The Client shall use its best efforts to ensure that the Government shall:

(v) Provide the Consultant with work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.

(w) Arrange for the Consultant and, if appropriate, the Consultant's eligible dependents, to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other

documents required for their stay in *Georgia*.

- (x) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Consultant and the Consultant's eligible dependents.
- (y) Exempt the Consultant from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the Applicable Law.
- (z) Grant to the Consultant the privilege, pursuant to Applicable Law, of bringing into *Georgia* reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Consultant and the Consultant's dependents and of withdrawing any such amounts as may be earned in the execution of the Services.

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| 4.2 | Access to Land | The Client warrants that the Consultant shall have, free of charge, unimpeded access to all land in Georgia in respect of which access is required for the performance of the Services. |
| 4.3 | Change in the Applicable Law Related to Taxes and Duties | If, after the date of this Contract, there is any change in the Applicable Law with respect to Taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, payments to the Consultant shall not be adjusted. However, the provisions of Section 1.8.5 shall be applicable in such a situation. |
| 4.4 | Services, Facilities and Property of the Client | The Client shall make available to the Consultant, for the purposes of performing the Services and free of any charge, the services, facilities and property described in Appendix D at the times and in the manner specified in Appendix D. |
| 4.5 | Payment | In consideration of the Services performed by the Consultant under this Contract, the Client shall make to the Consultant payments in the manner provided in Section 5. |
| 4.6 | Counterpart Personnel | <div style="padding-left: 20px;">4.6.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in Appendix D.</div> <div style="padding-left: 20px;">4.6.2 Professional and support counterpart personnel, excluding the Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work</div> |

assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

5. Consultant Compensation

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| 5.1 Contract Price | Except as provided in Section 5.5, the total payment due to the Consultant for the performance of the Services (the “ Contract Price ”) shall be <i>[insert amount]</i> . The Contract Price is an all-inclusive fixed-price, lump-sum covering all costs required to provide the Services in accordance with the terms of this Contract. The Contract Price may only be increased if the Parties have agreed to additional payments in accordance with Sections 2.4 and 5.4. |
| 5.2 Currency of Payment | Payments shall be made in US Dollars or <i>in Georgian Lari</i> or if justified for sound business reasons and approved by the Client, a combination of the two currencies. |
| 5.3 Terms, Conditions and Mode of Billing and Payment | Payments will be made to the account of the Consultant and according to the payment schedule stated in Appendix C and against an invoice. Any other payment shall be made after the conditions listed in Appendix C for such payment have been met, and the Consultant has submitted an invoice to the Client specifying the amount. In all cases, invoices shall be delivered to the Client no later than thirty (30) days prior to the requested payment date and will not be deemed delivered until they are in form and substance satisfactory to the Client. Payments will be made to the Consultant within thirty (30) days of the date of receipt by the Client of a valid and proper invoice or the date of the Client’s acceptance of required deliverables (e.g., the delivery of reports), whichever is later. The Consultant shall comply with any other instructions related to payment as may be reasonably requested by the Client. |
| 5.4 Payment for Additional Services | For the purposes of determining the remuneration due for additional services as may be granted under Section 2.4, a breakdown of the Contract Price (lump sum) is provided in Appendix C. |
| 5.5 Interest on Delayed Payments | If the Client has delayed payments beyond thirty (30) days after the payment date determined in accordance with Section 5.3, interest shall be paid to the Consultant for each day of delay at the rate of the Federal Funds Rate as stated on the website: www.federalreserve.gov/fomc/funds/rate.htm . |

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| 5.6 Working Hours, Overtime, Leave, etc. | 5.6.1 Working hours and holidays for the Consultant are set forth in Appendix C. |
| | 5.6.2 The Consultant shall not be entitled to reimbursement for overtime nor to take paid sick leave or vacation leave except as specified in Appendix C, and except as specified in Appendix C, the Consultant's remuneration shall be deemed to cover these items. |

6. Settlement of Disputes

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| 6.1 Amicable Settlement | The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of this Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation. |
| 6.2 Dispute Resolution | <p>(a) Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after the receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement by Georgian arbitration in accordance with this Section 6.2.</p> <p>(b) All disputes shall be settled by Georgian arbitration and the rules for the selection of arbitrators and as well as the proceeding rules shall be determined by the parties in a form of additional agreement thereto. All disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. Composition of the arbitral tribunal. An arbitral tribunal shall be composed of one or several arbitrators. The number and procedure to appoint arbitrators shall be defined by the parties. The parties shall appoint an equal number of arbitrators, unless otherwise provided for under the oral agreement between the parties. If the arbitration agreement provides for an even number of arbitrators, the already appointed arbitrators shall, within 10 days from their appointment, appoint one more arbitrator, unless otherwise provided for under the agreement of the parties. In the event that the number of arbitrators is not determined under the agreement of the parties, the arbitral tribunal shall be composed of three arbitrators. A person shall not be appointed as arbitrator without his/her consent. An arbitrator's consent shall be given in writing. The procedure of appointment of the arbitrator(s) and the presiding arbitrator shall be determined by the agreement of the parties. In case of Failing such agreement: in an arbitration with three arbitrators,</p> |

each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the presiding arbitrator; if a party fails to appoint the arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the appointment of a third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court, within thirty days following the receipt of said application by the court; in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of one of the parties, by the court, within thirty days following receipt of said application before the court.

2. Rules of Procedure. Except as stated herein, arbitration proceedings shall be conducted in accordance with law of Georgia on arbitration.as in force on the date of this Contract.

3.Substitute Arbitrators. Where the mandate of an arbitrator is terminated, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

4.Qualifications of Arbitrators. A person to be appointed as an arbitrator shall, before acting as arbitrator, provide the parties to the arbitration and the arbitral tribunal with information about his/her educational background and experience working as an arbitrator (if any), in writing. The arbitral tribunal, in appointing an arbitrator(s), shall take into consideration any qualification requirements set out by the agreement of the parties in order to ensure appointment of an independent and impartial arbitrator. A person shall not be denied being appointed as an arbitrator, unless he/she: lacks legal capacity or has restricted legal capacity; holds a political position or is a civil servant; has been convicted for committing a crime and the conviction has not been dissolved.

5.Costs. Upon the occurrence of a dispute, the Parties shall agree on the allocation of the costs associated with any settlement efforts before arbitration or cited with arbitration. Where the Parties fail to agree on the allocation, the allocation shall be determined by the arbitrator.

6.Miscellaneous

In any arbitration proceeding under this Contract:

- (a) proceedings shall, be held in Georgia;
- (b) the Georgian shall be the official language for all purposes related to the Arbitration proceedings; and
- (c)the decision of t arbitrator(s)shall be final and binding and shall be enforceable in any court of competent jurisdiction, and

the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

(e) MCC has the right to be an observer to any arbitration proceeding associated with this Contract, at its sole discretion, but does not have the obligation to participate in any arbitration proceeding. Whether or not MCC is an observer to any arbitration proceeding associated with this Contract, the Parties shall provide MCC with written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within ten (10) days after (i) each such proceeding or hearing or (ii) the date on which any such award is issued. MCC may enforce its rights under this Contract in an arbitration conducted in accordance with this provision or by bringing an action in any court that has jurisdiction. The acceptance by MCC of the right to be an observer to any proceeding shall not constitute consent to the jurisdiction of the courts or any other body of any jurisdiction or to the jurisdiction of any arbitral or other panel.

7. Compact Conditionalities

7.1 Required Provisions

For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Article III reflect certain obligations of the Government and the Client under the terms of the Compact and related documents that are also required to be transferred onto any consultant, sub-consultant or associate who partakes in procurements or contracts in which MCC funding is involved and that, as with other sections of this Contract, the provisions of Article III are binding obligations under this Contract.

7.2 Flow Through Provisions

In any sub-contract or sub-award entered into by the Consultant, as permitted by the terms of this Contract, the Consultant shall ensure the inclusion of all the provisions contained in Article III in any agreement related to such sub-contract or sub-award.

Article III. Additional Provisions of Contract

The Client is responsible for the oversight and management of the implementation of the Compact on behalf of the Government, and intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (a) such payments will only be made at the request of and on behalf of the Client and as authorized by the Fiscal Agent, (b) MCC shall have no

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obligations to the Consultant under the Compact or this Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the Client shall derive any rights from the Compact or have any claim to MCC Funding.

A. MCC Status; Reserved Rights; Third-Party Beneficiary

1. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Contract, and is immune from any action or proceeding arising under or relating to this Contract. In matters arising under or relating to this Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

- (a) Certain rights are expressly reserved to MCC under this Contract, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate this Contract.
- (b) MCC, in reserving such rights under this Contract, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Contract.
- (c) MCC may, from time to time, exercise its rights, or discuss matters related to this Contract with the Parties or the Government, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.
- (d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the Client, MCC or any other person or entity from asserting any right against the Consultant, or relieve the Consultant of any liability which the Consultant might otherwise have to the Government, the Client, MCC, or any other person or entity. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, affiliate, contractor, agent or representative.

B. Limitations on the Use or Treatment of MCC Funding

The use and treatment of MCC Funding in connection with this Contract does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable law or United States Government policy. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/funding_limitations.pdf.]²

² Prior to finalizing this as part of a specific contract, confirm that it remains the proper link.

C. Procurement

The Consultant shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in the Compact and in the “**MCC Program Procurement Guidelines**” from time to time in effect as posted on the www.mcc.gov. The Consultant shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the Client. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at

[www.mcc.gov/guidance/compact/procurement_awards_provisions.pdf].³

D. Reports and Information; Access; Audits; Reviews

1. Reports and Information. The Consultant shall maintain such books and records and provide such reports, documents, data or other information to the Client in the manner and to the extent required by the Compact or related documents and as may be reasonably requested by the Client from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of the Compact and Program Implementation Agreement that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Consultant as if the Consultant were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at

[www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf].⁴

2. Access; Audits and Reviews. Upon MCC’s request, the Consultant shall permit such access, audits, reviews and evaluations as provided in the Compact or related documents. The provisions of the Compact and Program Implementation Agreement that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to the Consultant as if the Consultant were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at

[www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf].⁵

3. Application to Providers. The Consultant shall ensure the inclusion of the applicable audit, access and reporting requirements in the Consultant’s contracts or agreements with other providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at

[www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf].⁶

³ Prior to finalizing this as part of a specific contract, confirm that it remains the proper link.

⁴ Prior to finalizing this as part of a specific contract, confirm that it remains the proper link.

⁵ Prior to finalizing this as part of a specific contract, confirm that it remains the proper link.

⁶ Prior to finalizing this as part of a specific contract, confirm that it remains the proper link.

E. Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions

1. The Consultant shall ensure that no payments have been or will be made by the Consultant to any official of the Government, the Client, or any third party (including any other government official) in connection with this Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the “**FCPA**”) or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws. The Consultant affirms that no payments have been or will be received by any official, employee, agent or representative of the Consultant in connection with this Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws.

2. The Consultant shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that the Consultant knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac, (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on www.epls.gov or (iv) on such other list as the Client may request from time to time. For purposes of this provision, “material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. The Consultant shall ensure that the Consultant’s activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that the Consultant’s activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the Client, the Fiscal Agent, or the Bank, as may be applicable. The Consultant shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set

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out “in Part 10, Eligibility Verification Procedures in the MCC Program Procurement Guidelines that can be found on MCC’s website at www.mcc.gov.” The Consultant shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the Client or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the Client with a copy to MCC.

4. Other restrictions on the Consultant shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. laws, regulations, executive orders or policies, any misconduct injurious to MCC or the Client, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information and Marking

1. The Consultant shall cooperate with the Client and the Government to provide the appropriate publicity to the goods, works and services provided under this Contract, including identifying Program activity sites and marking Program assets as goods, works and services funded by the United States, acting through MCC, all in accordance with the MCC Standards for Corporate Marking and Branding, available on the MCC website at [\[http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf\]](http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf); ⁷ provided, however, that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to MCC’s prior written approval and must be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters.

2. Upon the termination or expiration of the Compact, the Consultant shall, upon MCC’s request, cause the removal of any such markings and any references to MCC in any publicity materials.

G. Insurance

The Consultant shall obtain insurance or other protections appropriate to cover against risks or liabilities associated with performance of this Contract. The Consultant shall be named as payee on any such insurance. The Client and, at MCC’s request MCC, shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws. The Consultant shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, works and services; provided, however, that at MCC’s election, such proceeds shall be deposited in an account as designated by the Client and acceptable to MCC or as otherwise directed by MCC.

H. Conflict of Interest

⁷ Prior to finalizing this as part of a specific contract, confirm that it remains the proper link.

Section 4: Form of Contract

The Consultant shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Consultant participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Consultant shall ensure that none of the Consultant's officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Consultant shall ensure that none of the Consultant's officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with this Contract. Without limiting the foregoing, the Consultant shall comply, and ensure compliance, with the applicable conflicts of interest and ethics policies of the Client as provided by the Client to the Consultant.

I. Inconsistencies

In the event of any conflict between this Contract and "**609(g) Agreement**", the term(s) of the "**609(g) Agreement**" shall prevail.

J. Other Provisions

The Consultant shall abide by such other terms or conditions as may be specified by the Client or MCC in connection with this Contract.

K. Flow-Through Provisions

In any subcontract or sub-award entered into by the Consultant, as permitted by this Contract, the Consultant shall ensure the inclusion of all the provisions contained in paragraphs (A) through (J) above.

Appendix A – Description of Services

[Insert detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by the Client, etc].

[Sections 3 and 4 of Attachment 2, Terms of Reference, to be inserted here – modified as necessary, based on negotiations]

Appendix B - Reporting Requirements

[List format, frequency, and contents of reports and other deliverables; persons to receive them; dates of submission; etc].

[Section 5.3 of Section 3, Terms of Reference, to be inserted here — modified as necessary, based on negotiations]

[Depending on the nature of the consultancy, the MCA Entity may wish to include the following provision with respect to extension of time:

Extension of Time

If following submission of the deliverable on the due date, a review by the Client determines additional work on such deliverable is required, a new deliverable date not exceeding *[insert amount of time]* shall be agreed upon in writing between the Parties and the Consultant shall not be *[if liquidated damages section is included in Appendix C, insert the following: “liable for liquidated damages or”]* subject to termination for default until the expiration of the new agreed submission date.

If at any time during performance of this Contract, the Consultant should encounter conditions impeding timely completion of the Services, the Consultant shall promptly notify the Client in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Consultant’s notice, the Client shall evaluate the situation and may, at its sole discretion, extend the Consultant’s time for performance, in which case the extension shall be ratified by the Parties by amendment to this Contract, and the Consultant shall not be *[if liquidated damages section is included in Appendix C, insert the following: “liable for liquidated damages or”]* subject to termination for default until the expiration of the new agreed submission date.

Appendix C – Fee Schedule/Breakdown of Contract Price

[Insert negotiated fee schedule. May be (as negotiated) specified portions of total negotiated fixed lump sum upon delivery and acceptance of specified deliverables/reports or equal monthly instalments of the total negotiated fixed lump sum fee for the assignment. Specify currency (US Dollars or local currency).]

[Equal monthly instalments of the total negotiated fixed lump sum fee for the assignment]

[Depending on the nature of the consultancy, the MCA Entity may wish to include the following provision with respect to liquidated damages:

Liquidated Damages

Except as provided under Section 2.5 (*force majeure*), if the Consultant fails to perform the contracted Services and submit deliverables in accordance with the schedule set forth in Appendix B [and this Appendix C], the Client may without prejudice to all of its other remedies under this Contract, deduct from the amount of the Contract Price due upon submission of the said late deliverable, as liquidated damages, a sum equivalent to *[insert number]* percent (xx %) of the portion of the Contract Price associated with the delayed unperformed Services for each week or part thereof of delay until actual performance, up to a maximum amount of liquidated damages equal to *[insert number]* percent (xx%) of the *[insert “Contract Price” or “portion of the Contract Prices associated with such delayed unperformed Services”]*. *depending on which term is acceptable to the MCA Entity* Once the maximum is reached, the Client may terminate the Contract pursuant to Section 2.7.

Appendix D – Services and Facilities to be Provided by the Client

[List here the services, equipment, facilities, and counterpart personnel to be made available to the Consultant by the MCA Entity.]

[Section 8 of Section 3, Terms of Reference, to be inserted here — modified as necessary, based on negotiations]

Appendix E - Services and Facilities to be provided by Consultant

[List here the services, equipment, and facilities to be provided by the Consultant.]

[Section 9 of Section 3, Terms of Reference, to be inserted here — modified as necessary, based on negotiations]

[Note: Delete this Appendix entirely if, in lieu of a list of services, equipment, and facilities to be provided by the Consultant, Section 9 of the TOR includes only a statement that all services, equipment, and facilities not listed as being made available by the MCA Entity are to be provided by the Consultant.]