

**IMPLEMENTATION AGREEMENT**

**FOR COMPACT IMPLEMENTATION**

**BY AND AMONG**

**THE MILLENNIUM CHALLENGE CORPORATION**

**AND**

**THE GOVERNMENT OF GEORGIA  
ACTING THROUGH THE MINISTRY OF FINANCE**

**AND**

**MILLENNIUM CHALLENGE GEORGIA FUND**

**MILLENNIUM CHALLENGE**  
**TABLE OF CONTENTS**

	<u>Page</u>
RECITALS .....	1
ARTICLE I. PURPOSE AND TERM .....	2
Section 1.1 Objective and Assistance .....	2
Section 1.2 Effective Date, Term.....	2
ARTICLE II. DISBURSEMENT .....	2
Section 2.1 Disbursement Framework.....	2
Section 2.2 Disbursement Requests.....	3
Section 2.3 Disbursement by MCC, Reservation .....	3
ARTICLE III. IMPLEMENTATION; USE OF FUNDS .....	4
Section 3.1 Implementation Framework.....	4
Section 3.2 Procurement of Goods and Services .....	5
Section 3.3 Use of Funds .....	5
Section 3.4 Taxation .....	6
Section 3.5 Records and Information.....	7
Section 3.6 Audits.....	7
Section 3.7 Approvals and Consents .....	8
Section 3.8 Refunds .....	8
ARTICLE IV. TERMINATION OF GRANT .....	8
Section 4.1 Termination.....	8
Section 4.2 Reinstatement.....	10
ARTICLE V. GOVERNMENT REPRESENTATIONS AND OBLIGATIONS .....	10
Section 5.1 Nature of Obligation .....	10
Section 5.2 No Violation of Law .....	10
ARTICLE VI. GENERAL.....	10
Section 6.1 Governing Law; Consultation.....	10
Section 6.2 Alteration .....	11
Section 6.3 Liens or Encumbrances.....	11
Section 6.4 Publicity, Information and Marking .....	11
Section 6.5 No Assurance of Future Assistance .....	11
Section 6.6 Foreign Government Information .....	11
Section 6.7 Headings .....	12

Section 6.8	Severability .....	12
Section 6.9	Communications .....	12
Section 6.10	Counterparts; Signatures .....	13
Section 6.11	Relationship Between the Parties.....	13
Section 6.12	MCC Status.....	13
Section 6.13	Non-waiver of Remedies .....	13
Section 6.14	Language.....	13
Section 6.15	Amendment.....	13

Annex I: Description of the Assistance

Annex II: Form of Request for Disbursement of Grant

Annex III: Form of Invoice

Annex IV: MCG Bank Account Information

Annex V: Procurement Guidelines

## IMPLEMENTATION AGREEMENT

This IMPLEMENTATION AGREEMENT (the "*Implementation Agreement*") is made by and among the Millennium Challenge Corporation, a United States Government corporation ("*MCC*") and the Government of Georgia (the "*Government*"), acting through the Ministry of Finance (the "*Ministry*"), and the Millennium Challenge Georgia Fund, established pursuant to Presidential Decree No 561, dated December 3, 2004 ("*MCG*"), and shall become effective as provided herein. MCC, the Ministry and MCG are sometimes referred to herein individually as a "*Party*" and together as the "*Parties*." All capitalized terms used but not defined herein shall have the meanings given such terms in the Grant Agreement (defined below) or in the Compact (as defined below).

### RECITALS

WHEREAS, the United States of America, acting through the Millennium Challenge Corporation ("*MCC*"), and the Government of Georgia (the "*Government*") executed a Millennium Challenge Compact on September 12, 2005 (the "*Compact*"), that sets forth the general terms and conditions pursuant to which MCC will provide funding of up to \$295,300,000 to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in Georgia;

WHEREAS, pursuant to the Compact and the Designation Agreement to be entered into by and between the Government and MCC, the Government has authorized MCG to implement certain of the Government Responsibilities in furtherance of the Compact;

WHEREAS, the Government, acting through the Ministry, and MCC have entered into a Grant Agreement dated the date hereof (the "*Grant Agreement*") pursuant to which MCC has agreed, subject to the conditions contained therein and herein, to grant to the Government an amount not to exceed six hundred and six thousand six hundred United States Dollars (US \$606,600) (the "*Grant*") for the purpose of facilitating the implementation of the Compact as described therein and herein; and

WHEREAS, the Parties are hereby entering into this Implementation Agreement to set forth the terms and conditions for the use of the Grant proceeds;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties agree as follows:

**ARTICLE I.**  
**PURPOSE AND TERM**

Section 1.1 Objective and Assistance. The objective of this Implementation Agreement is to facilitate the provision of the assistance, as described in Section 1.1 of the Grant Agreement and Annex I (the “*Assistance*”).

Section 1.2 Effective Date, Term. This Implementation Agreement shall become effective on the last date on which it is signed by the Principal Representative (defined below) of each Party (“*Effective Date*”). This Implementation Agreement shall terminate on the earlier of (i) sixty (60) days after the date of the initial MCC Disbursement under the Compact (the “*Completion Date*”), (ii) the date on which any Party terminates this Implementation Agreement in accordance with Section 4.1 hereof, or (iii) the date on which any Party terminates the Grant Agreement in accordance with Section 1.2 thereof.

**ARTICLE II.**  
**DISBURSEMENT**

Section 2.1 Disbursement Framework.

(a) Except as may be otherwise agreed in writing by the Parties, MCC shall from time to time, upon presentation of satisfactory documentation from the Ministry in accordance with this Implementation Agreement, make disbursements of the Grant to an authorized account of MCG held at the Bank of Georgia, as further described in Annex IV.

(b) MCC may, in its sole discretion, reduce the total amount of the Grant by an amount equal to the amount attributable to any failure to satisfy a condition precedent to disbursement specified in, or any violation of, this Implementation Agreement (including a procurement in violation of Section 3.2), and such amount shall be automatically released from any obligation in connection with this Implementation Agreement. Upon the expiration or termination of this Implementation Agreement or the Grant Agreement, any amount of the Grant not disbursed by MCC in accordance with Section 2.3 of this Implementation Agreement shall be automatically released from any obligation in connection with this Implementation Agreement and the Grant Agreement. Any amount of the Grant disbursed by MCC but not re-disbursed or otherwise incurred as permitted pursuant to Section 4.1(d) of this Implementation Agreement shall be returned promptly to MCC to such accounts designated by MCC from national funds in accordance with Section 3.8 of this Implementation Agreement.

(c) On the date of the initial MCC Disbursement under the Compact and upon the satisfaction of all conditions precedent to the initial MCC Disbursement, (i) MCC shall transfer any amounts of the Grant that have not been disbursed by MCC to the Special Account, and (ii) MCG shall, in accordance with instructions provided by MCC, transfer any amounts of the Grant that have been disbursed by MCC but have not been re-disbursed by MCG to the account(s)

specified in such MCC instructions and, in each case, such funds shall be applied pursuant to and in accordance with the provisions of the Compact and the relevant Supplemental Agreements, as if such funds were MCC Funding under the Compact.

(d) The Ministry and MCG agree that MCG shall not request any MCC Disbursement under the Compact, and MCC will not make any MCC Disbursement under the Compact, in an amount that, when taken together with all MCC Disbursements made under the Compact and the full amount of the Grant, would exceed \$295,300,000.

## Section 2.2 Disbursement Requests.

(a) MCG shall submit to the Ministry disbursement requests (each a “**Disbursement Request**”) substantially in the form attached hereto as Annex II. Except as otherwise agreed by MCC in writing, MCG shall submit Disbursement Requests to the Ministry on a monthly basis, and shall only submit one Disbursement Request in each calendar month. Each Disbursement Request (other than the initial Disbursement Request) shall be submitted at least 15 days prior to the date on which the disbursement is requested to be made.

(b) Each Disbursement Request shall:

(i) Attach any timesheets, receipts or invoices, as applicable, in respect of any goods procured or services rendered, substantially in the form attached hereto as Annex III, which shall include the service provider’s contract date and number and/or each employee’s name and position, as applicable, the service provider contract and budget line item to be paid and balance remaining after payment of the invoice, if applicable, and certification that the service provider or employee is not on the excluded party list of the United States Government (<http://epls.arnet.gov>) or on the list of firms debarred by the World Bank (<http://www.worldbank.org>);

(ii) State the amount and purpose of the disbursement; certify that the Disbursement Request has been prepared by MCG and authorized by the Ministry; and certify that such disbursement is in accordance with the terms of the Grant Agreement and this Implementation Agreement, including, without limitation, the limitations on the use of funds set forth in Section 3.3 of this Implementation Agreement; and

(iii) Include such other information as MCC may from time to time request.

## Section 2.3 Disbursement by MCC; Reservation.

(a) Upon (i) review of the Disbursement Request, (ii) evaluation of the reconciliation report submitted by MCG with respect to each disbursement (other than with respect to the initial Disbursement Request) and (iii) confirmation that the request for disbursement is within the budget set forth in Annex I (the “**MCG Budget**”), the Ministry shall authorize and forward the

Disbursement Request to MCC. Following receipt of the authorized Disbursement Request from the Ministry and the satisfaction of all conditions precedent to such disbursement under this Implementation Agreement, MCC shall disburse the amount of the Disbursement Request to an authorized MCG bank account held at the Bank of Georgia, which account information is provided in Annex IV (the "**MCG Bank Account**").

(b) MCG shall make payments from the MCG Bank Account to pay (i) monthly salary amounts to the employees listed in the approved staffing plan, which shall be evidenced by timesheets or other equivalent evidence and (ii) other administrative payments, which shall be evidenced by documents, including a receipt or an invoice, each in accordance with the approved MCG Budget. MCG shall ensure that each employee timely certifies and confirms in writing its receipt of and the amount of each payment received by it under the Grant Agreement and this Implementation Agreement (which notice shall be simultaneously copied to MCC).

(c) MCG and the Ministry acknowledge that MCC shall make disbursements in reliance upon the certifications given by MCG and the Ministry in each Disbursement Request and that MCC shall have no obligations to any service provider, employee or vendor under the terms of the respective service provider contract, employee contract or vendor contract.

(d) Notwithstanding the foregoing or any other provision of the Grant Agreement or this Implementation Agreement, MCC reserves the right to withhold, in its sole discretion, disbursement with respect to any Disbursement Request which is not satisfactory to MCC.

### **ARTICLE III.**

#### **IMPLEMENTATION; USE OF FUNDS**

##### Section 3.1 Implementation Framework.

(a) MCG shall make Disbursement Requests to the Ministry, make salary and other administrative payments and provide reports, audits and other information to the Ministry and MCC, in each case as set out in this Implementation Agreement. Without limiting the foregoing, MCG shall, at least monthly, reconcile actual cash payments it makes against the disbursements made by MCC and shall provide such information to the Ministry and MCC (if MCC so requests), together with all invoices, receipts, timesheets and other supporting documentation.

(b) Following receipt by the Ministry of each monthly report and Disbursement Request from MCG, the Ministry shall review such monthly report, Disbursement Request and supporting documentation for compliance with the provisions of this Implementation Agreement and for compliance with the same month's budget as set forth in the MCG Budget and, if the Ministry determines that the Disbursement Request is consistent with the MCG Budget and is in accordance with this Implementation Agreement, the Ministry shall authorize the Disbursement Request and forward the authorized Disbursement Request to MCC for disbursement.

(c) The Ministry and MCG shall comply, and the Ministry shall take all steps necessary to ensure that MCG complies, with all of their respective obligations under this Implementation Agreement.

Section 3.2 Procurement of Goods and Services.

(a) MCG shall procure all goods and services in accordance with the procurement guidelines attached hereto as Annex V (the "**Procurement Guidelines**").

(b) The Ministry shall ensure that MCG follows the Procurement Guidelines.

Section 3.3 Use of Funds.

(a) The Ministry and MCG shall ensure that the Grant shall be used solely for the purposes of the Assistance described in Annex I.

(b) The Ministry and MCG further agree and undertake that the Grant shall not be used to undertake, finance or otherwise support:

(i) Any activity that is subject to prohibitions on use of funds contained in (A) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)-(3), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (B) any provision of law comparable to the eleventh and fourteenth provisions under the heading "Child Survival and Health Programs Fund" of division E of Public Law 108-7 (117 Stat. 162), a United States statute;

(ii) Any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(1) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(2) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(3) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(4) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(5) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(6) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(7) Providing general budget support for an organization that engages in any activity prohibited above;

(iii) The purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit; or

(iv) Any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and MCG agree otherwise in writing, MCG shall ensure that activities undertaken or financed in whole or in part (directly or indirectly) by the Grant comply with environmental guidelines delivered by MCC to MCG or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time (the “*Environmental Guidelines*”), including any definition of “likely to cause a significant environmental, health, or safety hazard” as may be set forth in such Environmental Guidelines.

Section 3.4 Taxation. The Grant proceeds shall be free from any taxes imposed under laws currently or hereafter in effect in Georgia during the term of the Grant Agreement and this Implementation Agreement. This shall apply to the use of any Grant proceeds and to any work performed under or activities undertaken by any service provider or employee funded by the Grant, and shall apply to all taxes, tariffs and duties and other levies, including:

(a) To the extent attributable to Grant proceeds, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Georgia, receiving Grant proceeds, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Georgia, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 3.4, the term “national” refers to organizations established under the laws of Georgia, other than MCG or any other entity established solely for purposes of managing or overseeing the implementation of the Grant and the Proposed Compact or any wholly-owned subsidiaries, divisions, or affiliates of entities not registered or established under the laws of Georgia;

(b) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Grant use or the personal use of individuals who are neither citizens nor permanent residents of Georgia and who are present in Georgia for purposes of carrying out the Grant or their family members, including all charges based on the value of such imported goods;

(c) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of Georgia, including income and social taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to Grant proceeds; and

(d) Taxes or duties levied on the purchase of goods or services financed by Grant funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

### Section 3.5 Records and Information.

(a) Each of the Ministry and MCG shall furnish to MCC, and MCG shall use its best efforts to ensure that any third party receiving a portion of the Grant proceeds, as appropriate, furnishes to MCG (who shall in turn furnish to MCC), any records and other information as may be necessary or appropriate for the Ministry and MCG to effectively to carry out their respective obligations under the Grant Agreement and this Implementation Agreement.

(b) Each of the Ministry and MCG shall maintain, and MCG shall use its best efforts to ensure that all third parties maintain, accounting books, records, documents and other evidence relating to the Grant Agreement and this Implementation Agreement adequate to show, without limitation, the use of the Grant proceeds, including all costs incurred by MCG and other third parties, the receipt and use of goods and services acquired in furtherance hereof, the nature and extent of solicitations of prospective suppliers of goods and services acquired by MCG and other third parties, the basis of award of service provider contracts and orders in furtherance hereof, the overall progress of the implementation of the Grant, and any documents reasonably requested by MCC upon reasonable notice ("**Records**"); *provided*, that MCG shall be responsible for maintaining the originals of all such Records. The Ministry and MCG shall maintain, and each shall use its best efforts to ensure that all Records are maintained, in accordance with generally accepted accounting principles prevailing in the United States or, at the Ministry's or MCG's option and with the prior written approval by MCC, other accounting principles. Records shall be maintained for at least five (5) years after the Effective Date or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

Section 3.6 Audits. The Ministry and MCG, as applicable, shall afford, or cause to be afforded, authorized representatives of MCC, the Inspector General of the United States Agency for International Development ("**Inspector General**"), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of the Grant Agreement and this Implementation Agreement, and any agents or representatives engaged by MCC or a representative to conduct any assessment, review or evaluation of the Grant, at all reasonable times, the opportunity to audit, review, evaluate or inspect activities financed in whole or in part (directly or indirectly) by MCC or undertaken in connection with the Grant, including pursuant to any service provider contract, the utilization of goods and services purchased or financed in whole or in part (directly or indirectly) by the Grant, and Records relating to activities financed or undertaken in furtherance of, or otherwise relating to, the Grant Agreement and this Implementation Agreement, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability

Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, affiliates, contractors, representatives and agents of the Ministry or MCG. As applicable, MCG shall make provision for such assessment, review and evaluation in each service provider contract or other contract. As requested by MCC in writing, the Ministry and MCG shall use, or cause to be used, or select, or cause to be selected, an auditor named on the approved list of auditors in accordance with the *Guidelines for Financial Audits Contracted by Foreign Recipients* (the "**Audit Guidelines**") issued by the Inspector General, and as approved by MCC, to conduct such audits. Such audits shall be performed in accordance with such Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Guidelines.

Section 3.7 Approvals and Consents. The Ministry and MCG, as applicable, shall take or cause to be taken such actions, including using its best efforts to obtain all necessary approvals and consents, as are necessary and appropriate for the implementation of the Grant.

Section 3.8 Refunds. In the event Grant proceeds are used by any party in a manner not supported by valid documentation in accordance with the Grant Agreement and this Implementation Agreement, or otherwise in any manner not in accordance with the Grant Agreement and this Implementation Agreement, or for goods or services not used in accordance with the Grant Agreement and this Implementation Agreement, MCC, notwithstanding the availability or exercise of any other remedies under the Grant Agreement or this Implementation Agreement and notwithstanding any action taken or not taken between MCG and the Ministry, may require the Ministry to refund, and the Ministry shall refund, the amount of such Grant proceeds in United States Dollars to MCC to such accounts designated by MCC within thirty (30) days after receipt of a request therefore. The Ministry shall cause the Government to apply national funds to satisfy its obligations under this Section 3.8 and shall not apply any portion of the Grant or any other funds received from MCC to satisfy such obligations. Notwithstanding any other provision of this Implementation Agreement or any other agreement to the contrary, MCC's right under this Section 3.8 for a refund shall continue until the Completion Date and for a period of (i) three (3) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

#### ARTICLE IV.

#### TERMINATION OF GRANT

Section 4.1 Termination.

(a) Any Party may terminate this Implementation Agreement with thirty (30) days prior written notice.

(b) Notwithstanding the preceding paragraph, MCC may terminate this Implementation Agreement upon giving the Ministry and MCG written notice, if MCC determines that:

(i) Any use or proposed use of Grant proceeds or continued implementation of the Grant would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) The Ministry, MCG or any third party receiving Grant proceeds is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Ministry or MCG has committed an act, or an event has occurred, that would render Georgia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Ministry, MCG or any service provider or employee, in MCC's sole opinion, has materially breached one or more of its assurances or any other covenants, obligations or responsibilities under the Grant Agreement or this Implementation Agreement, as applicable, or has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of the Grant Agreement or this Implementation Agreement or a service provider contract or employee contract, as applicable;

(v) If the Ministry, MCG, any service provider, or any of their respective directors, officers, employees, affiliates, contractors, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(vi) Any Grant proceeds are applied, directly or indirectly, to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution; or

(vii) An event or condition of any character has occurred that, in MCC's sole opinion: materially and adversely affects, or is likely to materially and adversely affect, the ability of the Ministry, MCG or any other party to effectively implement, or ensure the effective implementation of, the Grant or to otherwise carry out its responsibilities or obligations under or in furtherance of the Grant Agreement or this Implementation Agreement or to exercise its rights hereunder.

(c) Notwithstanding the foregoing provisions, reasonable expenditures for goods and services that are properly incurred under or in furtherance of the Grant Agreement or this Implementation Agreement before the Completion Date or before termination hereof may be paid from Grant proceeds if the request for such payment is properly submitted within sixty (60) days after such expiration or termination.

(d) Upon the termination of this Implementation Agreement and the Grant Agreement, all assets purchased pursuant hereto and thereto shall become subject to the terms

and conditions of the Compact and shall be reported to and accounted for by the Fiscal Agent as contemplated by the Compact and other relevant supplemental agreements.

Section 4.2 Reinstatement. MCC may reinstate any suspended or terminated Grant funding under the Grant Agreement or this Implementation Agreement if MCC determines, in its sole discretion, that the Ministry, MCG or other relevant party has demonstrated a commitment to correcting each condition for which Grant funding was suspended or terminated.

## ARTICLE V.

### GOVERNMENT REPRESENTATIONS AND OBLIGATIONS

Section 5.1 Nature of Obligation. This Implementation Agreement is a legal, valid and binding obligation of the Ministry and MCG. Each of the Ministry and MCG has the power and authority to execute, deliver and perform its obligations under this Implementation Agreement and each certificate or instrument contemplated hereby. The execution, delivery and performance by each of the Ministry and MCG of this Implementation Agreement and each certificate or instrument contemplated hereby to which it is or will be a party have been duly authorized by all necessary action by the Ministry and MCG, as applicable, and no other approvals or consents are required.

Section 5.2 No Violation of Law. Neither this Implementation Agreement nor any of the activities contemplated herein violates or will violate any applicable law or regulation in effect in Georgia or any decree, order, agreement or obligation to which either of the Ministry or MCG is a party or by which it is bound.

## ARTICLE VI.

### GENERAL

Section 6.1 Governing Law; Consultation.

(a) This Implementation Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) Any Party may at any time request consultations relating to the interpretation or implementation of this Implementation Agreement. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter into consultations and the other Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (20) days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative (defined below) or such other representative of comparable or higher rank. The consultations shall last no longer than forty-five (45) days from date of commencement. If the matter is not resolved within such time

period, any Party may terminate this Implementation Agreement pursuant to Section 4.1. The Parties shall enter any such consultations guided by the principle of achieving the Grant objective in a timely and cost-effective manner.

(c) In matters arising under or relating to this Implementation Agreement, no Party shall be deemed to have submitted to the jurisdiction of the courts of the State of New York or any other court or judicial body.

Section 6.2 Alteration. The Grant shall not be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in Georgia that would have the effect of requiring or allowing any impoundment, rescission or sequestration thereof.

Section 6.3 Liens or Encumbrances. The Grant shall not be subject to any lien, attachment, enforcement of judgment, pledge or encumbrance of any kind, except with the prior approval of MCC.

Section 6.4 Publicity, Information and Marking. Each of the Ministry and MCG shall give appropriate publicity to the Grant Agreement and this Implementation Agreement as a program to which the United States has contributed, including by posting the Grant Agreement and this Implementation Agreement (or summary hereof or thereof as may be prudent due to the sensitive nature of salary-related expenses), and any amendments thereto, on an agreed website, and marking goods financed in whole or in part (directly or indirectly) by the Grant; *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is financing the Grant or any other publicity materials referencing MCC shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time.

Section 6.5 No Assurance of Future Assistance. Nothing contained in the Grant Agreement or this Implementation Agreement shall be construed as creating an obligation on the part of MCC to provide any further funding or assistance, other than the Grant, to the Government.

Section 6.6 Foreign Government Information. The Parties agree to the removal of the Foreign Government Information ("*FGI*") classification for the text of this Implementation Agreement and the terms of the Grant and the implementation thereof described herein. Notwithstanding the foregoing, except as shall otherwise be agreed by the Parties in writing, all prior drafts of this Implementation Agreement, any other agreement between MCC and the Government yet to be negotiated and documented, and all other documents, information and other communications between MCC and the Government or their respective representatives either prior to, on or after the date of this Implementation Agreement, whether related to the subject matter of this Implementation Agreement or otherwise, will remain subject to FGI classification and, as such, protected from disclosure to the public in accordance with the letter dated December 8, 2004 from MCC to the Government.

Section 6.7 Headings. The Section and Subsection headings used in this Implementation Agreement are included for convenience only and are not to be considered in construing or interpreting this Implementation Agreement.

Section 6.8 Severability. If one or more provisions of this Implementation Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Implementation Agreement and the balance of this Implementation Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 6.9 Communications. Unless otherwise agreed by the Parties in writing, any notice, request, report, document or other communication required, permitted, or submitted by any Party to any other Party or Parties under this Implementation Agreement shall be (i) in writing, (ii) in English, and (iii) deemed duly given: (a) upon personal delivery to the Party or Parties to be notified; (b) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party or Parties, if not, then on the next business day, with an original copy to follow by mail; or (c) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation

Attention: Vice President for Operations (Principal Representative)  
(with a copy to the General Counsel)

875 Fifteenth Street, N.W.

Washington, DC 20005

United States of America

Tel: 1-202-521-3600

Fax: 1-202-521-3700

Email: [VPOperations@mcc.gov](mailto:VPOperations@mcc.gov) (Vice President for Operations);

[VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)

To the Ministry:

Ministry of Finance

Attention: Minister of Finance (Principal Representative)

70a I. Abashidze St.

Tbilisi, 0062

Georgia

Tel: (995-32) 22-68-05

Fax: (995-32) 33-19-22

To MCG:

Millennium Challenge Georgia Fund

Attention: Chief Executive Officer (Principal Representative)

4 Sanapiro St.

Tbilisi, 0105  
Georgia  
Tel: + (995-32) 93-91-12; 93-91-13; 93-91-33  
Fax: + (995-32) 93-91-44  
Email: lashanidze@mcg.ge

Section 6.10 Counterparts; Signatures. This Implementation Agreement may be executed in one or more counterpart signatures and, each when so executed and delivered, shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature delivered by facsimile or electronic mail in accordance with Section 6.9 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement, on the basis of the signature's legal effect, validity or enforceability, solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 6.11 Relationship Between the Parties. Nothing in this Implementation Agreement shall be construed to constitute or create a partnership, agency relationship, joint venture, or equity or similar interest among the Parties. No Party has the power or authority to act on behalf of another Party, except as expressly authorized by the other Parties in writing.

Section 6.12 MCC Status. MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Implementation Agreement. As such, MCC has no liability under this Implementation Agreement and is immune from any action or proceeding arising under or relating to this Implementation Agreement. In matters arising under or relating to this Implementation Agreement, MCC is not subject to the jurisdiction of the courts or other body of Georgia.

Section 6.13 Non-waiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with this Implementation Agreement shall be construed as a waiver of such right or remedy.

Section 6.14 Language. This Implementation Agreement is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into Georgian for the convenience of the Parties, this official English version shall prevail.

Section 6.15 Amendment. This Implementation Agreement may be amended or modified by written agreement of the Parties.

**[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]**

**IN WITNESS WHEREOF**, MCC, the Ministry and MCG, each acting through its duly authorized representative, have caused this Implementation Agreement to be executed in their names and delivered as of the 21st day of December, 2005.

MILLENNIUM CHALLENGE  
CORPORATION

By: \_\_\_\_\_ / s / \_\_\_\_\_  
Name: John Hewko  
Title: Vice President, Operations

MINISTRY OF FINANCE OF GEORGIA

By: \_\_\_\_\_ / s / \_\_\_\_\_  
Name: Alexander Aleksishvili  
Title: Minister of Finance

MILLENNIUM CHALLENGE GEORGIA  
FUND

By: \_\_\_\_\_ / s / \_\_\_\_\_  
Name: Lasha Shanidze  
Title: Chief Executive Officer

**ANNEX I**  
**DESCRIPTION OF THE ASSISTANCE**

**1. Description of Assistance.**

(a) The Assistance shall be comprised of the funding of certain program administration and control costs as identified below.

(b) The Assistance shall be subject to all of the provisions of the Implementation Agreement of which this Annex forms a part, including the restrictions on use of funds set forth in Section 3.3 of the Implementation Agreement.

**2. Budget and Disbursement.**

(a) The MCG Budget is expected to be utilized as set forth below, and in no circumstances shall the total budget exceed \$606,600. No reallocations may be made between or among these line items without prior written MCC consent.

(b) Disbursements shall be made in accordance with Article II of the Implementation Agreement.

DESCRIPTION OF EXPENSES	November	December	January	February	Total By Expenditure
<b>Staff Salaries and other Benefits</b>	<b>54,260</b>	<b>65,162</b>	<b>124,116</b>	<b>36,247</b>	<b>279,785</b>
Staff salaries and other benefits	54,260	65,162	124,116	36,247	279,785
<b>Office Equipment</b>	<b>33,500</b>	<b>0</b>	<b>169,225</b>	<b>0</b>	<b>202,725</b>
Vehicles	0	0	55,000	0	55,000
Computer equipment	0	0	66,620	0	66,620
Software	0	0	7,000	0	7,000
Other office equipment	0	0	8,295	0	8,295
Furniture	21,500	0	16,850	0	38,350
Other equipment	12,000	0	15,460	0	27,460
<b>Overhead Expenses</b>	<b>1,200</b>	<b>8,100</b>	<b>28,940</b>	<b>10,000</b>	<b>48,240</b>
Maintenance on equipment and buildings	600	2,800	20,140	10,000	33,540
Communications	600	2,300	3,800	0	6,700
Other indirect costs	0	3,000	5,000	0	8,000
<b>Other Non-Overhead</b>	<b>10,000</b>	<b>12,400</b>	<b>19,000</b>	<b>11,500</b>	<b>52,900</b>
Travel	0	0	0	10,000	10,000
Consulting services	10,000	11,700	16,700	1,500	39,900
Workshops	0	0	800	0	800
Incidentals	0	700	1,500	0	2,200
<b>Other Costs</b>	<b>0</b>	<b>300</b>	<b>17,300</b>	<b>5,350</b>	<b>22,950</b>
Public Outreach	0	0	17,150	5,350	22,500
Supervisory and Stakeholder Committees	0	300	150	0	22,950
<b>GRAND TOTAL</b>	<b>98,960</b>	<b>85,962</b>	<b>358,581</b>	<b>63,097</b>	<b>606,600</b>

**ANNEX II**  
**FORM OF REQUEST FOR DISBURSEMENT OF GRANT**

Section 1. Request Summary	
<b>Country</b>	GEORGIA
<b>Grant Agreement date</b> <b>Implementation Agreement date</b>	
<b>Grant Assistance Component Number and Description</b>	
<b>Request Date</b>	
<b>Disbursement Period Beginning Date</b>	
<b>Disbursement Period End Date</b>	
<b>Disbursement Request Number</b>	
<b>Currency</b>	
<p><b>A. Disbursement Request:</b> The undersigned hereby requests the Millennium Challenge Corporation (“MCC”) to disburse funds under the Grant Agreement by and between the Government of Georgia, acting through the Ministry of Finance (the “Ministry”) and MCC, dated the date first mentioned above and the Implementation Agreement by and among the Government, acting through the Ministry, Millennium Challenge Georgia Fund (“MCG”) and MCC, dated the date first mentioned above as follows:</p>	
1. Disbursement amount requested from MCC (amount in USD):	
2. Amount requested in words (in USD):	
3. Service provider(s)/Vendor(s) and/or employees in respect of which disbursement is requested and purpose of such payment	
<p><b>B. Compliance.</b> The undersigned confirms that the disbursement requested hereby is in accordance with the terms and conditions set forth in the Grant Agreement and the Implementation Agreement. Attached hereto are the required timesheets, receipts or invoices, as applicable, in respect of such goods procured and/or services rendered</p>	
<p><b>C. Authorization:</b> The undersigned acknowledges that funds disbursed in accordance with this request will be paid by MCG directly to employees and/or third party goods and services providers, as applicable, in accordance with the Grant Agreement and the Implementation Agreement.</p>	
<p><b>D. {For disbursements requested for payment of employees}</b></p> <p>Attached hereto is an executed Certificate of MCG certifying the following:</p> <p style="margin-left: 40px;">(a) The service provided by the employee during the period covered by this disbursement request meets the requirements specified in the employee contract.</p> <p style="margin-left: 40px;">(b) Neither the employee nor its respective agent has compensated any person to obtain the contract except as permitted under the laws of Georgia and approved in writing by MCG.</p> <p style="margin-left: 40px;">(c) The employee has not been placed on the “List of Parties Excluded from Federal Procurement or Non-procurement Programs” published by the United States General Services Administration</p>	

(<http://epls.arnet.gov>), or on the list of firms debarred by the World Bank (<http://www.worldbank.org>); or on the list of "Specially Designated Nationals and Blocked Persons" published by the United States Treasury Department Office of Foreign Assets Control, and thereby rendered ineligible to receive Millennium Challenge Corporation funds. .

**Millennium Challenge Georgia Fund**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**As Authorized Principal Representative of Millennium Challenge Georgia Fund**

**Date:** \_\_\_\_\_

**Ministry of Finance**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**As Authorized Principal Representative of Ministry of Finance**

**Date:** \_\_\_\_\_

## ANNEX III

<b>FORM OF INVOICE</b>	
1.	Name, address and telephone number of the service provider
2.	<p>Addressee:                      Millennium Challenge Georgia Fund                      Attention: Chief Executive Officer                      4 Sanapiro St.                      Tbilisi, 0105                      Georgia                      Tel: + (995-32) 93-91-12; 93-91-13; 93-91-33                      Fax: + (995-32) 93-91-44                      Email: lashanidze@mcg.ge</p>
3.	Date of invoice, if applicable
4.	Contract Number (or other authorization for services performed or supplies delivered (including order number and contract line item number))
5.	Description, quantity, unit of measure, unit price and extended price of services performed or supplies delivered, if applicable
6.	<p>Name and address of service provider official or the bank account routing information to whom or to which payment will be sent by MCG (must be the same as that in the contract or in a proper notice of assignment). The service provider or employee, if applicable, must at a minimum include the following information regarding the account to which the payment will be sent:</p> <p>Account name:                      Account number:                      Bank name:                      Full bank address (including country):                      Bank SWIFT Code:                      Bank Code:</p> <p>Routing instructions for payments:  <i>A United States Service provider shall also furnish the following information [if appropriate]:</i>  <i>[Taxpayer Identification Number]</i>  <i>[Electronic funds transfer banking information – may be included in the invoice or otherwise submitted, e.g., through the Central Service Provider Registration process]</i>  <i>[Any other information or documentation required by the Contract]</i></p>
7.	Name, title, phone number and mailing address of the person to notify in the event of a defective invoice
8.	<p>Billing Information:                      (a) Amount billed in this invoice</p>
9.	<p>An executed Certificate of MCG certifying the following:</p> <p>(a) To the best of its information and belief, any commodity or service supplied by the service provider meets the requirements specified in the service provider contract.</p> <p>(b) Neither the service provider nor its agent has compensated any person to obtain the contract except as permitted under the laws of Georgia and approved in writing by MCG.</p> <p>(c) Neither the service provider nor its agent has made or will make any payment to or for the benefit of the purchaser, the purchaser's agent, or any other person or entity in the nature of a kickback. Any commission paid or to be paid by the service provider to its agent in connection with the transaction for which payment is</p>

**FORM OF INVOICE**

being requested under the contract is shown in item 5 above and does not exceed the lesser of (a) the amount customarily paid by the service provider in connection with similar transactions or (b) the amount customary in the trade. Neither the service provider nor its agent has given or received and will not give or receive any payment or benefit whatever in connection with any transaction or series of transactions that are covered by the contract other than those payments or benefits permitted under this Certificate and Agreement.

(d) The service provider has not been placed on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs" published by the United States General Services Administration (<http://epls.arnet.gov>), or on the list of firms debarred by the World Bank (<http://www.worldbank.org>); or on the list of "Specially Designated Nationals and Blocked Persons" published by the United States Treasury Department Office of Foreign Assets Control, and thereby rendered ineligible to receive Millennium Challenge Corporation funds. To the best of its knowledge, the service provider has not subcontracted and, in any event, will not subcontract the services covered by this Certificate and Agreement to any subcontractor included on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs", on the list of firms debarred by the World Bank or on the list of "Specially Designated Nationals and Blocked Persons" or from any affiliate of a person or entity on such lists.

10. Signature by an authorized representative of MCG

**ANNEX IV**

**MCG BANK ACCOUNT INFORMATION**

**US Account Information**

**Intermediary Bank:**

JP Morgan Chase Bank, New York, NY, USA

Swift: CHASUS33

**Account with Institution:**

Bank of Georgia

3, Pushkin Street,

0105 Tbilisi, Georgia

Swift: BAGAGE22, Corr. Account: 400213605

**Beneficiary Customer:**

Millennium Challenge Georgia Fund

**Account Number:**

295070702

ANNEX V  
PROCUREMENT GUIDELINES

**1. Conduct and Administration of Procurement.**

The principles, rules and procedures set out in The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004 and The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004 (WB Procurement Guidelines) shall govern the conduct and administration of the procurement of the goods, works and services that need to be acquired to implement the projects and programs under the Compact subject to the following exceptions:

(a) General Exceptions.

(i) References to the “**Bank**” unless otherwise noted refer to the Millennium Challenge Corporation (MCC).

(ii) References to the “**Borrower**” unless otherwise noted refer to the Government of Georgia as signatory to the Compact and the Millennium Challenge Georgia Fund as the accountable entity (collectively, MCG).

(iii) References to the “**Loan Agreement**” unless otherwise noted refer to the Compact.

(iv) References to “**loan**” refer to grant.

(v) References to the “**Guidelines**” refer to the Procurement Guidelines.

(vi) Contract Dispute resolution will take place primarily in Georgia with the possibility for international arbitration in the case that disputes are not resolved at the national level.

(b) Specific Exceptions. *The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004.*<sup>1</sup>

(i) Introduction.

(1) **Paragraphs 1.1 to 1.3** defining the purpose of the guidelines are deleted.

---

<sup>1</sup> Modifying instructions and text of modifications are set out in regular type. [Explanatory text is set out in italics type within brackets.]

(2) **Paragraphs 1.4 to 1.5** describing the procurement principles underlying the guidelines are deleted.

(3) **Paragraph 1.6** is changed to: The particular methods to be followed for the selection of consultants under the Compact shall be set out in the semi-annual Procurement Plans.

(4) **Paragraphs 1.7 to 1.8** defining application of guidelines are deleted.

(5) **Paragraphs 1.11** defining eligibility requirements is modified to add the following paragraph: (f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies shall be excluded from procurements awarded under the Compact; including under any then-existing anti-terrorist policies. Without limiting the foregoing, this would remove from eligibility any consultant, sub-consultant or personnel who or which are nationals of any country that is subject to sanction or restriction by United States law or policy. As of the date hereof, this list includes Cuba, Iran, Libya, North Korea, Sudan and Syria.

Footnote 9 is deleted.

(6) **Paragraphs 1.12** defining rules for advance contracting and retroactive funding is changed to the following text:

In certain circumstances, such as to accelerate project implementation, MCG may, with MCC's approval, wish to proceed with the selection of consultants before the Compact comes into force. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Procurement Guidelines, and MCC shall review the process used by MCG. MCG undertakes such advance contracting at its own risk, and any "no objection" issued by MCC with regard to the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCG for any contract costs if the contract is signed prior to entry into effect of the Compact and any required MCC approval.

(7) **Paragraphs 1.14** providing for MCC review is modified by changing the last sentence to the following text:

The thresholds for MCC review are described in Schedule 2 of this Annex.

(8) **Paragraphs 1.15** providing for Bank's assistance in identifying consultants is deleted.

(9) **Paragraphs 1.18** defining how to reference The World Bank role in the procurement is changed to: MCG shall use the following language when referring to MCC in the RFP and contract documents:

The Millennium Challenge Corporation ("**MCC**") and the Government of Georgia (the "**Government**") have entered into a compact for Millennium Challenge Account ("**MCA**") assistance to help facilitate poverty reduction through economic growth in Georgia (the "**Compact**") in the amount of 295,300,000USD ("**MCC Funding**"). Georgia intends to apply a portion of the proceeds of the MCC Funding to eligible payments under this contract. Payment by MCC will be made only at the request of the Millennium Challenge Georgia Fund ("**MCG**") and upon approval by MCC, and will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than Georgia and MCG shall derive any rights from the Compact or have any claim to any proceeds of the MCC Funding.

(10) **Paragraphs 1.20 and 1.21** defining rules for use of language are revised to a single paragraph that states: The RFPs and the proposals for contracts valued at or above 100,000USD shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between MCG and the Provider. At the discretion of MCG, the RFP also may be prepared in the Georgian language. For contracts valued at less than 100,000USD, any invitation or solicitation document and responding documents may be prepared in English or in the Georgian language or both at the discretion of MCG. Consultants shall not be permitted or required to sign contracts in two languages.

(11) **Paragraphs 1.22** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that Grantees (including beneficiaries of MCC grants), as well as consultants under MCC financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In accordance with this requirement, MCC.

(12) **Paragraphs 1.24** defining the rules for providing a Procurement Plan is deleted.

(ii) Quality-and-Cost Based Selection (QCBS).

(1) **Paragraph 2.2** setting out the steps of the procurement procedure is modified in the introductory sentence to: The steps of the selection process shall include the following steps unless MCC specifically approves a modification in the procedure that is justified under the circumstances of a particular procurement.

(2) **Paragraphs 2.4** providing rules for developing cost estimates is changed in the second sentence to state: As requested in the solicitation documents, costs shall be divided.

(3) **Paragraph 2.5** providing rules for advertising procurements is changed to: Every procurement shall be open to foreign and national participants without restrictions or preferences. General notice of anticipated procurements for consultant services shall be included in the procurement plan which is published semi-annually as a General Procurement Notice (the "**General Procurement Notice**"). Specific procurement notices of consultant contracts expected to cost more than 30,000USD shall be advertised at the MCG website and at dgMarket. In addition, contracts expected to cost more than 100,000USD shall be advertised in UN Development Business Online as well as at the MCG website and at dgMarket. MCG may also advertise the procurements in national and international paper publications or electronic media. The text of the advertisement, whether a Request for Expressions of Interest or a Request for Proposals may be subject to review by MCC.

Footnote 19 is retained unchanged.

Footnote 20 is deleted.

(4) **Paragraph 2.6, 2.7 and 2.8** providing rules for preparing the Short List of Consultants are revised to a single paragraph that states: MCG is responsible for preparation of the short list which is expected to include six to ten firms or organizations unless a smaller number of firms is justified under the circumstances of the particular procurement. Consideration will be given to all firms or organizations—national and international—expressing interest and possessing the relevant qualifications. The method for developing a shortlist shall be fair and objective according to pre-announced criteria.

Footnotes 21, 22 and 23 are deleted.

(5) **Paragraph 2.9** defining the contents of the RFP is modified in the second sentence to: MCG shall use the applicable standard RFPs issued by The World Bank as modified to reflect the exceptions set out in the Procurement Agreement with MCC and changes to address project-specific conditions, subject to MCC approval when the change is significant. The third sentence of Paragraph 2.9 is deleted.

(6) **Paragraph 2.12** defining rules for contracts is changed to: Section IV of these Procurement Guidelines briefly discusses the most common types of contracts. MCG shall use an appropriate Standard Form of Contract, acceptable to MCC, as necessary to address specific country and project issues. Any such changes shall be introduced generally through Contract Data Sheets or through Special Conditions of Contract rather than by introducing changes in the wording of the General Conditions of Contract included in the Standard Forms. These forms of contract cover the majority of consulting services. When these forms are not appropriate MCG shall use other contract forms acceptable to MCC.

(7) **Paragraph 2.15** defining the rules for evaluating quality is modified to delete all references to the use of “transfer of knowledge” and “participation of nationals” to evaluate the quality of the proposals.

(8) **Paragraph 2.21** providing rules for review of the financial proposals shall be changed to: MCG shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the RFP shall require that all proposals to be stated in the same currency (local currency, or USD or a combination of the two) as selected by MCG. If there is a need to make a conversion between the two allowable currencies, the RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, *provided that* the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal. Any proposal that deviates from the currency requirement as stated in the RFP may be rejected as non-responsive.

(9) **Paragraph 2.22** providing rules for evaluating cost proposals is subordinated to all related provisions of the Compact and Supplemental Agreements.

(10) **Paragraph 2.23** defining the procedures for developing the total score and determining the winning proposal is renumbered Paragraph 2.23.1 and a new paragraph is added that states.

(11) **Paragraph 2.23.2** before inviting the firm obtaining the highest total score for negotiations, MCG shall furnish to MCC for its review and “no objection” a full description of the procurement process including an account of all significant problems or defects during the process and a description of how these were resolved.

(12) **Paragraph 2.26** providing rules for financial negotiations is subordinated to all related provisions of the Compact and Supplemental Agreements. This Paragraph 2.26 also is modified by adding the following sentence at the end of the paragraph: If the contract permits reimbursement of any costs, the reimbursement amounts shall be limited by applicable cost principles.

(13) **Paragraph 2.28** defining requirements for publishing notice of award of the contract is modified to require that notice shall also be posted to the MCG website. Paragraph 2.28 is also modified by adding the following sentence at the end of the paragraph: For contracts valued less than 100,000USD, the publication in UNDB online and in dgMarket may be done quarterly and in the MCG website at least weekly and in a format of a summarized table covering the previous period.

(iii) Other Methods of Selection.

(1) **Paragraph 3.7, Footnote 32** is changed to: Dollar thresholds defining “small” shall be determined in each case, taking into account the nature and complexity

of the assignment, but shall not exceed 200,000USD, except in exceptional circumstances and specifically approved by MCC.

(2) **Paragraphs 3.8** defining the requirements for publishing notice of award when selection is based on the consultant's qualifications is changed to: MCG shall publish in *UNDB online*, in the *MCG website* and in *dgMarket*, the name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract. The publication in *UNDB online* and in *dgMarket* may be done quarterly, and in the *MCG website* at least weekly, and in the format of a summarized table covering the previous period.

(iv) Types of Contracts and Important Provisions.

(1) **Paragraph 4.6** defining currency related rules shall be changed to: RFPs shall state clearly that firms must express the price for their services in the currency stated in the RFP which in every case must be either US dollars or the local currency of Georgia. MCG may require consultants to state the portion of the price representing costs in the local currency of Georgia. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

(2) **Paragraphs 4.8 and 4.9** defining payment provisions are subordinated to the disbursement provisions set out in the Compact and the Supplemental Agreements.

(3) **Paragraph 4.9, subparagraph (a)** relating to payment provisions is changed to: (a) consultants will be paid directly by the Fiscal Agent.

(4) **Paragraph 4.11** relating to Borrower's contribution is deleted.

(v) Selection of Individual Consultants.

(1) **Paragraph 5.2** defining procedures for selection of individual consultants shall be modified by changing the first three sentences to: Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement is required for contracts valued at 30,000USD and above unless there are circumstances to justify a limited competitive process. Consultants do not need to submit proposals but shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Grantee.

(vi) Appendix 1: Review by MCC of the Selection of Consultants.

(1) **Paragraph 1** is changed to: 1. MCC shall review the selection process for the hiring of consultants proposed by MCG in the Procurement Plan to ensure compliance with the Compact and the Supplemental Agreements including the Procurement

Agreement. The Procurement Plan shall cover an initial period of at least six months unless a shorter period is approved. MCG shall update the Procurement Plan on a semi-annual basis or as needed always covering the next six months period of project implementation. Any revisions proposed to the Procurement Plan shall be furnished to MCC for its prior approval.

(2) **Prior Review:** The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule 2.

(3) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact.

(vii) Appendix 2: Instructions to Consultants (ITC).

(1) **Paragraph 1** relating to use of The World Bank standard proposal documents is changed in the introductory sentences to: MCG shall use the applicable standard RFPs issued by The World Bank as modified to reflect the exceptions set out in the Procurement Agreement with MCC and the circumstances of the procurement. This includes the ITC as modified to reflect MCC exceptions and special circumstances of the procurement. The ITC shall include adequate information on the following aspects of the assignment.

(2) **Paragraph 1(g)** referring to external financing is deleted.

(viii) Appendix 3: Guidance to Consultants.

(1) **Appendix 3:** Guidance to Consultants, providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. Consultants can learn about the Millennium Challenge Corporation and its programs at [www.mcc.gov](http://www.mcc.gov) and about the Millennium Challenge Georgia Fund at [www.mcg.ge](http://www.mcg.ge).

(c) Specific Exceptions. *The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits*, May 2004.

(i) Introduction.

(1) **Paragraph 1.1** defining the purpose of the guidelines is deleted.

(ii) General Considerations.

(1) **Paragraph 1.2** describing the procurement principles underlying the guidelines is deleted.

(2) **Paragraph 1.3** is changed to: Open competition is the basis for efficient public procurement. In most cases, therefore, MCC requires MCG to obtain goods, works and services through an international competitive bidding (ICB) process open to eligible suppliers and contractors as set out in Section II of the Guidelines.

(3) **Paragraph 1.4**, the third sentence is changed to: The particular methods that may be followed for procurements under the Compact shall be set out in the semi-annual Procurement Plans. The fourth sentence is deleted.

(4) **Paragraphs 1.5** defining application of guidelines is deleted.

(5) **Paragraph 1.8** defining eligibility requirements is modified to add the following paragraph: (f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies including under any then-existing anti-terrorist policies shall be excluded from procurements awarded under the Compact. Without limiting the foregoing, this would remove from eligibility any procurement from a country or from a firm 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 United States law or policy. As of the date hereof, this list includes Cuba, Iran, Libya, North Korea, Sudan and Syria.

(6) **Paragraph 1.9** defining rules for advance contracting and retroactive funding is changed to: MCG may wish to proceed with the initial steps of procurement before the Compact comes into force. In such cases, the procurement procedures, including advertising shall be in accordance with the Procurement Guidelines in order for the eventual contracts to be eligible for MCC financing, and MCC shall review the process used by MCG. MCG undertakes such advance contracting at its own risk, and any concurrence by MCC with the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCG for any contract costs if the contract is signed prior to entry into effect of the Compact and any required MCC approval.

(7) **Paragraph 1.13** defining how to reference The World Bank role in the procurement is changed to: MCG shall use the following language when referring to MCC in the RFP and contract documents:

The Millennium Challenge Corporation ("**MCC**") and the Government of Georgia (the "**Government**") have entered into a compact for Millennium Challenge Account ("**MCA**") assistance to help facilitate poverty reduction through economic growth in Georgia (the "**Compact**") in the amount of 295,300,000USD ("**MCC Funding**"). Georgia intends to apply a portion of the proceeds of the MCC Funding to eligible payments under this contract. Payment by MCC will be

made only at the request of the Millennium Challenge Georgia Fund (“MCG”) and upon approval by MCC, and will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than Georgia and MCG shall derive any rights from the Compact or have any claim to any proceeds of the MCC Funding.

(8) **Paragraph 1.14** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that MCG (including beneficiaries of MCC grants), as well as bidders, suppliers, and contractors under MCC financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In accordance with this requirement, MCC.

(9) **Paragraph 1.16** defining the rules for providing a Procurement Plan is deleted. [*The rules for preparing and implementing the Procurement Plan are set out in Article 1 of the Procurement Agreement.*]

(iii) International Competitive Bidding (ICB).

(1) **Paragraph 2.7** defining the requirements for publication of General Procurement Notice is deleted. The requirements for publication of a general notice in the form of a semi-annual Procurement Plan are defined in Article 1 of the Procurement Agreement.

Footnotes 26 and 27 are not deleted.

(2) **Paragraph 2.8** defining the requirements for notification and advertising is modified to require publication at the *MCG website* in addition to the *UNDB online* and *dgMarket*.

(3) **Paragraph 2.12** prescribing use of the Standard Bidding Documents is changed in the first two sentences to: MCG shall use the appropriate Standard Bidding Documents (SBDs) issued by The World Bank as modified to reflect the exceptions set out in the Procurement Agreement with MCC and changes to address project-specific conditions, subject to MCC approval when the change is significant. The third sentence of Paragraph 2.12 remains unchanged.

(4) **Paragraph 2.15** defining the rules for use of language is changed to: Prequalification and bidding documents and the bids for contracts valued at or above 100,000USD shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between MCG and the Provider. At the discretion of MCG, any or all procurement documents also may be prepared in the Georgian language. For contracts valued less than 100,000USD, any invitation or solicitation document and responding documents may be prepared in English or Georgian language or both

at the discretion of MCG. Bidders shall not be permitted or required to sign contracts in two languages.

(5) **Paragraph 2.24** defining rules for use of price adjustments is changed in the second sentence to: Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but may be included in contracts which extend beyond eighteen months with the approval of MCC.

(6) **Paragraph 2.26** defining requirements for transportation and insurance is changed in the third sentence to: The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States dollars.

(7) **Paragraph 2.27** allowing reservation of transportation and insurance for imported goods to national companies is deleted.

(8) **Paragraph 2.28** setting out the currency provisions is changed to: Bidding documents shall state currency or currencies in which bidders are to state their prices. All bids are to be denominated and paid only in United States dollars or the local currency of Georgia as stated in the bidding documents. No other currency is permitted.

(9) **Paragraphs 2.29 and 2.30** defining rules for the currency of bids is changed to: The Bidding Documents shall caution bidders that the bid price must be expressed in the currency requested. Only one of two currencies may be requested, either United States dollars or the local currency of Georgia. Bids may not be requested or expressed in any other currency.

(10) **Paragraph 2.31** defining rules for currency conversion for bid comparison is deleted.

(11) **Paragraph 2.33** defining rules for making payment in currency other than the currency of the bid price is deleted.

(12) **Paragraph 2.36** defining the rules for payment method and terms is changed to: Bidding documents shall specify the payment method.

(13) **Paragraph 2.52** defining rules for determining the lowest evaluated bid is modified to deleted the use of "payment schedule" from the list of permitted evaluation factors.

(14) **Paragraphs 2.55 and 2.56** defining requirements for use of Domestic Preferences are deleted.

(15) **Paragraph 2.60** defining the requirements for publication of the notices of contract award is modified to require publication at the *MCG website* in addition to *UNDB online* and *dgMarket*.

(16) **Paragraphs 2.66 and 2.67** defining modified ICB procedures for a program of imports are deleted.

(17) **Paragraph 2.68** defining the rules for procurement of commodities is modified to require that the bid prices must be denominated and paid in either United States dollars or the local currency of Georgia.

(iv) Other Methods of Procurement.

(1) **Paragraph 3.1** defining the general rules for choosing a procurement method is modified by deleting the second sentence related to domestic preferences.

(2) **Paragraph 3.3** defining the conditions for use of National Competitive Bidding is modified to limit the use of this method of procurement to procurements valued less than 100,000USD.

(3) **Paragraph 3.4** defining the rules for National Competitive Bidding is modified, the first two sentences are changed to: All procurements valued at 30,000USD or above shall be advertised in UNDB online, in the MCG website, and in dg Market (Procurements valued at 100,000USD and above must also be posted at UNDB online). For procurements less than the threshold amount as specified (30,000USD), advertising may be limited to the MCG website, the national press or official gazette. Bidding documents may be in Georgian only and the bids may be requested and paid only in Georgian currency at the discretion of MCG.

(4) **Paragraph 3.5** defining the conditions for using Shopping is modified to limit use of Shopping to procurement valued less than 30,000USD.

(5) **Paragraph 3.7** defining the publication requirements for notice of Direct Contracting awards is changed to: After the contract signature, MCG shall publish in the *MCG website*, in *UNDB online* and in *dgMarket* for all procurements valued above 2,000USD the name of the contractor, price, duration, and summary scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

(6) **Paragraph 3.16** defining rules for loans guaranteed by the World Bank is deleted.

(7) **Paragraph 3.17** defining the rules for community participation in procurement is deleted.

(v) The following section shall be added.

(1) **Paragraph 3.18 Indefinite Quantity Contracts:** These contracts are used when the MCG needs to have “on call” orders for works or goods but the extent and timing of which cannot be defined in advance. The contract provides for an indefinite quantity, within stated maximum or minimum limits of specific goods, works or services to be furnished during a fixed period by placing orders with the contractor. These contracts shall be procured through a Competitive Bidding process. When multiple contracts are awarded, orders shall be placed only after the contractors have competed in a limited bidding process for the order. MCC prior approval is required before beginning a procurement that contemplates an indefinite quantity contract.

(vi) Appendix 1: Review by MCC of Procurement Decisions.

(1) **Prior Review:** The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule 2.

(2) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact.

(vii) Appendix 2: Domestic Preferences.

(1) **Appendix 2** defining the requirements and rules for using domestic preferences is deleted.

(viii) Appendix 3: Guidance to Bidders.

(1) **Appendix 3:** Guidance to Bidders, providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. Bidders can learn about the Millennium Challenge Corporation and its programs at [www.mcc.gov](http://www.mcc.gov) and about the Millennium Challenge Georgia Fund at [www.mcg.ge](http://www.mcg.ge).

## 2. **Records.**

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC.

## 3. **Bidding and Proposal Documents.**

Standard bidding and proposal documents (“**Bidding and Proposal Documents**”) shall be developed and subject to review by MCC. The Bidding Documents must be available in the English language and in the Georgian language. The English language version will control. The

instructions to bidders and consultants in the Bidding and Proposal Documents must set out or reference the rules and procedures governing the procurement. The data sheet accompanying the instructions to bidders and consultants must also state the currency or currencies for the offers and shall require that payment be made in the same currency as the offer which must be in either United States dollars or the local currency of Georgia.

#### **4. Review and Approval Requirements.**

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCG or by MCC, as provided in Schedule 2. This system of review and approval requirements is intended to ensure adequate oversight over Compact-related procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities, and is subject to modification or exception at any time, which modification or exception shall be subject to MCC approval.

#### **5. Bid Challenge System.**

MCG shall establish a bid challenge system that provides suppliers and contractors the ability to seek review of procurement actions and decisions. Such bid challenge system shall be subject to MCC approval. The review body must be impartial and independent and shall have no interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement or involved in or related to the procurement process. The review body must follow clear, written, and transparent procedures and shall issue a timely, written decision on any bid challenge that is timely and properly filed. The review body must have the authority to order a correction of a violation of the procurement principles and procedures or to order compensation for any loss or damage suffered by a successful challenger, at least to the extent of the cost of preparation of the bid and the challenge. The review body must also have the power to order suspension of a procurement that is under challenge in order to preserve the commercial opportunity pending the outcome of the review. MCC reserves the right to review and comment on the organization and operation of the bid challenge system.

#### **6. Subcontracting.**

(a) Every contract or subcontract for goods, services or works with any party that receives at least 50,000USD in the aggregate of MCC Funding shall require the contracting party to follow the Procurement Principles set out in the Compact to the maximum extent consistent with the objectives and requirements of the contract when subcontracting for goods, services or works.

(b) In every contract or subcontract valued in excess of 1,000,000USD, the contracting party shall be required to have written procurement procedures that may be subject to review by MCG, MCC, the Government and any of their respective agents or representatives.

(c) Any contractor or subcontractor planning to subcontract for a major item of supply, services, or works, (deemed major if valued in excess of 100,000USD) shall seek MCG prior written approval of the subcontractor.

<b>APPROVALS</b>				
<b>REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services</b>				
<b>Procurement Procedure or Method</b>	<b>Decision<sup>2</sup></b>	<b>LEVEL OF REVIEW</b> (Thresholds expressed in USD)		
		<b>CEO</b>	<b>Supervisory Board</b>	<b>MCC</b>
Pre-qualification	Pre-qualification documents and advertising procedures	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed list of entities qualified	All	Above 500,000	Above 500,000
	Handling of Protest	All	All	All
Competitive Bidding (International and National)	Bidding Documents except for Indefinite Quantity Contracts	All	Above 1,000,000 Goods Above 5,000,000 Works	Above 1,000,000 Goods Above 5,000,000 Works
	Bidding Documents for Indefinite Quantity Contracts	All	All	All
	Extension of Bid Validity	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed award except for Indefinite Quantity Contracts	All	Above 250,000	Above 250,000
	Evaluation Report with proposed awards for Indefinite Quantity Contracts	All	All	All
	Handling of Protest	All	All	All
Limited Bidding	Selection of limited bidding because only limited number of suppliers	All	Above 100,000	Above 100,000
	Compete a Task Order under Indefinite Quantity Contract	All	None	None
	Other justification	All	Above 50,000	Above 50,000
	Shortlist	All	Above 100,000	Above 100,000
	Bidding Documents	All	Above 500,000	Above 500,000

## APPROVALS

<b>REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services</b>				
<b>Procurement Procedure or Method</b>	<b>Decision<sup>2</sup></b>	<b>LEVEL OF REVIEW</b> (Thresholds expressed in USD)		
		<b>CEO</b>	<b>Supervisory Board</b>	<b>MCC</b>
	Extension of Bid Validity	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed award except for Task Orders	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed award for Task Orders	All	Above 1,000,000	Above 1,000,000
	Handling of Protest	All	All	All
Shopping	Selection of Shopping because procurement is valued under 30,000	All	None	None
	Shortlist	Over 2,000	None	None
	Record of Purchases	Weekly	Monthly	None
	Handling of Protest	All	All	Quarterly record of decisions
Direct Contracting	Selection of Direct Contracting to add to or extend existing contract	All	Above 100,000	Above 100,000
	Selection of Direct Contracting to be compatible with existing equipment	All	Above 50,000	Above 50,000
	Selection of Direct Contracting because obtainable only from one source	All	Above 100,000	Above 100,000
	Selection of Direct Contracting because procurement is valued under 2,000	None	None	None
	Selection of Direct Contracting on any other grounds	All	Above 50,000	Above 50,000
	Proposed Contract	Over 2,000 (Under 2,000 review weekly report)	Above 50,000 (Under 2,000 review monthly report)	Above 50,000

<b>APPROVALS</b>				
<b>REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services</b>				
<b>Procurement Procedure or Method</b>	<b>Decision<sup>2</sup></b>	<b>LEVEL OF REVIEW</b> (Thresholds expressed in USD)		
		<b>CEO</b>	<b>Supervisory Board</b>	<b>MCC</b>
	Handling of Protest in respect of selection of Direct Contracting	All	All	All
Force Account	Selection of using equipment owned by or employees of Government of Georgia for performing works	All	All	All
	Proposed contracts	All	All	All
All Procurement Actions	Contract Modifications and Change Orders	All	If increases value of Contract by 10% or more	If increases value of Contract by 10% or more

<b>APPROVALS</b>				
<b>REVIEW OF PROCUREMENT DECISIONS: Consultant Services</b>				
<b>Procurement Procedure or Method</b>	<b>Decision<sup>2</sup></b>	<b>LEVEL OF REVIEW</b> (Thresholds expressed in USD)		
		<b>CEO</b>	<b>Supervisory Board</b>	<b>MCC</b>
Quality and Cost Based Selection	Request for Expression of Interest	All	Above 500,000	Above 500,000
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	Above 500,000	Above 500,000
	Technical Evaluation Report	All	Above 100,000	Above 100,000
	Proposed Award	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Quality Based Selection and Selection under Fixed Budget	Choice of this selection procedure	All	All	All
	Request for Expression of Interest	All	Above 500,000	Above 500,000
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	Above 500,000	Above 500,000
	Technical Evaluation Report for QBS only	All	Above 100,000	Above 100,000

ANNEX V-16

## APPROVALS

### REVIEW OF PROCUREMENT DECISIONS: Consultant Services

Procurement Procedure or Method	Decision <sup>2</sup>	LEVEL OF REVIEW (Thresholds expressed in USD)		
		CEO	Supervisory Board	MCC
	Proposed Award	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Least-Cost Selection	Choice of this selection procedure because procurement is valued under 200,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	None	None
	Proposed Award	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Selection Based on Consultant's Qualifications	Choice of this selection procedure because procurement is valued under 100,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist	All	Above 50,000	Above 50,000
	Proposal Documents	All	None	None
	Technical Evaluation Report	All	None	None
	Proposed Award	All	Above 50,000	Above 50,000
	Handling of Protest	All	All	All
Single Source Selection	Choice of this selection procedure	All	Above 50,000	Above 50,000
	Proposed Award	All	Above 50,000	Above 50,000
	Handling of Protest in respect of choosing Single Source Selection Procedure	All	All	All
Selection of Individual Consultants	Choice of this selection procedure	All	Above 50,000	Above 50,000
	Shortlist	All	Above 50,000	Above 50,000
	Technical Evaluation Report	All	None	None
	Proposed Award	All	Above 50,000	Above 50,000

**APPROVALS**

**REVIEW OF PROCUREMENT DECISIONS: Consultant Services**

Procurement Procedure or Method	Decision <sup>2</sup>	LEVEL OF REVIEW (Thresholds expressed in USD)		
		CEO	Supervisory Board	MCC
	Handling of Protest	All	All	All
All Procurement Actions	Contract Modifications and Change Orders	All	If increases value of Contract by 10% or more	If increases value of Contract by 10% or more