

THRESHOLD PROGRAM GRANT AGREEMENT

BETWEEN

**THE UNITED STATES OF AMERICA,
ACTING THROUGH THE MILLENNIUM CHALLENGE CORPORATION**

AND

**THE REPUBLIC OF GUATEMALA,
ACTING THROUGH ITS GOVERNMENT**

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THRESHOLD PROGRAM GRANT AGREEMENT

This THRESHOLD PROGRAM GRANT AGREEMENT (this “*Agreement*”), dated April 8, 2015 is made between the United States of America, acting through the Millennium Challenge Corporation (“*MCC*”) and the Republic of Guatemala (“*Guatemala*”), acting through its government (the “*Government*” and, collectively with MCC, the “*Parties*” and each, individually, a “*Party*”).

RECITALS

WHEREAS, MCC is authorized to provide assistance under Section 616 of the Millennium Challenge Act of 2003, as amended, to candidate countries that have demonstrated a commitment to strengthening good governance, economic freedom, and investments in people in order to assist such countries to become eligible for a Millennium Challenge Compact (the “*Threshold Program*”);

WHEREAS, MCC has selected Guatemala as eligible for the Threshold Program;

WHEREAS, this Agreement is a project agreement entered into pursuant to Article I of the General Agreement for Technical Cooperation between the Government of the United States of America and the Government of Guatemala, signed at Guatemala City on September 1, 1954 (the “*General Agreement*”) and therefore activities under this Agreement are subject to the terms of the General Agreement; and

WHEREAS, the Parties wish to implement the program described herein with the purpose of achieving the goals and objectives described herein (as such program description and objectives may be amended from time to time in accordance with the terms hereof, the “*Program*”);

THEREFORE, the Parties agree as follows:

ARTICLE 1.

GOAL AND OBJECTIVES

Section 1.1 Program Goal. The goal of the Program, as established in this Agreement, is to assist Guatemala to become eligible for a Millennium Challenge Compact by supporting the implementation of fundamental institutional and policy reforms that address binding constraints to economic growth in Guatemala (the “*Program Goal*”). MCC’s assistance will be provided in a manner that strengthens good governance, economic freedom, and investments in the people of Guatemala.

Section 1.2 Program Objective. The objective of the Program (the “*Program Objective*”) is to support reforms initiated by the Government to improve the quality and relevance of secondary education in Guatemala and to increase fiscal revenues to enable the Government to address constraints to economic growth. The Program consists of the projects described in Annex I (each, a “*Project*” and collectively, the “*Projects*”).

Section 1.3 Project Objectives. The objective of each of the Projects (each, a “**Project Objective**” and collectively, the “**Project Objectives**”) is as follows:

(a) The objective of the Education Project is to support the efforts undertaken by Government to implement institutional reforms, defined in the Proposal for the Transformation of Secondary Education and the Critical Path of the Ministry of Education, aimed at providing quality secondary education that prepare a diverse Guatemalan youth to be successful in the labor market.

(b) The objectives of the Resource Mobilization Project are: (i) to support Government reforms to increase the availability of resources by improving the efficiency of tax and customs administration, and (ii) to strengthen the capacity of the Government to finance infrastructure via public-private partnerships (“**PPPs**”) in order to increase public funding allocated for social investment, principally education.

ARTICLE 2.

PROGRAM FUNDING

Section 2.1 Program Funding.

(a) MCC hereby grants to the Government, subject to the terms of this Agreement, an amount not to exceed twenty-eight million United States dollars (\$28,000,000) (the “**Grant**”) to support implementation of the Program, as such Program is described in greater detail in Annex I.

(b) The Government agrees that MCC may directly administer any portion of the Grant in order to implement certain activities (the “**MCC-Administered Activities**”) related to the Program.

(c) For those portions of the Grant that are not MCC-Administered Activities, the Grant will be disbursed periodically to the Government in partial disbursements (each, a “**Disbursement**”) in accordance with the terms of this Agreement, including any conditions to disbursement contained in this Agreement.

(d) The Grant will be allocated as described in Annex II, or as otherwise agreed in accordance with this Agreement.

Section 2.2 Interest. The Government is not required to pay interest on Grant funding deposited to the special account of the Government established at the Bank of Guatemala pursuant to Section 5.1(c) of this Agreement. In the event that any interest or other earnings accrue on the Grant, the Government will pay or transfer to MCC such interest or other earnings on a quarterly basis and upon the termination or completion of this Agreement.

Section 2.3 Government Resources.

(a) The Government will seek to provide the necessary resources, and to take the actions necessary to carry out the Government’s responsibilities and obligations under this Agreement.

(b) The Government will use its best efforts to ensure that the amount of the Grant that it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget and/or in its accounting system.

(c) Unless the Government discloses otherwise to MCC in writing, the Grant will be in addition to the resources that the Government would otherwise allocate in its budget for the activities implemented under the Program.

Section 2.4 Use of the Grant.

(a) The Government will ensure that the Grant and any assets or services funded with proceeds of the Grant, in whole or in part, will be used solely in furtherance of this Agreement and the Program.

(b) The Government also will ensure that no Grant funding will be used for purposes that would violate United States law or policy, as specified in this Agreement or as further notified to the Government in writing by MCC, including but not limited to the following purposes:

(i) for assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(ii) for any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(iii) to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health or safety hazard, as further described in the “Environmental Guidelines” posted at www.mcc.gov (the “*MCC Website*”) or otherwise made available by MCC to the Government (“*MCC Environmental Guidelines*”) (to the extent applicable to the Threshold Program and as further instructed by MCC from time to time); or

(iv) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.5 Taxes. As this Agreement is a project agreement entered into pursuant to the General Agreement the tax exemptions provided in the General Agreement will apply to the Grant.

(a) In particular, the Grant will be free from the payment or imposition of any existing or future taxes, duties, levies, contributions or other similar charges (“*Taxes*”) of or in Guatemala (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Guatemala).

(b) The Government and MCC may define the mechanisms that will be used with respect to the tax exemptions set forth in this Section 2.5 and the General Agreement. Such mechanisms may include exemptions from the payment of Taxes that have been granted in

accordance with applicable law, refund or reimbursement of Taxes by the Government to MCC (or to another party designated by MCC), for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in this Section 2.5.

(c) If Taxes have been paid contrary to the requirements of this section, the Government will refund promptly to MCC (or to another party designated by MCC) the amount of such Taxes in United States dollars or the currency of Guatemala, in accordance with applicable law, seeking to do so within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing (whether by MCC or the Accountable Entity) that such Taxes have been paid.

(d) The Grant, including any proceeds thereof or Program Assets, may not be applied by the Government in satisfaction of its obligations under this Section 2.5 and the General Agreement.

(e) In the event of a disagreement about the application of a tax exemption, the Parties will promptly meet and resolve such matters, guided by the principle that the assistance furnished under this Agreement will contribute directly to the economic development of Guatemala.

ARTICLE 3.

GOVERNMENT REPRESENTATIONS AND OBLIGATIONS

Section 3.1 Government Representations. The Government hereby represents to MCC that the information provided to MCC by or on behalf of the Government in the design and preparation of the Program is true, correct, and complete in all material respects.

Section 3.2 Government Responsibilities.

(a) Principal Responsibility. The Government is responsible for overseeing and managing the implementation of the Program.

(b) Accountable Entity. The Government hereby designates the Ministry of Economy, acting through the National Competitiveness Program (Programa Nacional de Competitividad, known as “**PRONACOM**”) to implement the Program and to exercise and perform the Government’s right and obligation to coordinate, manage, implement and oversee the Program, including without limitation, managing the implementation of the Projects, allocating resources and managing procurements. The Ministry of Economy acting through PRONACOM will: (i) be referred to herein as the “**Accountable Entity**”; (ii) have the authority to bind the Government with regard to the Program (including, without limitation, the legal authority to execute contracts, cooperative agreements or other, similar arrangements); and (iii) act in accordance with MCC’s “Guidelines for Accountable Entities and Implementation Structures” provided by MCC or posted on the MCC Website (the “**MCC Governance Guidelines**”) (to the extent applicable to the Threshold Program and as further instructed by MCC from time to time), provided that they do not contradict the provisions of Guatemalan domestic law. The designation of the Accountable Entity contemplated by this Section 3.2(b) will not relieve the Government of any obligations or responsibilities hereunder or under any related agreement, for which the Government remains fully responsible.

MCC hereby acknowledges and consents to the designation in this Section 3.2(b). With the prior written consent of MCC, the Government may designate one or more additional entities to implement the Program and to exercise and perform the Government's right and obligation to oversee, manage and implement the Program.

(c) Policy Performance. In addition to undertaking the specific policy, legal and regulatory reform commitments identified in Annex I or elsewhere in this Agreement (if any), the Government will undertake best efforts to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003, as amended.

(d) Program Assets. Unless MCC agrees otherwise, the Government will ensure that any Program Assets or services funded in whole or in part (directly or indirectly) by the Grant are used solely in furtherance of this Agreement and the Program.

(e) Achievement of Program Objective. The Government will take all necessary or appropriate actions to achieve the Program Objective and the Project Objectives prior to the Completion Date (including, without limitation, providing the necessary resources that are required to carry out the terms of this Agreement and achieve such objectives, except as MCC otherwise agrees).

(f) Intellectual Property. All of the products delivered and, where applicable, Intellectual Property produced under the framework of the Program, will be the property of the Government. The Government explicitly grants to MCC a perpetual (or until such time as such Intellectual Property enters into the public domain), irrevocable, royalty-free, worldwide, fully paid, assignable right and license to practice or have practiced on its behalf (including the right to produce, reproduce, publish, repurpose, use, store, modify or make available) any portion or portions of Intellectual Property as MCC sees fit in any medium, now known or hereafter developed, for any purpose whatsoever.

(g) Impoundment; Liens or Encumbrances. The Government will ensure that neither the Grant nor any asset acquired with Grant funding will be subject to any impoundment, rescission, sequestration, liquidation, lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a "***Lien***"), except with MCC's prior written approval. In the event any Lien is nonetheless imposed, the Government will promptly seek the release of such Lien and, if such Lien is imposed by a final non-appealable court order, will pay any amounts due in order to obtain such release; *provided, however*, that the Government will not apply any portion of the Grant funding or any other funds received from MCC (or assets acquired with funds provided by MCC) to satisfy any of its obligations under this Section 3.2(g).

(h) Insurance; Performance Guaranties. The Government will ensure to MCC's satisfaction that any assets acquired with Grant funding are insured and will arrange such other appropriate insurance to cover against risks or liabilities associated with the Program and the transactions contemplated thereby, including by requiring Providers or Covered Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. With MCC's prior consent, the Grant may be used to pay for the costs of obtaining such insurance. The Government or the Accountable Entity will be named as the payee (or an additional insured, as the case may be) on any such insurance and the beneficiary of any such guaranty or bonds. The

Government will promptly notify MCC of the payment of any proceeds from claims paid under such insurance or guaranty, and will ensure that any such proceeds will be used to replace or repair any lost, stolen, or damaged assets acquired with Grant funding; *provided, however*, that, at MCC's election, such proceeds will be deposited in an account as designated by or as otherwise directed by MCC.

(i) Performance Liabilities. No Grant funding or any other funding received from MCC (or assets acquired with funds provided by MCC) may be used to pay any damages, including any indemnification-related payments, incurred or owed by the Government or the Accountable Entity under any agreement between the Government or the Accountable Entity, on the one hand, and any third party.

(j) Publicity. The Government, using Grant funding with MCC's prior written approval, will give appropriate publicity to this Agreement as a program to which the United States of America, through MCC, has contributed, including by posting this Agreement, in English, as MCC may request, on an agreed website, identifying the Grant activity sites and marking assets acquired with the Grant, all in accordance with MCC's "Standards for Global Marking" provided by MCC or posted on the MCC Website (the "**MCC Marking Standards**"); *provided, however*, that any press release or announcement regarding MCC or the fact that MCC is making the Grant or any other publicity materials referencing MCC will be subject to MCC's prior written approval. MCC may post this Agreement on the MCC Website. MCC may also freely use any information it receives in any report or document provided to it with respect to the Program, the Grant or this Agreement.

(k) Further Assurances. The Government will perform and take all necessary and appropriate actions and will use its best efforts to obtain all necessary approvals and consents to otherwise effectively carry out the obligations of the Government set forth in this Agreement.

ARTICLE 4.

IMPLEMENTATION FRAMEWORK

Section 4.1 Program Implementation Plan. The framework for implementation for the Program will be further elaborated in a set of documents, in form and substance approved by MCC, consisting of: (i) the Detailed Financial Plan; (ii) one or more Procurement Plans; (iii) a Work Plan; and (iv) an Audit Plan (each, an "**Implementation Plan Document**" and, collectively, the "**Implementation Plan**"). The Government will submit its proposed Implementation Plan for review and approval by MCC by the timeframes set forth in this Agreement and at least on an annual basis thereafter (or in such other interval as may be required by the Program Guidelines). MCC will review the proposed Implementation Plan and as necessary may request the Government to submit clarifications or adjustments. The Government will submit an updated Implementation Plan or updated Implementation Plan Document during any quarter in which significant changes or modifications are made to a Project or to the Program, or when the Government determines that the expected results, targets and milestones for the specified year are not likely to be achieved; *provided, however*, that an updated Detailed Financial Plan will be submitted each quarter and an updated Procurement Plan will be submitted at least every six months. In such instances, the Government will submit to MCC for approval a proposed revised Implementation Plan or updated

Implementation Plan Document (as applicable) on the same date as the next Disbursement Request is due. The Government will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Detailed Financial Plan. Unless MCC agrees otherwise, the Government will develop, adopt and implement a detailed financial plan (as approved by MCC) in accordance with the MCC Reporting Guidelines (to the extent applicable to the Threshold Program and as further instructed by MCC from time to time) (as supplemented or otherwise modified from time to time, the “**Detailed Financial Plan**”). The Detailed Financial Plan will set forth the funding requirements for each Activity (including administrative costs) and for each Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis. Annex II, attached hereto, sets forth the allocation of Grant funding for the Program. Annex II may be modified from time to time by agreement of the Parties in accordance with the terms of this Agreement.

(b) Procurement Plan. The Government will develop a procurement plan covering each procurement relating to the Program (each, a “**Procurement Plan**”), and submit such Procurement Plan to MCC for approval before commencing the relevant procurement. Each Procurement Plan will identify, among other things, the method of procurement for the goods, works, or services to be procured. The Government will ensure that all goods, works or services will be procured using the procurement method as approved in each Procurement Plan, and will comply with the method of procurement outlined in such Procurement Plan.

(c) Work Plan. The Government will develop, adopt and implement a work plan, in form and substance satisfactory to MCC, for the overall administration of the Program (the “**Work Plan**”). In addition, the Government will develop, adopt and implement such other work plans relating to the Projects and/or Activities as MCC may request from time to time.

(d) Audit Plan. The Government will develop, adopt and implement a plan, in accordance with the Guidelines for Financial Audits Contracted by the Millennium Challenge Corporation’s Accountable Entities (the “**MCC Audit Guidelines**”) (to the extent applicable to the Threshold Program and as further instructed by MCC from time to time), for the audit of the expenditures of the entities that are subject to audit pursuant to the MCC Audit Guidelines (the “**Audit Plan**”). The Audit Plan will be in form and substance satisfactory to MCC and will be developed no later than sixty (60) days before the end of the first period to be audited. Unless MCC agrees otherwise in writing, the Government will engage, using resources from this Grant, one or more auditors as contemplated in the MCC Audit Guidelines (each, an “**Auditor**”) to undertake the audits, as contemplated in the Audit Plan.

Section 4.2 Monitoring and Evaluation. The Government through the Accountable Entity and using resources from this Grant will develop, adopt and implement a monitoring and evaluation plan (the “**M&E Plan**”) that will serve as the primary governing document for monitoring and evaluation activities for the Program. The M&E Plan will be developed and updated in accordance with the “MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs” provided by MCC or posted on the MCC Website (the “**M&E Policy**”).

Section 4.3 Procurement and Grants.

(a) The procurement of all goods, works and services required to implement the Program will be governed by the “MCC Program Procurement Guidelines” provided by MCC or posted on the MCC Website (the “**MCC Program Procurement Guidelines**”), (to the extent applicable to the Threshold Program and as further instructed in writing by MCC from time to time). The MCC Program Procurement Guidelines include, among others, the following requirements:

(i) open, fair and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(ii) solicitations for goods, works and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(iii) contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis;

(iv) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices will be paid to procure goods, works and services.

(b) Unless MCC agrees otherwise, the Government will ensure that any grant issued in furtherance of the Program (each, a “**Program Grant**”) is awarded, implemented and managed pursuant to open, fair and competitive procedures administered in a transparent manner acceptable to MCC. In furtherance of this requirement, and prior to the issuance of any Program Grant, the Government and MCC will agree upon written procedures to govern the identification of potential recipients, including without limitation appropriate eligibility and selection criteria and award procedures.

Section 4.4 Fiscal Accountability. Unless MCC agrees otherwise, the Government will develop, adopt and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that will be used to ensure appropriate fiscal accountability and compliance with the “Cost Principles for Accountable Entity Operations” provided by MCC or posted on the MCC Website (the “**MCC Cost Principles**”) (to the extent applicable to the Threshold Program and as further instructed in writing by MCC from time to time) for the use of the Grant funding. The Fiscal Accountability Plan will include, among other things, requirements with respect to: (a) budgeting; (b) accounting; (c) cash management; (d) financial transactions (receipts and payments); (e) opening and managing the Permitted Account; (f) personnel and payroll; (g) travel and vehicle use; (h) asset and inventory control; (i) audits; and (j) reporting. The Fiscal Accountability Plan will be revised periodically, subject to review and approval by MCC.

Section 4.5 Environmental, Gender and other Program Guidelines.

(a) Unless MCC agrees otherwise, the Government will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by Grant

funding comply with the MCC Environmental Guidelines (to the extent applicable to the Threshold Program and as further instructed in writing by MCC from time to time).

(b) Unless MCC agrees otherwise, the Government will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by Grant funding comply with the MCC Gender Policy and the MCC Gender Integration Guidelines and Operational Procedures (in each case, to the extent applicable to the Threshold Program and as further instructed in writing by MCC from time to time).

(c) Unless MCC agrees otherwise, the Government will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by Grant funding comply with the Program Guidelines (in each case, to the extent applicable to the Threshold Program and as further instructed by MCC from time to time).

Section 4.6 Reports.

(a) Periodic Reports. Unless MCC agrees otherwise, the Government will provide to MCC the periodic reports required by the “MCC Guidance on Quarterly MCA Disbursement Request and Reporting Package” provided by MCC or posted on the MCC Website (the “***MCC Reporting Guidelines***”) (as applicable to the Threshold Program and as further instructed in writing by MCC from time to time), in each case timely delivered and in form and substance satisfactory to MCC.

(b) Additional Reports. In addition to the reports required by Section 4.6(a), the Government will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by the Parties in writing, such other reports or documents as MCC may request from time to time as related to any component of the Implementation Plan, the Fiscal Accountability Plan or in connection with any Activity or Disbursement.

Section 4.7 Records; Accounting; Providers; Access.

(a) Records. The Government will maintain, and will use its best efforts to ensure that the Accountable Entity and any Covered Providers maintain, accounting books, records, documents, and other evidence relating to the Program adequate to show, to MCC’s satisfaction, the use of all Grant funding (collectively, the “***Records***”). The Government will furnish or cause to be furnished to MCC upon MCC’s request originals or copies of all such Records.

(b) Accounting. The Government will maintain, and will use its best efforts to ensure that the Accountable Entity and any Covered Providers maintain, Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government’s option and with MCC’s prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Board or (ii) then prevailing in Guatemala. Records must be maintained for at least five (5) years after the end of the term of this Agreement or for such longer period, if any, required to resolve any litigation, claims or audit findings, or any statutory requirements.

(c) Access. Upon MCC’s request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, the Inspector General of MCC

(“*Inspector General*”), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Agreement, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities, assets and activities funded in whole or in part by Grant funding.

Section 4.8 Audits; Reviews.

(a) Government Audits. Unless MCC agrees otherwise, the Government will, on an annual basis (or on a more frequent basis if requested by MCC in writing), conduct, or cause to be conducted using resources from the Grant, financial audits of all disbursements of Grant funding covering the period from the entry into force of this Agreement until the following March 31 and covering each twelve-month period thereafter ending March 31, until the Completion Date. In addition, upon MCC’s request, the Government will ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General or a United States–based certified public accounting firm selected in accordance with the MCC Audit Guidelines issued and revised from time to time by the Inspector General, which are posted on the MCC Website. Audits will be performed in accordance with the MCC Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit must be completed and the audit report delivered to MCC no later than 90 days after the applicable audit period, or such other period as the Parties may otherwise agree in writing.

(b) Audits of Other Entities. The Government will ensure that MCC-financed agreements between the Government or any Provider, on the one hand, and (i) a United States nonprofit organization, on the other hand, state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, issued by the United States Office of Management and Budget; (ii) a United States for-profit Covered Provider, on the other hand, state that the United States for-profit organization is subject to audit by the applicable United States Government agency, unless the Government and MCC agree otherwise in writing; and (iii) a non-United States Covered Provider, on the other hand, state that the non-United States Covered Provider is subject to audit in accordance with the MCC Audit Guidelines.

(c) Corrective Actions. The Government will use its best efforts to ensure that each Covered Provider (i) takes, where necessary, appropriate and timely corrective actions in response to audits, (ii) considers whether the results of the Covered Provider’s audit necessitates adjustment of the Government’s records, and (iii) permits independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of the Government’s use of Grant funding.

Section 4.9 Required MCC Approvals. Each of the following transactions, agreements and documents will require MCC’s prior written approval:

- (a) any Disbursement and each Disbursement Request;

(b) the Implementation Plan (including each element or component thereof), the Fiscal Accountability Plan and the M&E Plan, and any modification of any of the foregoing;

(c) agreements between the Government and the Accountable Entity, and agreements in which any of the following are appointed, hired or otherwise engaged (each of the foregoing, a “*Material Agreement*”):

(i) Auditor;

(ii) any staff of the Accountable Entity whose compensation is funded in whole or in part by the Grant (including agreements regarding compensation for any such person);

(d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;

(e) any agreement or transaction of the Accountable Entity related to the Program that is not arm’s-length;

(f) any pledge of any Grant funding or any Program Assets;

(g) any change in character or location of any Permitted Account;

(h) any agreement, transaction, decision or other action or document for which MCC approval is required under any of the Program Guidelines, including the MCC Program Procurement Guidelines; and

(i) any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing documents or arrangements.

Section 4.10 Required MCC Notifications. Each of the following transactions, agreements and documents will require notification in writing to MCC as soon as possible:

(a) any decree, legislation, regulation, charter, contractual arrangement or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization or governance of, the Accountable Entity, and any amendment, supplement, modification, repeal or other alteration thereof or thereto (each, a “Governing Document”);

(b) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of the Accountable Entity, including any revocation or modification of or supplement to any Governing Document related thereto;

(c) any change of any member of the executive committee or the executive director of PRONACOM; and

(d) any decision by the Accountable Entity to engage, accept or manage any funds in addition to the Grant (including from any donor agencies or organizations) prior to the Completion

Date, or to engage in any activities or undertake any duties or responsibilities other than those contemplated under this Agreement or any related agreement or document;

Section 4.11 Implementation Letters. From time to time, MCC may provide guidance or instructions to the Government in writing on any matters relating to this Agreement, the Grant or implementation of the Program (each, an “**Implementation Letter**”). The Government will use such guidance or instructions in implementing the Program. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects related to the implementation of this Agreement or other related agreements.

ARTICLE 5.

DISBURSEMENT OF GRANT FUNDING

Section 5.1 Disbursement Process.

(a) Disbursement Requests. The Government may request Disbursements of the Grant (other than the portion of the Grant to be utilized for the MCC-Administered Activities) by submitting a written request to MCC substantially in the form of the “Disbursement Request” provided by MCC or posted on the MCC Website (each, a “**Disbursement Request**”), duly completed, not later than 20 days (or such other period of time as may be agreed by MCC) prior to the commencement of each Disbursement Period. Unless MCC agrees otherwise, the Government may submit only one Disbursement Request for each calendar quarter (such quarter, or any other period of time as agreed by MCC, the “**Disbursement Period**”).

(b) Approval of Disbursement Requests; Release of Proceeds.

(i) Upon receipt of a Disbursement Request, MCC will determine the appropriate aggregate amount of Disbursements permitted for the applicable Disbursement Period based on, among other things: (A) progress achieved under the Implementation Plan; (B) the amount of funds required to complete the activities described in the accompanying Disbursement Request during such Disbursement Period; and (C) the satisfaction, waiver, or deferral of the conditions precedent applicable to the requested Disbursements.

(ii) MCC may, in its sole discretion, reject any Disbursement Request completely, or reject or reduce the amount of any Disbursement requested thereunder, based on among other things: (A) any modification made to, for failure to achieve progress under, the Implementation Plan; or (B) if any condition precedent applicable to the requested Disbursements has not been satisfied, waived, or deferred. To this end, it will notify the Government or Accountable Entity of the decision with due notice.

(iii) Subject to MCC’s approval of a Disbursement Request, the proceeds of the Disbursements approved thereunder may be transferred, at MCC’s sole election: (A) to a Permitted Account; (B) directly to a third party as payment for goods, works, or services received by the Government or the Accountable Entity, as applicable, in accordance with MCC’s common payment system (the “**Common Payment System**”) or any alternate payment system approved by MCC; or (C) directly to an employee of the Accountable Entity (or to the Government, as reimbursement for authorized expenses of the Accountable Entity); *provided, however*, that any

expenditure of such proceeds is authorized by the Government or the Accountable Entity, as applicable, and any related payment complies with the most recently approved Detailed Financial Plan and the standards and procedures set forth in the Fiscal Accountability Plan.

(iv) Unless MCC agrees otherwise, any Disbursement, or financial commitment involving Grant funding may be made, and a Disbursement Request may be submitted, only if the related expense is provided for in the Detailed Financial Plan and sufficient uncommitted funds exist in the Detailed Financial Plan for that object of expense and for the relevant Disbursement Period.

(c) Permitted Account.

(i) All of the Grant funding that is disbursed to the Government will be deposited in the special account of the Government, denominated in U.S. Dollars, administered by the Bank of Guatemala (the “*Permitted Account*”).

(ii) Unless MCC agrees otherwise, the Grant funds held in the Permitted Account will not be commingled with other funds. MCC will have the right, among other things, to view any Permitted Account statements and activity on-line, and where such viewing is not feasible, the Government will provide copies of such statements to MCC upon its request.

(iii) For any amount of Grant funding in the Permitted Account that must be exchanged into the currency of Guatemala for any purpose, the Government will ensure that such exchange is consistent with the exchange rate applied by the Bank of Guatemala on the day of the transaction.

Section 5.2 Conditions Precedent to the Initial Disbursement. Unless waived or deferred by MCC in writing, the conditions set forth in this Section 5.2 and the conditions set forth in Section 5.3 must have been met to MCC’s satisfaction prior to the initial Disbursement of the Grant:

(a) Legal Opinion. The Government has delivered to MCC a signed legal opinion by the Solicitor General of the Republic of Guatemala.

(b) Implementation Plan. The Government has developed and adopted the Implementation Plan Documents (other than the Work Plan).

(c) Fiscal Accountability Plan. The Government has developed and adopted the Fiscal Accountability Plan (or an interim version), which will set forth the relevant provisions governing the operation of the Permitted Account, including signatory authority and access rights.

(d) Accountable Entity Staffing. The Government has made substantial progress recruiting the staff of the Accountable Entity.

(e) Institutional Agreements. The Accountable Entity has signed an institutional agreement with the beneficiary entities of the Program.

(f) Tax Exemption Mechanisms. The Accountable Entity has submitted to MCC a description of the mechanisms that will be used to effectuate the tax exemptions required in Section 2.5 of this Agreement.

Section 5.3 Conditions Precedent to Each Disbursement. Unless waived or deferred in writing by MCC, the following conditions must have been met to MCC's satisfaction prior to each Disbursement of the Grant (including the initial Disbursement of the Grant):

(a) Deliverables. The Government has delivered to MCC the following documents, in form and substance satisfactory to MCC:

(i) a completed Disbursement Request, together with the periodic reports required under Section 4.6 of this Agreement, covering the related Disbursement Period; and

(ii) a certificate from the Accountable Entity, dated as of the date of such Disbursement Request, substantially in the form provided by MCC.

(b) Other Conditions Precedent. MCC has determined in its sole discretion that:

(i) the Government's representations set forth in Section 3.1 of this Agreement are true and correct on and as of the date of such Disbursement Request as though made on and as of such date;

(ii) no material breach of any responsibility, covenant or obligation by the Government, the Accountable Entity or any other Government entity has occurred and is continuing under this Agreement or any related agreement or document;

(iii) the activities to be funded with such Disbursement will not violate any applicable law or regulation;

(iv) the Implementation Plan Documents and Fiscal Accountability Plan are current and updated and are in form and substance satisfactory to MCC, and there has been progress satisfactory to MCC on the components of the Implementation Plan related to such Disbursement;

(v) there has been progress satisfactory to MCC on the M&E Plan (including the Targets set forth therein, any related Baseline data collection requirements set forth therein or any applicable reporting requirements set forth therein for the relevant Disbursement Period);

(vi) there has been no material negative finding in any financial audit report delivered in accordance with this Agreement and the Audit Plan for the prior 12 months (or such other period as the Audit Plan may require);

(vii) in the event that any Taxes are paid with Grant funding through the date ninety (90) days prior to the start of the applicable Disbursement Period, such Taxes have been reimbursed by the Government in full in accordance with Section 2.5;

(viii) the Accountable Entity has sufficient staff to carry out its obligations, to MCC's satisfaction; and

(ix) prior to the third Disbursement of the Grant, the Government must have developed and adopted an M&E Plan pursuant to Section 4.2, in form and substance acceptable to MCC.

ARTICLE 6.

COMPLETION DATE; TERMINATION AND SUSPENSION

Section 6.1. Completion Date. The completion date, which is April 30, 2019, or such other date as the Parties may agree otherwise (the "**Completion Date**"), is the date by which the Parties estimate that all of the activities related to the implementation of the Program and the achievement of the Program Objective and the Project Objectives will be completed. Unless MCC agrees otherwise, Grant funding may not be used for expenditures incurred after the Completion Date.

Section 6.2. Termination and Suspension; Completion.

(a) Either Party may terminate this Agreement without cause in its entirety by giving the other Party 30 days' written notice; *provided, however*, that notwithstanding such termination, this Agreement will continue to be effective with respect to any activity for which a Disbursement has already been issued or approved by MCC.

(b) MCC may, upon written notice to the Government, immediately suspend or terminate this Agreement or the Grant, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC, as a basis for suspension or termination has occurred, which circumstances include but are not limited to the following:

(i) the Government fails to comply with its commitments under this Agreement or any other agreement or arrangement entered into by the Government in connection with this Agreement or the Program;

(ii) an event or series of events has occurred that MCC determines makes it improbable that the Program can be performed, that the Program Objective or Project Objectives will be achieved before the Completion Date or that the Government will be able to perform its obligations under this Agreement;

(iii) a use of the Grant or continued implementation of this Agreement would violate applicable law or United States Government policy, whether now or hereafter in effect;

(iv) the Government or any other person or entity receiving Grant funding or using assets acquired in whole or in part with Grant funding is engaged in activities that are contrary to the national security interests of the United States of America;

(v) an act has been committed or an omission or an event has occurred that would render Guatemala 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;

(vi) the Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Guatemala for assistance under the Threshold Program; and

(vii) a person or entity receiving Grant funding or using assets acquired in whole or in part with Grant funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon the completion, suspension or termination of this Agreement; *provided, however*, that Grant funding may be used, in compliance with this Agreement, to pay for: (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of this Agreement before the completion, suspension or termination of this Agreement; and *provided, further*, that the request for such expenditures is submitted within 90 days after such completion, suspension or termination; and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the completion, suspension or termination of this Agreement.

(d) Subject to Section 6.2(c), upon the completion, suspension or termination of this Agreement: (i) any amounts of the Grant not disbursed by MCC will be automatically released from any obligation in connection with this Agreement without any action from the Government or MCC; and (ii) any amounts of the Grant disbursed by MCC to the Government but not expended before such completion, suspension or termination of this Agreement, including any amounts in a Permitted Account, plus accrued interest thereon, will be returned to MCC within 30 days after the Government receives MCC's request for such return, and the Government will ensure that such amount will be returned promptly to such account(s) designated by MCC.

(e) At least one year prior to the Completion Date, or upon termination, of this Agreement, the Parties will consult in good faith with a view to reaching agreement in writing on (i) the process for ensuring the refunds of Disbursements that have not yet been released from a Permitted Account or committed in accordance with Sections 6.2(c) and (d), and (ii) any other matter related to the winding up of the Program, including the proper disposition of all Program Assets. Following the termination of this Agreement, the Accountable Entity will cease to use any name and logo associated with MCC that it used during implementation of the Program, except as otherwise agreed in writing by MCC.

(f) MCC and the Government recognize that the effects of the Program will be long-ranging and its impact may not be measurable for several years after the Completion Date. Accordingly, MCC and the Government agree to cooperatively monitor the results and evaluate the impacts of the Program in Guatemala after the termination or completion of this Agreement.

Section 6.3. Refunds. MCC may reinstate any suspended or terminated portion of the Grant under this Agreement if MCC determines that the Government, or other relevant person or entity, has committed to correct each condition for which the Grant was suspended or terminated.

(a) If any Grant funding, any interest or earnings thereon, or any asset acquired in whole or in part with Grant funding is used for any purpose in violation of the terms of this Agreement, then MCC may require the Government to repay to MCC in United States dollars the value of the misused portion of the Grant, interest, earnings or asset, plus interest within 30 days after the Government's receipt of MCC's request for repayment. The Government will not use Grant funding, proceeds thereof or any other funds received from MCC (assets acquired with Grant funding or with any such other funds) to make such payment.

(b) Notwithstanding any other provision in this Agreement or any other existing agreement to the contrary, MCC's right under this Section 6.3 to obtain a refund will continue during the term of this Agreement and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

ARTICLE 7.

GOVERNING LAW; AMENDMENTS; GENERAL

Section 7.1 Governing Law. This Agreement is an international agreement and as such will be governed by the principles of international law.

Section 7.2 Consultations. Either Party may, at any time, request consultations relating to the interpretation or implementation of this Agreement. Such consultations will begin at the earliest possible date.

Section 7.3 Representatives. For all purposes relevant to implementation of this Agreement, the Government will be represented by the individual holding the position of, or acting as, Minister of Economy, and MCC will be represented by the individual holding the position of, or acting as, the Vice President of the Department of Policy and Evaluation (each of the foregoing, a "**Principal Representative**"). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an "**Additional Representative**") for all purposes of this Agreement except for purposes of Section 7.7(a). The Government hereby designates the Executive Director of PRONACOM as an Additional Representative. MCC hereby designates the Deputy Vice President of the Department of Policy and Evaluation as an Additional Representative. A Party may change its Principal Representative to a new representative that holds a position of equal or higher authority upon written notice to the other Party.

Section 7.4 Communications. Any document or communication required or submitted by either Party to the other under this Agreement must be submitted in writing in either English or Spanish, to such Party's Principal Representative, and, if applicable, to such Party's Additional Representative(s). For this purpose, the address of each Party is set forth below.

To the Government:

Sergio de la Torre
Ministry of Economy
Attention: Minister of Economy
Facsimile: +50224120423

Telephone: +50224120419
Email: sdelatorre@mineco.gob.gt (Ministro de Economía)
With a copy to PRONACOM: jdiaz@pronacom.org
Teléfono: +50224212464

To MCC:

Millennium Challenge Corporation

Attention: Vice President, Department of Policy and Evaluation
(with a copy to the Vice President and General Counsel)

875 Fifteenth Street NW

Washington, DC 20005

United States of America

Facsimile: +1 (202) 521-3700

Telephone: +1 (202) 521-3600

Email: VPPolicyEvaluation@mcc.gov (Vice President, Department of Policy and Evaluation)

VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

Section 7.5 MCC Status. MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Agreement and the Program. MCC and the United States Government assume no liability for any claims or loss arising out of activities or omissions under this Agreement. The Government waives any and all claims against MCC or the United States Government or any current or former officer or employee of MCC or the United States Government for all loss, damage, injury, or death arising out of activities or omissions under this Agreement, and agrees that it will not bring any claim or legal proceeding of any kind against any of the above entities or persons for any such loss, damage, injury, or death. The Government agrees that MCC and the United States Government or any current or former officer or employee of MCC or the United States Government will be immune from the jurisdiction of all courts and tribunals of Guatemala for any claim or loss arising out of activities or omissions under this Agreement. Nothing contained in this Agreement will be construed as waiving the immunity that the United States government, MCC or any employee of the United States government or MCC may otherwise enjoy.

Section 7.6 No Assurance of Future Assistance. Nothing contained in this Agreement will be construed as creating an obligation on the part of MCC to provide any further funding or assistance, other than the Grant, in relation to any other project or program in Guatemala.

Section 7.7 Amendment.

(a) This Agreement may be amended by written agreement of the Parties. Such agreement will specify how it enters into force.

(b) Notwithstanding subsection (a) of this Section, the Parties agree that the Government and MCC may by written agreement which will enter into force upon signature (i) modify any Annex to this Agreement to, in particular, but without limitation, (1) suspend, terminate or modify any Activity described in Annex I or create a new Activity, (2) modify the

designation or allocation of funds among the Activities identified in Annex II; or (ii) extend the Completion Date; provided that, in each case, any such modification (A) is consistent in all material respects with the Program Objective and the Project Objectives, (B) does not cause the amount of the Grant to exceed the aggregate amount specified in Section 2.1(a), and (C) does not cause the Government's responsibilities or contribution of resources to be less than as specified in this Agreement. Any such modification pursuant to this subsection (b) will not be deemed an amendment of this Agreement pursuant to subsection (a).

Section 7.8 Survival. The Government's obligations under Sections 2.4, 2.5, 3.2, 4.6, 6.2, 6.3, 7.1, and this Section 7.8 will survive the completion, suspension, or termination of this Agreement.

Section 7.9 Definitions; Interpretation.

(a) Except as otherwise expressly provided herein, capitalized terms used in this Agreement will have the respective meanings given to such terms in Annex III.

(b) Any reference to the term "including" in this Agreement will be deemed to mean "including, without limitation," except as expressly provided otherwise. Unless the context requires otherwise: (i) each definition of or reference to any agreement, instrument, law, regulation, policy, guideline, or similar document in this Agreement (or any other agreement entered into in connection with this Agreement), unless otherwise expressly set forth herein, will be construed as a reference to such agreement, instrument, law, regulation, policy, guideline, or similar document as it may, from time to time, be amended, revised, replaced, or extended, and will include any agreement, instrument, law, regulation, policy, guideline, or similar document issued under or otherwise applicable or related to such agreement, instrument, law, regulation, policy, guideline, or similar document; (ii) the words "herein", "hereof" and "hereunder", and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof; (iii) all references herein to Articles, Sections, and Annexes will be construed to refer to the Articles and Sections of, and Annexes to, this Agreement, all of which form an integral part of this Agreement; (iv) any reference to the phrases "Unless MCC agrees otherwise" or "Unless the Parties agree otherwise" in this Agreement will be deemed to be followed by "in writing", except as expressly provided otherwise; (v) any approval right granted to MCC herein will only be satisfied upon the prior written approval of MCC.

Section 7.10 References to MCC Website. Each reference in this Agreement, or any other agreement entered into in connection with this Agreement, to a document or information available on, or notified by posting on, the MCC Website will be deemed a reference to such document or information as updated or substituted on the MCC Website by MCC from time to time.

Section 7.11 Signatures. Signatures to this Agreement and to any amendment to this Agreement (and to any other legally binding international agreement related to this Agreement) will be original signatures appearing on the same page or in an exchange of letters or diplomatic notes. With respect to all other documents arising out of this Agreement and amendments thereto, signatures may be delivered by facsimile or electronic mail and in counterparts and will be binding on the Party delivering such signature to the same extent as an original signature would be.

Section 7.12 Grant Reference. In all notices, requests, reports or correspondence in connection with Grant funding, the following number should appear on any such document as the grant reference: TR14GTM15001.

ARTICLE 8.
ENTRY INTO FORCE

The Government will notify MCC in writing when the Government's necessary internal procedures for entry into force have been completed. Following receipt of this notification, MCC will notify the Government in writing when MCC's necessary internal procedures for entry into force have been completed. The Agreement will enter into force on the date of MCC's written notification to the Government.

SIGNATURE PAGE FOLLOWS ON NEXT PAGE.

Done in Guatemala, on this 8th day of April 2015, in the English and Spanish languages.

FOR THE UNITED STATES OF
AMERICA, ACTING THROUGH THE
MILLENNIUM CHALLENGE
CORPORATION

/s/

Name: Dana J. Hyde
Title: Chief Executive Officer

FOR THE REPUBLIC OF GUATEMALA,
ACTING THROUGH ITS GOVERNMENT

/s/

Name: Carlos Raúl Morales Moscoso
Title: Minister of Foreign Affairs

ANNEX I
PROGRAM DESCRIPTION

A. SUMMARY OF PROGRAM

The Program includes the following Projects and activities (each, an “*Activity*”):

1. Education Project

The objective of the Education Project is to support the efforts undertaken by the Government in the implementation of institutional reforms, defined in the *Proposal for the Transformation of Secondary Education* and *Ruta Crítica*, designed to provide quality education to prepare a diverse Guatemalan youth to be successful in the labor market. In order to achieve the objective of the project, MCC financial support will be complemented by actions undertaken by the Ministry of Education. In order for the impact of the project to be sustained and expanded nationwide, Guatemala would need to progressively increase the budget for secondary education and ensure the equitable and efficient use of those resources.

The proposed Activities under this Project include:

(a) Activity 1: Improving the Quality of Education in Support of Student Success in Lower Secondary.

In order to improve learning of students and promote student success (student promotion and transition rates), MCC will support the Ministry of Education to initiate programs to improve the quality of education in lower secondary schools. Specifically, the Program will support:

- the establishment of school networks (primary and lower secondary schools) to improve the transition from primary to lower secondary, and to implement learning communities of teachers as a platform for continuous professional development of teachers;
- the design and implementation of a continuing education for lower secondary teachers and principals through a one-year certificate program in coordination with public and private universities with complementary training programs for supervisors and other technical staff;
- pedagogical advisors to support teachers to better deliver the national curriculum; and
- technical assistance to develop the capacity of parents councils to monitor and advocate for the quality of lower secondary education.

The Program will initiate these activities for 10 to 15 percent of the country’s public school teachers in lower secondary.

(b) Activity 2: Improving Technical and Vocational Education and Training (“*TVET*”) in Upper Secondary.

MCC will support the Ministry of Education and other Government entities to develop new tools and strategies for TVET in order to better match the supply and demand of the labor market. This will include an assessment of the current provision of TVET in upper secondary education and will provide recommendations for coordination and harmonization of competencies and qualification levels among educational institutions. The assessment will also identify opportunities for promoting the transition from lower to upper secondary education with attention to gender gaps that affect girls and boys differently. It will also support the design, implementation, and evaluation of curricula for new upper secondary school technical careers. Finally, the Program will support and strengthen a feedback and adjustment process between the labor market and TVET offerings.

(c) Activity 3: Strengthening Institutional and Planning Capacity.

MCC will support activities to strengthen the institutional capacity of the Ministry of Education to better plan and budget for the provision of an equitable and quality secondary education. This will include support to:

- conduct an assessment of the effectiveness and efficiency of different models of lower secondary school that includes identifying the minimum inputs needed to provide a quality education, the current provision, and the budgetary requirements to meet the minimum inputs;
- strengthen management information systems, support data gathering, improve data quality and to promote its use as a tool for planning the provision of secondary education services, including the management of training and professional development of secondary education teachers, and management human resources, their qualifications, training received and professional development needs;
- advance the institutionalization of a competitive teacher selection process (including a diagnostic test); and
- development of a geographical analysis of the supply and demand of secondary education as an input for the estimation of required resources (infrastructure, teacher assignments, and materials), the planning and budgeting to provide a quality education.

2. Resource Mobilization Project

The objectives of the Resource Mobilization Project are to a) support Government reforms to increase revenues by improving the efficiency of tax and customs administration and b) strengthen its capacity to finance infrastructure via public-private partnerships in order to preserve limited public funding for social spending such as education.

The proposed Activities under this Project include:

(a) Activity 1: Improving Tax and Customs Administration.

Grant funding will finance technical assistance, principally to the Superintendencia de Administración Tributaria (“*SAT*”), to support the Government’s efforts to undertake institutional changes to:

- Implement a strong risk management framework and strategy that integrates internal taxes and customs.
- Institute an effective Customs Post Clearance Audit program as an extension of Customs controls.
- Improve control of the physical movement of persons and cargo, including the assessment of the viability of an electronic container tracking system at the ports.
- Implement a process of continuous improvement in audits and the administrative process for the collection of tax debts, including training of personnel if necessary, using the Large and Medium Taxpayers Office as a pilot.
- Assess the adequacy of information technology systems, with respect to international practice, and, if necessary, create an investment proposal for improvement of the systems documenting the cost/benefit analysis that supports such proposals. Identify and implement interim measures to improve access to and usefulness of information currently available to the SAT.
- Identify shortcomings in detection and application of punitive measures and sanctions for the participation of officials and employees of SAT in illicit and ethically questionable acts and support the institutionalization of improved system of control to prevent and punish such acts, as well as train personnel in this subject.

The Government is also considering legal reforms that will allow access by the SAT to bank records with the objective of improving tax control and reducing the space for tax evasion, as well as strengthening other faculties of the SAT. The Program will provide limited support to the Government to review draft legislation and estimate the potential impact on compliance and revenues, as well as identifying the costs and relevant administrative aspects and providing the Government advice during its consultations with stakeholders. If the legislation is enacted, the Program will support the Government to implement the approved changes.

(b) Activity 2: Strengthening the Capacity to form Public Private Partnerships.

The Program will support Government efforts, principally those of Agencia Nacional de Alianzas para el Desarrollo de Infraestructura Económica (“*ANADIE*”), to build capacity to implement PPPs, promote transparency in PPPs, assess direct and contingent liabilities of PPPs, and bring one or two PPP projects to market by funding feasibility studies that inform the technical, financial, and legal structuring, value-for-money analysis, and other requirements for projects to be tendered, as well as transaction advisory services. MCC will coordinate this assistance with efforts by the World Bank, the Inter-American Development Bank, and others to provide general, on-going PPP capacity-building assistance to governmental agencies in Guatemala, El Salvador, and Honduras in order to improve capacity and consistency of PPP practices across the region and increase the impact and sustainability of MCC’s investments.

B. IMPLEMENTATION

The Program will be implemented in Guatemala through a combination of Accountable Entity administration (with MCC oversight) and direct MCC administration. The roles and responsibilities of the various entities involved in implementation are:

1. MCC.

MCC will take all appropriate actions to carry out its responsibilities in connection with this Agreement and the Program, including, without limitation, exercise of its approval rights. In addition, pursuant to Section 2.1(b) of this Agreement, MCC may directly administer a portion of the Grant to implement the MCC-Administered Activities. To do so, MCC may enter into contracts, grants, cooperative agreements or other arrangements with providers of goods and services in order to carry out the MCC-Administered Activities.

2. The Government and the Accountable Entity.

The Government will take all appropriate actions to carry out its responsibilities in connection with this Agreement and the Program. To do so, the Government has designated the Accountable Entity pursuant to Section 3.2(b) to implement the Program and exercise the rights and obligations of the Government to supervise, administer and implement the Program (other than the MCC-Administered Activities), including without limitation, managing the implementation of the Projects, allocating resources and managing procurements.

Moreover, the Grant may be used to support the compensation of the staff of the Accountable Entity, upon prior approval in writing by the MCC.

The Government will ensure that Government ministries, agencies, and entities cooperate with the Accountable Entity in the implementation of the Program. The entities benefitting from the Program are the Ministry of Education, SAT and ANADIE. The definition of the responsibilities and obligations of each entity, will be agreed in an institutional agreement to be signed by the Accountable Entity with each beneficiary entity, in the framework established by this Agreement. In the event that any of the beneficiary entities receive Program Assets from proceeds of the Grant, and with the prior consent of MCC, the beneficiary entities will register such assets in their inventories.

C. MONITORING AND EVALUATION

1. General.

In accordance with this Agreement, MCC and the Accountable Entity will formulate and agree to, and the Accountable Entity will adopt and implement, an M&E Plan that specifies: (a) how progress toward the Program Goal, the Program Objective and the Project Objectives will be monitored (“*Monitoring Component*”); (b) a process and timeline for the monitoring of planned, ongoing or completed Activities to determine their efficiency and effectiveness; and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (“*Evaluation Component*”). The actual content and form of the M&E Plan will be agreed to by

MCC and the Accountable Entity in accordance with MCC's M&E Policy. In addition, the M&E Plan may be modified from time to time as outlined in MCC's M&E Policy with MCC approval and without requiring an amendment to this Agreement. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available.

The M&E Plan will be finalized within six months of the beginning of implementation, after Activity-level work plans have been developed and adopted.

2. Program Logic.

The M&E Plan will be built on a logic model which reflects how the line ministries and other stakeholders expect that the Program, Projects and Activities will contribute to the Program Goal, the Program Objective and the Project Objectives.

3. Monitoring Component.

The Accountable Entity will be responsible for developing the M&E Plan, with support from MCC and, in most cases, the relevant implementing agencies or partners. To monitor progress toward the achievement of the impact and outcomes of the Program, the Monitoring Component of the M&E Plan will identify: (a) the Indicators (as defined below), (b) the definitions of the Indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible for collecting and analyzing relevant data, and (f) the timeline for reporting on each Indicator to MCC.

(a) Indicators.

The M&E Plan will measure the results of the Program using quantitative, objective and reliable data (each, an "***Indicator***"). Each Indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved (each, a "***Target***"). All Indicators will be disaggregated by gender and beneficiary types to the extent practicable. Subject to prior written approval from MCC, the Accountable Entity may add Indicators or refine the definitions and Targets of existing Indicators.

The M&E Plan will also establish baselines that measure the situation prior to a development intervention, against which progress can be assessed or comparisons made (each, a "***Baseline***"). The Accountable Entity will collect Baselines on the selected Indicators or verify already collected Baselines where applicable and as set forth in the M&E Plan.

The Indicators for the Program will be separated into the following levels:

- **Project Outputs** are the goods and services procured with Grant funding.
- **Project Outcomes** (short-term and medium-term) are the result of Project Outputs and the institutional reforms that measure achievement of the Project Objective. The achievement or not of these outcomes will inform MCC and the Government as to the effectiveness of the Activities.

- **Policy Milestones** are policy actions necessary to achieve significant progress toward the alleviation of the identified constraints to growth. Some of these policy actions are outside of the control of the executive branch and rely on actions by the Congress of the Republic of Guatemala. The Program will contribute to the likelihood that these milestones will be achieved, but the Program is intended as support to Government efforts and on its own will not ensure that all of the policy actions necessary are taken. Policy Milestones are described in Table 1:

Table 1: Policy Milestones

Education Project Policy Milestones:

- Publish an annual report on the provision of lower secondary, in relation to the medium- and long-term national targets, which would include an estimate of the financial resources needed to close gaps between outcomes and targets.
- The model of school accompaniment is gradually implemented using Ministry of Education resources.
- Advance in the institutionalization of a competitive selection process for secondary teachers (including a diagnostic test).
- Gradually establish and provide funding for a Continuous Professional Development Program for secondary teachers.
- Update the standards for lower secondary by modality to improve the quality and equity between modalities of secondary education.
- Progressively increase real spending on lower secondary students to a level appropriate to the modality.
- Increased the offering and quality of TVET in secondary education.
- Improved mechanism for feedback of the labor market to inform TVET offerings.

Resource Mobilization Project Policy Milestones:

- Implement measures to increase tax revenues from foreign trade (*i.e.*, customs duties and Value Added Tax (VAT) from imports) while reducing customs clearance times and improve transparency, such as:
 - Implement measures to improve control of the physical movement of persons and cargo, including an electronic container tracking system in the ports.
 - Implement a strong Risk Management framework and strategy that integrates internal taxation and customs.
 - Institute an effective Customs Post Clearance Audit program as an extension of Customs border controls.
- Implement measures to reduce tax evasion, such as:
 - Improvements in audit and the administrative processes for the collection of tax debt to reduce the rate of rejected audit cases.
 - Amend the bank secrecy law to (i) comply with international commitments related to tax administration; (ii) provide the Superintendencia de Administración Tributaria with additional authority and tools to audit tax filings and (iii) allow the government adequate basis for broad participation in bilateral and multilateral tax information exchange and mutual assistance agreements.
 - Adopt measures to detect and punish corrupt actions and to improve internal accounting and managerial controls.

- GOG has put in place institutional arrangements to properly develop PPP transactions according to international best practice, including procedures to properly:
 - Screen, prioritize and select potential PPP projects based on well-defined criteria (e.g., whether the projects meet a well-defined public need, have a clear and definable revenue stream and are financially, economically and politically viable, are consistent with government development plans and policies, etc.);
 - Conduct feasibility studies for each project that assesses value for money, affordability, bankability, legal viability, market appetite, etc.;
 - Structure contracts that reflect best value for money, etc. and are reviewed by expert technical, financial and legal counsel with significant experience in structuring PPP contracts;
 - Tender PPP packages according to best practice;
 - Disclose to the public material information about the development and management PPPs throughout the project life-cycle;
 - Conduct an independent assessment endorsed by the Ministry of Finance of PPP direct and contingent liabilities;
 - A mechanism to ensure adequate funding for project development and training programs; and
 - Incentivize staff that structure PPP contracts in ANADIE and other state institutions to optimize public welfare and achieve a good economic rate of return for the country.

- **Policy Outcomes** measure the impact of Government reforms that the Program supports the Government to implement. Progress on policy outcomes will rely not only on the Program, but on the Government's implementation of reforms. These indicators will be tracked primarily to keep focus on the reform objective needed to address the binding constraint to growth. Therefore targets will not be identified. While MCC will be provided information on the performance of national policy outcomes, MCC will rely more on project outcomes and policy milestones to assess whether Guatemala seized the opportunity provided by the Threshold Program to demonstrate commitment to investing in people. The Government will monitor, for a period not less than 10 years, all of these indicators and others deemed relevant and incorporate relevant indicators into the Ministry of Education's system of indicators consistent with Section 6.2(f) of this Agreement. Policy Outcome Indicators are described in Table 2:

Table 2: Policy Outcome Indicators

Policy Outcome Indicators:

- Tax revenue to gross domestic product
- Rate of promotion in lower secondary grades (equivalent to grade 7-9) nationally.
- Rate of retention in lower secondary grades (equivalent to grade 7-9) nationally.
- Proportion of lower secondary school students that achieve a satisfactory or better score in reading and math on standardized tests nationwide.
- Number of upper secondary graduates from new TVET careers designed with support of the Program.

(b) Data Collection and Reporting.

The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and schedules for reporting will be conditions for Disbursements for the relevant Activities. The M&E Plan will specify the data collection methodologies, procedures and analysis required for reporting on results at all levels. The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews.

As determined in the M&E Plan, or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

4. Evaluation Component.

The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, and the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC's M&E Policy.

MCC will commission independent evaluations of the Program to examine the effectiveness and sustainability of the Projects. The evaluation section of the M&E Plan will outline key evaluation questions, and will focus its efforts on understanding the extent to which:

- Activities were undertaken and fully implemented;
- Activities led to outcomes;
- The likelihood that outcomes will be sustained over the short- and long-term; and
- Cost effectiveness of the program activities, where feasible.

ANNEX II
ALLOCATION OF GRANT FUNDING

Guatemala Threshold Program Budget	
Education Project	\$19,700,000
1.1 Improving the Quality of Education in Support of Student Success in Lower Secondary	\$12,000,000
1.2 Improving Technical and Vocational Education and Training in Upper Secondary	\$4,700,000
1.3 Strengthening Institutional and Planning Capacity	\$3,000,000
Resource Mobilization Project	\$5,800,000
2.1 Improving Tax and Customs Administration	\$1,800,000
2.2 Strengthening the Capacity to Form Public Private Partnerships	\$4,000,000
Program Administration	\$800,000
Monitoring and Evaluation	\$1,700,000
Total	\$28,000,000

ANNEX III DEFINITIONS

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Annex III and the definitions elsewhere in the text of this Agreement, the definition elsewhere in this Agreement will prevail over the definition in this Annex III.

***Activity** or **Activities** has the meaning given to that term in Section A of Annex I.*

***Accountable Entity** has the meaning given to that term in Section 3.2(b).*

***Additional Representative** has the meaning given to that term in Section 7.3.*

***Agreement** has the meaning given to that term in the preamble to this Agreement.*

***Audit Plan** has the meaning given to that term in Section 4.1(d).*

***Auditor** has the meaning given to that term in Section 4.1(d).*

***Baseline** has the meaning given to that term in Section C.3 (a) of Annex I.*

***Common Payment System** has the meaning given to that term in Section 5.1(b)(iii).*

***Completion Date** has the meaning given to the term in Section 6.1.*

***Covered Provider** has the meaning provided in the MCC Audit Guidelines.*

***Detailed Financial Plan** has the meaning given to that term in Section 4.1(a).*

***Disbursement** has the meaning given to that term in Section 2.1(c).*

***Disbursement Period** has the meaning given to that term in Section 5.1(a).*

***Disbursement Request** has the meaning given to that term in Section 5.1(a).*

***Education Project** has the meaning given to that term in Section A.1 of Annex I.*

***Evaluation Component** has the meaning given to that term in Section C.1 of Annex I.*

***Fiscal Accountability Plan** has the meaning given to that term in Section 4.4.*

***General Agreement** has the meaning given to that term in the preamble to this Agreement.*

***Governing Document** has the meaning given to that term in Section 4.10(a).*

***Government** has the meaning given to that term in the preamble to this Agreement.*

***Grant** has the meaning given to that term in Section 2.1(a).*

Guatemala has the meaning given to that term in the preamble to this Agreement.

Implementation Letter has the meaning given to that term in Section 4.10.

Implementation Plan has the meaning provided in Section 4.1.

Implementation Plan Document has the meaning provided in Section 4.1.

Indicator has the meaning provided paragraph 3(a) of part C of Annex I.

Inspector General has the meaning given to that term in Section 4.7(c).

Intellectual Property means all registered and unregistered trademarks, service marks, logos, names, trade names and all other trademark rights; all registered and unregistered copyrights; all patents, inventions, shop rights, know how, trade secrets, designs, drawings, art work, plans, prints, manuals, computer files, computer software, hard copy files, catalogues, specifications, and other proprietary technology and similar information; and all registrations for, and applications for registration of, any of the foregoing, that are financed, in whole or in part, using the Grant.

Lien has the meaning given to that term in Section 3.2(g).

M&E Plan has the meaning given to that term in Section 4.2.

M&E Policy has the meaning given to that term in Section 4.2.

Material Agreement has the meaning given to that term in Section 4.9(c).

MCC has the meaning given to that term in the preamble to this Agreement.

MCC-Administered Activities has the meaning given to that term in Section 2.1(b).

MCC Audit Guidelines has the meaning given to that term in Section 4.1(d).

MCC Cost Principles has the meaning given to that term in Section 4.4.

MCC Environmental Guidelines has the meaning given to that term in Section 2.4(b)(iii).

MCC Gender Integration Guidelines and Operational Procedures means MCC's Gender Integration Guidelines and Operational Procedures, as such may be posted on MCC's Website from time to time.

MCC Gender Policy means the MCC Gender Policy (including any guidance documents issued in connection with the guidelines) posted from time to time on the MCC Website or otherwise made available to the Government.

MCC Governance Guidelines has the meaning given to that term in Section 3.2(b).

MCC Marking Standards has the meaning given to that term in Section 3.2(k).

MCC Program Procurement Guidelines has the meaning given to that term in Section 4.3(a).

MCC Reporting Guidelines has the meaning given to that term in Section 4.6(a).

MCC Website has the meaning given to that term in Section 2.4(b)(iii).

Monitoring Component has the meaning given to that term in paragraph 1, Part C of Annex I.

Officers has the meaning given to that term in Section B.2 of Annex I.

Party or Parties has the meaning given to that term in the preamble to this Agreement.

Permitted Account has the meaning given to that term in Section 5.1(c)(i).

PPPs has the meaning given to that term in Section 1.3(b).

Principal Representative has the meaning given to that term in Section 7.3.

Procurement Plan has the meaning given to that term in Section 4.1(b).

Program has the meaning given to that term in the recitals to this Agreement.

Program Asset means any assets, goods or property (real, tangible or intangible) purchased or financed in whole or in part (directly or indirectly) by the Grant, including any Intellectual Property.

Program Goal has the meaning given to that term in Section 1.1.

Program Grant has the meaning given to that term in Section 4.3(b).

Program Guidelines means collectively the MCC Audit Guidelines, the MCC Cost Principles, the MCC Environmental Guidelines, the MCC Gender Policy, the MCC Gender Integration Guidelines and Operational Procedures, the MCC Governance Guidelines, the MCC Marking Standards, the MCC Program Procurement Guidelines, the MCC Reporting Guidelines, the M&E Policy, (including any successor to any of the foregoing) and any other guidelines, policies or guidance papers relating to the administration of a Threshold Program, and, in each case, as from time to time published on the MCC Website.

Program Objective has the meaning given to that term in Section 1.2.

Project or Projects has the meaning given to that term in Section 1.2.

Project Objective has the meaning given to that term in Section 1.3.

PRONACOM has the meaning given to that term in Section 3.2(b).

Provider has the meaning provided in the MCC Audit Guidelines.

Records has the meaning given to that term in Section 4.7(a).

Resource Mobilization Project has the meaning given to that term in Section A.2 of Annex I.

SAT has the meaning given to that term in Section A.2(a) of Annex I.

Target the meaning given to that term in Section C.3(a) of Annex I.

Taxes has the meaning given to that term in Section 2.5(a).

Threshold Program has the meaning given to that term in the recitals to this Agreement.

Work Plan has the meaning given to that term in Section 4.1(c).