



**MILLENNIUM**  
CHALLENGE CORPORATION  

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**UNITED STATES OF AMERICA**

# **Program Closure Guidelines**

*July 14, 2017*

*Version DCO-2017-1.3*

**Submitted by:**

**Department of Compact Operations, Policy Owner**

**Millennium Challenge Corporation**

**1099 Fourteenth Street NW**

**Washington, DC 20005**

**Program Closure Guidelines**



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## **1 PURPOSE**

Millennium Challenge Corporation (“MCC”) wishes to provide guidelines to assist governments and accountable entities with the closure of programs funded under a Millennium Challenge Compact (“Compact”).

## **2 SCOPE**

These guidelines apply to the closure of programs in the context of a normal expiration of a Compact and, to the greatest extent possible, to the closure of Programs in the context of a suspension or termination of assistance under a Compact. Guidance concerning the application of these guidelines in the context of a suspension or termination of assistance under a Compact is provided in Section 5.15. Although these guidelines do not specifically apply to the closure of activities funded under a grant or other agreement pursuant to section 609(g) or section 616 of the Millennium Challenge Act, MCC may apply certain principles and mechanisms contained in these guidelines in those circumstances.

## **3 AUTHORITIES AND RELATED MCC POLICIES**

- Millennium Challenge Act of 2003, as amended (22 U.S.C. 7701, et seq.)
- Cost Principles for Accountable Entity Operations
- MCC Guidelines for Accountable Entities and Implementation Structures
- MCC Program Procurement Guidelines
- MCC Policy on Suspension and Termination
- MCC Guidelines for Country Contributions
- The Standards for Global Marking: Guidelines for Millennium Challenge Account Accountable Entities and Threshold Program Countries and Implementers

## **4 KEY DEFINITIONS**

*Accountable Entity* – The principal legal entity designated to implement a Compact.

*Act* – The Millennium Challenge Act of 2003, as amended (22 U.S.C. 7701, et seq.).

*Activity* – Any activity undertaken in furtherance of a Project, including any sub-activities.

*Asset Transfer Agreement* – A written agreement that serves to pass ownership of and responsibilities for an asset from one party to another.

*Closure Date* – The last day of the Closure Period.



*Closure Expenses* – Expenses incurred after the Compact End Date for activities ordinary and necessary for the closure of the Program and the winding-up of the Accountable Entity.

*Closure Period* – The period beginning on the Compact End Date and ending no later than 120 calendar days after the Compact End Date.

*Common Payment System* – The system by which MCC Funding is disbursed to permitted accounts or directly to providers of goods, works, and services under a Program.

*Compact* – The agreement between the United States, acting through MCC, and the Government of an eligible country that establishes a multi-year plan for achieving shared development objectives in furtherance of the Act.

*Compact Completion Report* – An assessment prepared by the Accountable Entity that describes the history and evolution of the Compact, results achieved and lessons learned.

*Compact End Date* – The last day of the Compact Term. The Compact End Date for a Compact with a five-year or lesser term will be the date that is the anniversary of the date of entry into force.

*Compact Term* – The period beginning on the date of entry into force of the Compact and ending on the date that the Compact expires or is terminated in accordance with its terms.

*Disbursement Request* – An official request by an Accountable Entity for authority to expend a portion of the grant in a given disbursement period.

*DNP* – Defect notification period.

*FIDIC* – International Federation of Consulting Engineers (*Fédération Internationale Des Ingénieurs-Conseils*).

*Final Audit* – The last audit performed near or after the Compact End Date.

*Final Financial Report* – The last financial report submitted by an Accountable Entity after the Compact End Date to complete the financial reporting.

*Final Procurement Performance Report* – The last procurement performance report submitted by an Accountable Entity after the Compact End Date.

*Financial Asset* – Any Program Asset of a financial nature, including without limitation, any cash, check, deposit account, security, loan, guarantee, retention money, beneficial interest in a trust, fund, or other instrument owned by the Accountable Entity or any other entity obtained using MCC Funding.



*Financial Asset Agent* – A bank, trust, fund or other financial institution that holds or manages a Financial Asset on behalf of the Accountable Entity or any other Government entity.

*Fiscal Accountability Plan (FAP)* – A financial operations manual for each Accountable Entity that sets forth the principles, mechanisms, and procedures to ensure appropriate use of MCC Funding and Government funding, including the process to ensure that open, fair, and competitive procedures will be used in the administration of grants or cooperative agreements and in the procurement of goods, works, and services.

*Funds in Transit* – Funds that have been drawn to pay an invoice that is due and that will pass through the permitted account en route to the final beneficiary. Such funds are not meant to reside in the permitted account longer than three business days.

*Government* – The government of the country that has entered into a Compact with the United States, acting through MCC.

*Implementation Letter* – An official letter issued by MCC, from time to time, to furnish additional information or guidance to assist the Government in the implementation of the Compact.

*Implementing Entity* – Any entity of the Government engaged by the Accountable Entity to assist in the implementation of any Project or Activity carried out in furtherance of the Compact.

*Implementing Entity Agreement* – An agreement, memorandum of understanding or other document between an Accountable Entity and an Implementing Entity that sets forth the roles and responsibilities of such Implementing Entity.

*Imprest Funds* – A limited amount of working capital that may be held in a permitted account to meet immediate cash needs.

*ITT* – The indicator tracking table produced by an Accountable Entity to track the results of the Compact.

*M&E* – Monitoring and evaluation of Program impact and performance.

*MCC* – Millennium Challenge Corporation.

*MCC Funding* – All funding provided by MCC under a Compact.

*MCDR* – Monthly Commitments & Disbursements Report

*MYFP* – Multi-year financial plan.

*OIG* – Office of the Inspector General for MCC.



*PPG* – Program Procurement Guidelines issued by MCC, as amended from time to time.

*PPP* – Public-Private Partnership.

*Principal Representative* – The person specified as the legal representative of the Government or MCC, as applicable, under a Compact.

*PRF* – Payment request form.

*Program* – The program established by the Government and MCC to achieve the goal and objectives of a Compact, including any Projects and Activities defined therein, program administration, and M&E.

*Program Asset* – MCC Funding, interest accrued thereon, and any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.

*Program Closure Plan* – The plan developed by an Accountable Entity in accordance with these guidelines.

*Procurement Closure Tracking Tool* – The tool developed by the Accountable Entity to track the status of all contracts and to plan and schedule procurement wind-down work in connection with closure of the Program.

*Project* – Any project defined as such in a Compact.

*Punch List* – Minor outstanding work and defects which will not substantially affect the use of the Program Assets for their intended purpose (either until or while this work is completed and these defects are remedied).

*QFR* – Quarterly Financial Report.

*Records* – All books, papers, maps, photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by MCC and the Government in connection with the Program and preserved or appropriate for preservation by MCC or the Government as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of MCC and the Government or because of the informational value of data in them. Records include but are not limited to: accounting records (books of account), procurement files including contracts, electronic mail (“email”) correspondence, photos, surveys, fixed asset registers, compliance reports, tracking indicators, engineer’s reports, and all manner of other reports and documents relating to the implementation and closure of a Compact.



*SPRF* – Special payment request form.

*VAT* – Value added tax.

## **5 GUIDELINES**

### **5.1 Governing Principles**

The following governing principles apply to the closure of a Program:

- The Compact Term may not exceed five years. Unless the Government and MCC have identified committed sources of funding other than MCC Funding to continue the Program or fund the Accountable Entity after the Compact End Date, the Accountable Entity will begin not later than 12 months prior to Compact End Date to take reasonable steps to close the Program in an orderly and efficient manner and to close the Accountable Entity.
- In closing the Program, the Government, the Accountable Entity, and MCC should be guided by the shared goals of reducing poverty through economic growth and sustaining the results achieved by the Program during the Compact Term.
- The Government, the Accountable Entity, and MCC will focus on facilitating evaluation of the results of the Compact and communicating those results in a transparent manner to their respective stakeholders.
- Certain Government responsibilities in the Compact extend beyond the Compact End Date, including issuing any authorization and taking any other action required to be taken by, or fulfilling any obligation of, the Accountable Entity, retaining and archiving all Records for a minimum of five years after the Compact End Date, making the Records available on short notice, and cooperating with any audit of the Program.

### **5.2 Program Closure Plan**

To ensure an orderly and efficient closure to the Program, the Accountable Entity will develop a detailed plan (typically in the form of a body plus several annexes) describing the schedule and steps it will take to close each Project and Activity of a Compact, the closure or continuation of the Accountable Entity, and other important aspects as detailed in these guidelines (the “Program Closure Plan”).

The content of the Program Closure Plan will vary by Program; however, a Program Closure Plan must include the components outlined in **Annex I**, as explained below.



### **5.2.1 Timeline for Submission, Approval, and Execution of the Program Closure Plan**

The Accountable Entity will submit a draft Program Closure Plan to MCC for review and approval at least 15 months prior to the Compact End Date. MCC and the Accountable Entity will consult in good faith with a view to reaching agreement on the Program Closure Plan 12 months prior to the Compact End Date or at a date as otherwise communicated in writing by MCC. In the time between draft submission and final approval, MCC will review and resolve specific issues related to the draft Program Closure Plan in consultation with the Government and Accountable Entity so that it can be approved by MCC, the board of the Accountable Entity, and the Government, acting through its Principal Representative. Once approved, the Program Closure Plan will become effective and binding through an Implementation Letter or a supplemental agreement among MCC, the Government, and the Accountable Entity.

At the time of submission to MCC, the Program Closure Plan should be accompanied by a draft opinion from legal counsel engaged by either the Accountable Entity or the Government confirming that the Program Closure Plan is in accordance with the provisions of the Compact and supplemental agreements, that it complies with applicable laws and regulations of the country. The final legal opinion should be delivered to MCC at the same time as MCC issues the Implementation Letter or supplemental agreement that documents approval of the final plan.

During the Closure Period, the Government will close the Program and the Accountable Entity. As further described later in these guidelines, activities during the Closure Period may include the review of contract deliverables and the processing of final invoices submitted by contractors, finalizing accounting and other Records, and preparing final financial reports.

During the Closure Period, limited key Accountable Entity personnel, the fiscal agent, and the procurement agent may remain to close the Program.<sup>1</sup> If necessary, the fiscal agent agreement and procurement agent agreement may be amended to end no later than the Closure Date. For a period established by the Program Closure Plan, designated Accountable Entity personnel may be retained to review final contract deliverables and approve final invoices for payment (see Section 5.5 below). The fiscal agent must close the Accountable Entity books and submit all final reports before the Closure Date. The auditor must conclude its field work on or before the Closure Date and submit its draft audit report to the OIG no more than 30 days after the end of the Closure Period.

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<sup>1</sup> These guidelines have been prepared based on the assumption that a procurement agent has been selected to perform all procurement activities of the Compact. In case the program does not include a procurement agent, all references to procurement agents must be substituted by the Accountable Entity procurement director or procurement unit, whichever is appropriate.

The timeline may be adjusted to comply with any statutorily applicable timeline permitted or required for the closure of a Program in connection with a suspension or termination of MCC assistance.

### 5.2.2 Modifications to the Program Closure Plan

On a regular basis, the Accountable Entity should review and update (as needed) the Program Closure Plan to reflect material changes and to revise the Program Closure Plan for material new closure activities, facts, and circumstances that arise after the plan has been approved by MCC. The Accountable Entity should submit any proposed modifications to the Program Closure Plan to MCC for no objection prior to formal inclusion in the plan. Any adopted modifications may be documented in a separate annex or list for reference. Prior to approval of the Program Closure Plan, for maximum efficiency, the MCC country team should define the level of materiality of changes as well as the change process.

### 5.3 Expenditures of MCC Funding after the Compact End Date

No expenditures of MCC Funding may be made after the Compact End Date unless MCC and the Accountable Entity have an approved Program Closure Plan in place. Once a Program Closure Plan is approved, the Accountable Entity may expend MCC Funding after the Compact End Date for:

- (i) goods, works, or services delivered, handed over, or otherwise completed under or in furtherance of the Program on or before the Compact End Date, provided that an invoice for such expenditures is submitted within 60 days after such date; and
- (ii) Closure Expenses that are properly incurred in connection with the Program Closure Plan and are invoiced and paid prior to the Closure Date.

Subject to approval by MCC in the Program Closure Plan or otherwise, Closure Expenses **may include** expenses for activities such as certification of final invoices and settlement of claims; securing unfinished project sites against potential health or safety hazards; closing of accounts; preparation of final reports by the Accountable Entity; financial and performance audits; disposition of assets; M&E activities conducted during the closure period; public outreach to disseminate results; moving and storage services; hosting the Accountable Entity website; legal services for closure-related activities; retention and safeguarding of Records; and compensation for limited Accountable Entity and Implementing Entity staff and consultants conducting closure activities.

Closure Expenses **may not include** expenditures primarily incurred to undertake or continue activities that should have been completed on or before the Compact End Date, including expenses



for activities such as completion of works (other than “punch list” items after acceptance of works); work with respect to the testing and commissioning of works, issuance of taking-over certificates, or handover of project assets from the Accountable Entity to an Implementing Entity; review and approval of variation orders (unless variation orders result from a claim for work performed before the Compact End Date); supervisory engineer services (except as set forth in section 5.4.3.4); consulting services (except for necessary closure activities); and the payment of project affected persons without signed compensation agreements before Compact End Date.

MCC may, in its sole discretion, with MCC Funding or other resources, make payments on behalf of the Accountable Entity during or after the Closure Date for certain Closure Expenses that for reasons of practicality cannot be made by the Accountable Entity, such as the payment for the Final Audit.

Except as may be provided in the Program Closure Plan, the Accountable Entity may not make advance payments prior to the Compact End Date for goods, works or services that are delivered or performed after the Compact End Date.

## **5.4 Disposition of Program Assets**

### **5.4.1 Overview**

The disposition of Program Assets by donation, transfer, assignment, or other methodology must be documented in the Program Closure Plan and implemented in an orderly and timely manner. Any Financial Assets remaining in the possession of the Accountable Entity and any Imprest Funds not expended before the Compact End Date, plus accrued interest, must be transferred to MCC or its designee prior to the deadline established to close all Accountable Entity permitted accounts.

Certain Program Assets may continue to be subject to restrictions on their use as set forth in the Program Closure Plan even after they are disposed of. If MCC determines that such Program Assets are used in violation of such restrictions, MCC may require that the Government refund to MCC the cash equivalent of the value of such misused Program Asset.

No Program Asset may be used for the personal gain of any individual, including any employee, consultant, part-time employee, or contractor of the Government, Accountable Entity, or Implementing Entity, or be used as a reward or form of compensation made in connection with the termination of an employment or contractual relationship.

Program Assets include any MCC Funding in permitted accounts, interest accrued and any other proceeds of such funding, and any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding. Accordingly, Program Assets can take many forms and include without limitation: information technology equipment, vehicles, furniture, survey equipment, intellectual property, photos, surveys,

specialized software, Records, petty cash, cash in permitted accounts (including Imprest Funds), Funds in Transit, real property, works, works in progress, grants, and Financial Assets such as credit facilities, revolving funds, grant facilities, retention monies, bid securities, and loan guarantee programs.

Generally, all Program Assets of the Accountable Entity must be accounted for and disposed of in an orderly manner prior to the Closure Date. If the Accountable Entity proposes any exceptions to this principle, such exceptions should be set forth in the Program Closure Plan. MCC expects that at the end of the Closure Period the majority of Program Assets will be granted for the purpose of sustaining the objectives of the Compact to the Government, other donors, nongovernmental organizations, private entities, and in certain circumstances, program beneficiaries. As set forth in more detail in Section 5.4.2 below, however, in some cases MCC may require that the Program Assets be sold to third parties, returned to MCC, or transferred to another U.S. Government agency. Moreover, certain Financial Assets may be transferred to a fiduciary institution to preserve and manage the Financial Assets for a defined period and purpose after the Closure Date.

#### **5.4.2 Options for the Disposition of Program Assets**

The Accountable Entity has several options regarding disposition of Program Assets including grant, sale, discard/recycle, or other methodology as approved by MCC. For each category of Program Asset, the Accountable Entity will include its preferred disposition method. MCC may request a different disposition method prior to approving the Program Closure Plan. If MCC and the Accountable Entity are not able to agree on an appropriate disposition method, MCC may, at its expense, have title to and custody of such Program Assets transferred to MCC if such Program Assets are in a deliverable state.

The Accountable Entity should use the following criteria (in the order of importance stated) when evaluating the suitability of potential recipients of Program Assets. Potential recipients of Program Assets should have:

- A clear need for the Program Assets;
- The ability to further the Compact objectives and use the Program Assets to sustain the results of the Compact; and
- The ability to maintain the asset, including
  - Financial capacity to pay expenses to operate or sustain the assets, such as taxes (including sales and use, transfer, and VAT), insurance, registration, and other expenses;
  - The human resource capacity to sustain the Compact objectives; and
  - Procedures in place to ensure the proper use of assets.



#### 5.4.2.1 Grant

The Accountable Entity may propose to grant all or a portion of the Program Assets to any of the following entities (in no particular order):

- A Government entity, such as an Implementing Entity;
- Another donor;
- A non-governmental organization;
- A fiduciary institution; or,
- When specified as part of the project logic and design,
  - A contractor or other private entity; or
  - A Program beneficiary.

With respect to each entity to which Program Assets are to be granted, the Accountable Entity should complete a *Proposal for Granting Program Assets* (or such other format as MCC may provide), which includes a basic needs and/or capacity analysis to determine that the Program Assets will be properly used and maintained, and that the receiving entities (including non-governmental organizations) have the financial and human resource capacity, as well as procedures in place, for the proper use and oversight of Program Assets. To the extent the Accountable Entity is transferring assets to a non-governmental organization or other private entity, MCC may require that the receiving entity provide appropriate documentation on their legal status. Following MCC approval of the Program Closure Plan and the *Proposal for Granting Program Assets*, the Accountable Entity and the receiving entity should enter into an appropriate grant agreement. The analysis and documentation will help ensure that Program Assets will be used to sustain the objectives of the Compact and will not be used for any purpose that would have been prohibited under the Compact.

Generally, the process should proceed according to the following steps, unless otherwise agreed in the Program Closure Plan:

- Agreement on the general asset disposition strategy outlined in the Program Closure Plan;
- Specific justifications and description of assets provided by the Accountable Entity in the *Proposal for Granting Program Assets*;
- MCC approves the grant to each recipient, allowing the Accountable Entity to move ahead with the transfer;
- The Accountable Entity signs a grant agreement with the recipient entity, along with the specific list of assets and market values, and provides MCC with a copy of these agreements; and
- The Accountable Entity or its fiscal agent records the disposition of each asset in its overall asset registry.



In certain cases, MCC may request the Accountable Entity to transfer control and title to the Program Assets to MCC, another U.S. Government agency, or another Accountable Entity.

#### *5.4.2.2 Sale*

The Accountable Entity may propose that certain Program Assets be sold. MCC will determine in advance of a sale, whether the proceeds may be used by the Accountable Entity in pursuit of the objectives of the Compact, or if such funds should be returned to MCC. The Accountable Entity will provide an estimated market value, supported by empirical data, of the Program Assets it intends to sell and the method of sale. Except as agreed by MCC, all sales of Program Assets must be conducted in a transparent and competitive manner. To the extent that a buyer of a Program Asset would be obligated under local law to pay VAT on the purchase, the buyer will be solely responsible for paying the VAT. The Accountable Entity must not reduce the sale price of the Program Asset to avoid, or otherwise use the proceeds from the sale to pay, VAT or any other tax.

#### *5.4.2.3 Discard/Recycle*

In limited instances, certain Program Assets may be discarded or recycled. This option may be appropriate for items that have no useful life remaining, have been irreparably damaged or depleted, or where the cost of other disposition methods would be greater than the residual market value of the Program Asset. This method is to be used sparingly and with regard to issues of perception of discarding assets that may still appear to be useful.

### **5.4.3 Special Considerations for Certain Asset Types**

Certain asset types require special considerations given their nature or value as set forth below.

#### *5.4.3.1 Vehicles*

A vehicle may have a significant remaining useful life after the Compact Term. A vehicle should only be granted to an approved entity that will use the vehicle to pursue the objectives of the Compact and demonstrates the financial and management capacity to maintain the vehicle. Such entities may include another Government entity, a non-governmental organization, and, when specified as part of the project logic and design, a Program beneficiary.

#### *5.4.3.2 Financial Assets Used in Credit Facilities and Similar Activities*

Certain Financial Assets are intended to sustain Activities after the Closure Date. Examples of these Financial Assets include cash reflows from interest and principal repayments and accounts receivable in the form of outstanding payments due on outstanding loans. Due to their convertibility, liquidity, and potential misuse, Financial Assets pose unique concerns, and their treatment requires careful planning and execution.



In many cases, the nature and disposition of Financial Assets will have been contemplated in the Compact or supplemental agreements that governed their use and implementation during the Compact Term. To the extent that the documents governing the use of Financial Assets do not specify the disposition of such assets after the Compact End Date, MCC and the Accountable Entity should update the governing documents in a timely manner.

The Accountable Entity may propose a plan to engage a Financial Asset Agent prior to the Compact End Date to hold and manage Financial Assets used in credit facilities, guarantee programs, and similar activities. The Financial Agent might be a government entity, an NGO, or a private entity.

The Financial Asset Agent may be the independent entity originally engaged to manage specific Financial Assets during the Compact Term or a different entity to which the Financial Assets will be transferred for management after the Compact Term. The contract with the Financial Asset Agent should include how the Financial Assets are to be used and monitored, for how long, the ultimate disposition of the funds, and what reports will be provided to MCC. Management of the Financial Asset after the Compact End Date may also require that a financial audit, limited review, or another limited form of review be performed at intervals after the Compact End Date. The selection of the Financial Asset Agent and the final plan for disposition of the Financial Assets will be subject to approval by MCC.

Except as agreed by MCC, if no Financial Asset Agent is selected by the date that is six months prior to the Compact End Date, all activities using Financial Assets will cease as quickly as practicable. In this instance, MCC may choose, through its own procurement process, a liquidation agent to oversee the disposition of Financial Assets.

Unless specified in the Compact or approved by MCC, no Financial Asset should have an initial maturity beyond the date that is four years after the Compact End Date, and final dispositions of Financial Assets should occur not later than five years after the Compact End Date.

#### *5.4.3.3 Public Private Partnerships*

Compact funding for PPPs can flow either to an Accountable Entity where investments are made and ownership is held, (at least during the term of a Compact) or through an Accountable Entity directly to a government entity that will hold an ownership stake in the PPP. If the Accountable Entity is the initial stakeholder in the PPP, its investment and ownership need to be transferred to another government entity prior to the end of the Compact. Normally, the beneficiary will be identified in the Compact. If an Accountable Entity is not a legal owner, no such transfer is required. The Program Closure Plan should include a time table for completing that transfer, if applicable.



However in either case, a monitoring mechanism needs to be in place to measure progress against Compact objectives and the performance of the PPP itself during both the Compact and the post-Compact periods. Special attention should be given to any contractual clauses regarding milestones pertaining to completion or performance. Deviations should be reported to MCC.

#### *5.4.3.4 Guarantees and Retention Monies Securing Contractor Obligations*

As noted above, certain Program Assets may have DNPs that end after the Closure Date. Depending on the contract, the DNP for certain Program Assets may last for several months after the assets have been accepted by the Accountable Entity. In these instances, MCC will direct that the Accountable Entity institute a mechanism to accept the final completion of the Program Asset following the Closure Date. In most cases, the final acceptance of the Program Asset at the end of the DNP will result in either the cancellation of a bank demand guarantee provided by the contractor or a final payment to the contractor of any remaining retention money.

Generally, an Accountable Entity will retain money from payments made to the contractor to secure the contractor's obligation to cure any defects to the Program Asset during the DNP. At the commencement of the DNP, the Accountable Entity may pay a portion of the retention money to the contractor (generally 50 percent) and retain the balance of the retention money until the end of the DNP. If the DNP will end after the Compact End Date, the Accountable Entity shall request that, in lieu of the Accountable Entity retaining the remaining retention money, the contractor obtain a demand guarantee equivalent to the amount of remaining retention money, with the Accountable Entity, or the ultimate owner of the Program Asset, as the beneficiary, issued by a bank acceptable to MCC. This demand guarantee would be drawn upon during the DNP in the event that work to remedy defects is necessary. Assuming no defects have been identified at the end of the DNP, the Accountable Entity, or the ultimate owner of the Program Asset, in conjunction with MCC and possibly an independent engineer, will accept the Program Asset and return the demand guarantee to the contractor. In the event that the contractor does not provide a demand guarantee and a payment of retention money is owed to the contractor after the Closure Date, MCC Funding cannot be used to satisfy this payment obligation.

The Program Closure Plan should include a description of any mechanism used to make payments relating to the final acceptance of Program Assets following the Compact End Date. In the event that the Accountable Entity will not exist at the end of the DNP, the Program Closure Plan should name an entity responsible for accepting the Program Asset and drawing upon or canceling the demand guarantee (i.e., the beneficiary of the guarantee). If necessary, the Program Closure Plan should indicate a source of funding for any payments made to the contractor following the Compact End Date.

To the extent that construction supervision services may be required after the Compact End Date, as is generally the case during a DNP under a FIDIC contract, such services are not considered Closure Expenses and may not be paid with MCC Funding if incurred after the Compact End Date



(refer to section 5.3). Exceptions may include verification of quantities used under the construction contracts where the taking over certificate has been issued on or near Compact End Date, verification of completion of “punch list” items, and finalization of the Engineer’s completion report. Similarly, such expenses may not be paid in advance prior to the Compact End Date to cover services rendered after such date. The Accountable Entity should describe in its Program Closure Plan any arrangements for the continuation of construction supervision services with sources of funding other than MCC Funding.

#### *5.4.3.5 Intellectual Property, Intangible Assets, and Accountable Entity Website*

Any intellectual property or intangible assets created as a result of the Program should be disposed of in a manner that will further the objectives of the Compact or sustain the results of the Program. Intangible assets are defined as any assets that are not physical in nature. Intellectual property includes, but is not limited to, patents, trademarks, copyrights, business methodologies, software, cadastral mappings, photos, studies, designs, reports, surveys, and other data. To the extent possible, intellectual property should remain with the Government or in the public domain and not be sold or donated to third parties that may use it for private financial gain. MCC must be given, upon its request, rights to use any intellectual property useful to it.

The Government will maintain and update the Accountable Entity website until the Closure Date and fund the hosting of the website for a minimum of 12 months following the Closure Date. The Accountable Entity should work with MCC to take a snapshot (i.e. capture and permanently record) of the Accountable Entity website and provide this snapshot to MCC for its records. The snapshot should be taken the final month before it is shut down and should follow the U.S. National Archives and Records Administration’s guidelines for the transfer of permanent electronic records. More information is available at <http://www.archives.gov/records-mgmt/policy/transfer-guidance.html>.

#### *5.4.3.6 Cash in Permitted Accounts*

The total amount of cash remaining in permitted account(s) on the Compact End Date may not exceed \$250,000 or such other amount as agreed in writing with MCC.

After the Compact End Date, funds needed to pay contractors’ final invoices (that are received during the Closure Period) and administrative expenses (such as rent and salaries) will be made directly to providers of goods, works, and services or indirectly through the permitted Accountable Entity bank accounts. No later than 105 days after the Compact End Date, the balance(s) of the permitted account(s) and any petty cash boxes must be zero.

Unless otherwise agreed by MCC, rent and security deposits, pre-paid expenses, advances, and similar items must be collected no later than 90 days after the Compact End Date. A provision for their collection should be included in the Program Closure Plan.



Accrued interest on undisbursed MCC Funding held in any permitted account must be remitted to the account designated by MCC, using the same procedure as during implementation of the Compact, by no later than 105 days after the Compact End Date. The Accountable Entity should check that the terms of the bank agreement are consistent with this requirement and amend the bank agreement as necessary.

Subject to approval by MCC in the Program Closure Plan, other Program income derived or generated from Program activities (e.g., cash from the call of bank guarantees, performance guarantees, bid securities, advance payment guarantees, etc.) may be used by the Accountable Entity to fund certain Closure Expenses. Program income may include cash collateral for loan guarantee programs, principal and interest from credit facilities, and securities from fund investments.

#### *5.4.3.7 Real Property*

Real property owned by the Accountable Entity should only be donated to another Government entity to the extent the property will be used to sustain the results or further the objectives of the Compact. In all other cases, the property should be donated to a non-Government entity or sold. Unless otherwise provided in the Program Closure Plan, proceeds of the sale will be remitted to MCC for remittance to the United States Treasury. The Accountable Entity should propose in the Program Closure Plan the process to manage the sale and the transfer of proceeds in the event that a sale cannot be accomplished before the Closure Date.

#### *5.4.3.8 Treatment of Personally Identifiable Information or Sensitive Information*

When disposing of Program Assets and storing Records, the Accountable Entity should take all reasonable steps to safeguard or remove sensitive data and information. The Accountable Entity should include in its Program Closure Plan the procedures it will take to safeguard or remove any data or information that may be sensitive prior to the disposition or storage of such Program Asset or Record. Sensitive information may include personally identifiable information, personnel files, procurement documentation, survey documentation that identifies respondents who provided personal or income-related information, or private business and financial information. The procedures may vary depending on the nature of the information and should take into account the country's relevant laws on privacy.

### **5.5 Accountable Entity and Other Key Personnel**

Only the Accountable Entity staff required to complete closure activities should be retained during the Closure Period. While needs will vary across countries, and should be detailed in individual Program Closure Plans, the typical required staff includes: the executive management of the Accountable Entity, project directors to the extent they are required for completion of reporting requirements or validating invoices, limited monitoring and evaluation staff, fiscal and



procurement staff as well as other staff responsible for administrative closure. The Accountable Entity may take measures to encourage key staff and personnel to remain available for duty until the Compact End Date. MCC Funding may be used after Compact End Date and during the Closure Period to retain only personnel necessary to ensure that closure is conducted in an efficient and orderly manner. The Program Closure Plan should set forth any special compensation or other arrangements proposed to retain staff through the Compact End Date and any personnel that will be retained during the Closure Period, in addition to a clear justification as to why such arrangements are reasonable and necessary. **Annex II** hereto sets forth guidelines for such compensation and arrangements. Upon request from MCC, the Accountable Entity will separately provide individual compensation information that is not disclosed in the Program Closure Plan.

#### **5.5.1 Winding-Up or Continuing the Accountable Entity**

In most cases, the Accountable Entity was created specifically to implement the Program and its operations are funded solely by MCC under the Compact. If no committed sources of funding other than MCC Funding have been identified by the Government to continue the Accountable Entity, the Program Closure Plan should include a description of the administrative, financial and legal steps necessary to wind-up the Accountable Entity by the end of the Closure Period.

In case the Accountable Entity will continue beyond the Closure Period and committed sources of funding other than MCC Funding have been identified, the Program Closure Plan should include a description of the source and amount of such other funding. The description should also set forth the activities that will be pursued after the Compact End Date.

By the end of the Program, the names and logos of most Accountable Entities will have become intrinsically linked with MCC and the Government. Accordingly, the Accountable Entity name, logo and related brands are considered Program Assets to be disposed of by the end of the Closure Period. To the extent that an Accountable Entity will continue operations after the Closure Period with sources of funding other than MCC Funding, the Accountable Entity must cease to use the name and logo that it used during Compact implementation, except as may be agreed by MCC. The Program Closure Plan must specify that the Accountable Entity will change its name and logo and specify the procedure for doing so (including any amendments required to its constituent documents). If MCC will allow continued use of the names and logos, MCC may specify the conditions by which the Accountable Entity may continue to use the name and logo for a period of time and in a manner described in the Program Closure Plan. In general, MCC will only consider allowing the Accountable Entity to continue to use a name and logo to the extent that the Accountable Entity is completing or continuing projects funded by MCC in the Compact, such as pursuant to co-financing and parallel financing arrangements, or has been selected as eligible to develop a subsequent Compact.

## 5.6 Budgeting for Closure

### 5.6.1 Overview

The Accountable Entity must carefully budget MCC Funding towards the end of the Compact to ensure that all expenses can be paid and that appropriate amounts of funds are planned and reserved for Closure Expenses. No additional funding for Closure Expenses will be provided by MCC.

In anticipation of Program closure, the Accountable Entity will need to periodically review and adjust budgets as necessary for the following reasons:

- To provide for the compensation of Accountable Entity personnel, the auditor and other entities during the Closure Period, as well as to Financial Asset Agents, if applicable, if not provided for earlier;
- To ensure that there will be enough MCC Funding or other resources left to pay all relevant Closure Expenses, and to more precisely plan typical end-of-Compact financial events such as payout of retentions to contractors and final liquidation of outstanding advances;
- To determine if the Government or another source will need to pay any expenses (if MCC Funding is not sufficient);
- To finance new activities (i.e., new commitments) specifically related to Program closure; and
- To determine appropriate reallocations of budget for approval in the Disbursement Request process.

### 5.6.2 Re-budgeting within the Compact Amount

The amount of MCC Funding available under the Compact will not be increased to pay Closure Expenses. Therefore, the Accountable Entity must determine the most appropriate way to ensure that the work will be performed and the Program will be completed in an orderly and cost-effective manner. This may include a re-budgeting exercise to economize – e.g., use savings from other activities to help fund Closure Expenses.

Similarly, the Accountable Entity should evaluate which Projects and Activities can be properly concluded by the Compact End Date. If not already performed, it may be necessary to evaluate whether the scope of the work in some Projects, and therefore the relevant budget line, will be reduced and/or curtailed. A preliminary analysis of Project/Activity completion should be conducted prior to submission of the Program Closure Plan such that any adjustments to the budget may be included in the Program Closure Plan.



### **5.6.3 Reconciliation of the Accountable Entity and MCC Financial Books of Account**

The Accountable Entity must also perform a full reconciliation of its books of account with those of MCC on a monthly basis throughout the Compact Term and through the end of the Closure Period. This reconciliation is part of the Accountable Entity's MCDR. If any reconciling items are discovered, the Accountable Entity must clear them within 30 calendar days, i.e., by the due date of the next MCDR. The final reconciled MCDR is due to MCC no later than the Closure Date.

### **5.6.4 Spending Authority for Final Disbursement Period**

In order to have MCC Funding available to pay for Closure Expenses, the final disbursement period of the Program will include the Closure Period. Generally speaking, the final disbursement period should be no more than the normal three months of the quarter and up to 120 days for the Closure Period. The final Disbursement Request may request spending authority for the elongated final period and must contain all of the documents required pursuant to the *MCC Guidance on Quarterly MCA Disbursement Request and Reporting Package*, or other instructions as issued from time to time by MCC. There is no working capital allocation for the final disbursement period. If spending authority approved for the final disbursement period is not sufficient, additional spending authority must be requested and approved on a case-by-case basis.

### **5.6.5 New Commitments during the Closure Period**

The Accountable Entity may incur new commitments after the Compact End Date for Closure Expenses. These commitments must be described or anticipated in the Program Closure Plan and will typically be small and directly related to closure. It is acceptable to budget a small contingency amount to cover unexpected Closure Expenses. New commitments should be reflected on the final Disbursement Request (specifically on the detailed financial plan – commitments schedule of such Disbursement Request). No other new commitments may be made that were not approved by MCC in a Disbursement Request.

### **5.6.6 Cash Flow Management**

Expenditures (and hence spending authority) is likely to increase considerably toward the end of the Compact Term. Spending authority for the final disbursement period should include projections for all MCC Funding needed to conclude the Compact, including remuneration for all parties, customary progress payments to vendors, retention monies, and any new small commitment for closure activities, etc. The Common Payment System will have a specified deactivation date approximately 90 days after Compact End Date. The deactivation date may be adjusted in case the Closure Period crosses a typical holiday period or other major period of inoperability. After the deactivation date, the Accountable Entity may no longer request the disbursement of funding independently. Any disbursement after the deactivation date in the approved Program Closure Plan must be requested through a PRF or SPRF. The procedures



governing the use of PRFs/SPRFs can be found in the Common Payment System manual. MCC's approval of these PRFs/SPRFs in no way removes or reduces the responsibility of the Accountable Entity and its fiscal agent when approving payments. MCC's approval is only for purposes of ensuring that the PRF/SPRF in question is for an expense consistent with the requirements of the Program Closure Plan as a Closure Expense. The amount of the expense in question, the underlying support for disbursing the funds, and all payment information remains the responsibility of the Accountable Entity and its fiscal agent.

### **5.6.7 Reimbursement of Taxes to MCC**

The Program Closure Plan must include a section indicating how any outstanding (not yet reimbursed) tax amounts will be reimbursed by no later than 60 days after the Compact End Date. To the extent that Program Assets are transferred to individuals or entities for purposes unrelated to the Program or the sustainability of the Program, the Government may apply its regular tax procedures to such transfers or the Program Asset itself, once it is no longer in the possession of the Accountable Entity or a Program beneficiary.

## **5.7 Environmental, Social, Health and Safety**

Closure of the Program must be conducted in a manner that does not create (or leave unresolved) any environmental, health, or safety hazards and that promotes environmental and social sustainability of Compact investments. *Environmental* refers both to the biophysical and social environments in which MCC investments operate. In preparation for Compact closure the Accountable Entity must review the status of environmental, social, health, and safety aspects associated with Compact programs (including resettlement), and identify and implement any measures required to ensure that outstanding issues are resolved prior to the Closure Date. These required actions should be clearly documented in the Program Closure Plan, along with a clear definition of who will be responsible for the actions, when they are expected to be completed, and what resources are required and available to support the efforts.

## **5.8 Legal Agreements**

### **5.8.1 Approval of Program Closure Plan**

Following the approval of the Program Closure Plan by MCC, the board of the Accountable Entity and the Principal Representative of the Government, MCC will deliver an Implementation Letter to the Principal Representative of the Government. The Implementation Letter will indicate that the Program Closure Plan has been approved by MCC and will be binding among MCC, the Government, and the Accountable Entity.



### **5.8.2 Modification of Existing Agreements**

Prior to submitting the Program Closure Plan to MCC, the Accountable Entity, working with its legal adviser, should perform a review of all existing legal agreements to determine whether they need to be modified to carry out the Program Closure Plan. Any modifications to material legal agreements in connection with the Program Closure Plan must be submitted to MCC for review.

### **5.8.3 Designation of Principal and Additional Representatives**

The Government will confirm the existing Principal Representative or designate a new Principal Representative to represent the Government after the Compact End Date. In the event that the Government has proposed to continue the operation of the Accountable Entity following the Closure Date, the Government may designate the executive director of the Accountable Entity as an additional representative.

## **5.9 Reporting and Auditing**

### **5.9.1 Overview**

This section describes the treatment of various documents, data, and reports before and after the Compact End Date.

### **5.9.2 Compact Completion Report**

The Accountable Entity must prepare a Compact Completion Report. The Compact Completion Report is intended to provide the Accountable Entity's perspective on: (a) the performance of the Compact relative to its stated objectives, (b) factors (positive and negative) that affected implementation and the achievement of outcomes, and (c) key lessons learned during the implementation period.

Accountable Entity staff should prepare the Compact Completion Report in a collaborative manner. The expectation is that the full Accountable Entity staff will contribute to this report. The Accountable Entity should consult with implementers, beneficiaries and other key stakeholders in preparing the Compact Completion Report. The Accountable Entity may choose to hire a consultant to support them in preparing elements of this report or in performing analyses that will feed into the report.

Preparation of the Compact Completion Report should begin approximately one year prior to the Compact End Date, especially if an external consultant is to be hired to support the effort. The Accountable Entity should submit the final version of the Compact Completion Report to MCC as early as possible prior to the Compact End Date. The Compact Completion Report must be submitted in English, except as otherwise agreed with MCC.



### **5.9.3 The Fiscal Accountability Plan**

The FAP is one of the documents that may be modified to accommodate procedural, process, and rule changes pertaining to closure activities. The Accountable Entity is encouraged to make any changes to the FAP as early as possible. It may also be advisable for the Accountable Entity to create a streamlined procedure for approval of the FAP so that changes can be made rapidly and efficiently when necessary.

### **5.9.4 Final Audit**

The Final Audit varies slightly from prior audits in that it also includes a review of the Accountable Entity's compliance with terms and provisions of the Program Closure Plan. The scope of the Final Audit should conform with the OIG audit guidelines, as periodically revised, and should have been incorporated into the audit contract with the auditor performing audits of the Accountable Entity during the second half of the Compact Term.

The Final Audit period begins prior to the Compact End Date and continues through the end of the Closure Period. As the auditor's field work continues until the Closure Date, staff of the Accountable Entity must be available to answer any questions, respond to document requests, attend the exit interview(s), and provide management comments to the Final Audit report. Since the Final Audit report is due to the OIG at the end or after the Closure Period, special arrangements may be made for final payment(s) to the audit firm. In such cases, the auditor may invoice MCC to make final payment(s) on behalf of the Accountable Entity.

The OIG may elect to provide a special statement of work for the Final Audit, and may elect to perform the Final Audit itself or to commission an audit firm to perform the Final Audit. If that is the case, the OIG will advise the Accountable Entity at least six months prior to the Compact End Date.

### **5.9.5 Final Financial Report**

Except as agreed in writing with MCC, the Accountable Entity must submit a final MCDR and a final QFR no later than the Closure Date. The purpose of the final MCDR is to state actual cumulative disbursements and commitments through the end of the Closure Period. The purpose of the final QFR is to initiate any available deobligation and finalize the disbursement and commitment plans. Since the Accountable Entity's books of account will be closed by this time, the final MCDR and final QFR will state only actual cumulative disbursements and commitments at that time. No further projections of any kind are included and the final QFR will not include any requests for new spending authority.

In the event that MCC pays any administrative expenses on behalf of the Accountable Entity with MCC funding (i.e., final audit payments, office rent and utilities, and other administrative



expenditures) after the Accountable Entity is closed, the final QFR and final MCDR will be prepared by representatives of MCC's Fiscal Accountability division and submitted to MCC's Department of Administration & Finance to capture the final expenses and Accountable Entity deobligations, along with a letter from MCC's Office of the General Counsel regarding deobligation of any remaining funds.

#### **5.9.6 Final Procurement Performance Report**

The Accountable Entity must submit a Final Procurement Performance Report concurrently with the Final Financial Report.

#### **5.9.7 Final Conditions Precedent Report**

To the extent the conditions precedent report submitted with the final Disbursement Request included any conditions precedent that were not yet satisfied, a final conditions precedent report should be submitted with the Final Financial Report.

#### **5.9.8 Taxes Report**

The Accountable Entity must submit a final report at the end of the Closure Period indicating that all taxes have been exempted or reimbursed by the Government in accordance with the arrangements agreed with the Government in the Compact and any supplemental agreement.

#### **5.10 Retention and Safekeeping of Records**

The Accountable Entity and the Government must comply with the provisions in the Compact and any applicable law for the retention of Records. The Program Closure Plan should include a list of the types of Records the Government will retain and a description of the form and manner in which they will be kept. The Government through its Principal Representative is encouraged to appoint a specific custodian of the Records who will be responsible for the long-term maintenance of the Records and especially for ensuring rapid access to any Records after the Compact.

The Records to be retained should include those documents identified in **Annex III**. The Accountable Entity and the Government should make provisions for the safekeeping of the Records for a period of at least five years after the Compact End Date and should ensure that fiscal agent and procurement agent Records are also retained for this period.

The Records must be maintained at a site that is secure, locked, fireproof, and acclimatized to ensure the protection of the Records and the proper treatment of sensitive information. The Government, through the Accountable Entity as applicable, will, at MCC's discretion, provide MCC with electronic copies of the Records during the Closure Period or afterwards. The fiscal

agent agreement and procurement agent agreement may also require these agents to produce electronic copies of accounting records in a specified format.

Auditors may need to have rapid and frequent access to Records during the Closure Period, including for viewing by the auditors for the Final Audit and MCC staff and external parties conducting an evaluation. Therefore, Records should be stored in such a way that they can still be made available after the Closure Date upon short prior notice by MCC (10 days).

MCC may request that copies of certain Records be delivered to MCC prior to the Closure Date. If this is the case, MCC will specify the format and provided detailed guidance about the storage procedure and delivery to MCC. The format and detailed guidance are expected to be similar to that set forth in **Annex III**.

### **5.11 Marking and Communication with Stakeholders**

*The Standards for Global Marking: Guidelines for Millennium Challenge Account Accountable Entities and Threshold Program Countries and Implementers*<sup>2</sup> require that all completed Projects must be marked with a sign, plaque, or other device that will last, indefinitely MCC or Accountable Entity marking or signs retained beyond the Compact End Date should be detailed in the Program Closure Plan, with specific attention directed to infrastructure signage deployed per the *Technical Specifications for Infrastructure Signage*. Any MCC markings on Program Assets that will be disposed of must be removed prior to the transfer or sale of such Program Assets.

The Accountable Entity will begin preparing a closure communications plan 15 months prior to the Compact End Date. This timeframe allows for possible additional surveys or data gathering requirements. It also provides time to conduct an inventory of multi-media content – including success and beneficiary stories, high-quality photos, and short videos – and create new multi-media content for amplification in country and from MCC headquarters as part of a closure campaign on the internet, social media, with the press and at closure events. The plan will generally include the following, depending on the Compact context:

- Objective for closure communications;
- Topline Compact messages and highlights;
- Key audiences targeted for closure communications;

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<sup>2</sup> Found at: [https://assets.mcc.gov/documents/guidance-2011001020309-standards\\_for\\_global\\_marking.pdf](https://assets.mcc.gov/documents/guidance-2011001020309-standards_for_global_marking.pdf)

- Strategy for reaching these audiences, which may include: sharing and promoting success stories, beneficiary stories, high-quality digital content like photos and short videos, press releases, stakeholder engagement, and digital media covering closure events;
- Statistics and data points that convey the impact of MCC's investment (prepared in coordination with the Accountable Entity and MCC M&E teams);
- An asset transfer plan for delivering copies of multimedia assets to MCC for potential use in U.S. closure communication campaigns; and
- A timeline for in-country closure events, their corresponding projects, and media components.

The Accountable Entity will provide this plan to MCC to ensure proper collaboration on key messages and results between MCC and the Accountable Entity. A final plan will be provided to MCC six to nine months prior to Compact End Date. The Accountable Entity shall incorporate the need for effective coordination between communications and M&E products and activities as it develops its closure communications strategy and plan.

The Accountable Entity and MCC will cooperate to ensure consistency in results figures in its closure materials. It is important to identify and resolve data discrepancies as early as possible. This is especially important during events related to the closure of the Compact to ensure the partner Government, the Accountable Entity, and MCC are utilizing consistent data.

After approval of the Program Closure Plan, the Accountable Entity should ensure that it is communicated to personnel, Implementing Entities and other Project stakeholders, as appropriate. As part of its strategic communications plan, the Accountable Entity should implement a strategic campaign to communicate the results and activities related to the Compact to key stakeholders through a variety of channels. This information and campaign should be closely coordinated with MCC and any related products or events should be shared with U.S. Government counterparts (e.g., U.S. Embassy) and other donors in the country whenever possible.

## **5.12 Monitoring and Evaluation**

The M&E section of the Program Closure Plan should provide a brief overview of the closure strategy for M&E disaggregated by Project or Activity as appropriate. Such closure strategy should: (a) highlight any data collection activities, such as surveys, evaluations, and special studies that are at risk of not being completed by the Compact End Date; and (b) include a description of all M&E activities that are planned to be conducted after the Compact End Date as agreed by MCC. This strategy shall consider the need for coordination of M&E activities with communications requirements, particularly in advance of the Compact closure communications campaign.



MCC and the Accountable Entity should consult to discuss the appropriate source of funding, contract mechanism and implementation timeframe if any payments or contracts are required for conducting post-Compact monitoring and/or evaluation activities.

As part of the Program Closure Plan, the Accountable Entity will: (a) identify designated representatives that will serve as the primary points of contact for any M&E-related obligations of the Government that extend beyond the Closure Date; (b) identify the actions these representatives are required to take to fulfill the Government's obligations, including whether a separate agreement with MCC must be established and by when; and (c) detail the process and timeline for developing a post-Compact M&E plan to be approved by an Accountable Entity's board of directors and MCC.

The Accountable Entity must submit an ITT as part of the QDRP deadline closest to Compact End Date. This ITT will contain final data for quarter 19 and preliminary data for quarter 20. The Accountable Entity must also submit an ITT (with final data for quarter 20) no later than 70 days after the Compact End Date, or as otherwise agreed with MCC, in compliance with the format provided by MCC.

MCC and the Accountable Entity will use data from the quarter 19 ITT for Compact closure events and publications until the quarter 20 ITT is approved, after which all future Compact closure documents will report the quarter 20 ITT figures. Previously-released Compact closure documents may be updated using quarter 20 figures, although this is not required.

On or before the Closure Date, the Accountable Entity must deliver to MCC electronic copies of: (a) all MCC-funded survey data sets and supporting materials, such as questionnaires, enumerator field guides, data entry manuals, data dictionaries, meta data and final reports, (b) other analyses, evaluations, data quality reviews, and special studies that were funded out of the M&E budget in a form and manner that complies with MCC's Evaluation Microdata Documentation and De-Identification Guidelines; and (c) all supporting documentation for data reported in all ITTs.

On or before the Closure Date, the Accountable Entity will provide evidence of the Government's acceptance of the approved post-Compact M&E plan and ensure that government entities that have post-Compact M&E duties have been duly notified. MCC Funding budgeted for M&E is available to the Accountable Entity after the Compact End Date for the closure of M&E activities implemented during the Compact and for M&E activities set forth in the Program Closure Plan as Closure Expenses. MCC may also fund additional M&E activities after the Compact End Date. Unless otherwise agreed with MCC, uncommitted MCC Funding for M&E activities in the MYFP may not be reallocated in support of other Compact activities.



## **5.13 Procurement, Contract Administration, and Contract Closure**

The Accountable Entity will properly carry out the closure of all ongoing contracts, ensuring that all deliverables have been received and that obligations have been fulfilled in a timely manner by Compact End Date or Closure Date as applicable. Under the Program Closure Plan procurement section; the Accountable Entity shall include a general overview of procurements risks and contingency plans to mitigate these risks.

### **5.13.1 Procurement/Contracts List and Procurement Tracking Tool**

The Accountable Entity shall identify and prepare a list of active and planned procurements and open contracts approximately one year before the Compact End Date. This list will be the basis of the Procurement Closure Tracking Tool and should be cross-referenced with the financial data within the Accountable Entity as a way of verifying that the information is consistent with the procurement agent and fiscal agent's records.

As part of the Program Closure Plan, the Accountable Entity procurement director shall develop a Procurement Closure Tracking Tool. The Procurement Closure Tracking Tool shall be used to report and track the status of all ongoing and expired contracts, ensuring that all deliverables have been received and accepted and that obligations have been fulfilled in a timely manner by the Compact End Date or Closure Date, as applicable. The Procurement Closure Tracking Tool should include information on pending deliverables (and due dates), pending payments, managing defects and liabilities, claims, disputes, guarantees, contract status, procurement or award method employed, expected completion date, key dates for milestones, information on contract identification, among other relevant information. The Procurement Closure Tracking Tool shall also include a specific course of action for each contract and that may include additional contract management support, notifications to parties of pending deliverables, cure letters, or termination notices.

The format and content of the Procurement Closure Tracking Tool should be agreed with MCC and included in the Program Closure Plan. The format may vary to accommodate the information and reporting procedures already in place at the Accountable Entity. The Procurement Closeout Tracking Tool should be modified and updated as necessary during the last year of the Compact Term, as well as through the end of the Closure Period. The Accountable Entity procurement director is responsible for updating and sharing the Procurement Closeout Tracking Tool with MCC on a regular basis; revisions should be discussed with the Accountable Entity's CEO and relevant members of MCC's country team (including lawyers, sector leads, and finance director).

In the event that a significant amount of Compact Funding will not be expended as originally planned, it may be necessary for the Accountable Entity to adjust its budget to maximize use of Compact Funding (see Section 5.6.2 on re-budgeting). These exercises will need to take into consideration the number of possible procurements; the Accountable Entity develop an action plan



that reviews and assesses the category of the procurement, the number of procurements, the procurement methodology, the estimated duration of the contract and the time left in the Compact Term. In some cases, MCC will need to approve such a plan before these additional procurements are formally considered and added to the procurement plan. MCC may also require the Accountable Entity to list this action plan as part of the Program Closure Plan and to identify, with respect to any such action plan, the related risks, mitigants, deadlines, specific payment and legal contractual terminology, and possible contingency plans. Additional and similar planning exercises will apply when the Accountable Entity has a significant number of open contracts. MCC may also invoke the right to opt in and review any procurement activity regardless of the threshold.

### **5.13.2 Deadline for Procurement Actions for Implementation Activities**

When entering into new contracts or amending existing contracts in the final year of the Compact, particular scrutiny must be applied to ensure that contract implementation timelines are reasonable and executable prior to Compact End Date.

The Accountable Entity must initiate any procurement actions for program implementation at least 30 days before the Compact End Date. All Compact procurements must be awarded and fully executed before the Compact End Date. The Accountable Entity will use its best effort to request any procurement plan amendment 60 days prior to the Compact End Date. Under special circumstances, as determined by MCC, the Accountable Entity may request amendments to the procurement plan up to 45 days prior to Compact End Date. As set forth in the PPG, lack of time to conduct a competitive procurement is not an acceptable justification for sole sourcing or direct contracting.

The Accountable Entity may incur new small commitments after Compact End Date for closure-related activities. These small commitments must be anticipated in the Program Closure Plan and must be directly related to closure. All of these deliverables must be received and completed before the Compact Closure Date. In order to verify that these deliverables have been submitted prior to Compact End Date, MCC may require the Accountable Entity to demonstrate written proof of the actual submission date of any deliverables submitted during the final two weeks of the Compact Term.

It may also be necessary to specify additional actions that need to be taken if the deadline is not met or the deliverable/task is not completed. The Accountable Entity may consider utilizing the following potential contract actions:

#### *5.13.2.1 Negotiation of Contract*

The Accountable Entity may prefer to renegotiate the terms of the original contract. The most common type of negotiation is re-scoping. Re-scoping shall only be done when it can be demonstrated that it is both in the best interest of the Compact and/or the Accountable Entity while

being designed to ensure the most responsible use of MCC Funding. Re-scoping cannot be done for the primary purpose of releasing the consultant/contractor from a liability or avoiding collecting on performance guarantees/liquidated damages, etc. Negotiations shall be based within the current scope of work, the rates, remaining payments, remaining deliverables, etc. noted within the contract. Negotiations shall result in a contract amendment and or a possible amicable settlement. In either case, the Accountable Entity shall include these contracts in the Program Closure Plan and must receive MCC approval before proceeding with the re-scoping of the contract. Since re-scoping a contract may result in not receiving some contracted deliverable(s), this may impact the realization of Project/Compact objectives.

#### *5.13.2.2 Assignment of Contract*

Although contract closure is performed at the expiration date of the contract, tasks and deliverables associated with the contract may not be completed before the Compact End Date (e.g. infrastructure, M&E, and consultant contracts). When this occurs, under exceptional circumstances and by mutual agreement of both parties to the contract and approval of MCC, the Accountable Entity has the authority to assign the contract to a new party to complete. The new contract assignment shall include the following:

- Assignment of all rights and obligations under the contract to the new party;
- Handover of performance guarantees-warranties-insurances and all documentation related to the contract and the deliverables/reports up-to-date;
- A financial summary report that includes all payments made and remaining payments;
- Handover of retention monies;
- Transfer of all responsibilities of the contract, including disputes, claims and/or ongoing arbitration or any other legal implication; and
- Handover of all deliverables.

#### *5.13.2.3 Termination of Contract*

As a last option, the Accountable Entity may need to terminate a contract. If contract termination is required, the Accountable Entity shall make its best efforts to identify this action as early as possible so that it can plan ahead for possible liquidations due to a termination without cause. Under these circumstances, the Accountable Entity shall follow the specific procedures for termination under the contract. Some of the considerations to be taken into account include advance notices, timelines, and applicable clause of termination. The Accountable Entity shall ensure that, during the termination process, it will continue to collect performance guarantees, liquidated damages, and will issue a final payout, if applicable. The Accountable Entity shall make its best efforts to solve any disputes and claims that arise during this period. MCC can invoke third party rights to review and approve any settlement as a result of a dispute. Whenever this is not possible, the dispute/claim shall be turned over to the corresponding new party. Since terminating



a contract may result in not receiving some contracted deliverable(s), this may impact the realization of project/Compact objectives.

### **5.13.3 Procurement Communication**

At least 30 days prior to the Compact End Date, the Accountable Entity should widely publish in the media a final procurement notice. This final procurement notice is a public advertisement of the Compact End Date and should also provide information for stakeholders (contractors, suppliers, consultants, etc.) regarding the deadline to submit deliverables to remain eligible for payment and an Accountable Entity point-of-contact for any inquiries. This general final procurement notice is separate from any direct written communications that the Accountable Entity will issue to contract parties to notify them of specific contractual requirements (e.g., pending deliverables, notices of termination, pending deliverable dates). Additionally, the Accountable Entity may also host closure informational outreach sessions with the general public and relevant stakeholders to inform them of the next steps for Compact closure.

### **5.13.4 Retention and Custody of Procurement Records**

As required by the Compact or related agreements, including this guidance, the Accountable Entity must maintain procurement documentation (including contract amendments and contract assignments) as part of its records. In order to do this in a comprehensive manner, it is recommended that the Accountable Entity develop during Compact implementation a quality assurance ex-post review for all procurement files to be carried out periodically throughout the Compact Term. These files should also include the procurement agent's procurement files. The objective of this review is to ensure compliance with all requirements stated in the PPG and these guidelines for each procurement process. The Accountable Entity, through its procurement agent, will be in charge of creating an inventory of all record files that will include an index/registry of all the procurement files, detailing documents that are included in the record, the location of the record, the number of documents, among other relevant information. This index/registry will serve as a useful resource for the entity that will be responsible for the safekeeping of these documents after the closure of the Compact, especially for future audits that may require the review of procurement records. All procurement files will be saved in either print and/or digital format (scanned), as applicable, and such process should be completed at least 15 days prior to the Compact End Date. The Accountable Entity may want to outsource the digitalization of procurement files if deemed necessary and if funds and time are available.

For guidance on retention of additional Compact-related documents, see **Annex III**.

### **5.13.5 Contractor Past Performance Reporting System Evaluations**

The Accountable Entity must deliver to MCC the Contractor Past Performance Reporting System final evaluations (even in the cases when contracts are reassigned) no later than 60 days after the



Compact End Date. These evaluations shall be carried out according to the paragraph pertaining to Contractor Past Performance Reporting System in the PPG.

#### **5.13.6 Final Procurement Performance Report**

The Final Procurement Performance Report, as described in Section 5.9.6, shall be submitted to MCC through the MCC management information system 10 days prior to the Closure Date and will be reviewed by MCC to ensure it reflects the final status of all contracts completed under the Compact.

#### **5.13.7 Level of Effort and Procurement Staffing Plan**

In order to sufficiently prepare for Compact closure, the Accountable Entity is encouraged to define adequate procurement staffing requirements for closure to properly address procurement-related issues. The staffing requirements typically include at the least the continuation of the procurement director through Closure Date. In cases where there are early departures of procurement staff, the Accountable Entity's procurement director shall ensure that there is an established mechanism that allows a smooth and uninterrupted transition of personnel in a timely and organized manner and ensure compliance with the Program Closure Plan.

During closure and regardless of the operational staffing rearrangements, the Accountable Entity shall maintain the concept of segregation of duties to mitigate any fraud and corruption risks. While overseeing of operational contracts is the responsibility of the Accountable Entity finance director, the Accountable Entity procurement director shall work closely with the finance director to ensure that the Program Closure Plan includes a section on how to close operational contracts (e.g., lease, telephone, and other services and utilities). This section may contain a list of contracts, possible penalties, advance termination notice requirements, deposits, etc. The Accountable Entity procurement director shall continue to work closely with the finance director until all contracts have been closed.

The Accountable Entity may not initiate any new procurement if the funds are not available or have not been reallocated. If the Accountable Entity expects to have funds available toward the end of the Compact Term as part of unused contingencies (e.g., as a result of de scoping/termination of contracts), the Accountable Entity must complete or close existing contracts before making these funds available, and use of the funds is subject to MCC's instructions to the Accountable Entity regarding the deadline for procurement actions for implementation activities.

#### **5.14 Grant Administration and Closure**

Grants, grant facilities, and related programmatic activities often have similarities to contract structures noted in the preceding section. For example, most grants have a finite length of time, a

payment stream, and an underlying grant agreement that regulates the programmatic work or intent and the parties to the grant. Many grants will have employed a structure called the “fixed obligation grant” which was designed to approximate the structure of a contract. In fixed obligation grants the grant amount is typically disbursed in parts against deliverables just as payments in contracts are made against defined deliverables. Typically grants are administered by a grant manager of the Accountable Entity, who is responsible for the formulation, implementation, and closure of the grant programs.

Because of the similarities, it is likely that many of the same rules that apply to closure contracts also apply to grants. For example, the Accountable Entity should not consider making new grants near the end of the Compact Term if funds are not available or have not been reallocated, or if it is not likely that the program can be completed by the end of the Compact. In consideration of closure, the grant manager should perform many of the same duties as a procurement director, such as checking that all deliverable have been received, establishing a tracking tool, checking grant agreements for terms that may need to be changed, ensuring that all Records are in order, and similar things.

In general, the closure methodology should proceed as follows: the first major step is to perform an inventory and develop a tracking tool, much like the one described in Section 5.13.1. The list or tracking tool should capture characteristics and elements such as:

- Number and types of grant agreements;
- Any assets that may need to be returned to the Accountable Entity;
- Whether the grantee is up-to-date on deliverables;
- Whether sustainability of the grant program has been assured, if applicable; and
- Whether the grant can be finalized by a designated date prior to Compact End Date.

Once each grant has been properly terminated, it should be noted in the tracking tool.

For grants that have not been finalized, the Accountable Entity should maintain and update a list of steps to be taken to either complete or cancel the grant by a designated date prior to Compact End Date. The Accountable Entity should notify MCC of any grant that the grant manager proposes to finalize after the designated end date for completing such grants.

After the grant manager has created the inventory, the grant manager should work in consultation with MCC to determine the next steps for closure of the grants and grant programs. The steps are likely to include:

- Following up on record-keeping, including reviewing the completeness of the documentation for each grant and noting the completion of that review for each grant in the tracking tool;

- Consideration of sustainability issues;
- Transferring of authority from the Accountable Entity to another party; and
- Documenting: (a) the post-Compact procedures, if any, for monitoring and reporting on the performance of grantees; (b) the planned disposition of any Program Assets related to the grant activity; and (c) the plan, if applicable, for the sustainability of the activity and/or assets funded by the Compact. The later may include the transfer of assets to a third party.

The closure strategy for grants and grant facilities should be included in the Program Closure Plan as a section.

### **5.15 Application to Suspension and Termination of Assistance under a Compact**

To the greatest extent possible, these guidelines also apply to the closure of a Program or Project in the context of a whole or partial suspension or termination of assistance under a Compact. In the event of a partial termination of assistance, the Accountable Entity will create a complete Program Closure Plan for any Projects or Activities that are terminated. During the partial or full suspension of a Compact, the Accountable Entity will undertake reasonable efforts to ensure that Programs, Activities and Program Assets are properly accounted for, and that any final disposition of all Program Assets is reported to MCC during the period of suspension. In the event of a full termination of assistance, the Accountable Entity and MCC will engage in reasonable efforts to develop a Program Closure Plan in accordance with these guidelines. The Accountable Entity will establish a Program Closure Plan committee that will endeavor to create a Program Closure Plan on an expedited basis. The Program Closure Plan will also incorporate deviations to the closure timeline or any additional items that may be statutorily permitted or required.

## **6 WAIVERS TO THESE GUIDELINES**

Any waiver to these guidelines must be requested by the Accountable Entity with a written justification that identifies the relevant section(s) of the guidelines and documents why the waiver is required. A waiver does not create a permanent change to these guidelines, but, rather, functions as a one-time exception necessary to support the closure of the Program and applies only to the specific Accountable Entity requesting the waiver.

The MCC Resident Country Mission is responsible for determining the magnitude of waiver requests. A waiver requesting minor deviations from the requirements of these guidelines must be approved by the MCC Resident Country Director and requires clearance by relevant technical experts on the country team (e.g. infrastructure, land, agriculture, financial, environmental, M&E, economists, procurement, etc. as applicable), as well as the lawyer(s) assigned to such team. A waiver requesting a significant deviation from these guidelines must be approved by the



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appropriate MCC Deputy Vice President and requires clearance by the Resident Country Director, the relevant technical Practice Lead/Senior Director (PLSD), and the MCC General Counsel.

## **7 EFFECTIVE DATE**

These guidelines were approved on July 14, 2017 and are effective immediately. These guidelines apply to any Accountable Entity that submits a Program Closure Plan after this effective date. With respect to any Accountable Entity that has submitted a Program Closure Plan pursuant to the previous version of these guidelines, but has not yet entered the Closure Period, MCC will notify the Accountable Entity of any changes to the Program Closure Plan that may be required prior to the commencement of the Closure Period.

## Annex I

### OUTLINE OF THE PROGRAM CLOSURE PLAN

#### **Program Administration Closure**

1. **Accountable Entity Status:** Each Program Closure Plan must include a description of the post-Compact treatment of the Accountable Entity.

If the Accountable Entity will be closed upon the Closure Date, the Program Closure Plan must include the following:

- a. Accountable Entity and other key personnel (per section 5.5):
  - A plan for release or termination of staff, including any financial obligations incurred by the Accountable Entity to effect the plan.
  - A plan for which staff will be retained for part or all of the Closure Period, as well as a brief justification of why the selected staff are required for closure tasks. Include any special arrangements to retain key staff during the Closure Period.
- b. Administrative Program Assets: A brief description of the intended disposition of Program Assets used by the Accountable Entity for the administration of the Program by category. This section should include the proposed timeline for asset disposition, to ensure adequate documentation of the process and timely disposition of assets. The description should include use of any third party agents or Government entities to assist in the disposition of assets.
- c. Website: This section should describe how the Accountable Entity will ensure that the website will be publicly available for one year after the Compact End Date.
- d. Treatment of Sensitive Information: A brief description of how the Accountable Entity will ensure that reasonable steps to safeguard or remove sensitive data and information are taken for all relevant Program Assets prior to transfer, as specifically described in these Guidelines.

If the Accountable Entity will continue operations beyond the Closure Date through sources of funding other than MCC Funding (per section 5.5.1), the Program Closure Plan must include a description of the funding and proposed operations, as well as documentation supporting commitment of such other sources' funding. The Program

Closure Plan should also include any plans to use the Accountable Entity name and logo beyond the closure date.

2. Project Closure: For each Project, the Program Closure Plan must include the following components:
  - a. A brief description of the closure strategy for the Project. If applicable, the Program Closure Plan for the Project should include detail at the Activity or sub-activity level.
  - b. Identification of completion risks and sustainability risks for the Project/Activity, including how the Accountable Entity plans to address these risks, and contingency plans for how to respond if these risks materialize. An example of a completion risk to include: if construction of small works does not begin by a certain date, the works will be terminated and appropriate stakeholders will be informed, or sources of funding other than MCC Funding have been mobilized to support any construction beyond the closure date, should the schedule experience any delays. Sustainability and completion risks should be treated in detail, including a plan for how to monitor these risks during the last year of the Compact and the Closure Period.
  - c. Any environmental, social (including resettlement), health, safety or gender risks and how these will be managed during the last year of the Compact and the Closure Period.
  - d. Plans to manage contingency amounts for the Project/Activity through the last year of the Compact and the Closure Period (when contingency funds will be released, how those funds will be utilized, etc.).
  - e. A brief description of the intended disposition of all forms of applicable Program Assets by Activity and asset category (e.g. equipment, vehicles, furniture). This section should include the proposed timeline for disposition of assets, to ensure adequate documentation of the process and timely disposition of assets. Disposition of Financial Assets as described in section 5.4.3.2 and Guarantees and Retention Monies Securing Contractor Obligations as described in section 5.4.3.4 are particularly complex issues and should be treated in detail in the Program Closure Plan.
  - f. An inventory, description, and timeline for the closure and/or assignment of each contract, grant, and Implementing Entity Agreement related to the Project.
3. Financial Management:
  - a. Closure Budget. The Program Closure Plan should include a budget for the Closure Period, with a description of how the issues described in section 5.6 have been addressed, including any anticipated reallocation of funds.

- b. New commitments. This section should include a description of any commitments anticipated during the Closure Period, as well as plans for a contingency amount to cover unexpected Closure Expenses (if applicable).
  - c. Taxes. This section should indicate how any outstanding (not yet reimbursed) tax amounts will be reimbursed by no later than 60 days after the Compact End Date (per section 5.9.8).
  - d. Financial Assets. This section should indicate how any Financial Assets remaining in the possession of the Accountable Entity and any Imprest Funds not expended before the Compact End Date, plus accrued interest, will be transferred to MCC or its designee prior to the deadline established to close all Accountable Entity permitted accounts (per section 5.4.1).
4. Monitoring and Evaluation:
- a. This section should provide a brief overview of the closure strategy for M&E disaggregated by Project and Activity as structured in the M&E plan. The closure strategy should: a) highlight any data collection activities, such as surveys, impact evaluations, and special studies that are at risk of not being completed by the Compact End Date; and b) include a description of all M&E activities that are planned to be conducted after the Compact End Date as agreed by MCC.
  - b. This section should describe the data and documentation to be provided as electronic copies to MCC, including: (a) all MCC-funded survey data sets and supporting materials, such as questionnaires, enumerator field guides, data entry manuals, data dictionaries, meta data and final reports; and (b) other analyses, evaluations, data quality reviews and/or special studies that were funded out of the M&E budget within the Compact.
  - c. If the individual serving in an M&E capacity will continue operations beyond the Closure Date through funding provided either by the Government or other sources, the Program Closure Plan should include a description and supporting documentation of the commitment from those funding sources.
5. Marking and Communications with Stakeholders: The Program Closure Plan should include a brief description of how the results of the Program will be communicated to stakeholders, including the board of the Accountable Entity, the Implementing Entities, the Accountable Entity personnel, Project stakeholder groups, contractors, and the public. This section should also address how the Accountable Entity will ensure compliance with the *Standards for Global Marking* as described in section 5.11.

6. Legal Requirements: This section should describe any modifications to legal agreements that may be required to effectively execute the Program Closure Plan, following the review described in section 5.8.2.
7. Ongoing Government Responsibilities: This section should identify the Principal Representative for the Government, if this will change during the Closure Period, and any Additional Representatives that will be the primary points of contact for any obligations of the Government that extend beyond the Compact End Date.
8. Reports and Auditing: This section should include a plan to produce the Compact Completion Report (for example, whether the Accountable Entity intends to hire a consultant to facilitate the process).
9. Retention and Safekeeping of Records:
  - a. This section should describe how the Accountable Entity will ensure that relevant records are provided to MCC, as necessary, prior to the Closure Date, and remain accessible beyond the Closure Date as required.
  - b. This section should include an indicative list of the types of records, as well as a description of the process and timeline for finalizing these lists.

#### Annexes:

There may be many annexes associated with the Closure Plan. Examples include:

Legal Opinion: a draft opinion from legal counsel engaged by either the Accountable Entity or the Government confirming that the Program Closure Plan is in accordance with the provisions of the Compact and supplemental agreements and complies with applicable laws and regulations of the country.

Procurement/Contracts List and Procurement Tracking Tool: a comprehensive list of contracts and their characteristics used to close contracts and evaluate action steps to be taken.

Pro-forma Closure Budget: a budget specifically formulated to cover necessary closure expenses; it does not contain programmatic activities.

Sample forms, e.g. Asset Transfer Agreement forms: various forms which will be needed during closure activities.

## Annex II

### GUIDANCE ON CERTAIN COMPENSATION ARRANGEMENTS

The goal of special compensation or other arrangements proposed to retain staff through the Compact End Date (referred to herein as “retention incentive payments”) is to ensure that certain Accountable Entity staff members whose jobs are deemed critical to the smooth administrative closing of the Compact remain with the Accountable Entity as long as needed. Such payments represent an *incentive* to remain at the Accountable Entity until a date that is determined through developing the Program Closure Plan for each accountable entity. Retention incentive payments are not entitlements, and should not be used for the purpose of rewarding loyalty, acknowledging years of service or seniority, or for any similar purpose, and they are not to be termed bonuses, gratuities, awards, or similar terms.

1. **Staffing Needs Assessment** – As part of the Program Closure Plan, each Accountable Entity must perform an assessment of the staffing needed to successfully and responsibly close the Program. This assessment must be based on project work plans and the timing of closure tasks. The final assessment must be realistic and be intended to identify only those staff who *must* be retained until the Compact End Date or through some or all of the Closure Period to ensure a successful Compact closure, and who must be incentivized to remain because of the real costs and benefits to the program of replacing them and/or training replacement staff. This assessment must also identify the date through which the service of each employee is required (e.g. – Compact End Date, Compact End Date + 30 days, Closure Date, etc.).
2. **Individual Eligibility for a Retention Incentive Payment** – The following limitations apply to the eligibility of staff to receive retention incentive payments:
  - a. Accountable Entity staff who are not identified as critical for Compact closure through the staffing needs assessment and approved by MCC in the Program Closure Plan are not eligible.
  - b. Accountable Entity staff who depart (either voluntarily or are removed from their position) from the Accountable Entity prior to the date identified as critical for them to remain are not eligible for any part of the planned retention incentive payment.
3. **Justification of Retention Incentive Payments** – Each Accountable Entity shall assess what is normal and reasonable to successfully retain critical staff identified in the staffing needs assessment. The justification for the retention calculation should consider:

- a. Benchmarking with comparable organizations in competitive labor markets, specifically considering whether and to what extent additional compensation is necessary to retain staff.
  - b. Stage of the Closure Period that services are no longer required (if a greater incentive may be needed to retain staff during the Closure Period than simply to Compact End Date).
  - c. The real costs involved in the hiring and re-training of replacement staff late in the Compact Term and/or during the Closure Period critical staff leave early.
4. **Amount and Overall Reasonableness of Retention Incentive Payments** – Notwithstanding the factors included in Guideline 3, all incentive payments must be assessed for overall reasonableness as required by the *MCC Cost Principles for Accountable Entity Operations*. As such, no individual retention incentive payment may exceed:
- a. For any staff member required for the entire Closure Period, a maximum of four (4) months of the employee’s basic monthly salary.<sup>3</sup>
  - b. For any staff member required through the Compact End Date, a maximum of three (3) months of the employee’s basic monthly salary.
  - c. For staff required for only a portion of the Closure Period, a maximum between three (3) and four (4) months of the employee’s basic monthly salary, determined by a pro-rated percentage of the Closure Period that their service is required.
5. **Timing of Retention Incentive Payments** – To emphasize the nature of retention incentive payments and maximize their impact, the entire amount will be paid to each employee in one lump sum only after the employee has completed the term of service approved as part of the Program Closure Plan.
6. **Overlap with Other Forms of Compensation** – These guidelines are not applicable to the calculation of other forms of compensation, including severance payments mandated by local law, merit awards, or merit salary increases. Moreover, changes in the merit award/increase structure intended to supplement or circumvent the maximum allowable limits on retention incentive payments are not allowed. Likewise, payments for severance should only be allowed when mandated by local labor laws.

### Annex III

## OUTLINE OF RECORDS RETENTION

The purpose of this annex is to elaborate on section 5.10 regarding Government’s responsibility to store and safely maintain important Records for a period of five years after the Compact End Date. This annex provides an indicative list of the types of materials that should be maintained. The Accountable Entity’s Program Closure Plan must include a specific list of Records and the related storage arrangements for each.

Records Category	Document Type
Accountable Entity Management and Administration	Board materials and minutes
	Governing Documents – legislation, relevant statutes, regulatory notes, etc.
	General correspondence (including all email of all Accountable Entity staff– see below)
	Legal documents- court filings, correspondence related to contractor disputes, etc.
	Conventions and agreements (IEAs, MOUs)
	Audit reports and responses
	Vehicle logs
	Physical inventory reports
Human Resources	Staff employment contracts
	Performance management system
	Human resources manual

	Training materials
	Travel orders and trip reports
Financial Management	Financial records
	Fiscal agent records
	Payment invoices
	Interim payment certificates
	Worksheets associated with calculation of advances, retentions, etc.
	Bank statements
	Fiscal agent periodic reports
	Ledgers
	Backup of accounting software
	Fixed assets registers
	Guarantees of all types (advance, performance, retention)
	Asset Transfer Agreement forms
	Transfer agreements
	Titles (e.g. vehicles)
Tax exemption/refund documentation	
Procurement	Procurement agent files
	Procurement plans and general procurement notices

	Documents related to bid challenges and resolutions
	Bid challenge system
	Contracts and contract-related documents (amendments and modifications, cure and notification letters)
	Contract closeout forms
	Notifications to vendors
Project Management	Contractor deliverables (studies, site reports, design documents, completion certificates and defects lists, etc.)
	Work plans
	Resettlement compensation documentation
	Environmental audit reports
	Grant agreements
	Grant manuals / operations manuals
Monitoring and Evaluation	Surveys and data
	Studies
	Indicator data
Communications	Communications materials (brochures, videos, etc.)
	Workshop materials
	Stakeholder committee meeting minutes
	Documents related to media and public outreach



	Website snapshot
	Intellectual property
	Copyrights and patents
	Photos

Accountable Entities should also establish an indexing system for the records in sufficient detail that any given record could be located quickly from its storage area. Electronic records of any type (e.g., email correspondence) must also be stored or archived in a commonly used searchable format. More details on email retention are below.

**Email Retention Guidance**

Email Retention	<p>Each Accountable Entity should archive all emails during the life-cycle of the Compact, and for a period of five years after the Compact End Date.</p> <p>All archived emails should be protected by encryption and password.</p>
Access Control	<p>Restrictions to access emails should include a unique identification element (user name) and a unique authentication element (password).</p> <p>Accounts holders should maintain their authentication element confidential and protected from unauthorized access.</p> <p>Electronic authentication elements should be encrypted using AES 256 encryption algorithm.</p>
Encryption	<p>All emails retained in a removable storage device; for example, a USB flash drive or removable hard drive, must be encrypted using an encryption algorithm of AES 256, or stronger.</p>

	Electronically stored passwords should be encrypted at rest with an encryption algorithm of AES 256, or stronger.
Passwords	All passwords should be at least twelve characters and should utilize upper case, lower case characters, numbers, and special characters. Passwords should never be dictionary words in any language.
Email Archiving Procedures and Annual Testing	The Accountable Entity should devise written archiving instructions.  Archiving and retrieval should be tested annually.  Testing should include all operational requirements to retrieve emails.
System Logging and Auditing	All email access should be logged and audited. Logs should indicate the user accessing the email; the date and time of access; and the actions the user took (e.g., read, write, or delete).  Audit logs should be protected from alteration.
Separation of Duties	The Accountable Entity should separate duties of personnel that have the ability to make changes to the information technology system and personnel that oversee their security and auditing functions to reduce the risk of unauthorized system or data changes/alteration.