Section VIII. Contract Forms and Annexes

**Table of Contents**

[1. Form of Letter of Acceptance 2](#_Toc183863931)

[2. Form of Contract Agreement 3](#_Toc183863932)

[3. Annex A: Additional Provisions 5](#_Toc183863933)

[4. Annex B: Appendix to Offer 6](#_Toc183863934)

[5. Annex C: Compliance with Sanctions Certification Form 7](#_Toc183863935)

[6. Annex D: PS-2 Self-Certification Form 14](#_Toc183863936)

[7. Annex E: Code of Business Ethics and Conduct Certification Form 16](#_Toc183863937)

[8. Annex F1: Form of Performance Bank Guarantee 23](#_Toc183863938)

[9. Annex F2: Form of Bank Guarantee for Advance Payment 25](#_Toc183863939)

[10. Annex F3: Form of Retention Money Guarantee 26](#_Toc183863940)

1. Form of Letter of Acceptance

**[letterhead paper of the Employer]**

[date]

To: **[insert name and address of the Contractor]**

This is to notify you that your Offer dated **[date]** for execution of the **[insert name of the Contract and identification number, as given in the Bidding Document]** for the Accepted Contract Amount of the equivalent of **[insert amount in numbers and words] [insert name of currency],** as corrected and modified in accordance with the Instructions to Offerors, is hereby accepted by us in our capacity as Employer under the Contract.

Within twenty-eight (28) days of your receipt of this Letter of Acceptance and the attached Contract Agreement you are hereby instructed to:

1. sign and return the attached Contract Agreement;
2. complete and return the Compliance with Sanctions Certification Form included in Section VIII. Contract Forms and Annexes;
3. complete and return the PS-2 Self-Certification Form for Contractors; and
4. forward the Performance Security in accordance with the General Conditions of Contract, using for that purpose the Form of Performance Bank Guarantee included in Section VIII. Contract Forms and Annexes, or another form acceptable to us.

Authorized Signature:

Name and Title of Signatory:

[insert proper name of the Employer]

Attachment: Contract Agreement

1. Form of Contract Agreement

**CONTRACT AGREEMENT**

THIS CONTRACT AGREEMENT made the day of 20

between of

(hereinafter called “the Employer”) of the one part and

of (hereinafter called “the Contractor”) of the other part.

WHEREAS, the Millennium Challenge Corporation and the Government of **[insert Country]** have entered into a Millennium Challenge Compact for assistance to help facilitate poverty reduction through economic growth in **[insert Country]** in the amount of approximately **[insert Amount]** USD (“MCC Funding”).

WHEREAS, the Government, acting through the Employer, intends to apply a portion of the proceeds of MCC Funding to eligible payments under the Contract.

WHEREAS, the terms of the Contract, including payments by the Employer and restrictions on the use of MCC Funding, will be subject, in all respects, to the terms and conditions of the Compact and related documents.

WHEREAS, no party other than the Government, the Employer, and MCC shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

WHEREAS, the Employer is desirous that certain Works should be executed by the Contractor, viz., , and has accepted an Offer by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS CONTRACT AGREEMENT WITNESSETH as follows:

1. In this Contract Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract.

2. The documents identified in the General Conditions of Contract and the Particular Conditions of Contract shall be deemed to form and be read and construed together as part of the Contract and the priority of such documents shall be as provided in such clauses.

3. In consideration of the payments to be made by the Employer to the Contractor as provided in the Contract, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof, the parties hereto have caused this Contract Agreement to be executed the day and year first before written.

The Common Seal of was hereunto affixed in the presence of:

or

Signed, sealed, and delivered by the said

In the presence of:

Binding Signature of Employer

Binding Signature of Contractor

1. Annex A: Additional Provisions

*[The additional provisions of contract can be found on the MCC website:* [*https://www.mcc.gov/resources/doc/annex-of-general-provisions*](https://www.mcc.gov/resources/doc/annex-of-general-provisions)

*NB: These provisions must be printed out and attached to the Contract prior to signature]*

1. Annex B: Appendix to Offer[[1]](#footnote-2)

*[The Particular Conditions of Contract, including Annex A and this Annex B, shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in these Particular Conditions of Contract, including Annex A and this Annex B, shall prevail over the General Conditions of Contract.]*

1. Annex C: Compliance with Sanctions Certification Form

*[In satisfaction of Clause G of the Additional Provisions at Annex A of the Contract, this form is to be completed by the Offeror upon submission of the Offer and, if selected, by the Contractor initially, within 28 days of receipt of Letter of Acceptance and Contract Agreement, and subsequently thereafter on the last business day prior to the last day of each quarter (March 31, June 30, September 30, December 31) after the signature of an MCC-Funded Contract[[2]](#footnote-3), for the duration of the Contract.*

*The form is to be submitted to the Accountable Entity's Procurement Agent at the time of Offer submission, and to the Fiscal Agent thereafter [email addresses for Procurement and Fiscal Agents to be inserted here] with a copy to MCC at* [*sanctionscompliance@mcc.gov*](mailto:sanctionscompliance@mcc.gov)*.*

*For the avoidance of doubt, reporting the provision of material support or resources (as defined below) to an individual or entity on the enumerated lists will not necessarily result in the disqualification of an Offeror or cancellation of the Contract. However,* ***failure*** *to report such provision, or any similar material misrepresentation, whether intentional or without due diligence, would be grounds for disqualifying the Offeror or canceling the Contract, and may subject such Offeror or Contractor to criminal, civil, or administrative remedies as appropriate under U.S. law.]*

**Instructions for completing this form are provided below.**

**Full Legal Name of Offeror/Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Accountable Entity with which Contract Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |
| --- |
| ALL OFFERORS/CONTRACTORS TO CHECK THE APPLICABLE BOX BELOW:   * All eligibility verifications have been completed in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”,** and the Offeror/Contractor hereby certifies as follows:   + No adverse or negative results were obtained from such eligibility verifications; and   + To the best of its current knowledge, the Offeror/Contractor has not provided, at any time within the previous ten years or currently, any material support or resources (including without limitation, any MCC Funding[[3]](#footnote-4)), directly or indirectly to, or knowingly permitted any funding (including without limitation any MCC Funding) to be transferred to, any individual, corporation or other entity that the Offeror or Contractor knew, or had reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities on the enumerated lists described below (including the Offeror or Contractor itself).   **OR**   * All eligibility verifications have been completed in accordance with  **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** and the Offeror/Contractor hereby certifies that the following adverse or negative results were obtained from such eligibility verification (information to be provided for each result in accordance with the instructions included with this form): * Name of individual, corporation or other entity: * Eligibility verification source(s) where listed ineligible: * Position (if individual), or goods or services provided (if corporation or other entity): * Estimated value of work performed as of certification date: * A description of, and the circumstances under which such support was provided: |

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed to be “fraud” for purposes of the ITO or Contract, the *MCC Procurement Policy and Guidelines*, and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**INSTRUCTIONS FOR COMPLETING THE COMPLIANCE WITH SANCTIONS CERTIFICATION FORM:**

The Offeror/Contractor shall perform the following procedures to verify the eligibility of firms, key personnel, subcontractors, vendors, suppliers, and grantees, in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** which is copied below for convenience.

Based on the results of these eligibility verifications, the Offeror/Contractor shall provide the applicable certification in the attached certification form. Note that for the purposes of this certification, Offerors/Contractors are only required to submit detailed back-up documentation about the eligibility verifications together with their certification form if the Offeror/Contractor identifies adverse or negative results. If not, Offerors/Contractors are free to mark the certification form accordingly and submit it to the appropriate recipient (although the Offeror/Contractor must maintain records per the instructions below).

The Offeror/Contractor shall verify that any individual, corporation, or other entity that has access to or is (or would be) a recipient of MCC Funding, including Offeror/Contractor staff, consultants, Subcontractors, vendors, suppliers, and grantees, is not listed on any of the following (or, in the case of #8 below, is not a national of, or associated in, any country appearing on such list):

1. System for Award Management (SAM) Excluded Parties List - <https://sam.gov/content/entity-information/>
2. World Bank Debarred List - <https://www.worldbank.org/debarr>
3. US Treasury, Office of Foreign Assets Control, Specially Designated Nationals (SDN) List - <https://sanctionssearch.ofac.treas.gov/>
4. US Department of Commerce, Bureau of Industry and Security, Denied Persons List - <https://www.bis.doc.gov/index.php/the-denied-persons-list>
5. US State Department, Directorate of Defense Trade Controls, AECA Debarred List - <https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=c22d1833dbb8d300d0a370131f9619f0>
6. US State Department, Foreign Terrorist Organizations (FTO) List - <https://www.state.gov/foreign-terrorist-organizations/>
7. US State Department, Executive Order 13224 - <https://www.state.gov/executive-order-13224/>
8. US State Sponsors of Terrorism List - <https://www.state.gov/state-sponsors-of-terrorism/>

In addition to these lists, before providing any material support or resources to an individual or entity, the Offeror/Contractor will also consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

Documentation of the process takes two forms. The Offeror/Contractor should prepare a table listing each staff member, consultant, subcontractor, vendor, supplier, and grantee working on the contract, such as the form provided below.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Date Checked | | | | | | | |  |
| Name | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | Eligible (Y/N) |
| SAM Excluded Parties List | World Bank Debarred List | SDN List | Denied Persons List | AECA Debarred List | FTO List | Executive Order 13224 | US State Sponsors of Terrorism List |
| Offeror/Supplier (the firm itself) |  |  |  |  |  |  |  |  |  |
| Staff Member #1 |  |  |  |  |  |  |  |  |  |
| Staff Member #2 |  |  |  |  |  |  |  |  |  |
| Consultant #1 |  |  |  |  |  |  |  |  |  |
| Consultant #2 |  |  |  |  |  |  |  |  |  |
| Sub-Contractor #1 |  |  |  |  |  |  |  |  |  |
| Sub-Contractor #2 |  |  |  |  |  |  |  |  |  |
| Vendor #1 |  |  |  |  |  |  |  |  |  |
| Supplier #1 |  |  |  |  |  |  |  |  |  |
| Grantee #1 |  |  |  |  |  |  |  |  |  |

The Offeror/Contractor should list the date on which the search was conducted using each eligibility verification source, and whether the staff member, consultant, subcontractor, vendor, supplier, or grantee was determined to be eligible – that is, did not show up on any of the eligibility verification sources.

In addition, 1. SAM Excluded Parties List, 3. SDN List, and 5. AECA Debarred List are searchable databases that return a positive or negative search results page upon submission of a name to be searched, in order to document the eligibility, the Offeror/Contractor should print out and retain for each staff member, consultant, subcontractor, vendor, supplier, or grantee the search results page for each eligibility verification source, which should read, *“Has Active Exclusion? No”* or *“No records found.”* (in the case of SAM Excluded Parties List), *“Your search has not returned any results.”* (in the case of SDN List), or *“No records in Statutorily Debarred Parties using that filter”* or *“No records in Admin Debarred Parties using that filter”* (in the case of AECA Debarred List). In the case of 2. World Bank Debarred List, Table 1: Debarred & Cross-Debarred Firms & Individuals will display a blank field that indicates no matching records have been found. For 4. Denied Persons List, 6. FTO List, and 7 Executive Order 13224, there is no searchable database provided so the Consultant will review each static list and confirm it does not name the firms or individuals identified in the table above.

If an adverse record(s) has/have been found for one or more individuals or entities, including for the Offeror/Contractor itself, the Offeror/Contractor must conduct additional research to determine whether the finding is a “false positive” (such as an individual whose name matches the name of an individual listed on a sanctions list, but is a different person). If it is a false positive, the Offeror/Contractor will mark the staff member, consultant, subcontractor, vendor, supplier, or grantee as eligible, and retain the research confirming that eligibility.

If any of the Offeror’s/Contractor’s personnel, consultants, subcontractors, vendors, suppliers, or grantees are found to be ineligible at this stage, the Accountable Entity will determine whether it is possible under the circumstances to allow the Offeror/Contractor to make a substitution. This determination will be made on a case by case basis and will require approval by MCC regardless of the estimated value of the proposed contract.

In addition, in accordance with *MCC Procurement Policy and Guidelines*, the Offeror/Contractor must ensure that MCC Funding is not used for goods or services from a country, or from a firm that is organized in or has its principal place of business or a significant portion of its operations in a country, that is subject to country-based sanctions or other restrictions under the law of the United States, including U.S. designated State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>).

All of these documents must be retained by the Offeror/Contractor as part of the overall record of the Contract for the duration of the Contract, and for the further period after the contract expiration that is required for document retention under the Contract (typically five years after the expiration date of the Compact Program or Threshold Program). Access to these documents must be provided to the Accountable Entity, MCC, or their designees in accordance with the access provisions of the Contract, And to the USAID Office of Inspector General (responsible for oversight of MCC operations), upon request.

**Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”**

1. The Contract Party, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide material support or resources (as defined below) directly or indirectly to, or knowingly permit any funding (including without limitation MCC Funding) to be transferred to, any individual, corporation or other entity that such Party knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac), (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on [www.sam.gov](http://www.sam.gov), or (iv) on such other list as the Accountable Entity may request from time to time.

For purposes of this provision:

1. “Material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
2. “Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.
3. “Expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge
4. The Contract Party shall ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under the Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the Accountable Entity, the Fiscal Agent, or the Bank, as may be applicable. The Contract Party shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the MCC Procurement Policy and Guidelines that can be found on MCC’s website at www.mcc.gov. The Contract Party shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the Accountable Entity or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the Accountable Entity with a copy to MCC.
5. Other restrictions on the Contract Party shall apply as set forth in Section 5.4(b) of the Compact with respect to drug trafficking, terrorism, sex trafficking, prostitution, fraud, felony, any misconduct injurious to MCC or the Accountable Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement or that materially and adversely affects the Program Assets or any Permitted Account.
6. Annex D: PS-2 Self-Certification Form

*[The below self-certification form should be signed by the Contractor as part of the Contract. This self-certification declares that the Contractor will only procure goods and materials essential for the Contract (as set out in the Bill of Quantity), from suppliers that are free of forced and child labor and provide their direct workers with a safe and hygienic workplace.]*

\*\*\*

As stipulated in the Contract, the Contractor must comply with the International Finance Corporation’s *Performance Standards on Environmental and Social Sustainability* regarding labor standards and protections. In turn, the Contractor must ensure that its Primary Suppliers, i.e., any person or legal entity who provides goods or materials essential for the Contract, do not use forced and child labor in the production of such goods and materials, and provide their direct workers with a safe and hygienic workplace.

In acknowledgement of my understanding, I certify that with respect to this Contract:

* + I understand the requirements in the Contract with the Employer.
  + **[Name of Contractor]** will ensure that all operations undertaken are done in accordance with the IFC Performance Standards, as described in the Contract.
  + **[Name of Contractor]** does not and will not use forced or child labor, and provides workers with a safe and hygienic workplace.
  + **[Name of Contractor]** does not and will not procure material or goods from suppliers that employ forced or child labor.
  + **[Name of Contractor]** will only procure material or goods from suppliers that provide a safe and hygienic working place for all laborers.
  + **[Name of Contractor]** is committed to equal opportunity and non-discrimination in workplace practices, and to a respectful workplace that is free from trafficking in persons, sexual-harassment, and sexual exploitation and abuse.
  + **[Name of Contractor]** has a system in place to monitor our suppliers, identify any new and emerging risks. This system also allows **[Name of Contractor]** to effectively remedy any risks.
  + Where remedy is not possible for any new risks or incidents, **[Name of Contractor]** commits to severing ties with these suppliers.

Record any exceptions to the above here:

|  |
| --- |
|  |

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed “fraud” for purposes of the Contract.

I confirm that I duly represent **[Name of Contractor]** and have the legal authority to sign.

Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Signatory:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Annex E: Code of Business Ethics and Conduct Certification Form

*[This form is to be completed by the Contractor and submitted for any MCC-Funded Contract with a value in excess of $500,000. This form is to be completed by the Contractor and submitted together with the signed Contract Agreement.*

*If the original certification, submitted along with the signed Contract Agreement, is that the Contractor “has adopted and implemented,” then further submissions will not be required, except as applicable for subcontracts. If the original certification is that the Contractor “will adopt and implement,” then a subsequent submission will be required when the Contractor “has adopted and implemented.”*

*The form is to be submitted to the Accountable Entity's Procurement Agent* ***[email address for Procurement Agent to be inserted here],*** *together with a copy of the Contractor’s code of business ethics and conduct.*

*If the Contractor is a joint venture or association, each Member of the joint venture or association must complete and submit this form, together with their respective code of business ethics and conduct.]*

**Code of Business Ethics and Conduct Certification Form**

**Full Legal Name of Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Legal Name of the Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

As stipulated in the Contract, the Contractor must certify to the Employer/ Accountable Entity that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. The Contractor must also include the substance of this clause in subcontracts that have a value in excess of $500,000.

In satisfaction of this requirement, I certify that with respect to this contract:

* + **[Name of Contractor]** has adopted and implemented a code of business ethics and conduct, a copy of which is hereby submitted together with this certification form.

OR

* + **[Name of Contractor]** will adopt and implement a code of business ethics and conduct within ninety (90) days after the date of Contract signature. **[Name of Contractor]** will resubmit this certification, together with a copy of the Contractor’s code of business ethics and conduct, when such code has been adopted and implemented.
  + **[Name of Contractor]** will include the substance of this requirement in all subcontracts having a value in excess of $500,000 and will forward all resulting certifications to [Name of Employer/ Accountable Entity].

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed “fraud” for purposes of the Contract between the Contractor and the Employer, the *MCC Procurement Policy and Guidelines*, and other applicable MCC policy or guidance, including *MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Annex F: Beneficial Ownership Disclosure Form (BODF)

*DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM*

*This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the Contractor whenever there is a change in beneficial ownership or whenever requested by the Employer. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Contractor is any natural person who ultimately owns or controls the Contractor by meeting one or more of the following conditions:*

* *directly or indirectly holding 10% or more of the shares*
* *directly or indirectly holding 10% or more of the voting rights*
* *directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Contractor*

*An individual directly holds 10 percent or more of the shares of the Contractor if the shares are registered in his or her name or, in the case of bearer shares, if the shares are in his or her possession. An individual owns 10 percent or more of the shares of the Contractor indirectly if the shares are held through a trust or through another corporation. Therefore the Contractor must know the identities of the natural persons who directly or indirectly hold the shares of any corporate entity or trust that owns part or all of the Contractor, and disclose the identity of any natural person who cumulatively directly or indirectly holds 10 percent or more of the shares of the Contractor. The same rules apply in determining whether an individual has 10 percent or more of the voting rights of the Contractor or the right to appoint a majority of the board of directors or equivalent governing body.*

*An example of indirectly holding 10 percent of the Contractor's shares: Mr. and Mrs. X each hold 50 percent of Company A. Company A in turn owns 20 percent of the Contractor. Mr. and Mrs. X each beneficially own 10 percent of the Contractor, and the names of each must be reported on the form.*

**Contract Ref. No.:** [*insert Contract reference number*]

To: **[*insert complete name of Accountable Entity*]**

*[select one option as applicable and delete the options that are not applicable]*

(i) we hereby provide the following beneficial ownership information.

Details of beneficial ownership

|  |  |  |  |
| --- | --- | --- | --- |
| Identity of Beneficial Owner | Directly or indirectly holding 10% or more of the shares  (Yes / No) | Directly or indirectly holding 10 % or more of the Voting Rights  (Yes / No) | Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Contractor  (Yes / No) |
| *[include full name (last, middle, first), citizenship(s), current home and business address, email address]* |  |  |  |

***OR***

*(ii) we declare that there is no individual meeting one or more of the following conditions:*

* + directly or indirectly holding 10% or more of the shares
  + directly or indirectly holding 10% or more of the voting rights
  + directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Contractor

OR

1. *we declare that we are unable to identify any individual meeting one or more of the following conditions. [If this option is selected, the Contractor shall provide explanation on why it is unable to identify any Beneficial Owner]*
   * directly or indirectly holding 10% or more of the shares
   * directly or indirectly holding 10% or more of the voting rights
   * directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Contractor

OR

(iv) we declare that we are a publicly held company listed on the New York, American, NASDAQ, London, Tokyo, or Euronext Stock Exchanges, with the following ticker symbol: [Insert ticket symbol].

**In addition, we attach a graphic depicting the corporate ownership structure, including ownership percentages, if any entities or legal arrangements – such as companies, trusts, foundations, etc. – exist between the Contractor and the Beneficial Owners in the corporate ownership structure.**

We acknowledge that the Accountable Entity may use this information to review if any Beneficial Owners are sanctioned by the United States Government or by the International Financial Institutions[[4]](#footnote-5), and to review if any Beneficial Owners present a conflict of interest as described in MCC’s Procurement Policy and Guidelines. We acknowledge that failure to provide this form, or providing false information on this form, can be grounds for terminating the Contract. We also acknowledge that we will be required to provide the Accountable Entity with a new BODF upon any changes regarding beneficial ownership during the life of the Contract. We acknowledge that the Accountable Entity will reserve the right to request an updated BODF, or documentation to provide proof of beneficial ownership, at any time during the life of the Contract. We also acknowledge that the Accountable Entity will reserve the right to terminate the Contract if the Accountable Entity decides that a Beneficial Owner is unacceptable due to sanctions or an unmitigable conflict of interest.

Data Privacy Protection Waiver: The information and documents provided will be used by the Accountable Entity, the Procurement Agent for the Accountable Entity, and MCC for the reasons described above. The information and documents may be shared with the Office of Inspector General (OIG) for the U.S. Agency for International Development (USAID), which serves as the OIG for MCC, or with other law enforcement agencies if requested through appropriate protocols. The Contractor consents to the collection, storage, access, use, processing, and transfer of this data by and among these entities, and voluntarily waives any provision of any local, national, or supranational law, such as, without limitation, the European Union’s General Data Protection Regulation (GDPR) and national laws enacted in response thereto, or laws of similar effect in other jurisdictions, which would prohibit or otherwise regulate such access, processing, and transfer.

**Name of the Contractor**: \*[*insert complete name of the Contractor*]

**Name of the person duly authorized to sign on behalf of the Contractor**: \*\*[*insert complete name of person duly authorized to sign*]

**Title of the person signing**: [*insert complete title of the person signing*]

**Signature of the person named above**: [*insert signature of person whose name and capacity are shown above*]

**Date signed** [*insert date of signing*] **day of** [*insert month*], [*insert year*]

\* In the event that the Contractor is a joint venture, each reference to “Contractor” in the Beneficial Ownership Disclosure Form shall be read to refer to the joint venture member.

\*\* The power of attorney shall be attached.

**Annex G: Securities**

**Forms of** **Performance Security,**

**Advance Payment Guarantee**

**and Retention Money Guarantee**

*[Samples of acceptable forms of the Performance Security, the advance payment guarantee and the retention money guarantee follow. Offerors should not complete these forms at this time. Only the successful Offeror will be required to provide a Performance Security and a bank guarantee for advance payment in accordance with the samples, or in similar forms acceptable to the Employer.]*

1. Annex F1: Form of Performance Bank Guarantee

**[Bank’s Name, and Address of Issuing Branch or Office]**

**Beneficiary: [Name and Address of Employer]**

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

**PERFORMANCE GUARANTEE No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

We have been informed that **[name of Contractor]** (hereinafter called "the Contractor") has entered into Contract No. **[insert reference number of the contract]**dated **[insert date]** with you, for the execution of **[name of contract and brief description of Works]** (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we **[name of Bank]** hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **[amount in figures][amount in words],** such sum being payable in the currency in which the Contract Price is payable, upon receipt by us of your first demand in writing, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-one (21) days following the date of issuance of the Performance Certificate in accordance with the terms of the Contract, calculated based on a copy of such Performance Certificate which shall be provided to us; or on the \_\_\_ day of \_\_\_\_\_\_, 2\_\_\_, whichever occurs first, unless the date specified is extended in accordance with the following paragraph.

We have been informed that you may require the Contractor to extend this guarantee if the Performance Certificate under the Contract has not been issued by the date twenty-eight (28) days prior to the date specified in the paragraph above (the \_\_\_ day of \_\_\_\_\_\_\_\_, 2\_\_\_\_). We undertake to extend the expiry date of this guarantee upon receipt by us, within such period of twenty-eight (28) days, of your demand in writing and your written statement that the Performance Certificate has not been issued and that the Contractor remains obligated to provide the Performance Security pursuant to the conditions of the Contract.

Any demand for payment under this guarantee must be received by us at this office on or before the date of its expiry as may be extended in accordance with the terms set forth above.

**[*Issuing Bank to delete whichever is not applicable*]** We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address].

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
**[signature(s)]**

1. Annex F2: Form of Bank Guarantee for Advance Payment

**[Bank’s Name, and Address of Issuing Branch or Office]**

**Beneficiary: [Name and Address of Employer]**

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

**ADVANCE PAYMENT GUARANTEE No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

We have been informed that **[name of Contractor]** (hereinafter called "the Contractor") has entered into Contract No. **[insert reference number of the Contract]**dated [insert date] with you, for the execution of **[name of contract and brief description of Works]** (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum **[amount in figures][amount in words]** is to be made against an advance payment guarantee.

At the request of the Contractor, we **[name of Bank]** hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures][amount in words] upon receipt by us of your first demand in writing, without your needing to prove or to show grounds for your demand or the sum specified therein.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number \_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[name and address of Bank].**

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that [ ] percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

**[*Issuing Bank to delete whichever is not applicable*]** We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address].

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
**[signature(s)]**

1. Annex F3: Form of Retention Money Guarantee

**[Bank’s Name, and Address of Issuing Branch or Office]**

**Beneficiary: [Name and Address of Employer]**

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

**RETENTION MONEY GUARANTEE No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

We have been informed that **[name of Contractor]** (hereinafter called "the Contractor") has entered into Contract No. **[insert reference number of the contract]**dated **[insert date]** with you, for the execution of **[name of contract and brief description of Works]** (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Contractor is to receive early payment of [part of] the Retention Money with such payment being made against a retention money guarantee.

At the request of the Contractor, we **[name of Bank]** hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **[amount in figures][amount in words],** such sum being payable in the currency in which the Contract Price is payable, upon receipt by us of your first demand in writing, without your needing to prove or to show grounds for your demand or the sum specified therein.

At any time, our liability under this guarantee shall not exceed the total amount of Retention Money released to the Contractor by you, as evidenced by your notices issued pursuant to the conditions of Contract, with a copy being passed to us.

This guarantee shall expire no later than twenty-one (21) days following the date of issuance of the Performance Certificate in accordance with the terms of the Contract, calculated based on a copy of such Performance Certificate which shall be provided to us; or on the \_\_\_ day of \_\_\_\_\_\_, 20\_\_, whichever occurs first, unless the date specified is extended in accordance with the following paragraph.

We have been informed that you may require the Contractor to extend this guarantee if the Performance Certificate under the Contract has not been issued by the date twenty-eight (28) days prior to the date specified in the paragraph above (the \_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_). We undertake to extend the expiry date of this guarantee upon receipt by us, within such period of twenty-eight (28) days, of your demand in writing and your written statement that the Performance Certificate has not been issued and that the Contractor remains obligated to provide the retention money guarantee pursuant to the conditions of the Contract.

Any demand for payment under this guarantee must be received by us at this office on or before the date of its expiry as may be extended in accordance with the terms set forth above.

**[*Issuing Bank to delete whichever is not applicable*]** We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address].

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except as may otherwise be stated above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[signature(s)]**

1. The completed Appendix to Offer of the successful Offeror (the form of which is provided in Section IV. Submission Forms) shall be appended to the Particular Conditions of Contract as Annex B. [↑](#footnote-ref-2)
2. “MCC-Funded Contract” is defined as a contract signed by an Accountable Entity or Core Team, as opposed to a contract signed by MCC, under the provisions of MCC’s Procurement Policy and Guidelines, and using funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding. [↑](#footnote-ref-3)
3. “MCC Funding” is defined as funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding [↑](#footnote-ref-4)
4. World Bank, African Development Bank, Asian Development Bank, Inter-American Development Bank, and European Bank of Reconstruction and Development. [↑](#footnote-ref-5)