

Appendix – Additional Provisions

Capitalized terms that are used but not defined in this Appendix shall have the meaning given to them in the GCC or in the Compact or related agreements.

The MCA Entity is responsible for the oversight and management of the implementation of the Compact on behalf of the Government, and intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (a) such payments will only be made at the request of and on behalf of the MCA Entity and as authorized by the Fiscal Agent, (b) MCC shall have no obligations to the Consultant under the Compact or this Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the MCA Entity shall derive any rights from the Compact or have any claim to MCC Funding.

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

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

2. MCC Reserved Rights.

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

3. Third-Party Beneficiary. MCC shall be deemed to be a third party beneficiary under this Contract.

B. Limitations on the Use or Treatment of MCC Funding

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

C. Procurement

The Consultant shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in the Compact and in the MCC Program Procurement Guidelines from time to time in effect as posted on the MCC website at www.mcc.gov. The Consultant shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the MCA Entity. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/procurement awards provisions.pdf](http://www.mcc.gov/guidance/compact/procurement_awards_provisions.pdf).

D. Reports and Information; Access; Audits; Reviews

1. Reports and Information. The Consultant shall maintain such books and records and provide such reports, documents, data or other information to MCA-Lesotho in the manner and to the extent required by Sections 3.7 (a) and (b) of the Compact or related documents and as may be reasonably requested by MCA-Lesotho from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of Section 3.8(a) and (b) of the Compact that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Consultant as if the Consultant were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits reviews provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

2. Access; Audits and Reviews. Upon MCC's request, the Consultant shall permit such access, audits, reviews and evaluations as provided in the Compact or related documents. The provisions of the Compact that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to the Consultant as if the Consultant were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits reviews provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

3. Application to Providers. The Consultant shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at [www.mcc.gov/guidance/compact/audits reviews provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

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

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

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

3. The Consultant shall ensure that its activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the MCA Entity, the Fiscal Agent, or the Bank, as may be applicable. The Consultant shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled “*Excluded Parties Verification Procedures in MCA Entity Program Procurements*” that can be found on MCC’s website at <http://www.mcc.gov/procurement/mca-guidancepapers.php>. The Consultant shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the MCA Entity or MCC may request from time to time and (B) deliver

a report of such periodic monitoring to the MCA Entity with a copy to MCC.

4. Other restrictions on the Consultant shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. laws, regulations, executive orders or policies, any misconduct injurious to MCC or the MCA 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 related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information and Marking

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

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

G. Insurance

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

H. Conflict of Interest

The Consultant shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Consultant participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is

negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Consultant shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Consultant shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with this Contract. Without limiting the foregoing, the Consultant shall comply, and ensure compliance, with the applicable conflicts of interest and ethics policies of the MCA Entity as provided by the MCA Entity to the Consultant.

I. Inconsistencies

In the event of any conflict between this Contract and the Compact and/or the Program Implementation Agreement, the term(s) of the Compact or the Program Implementation Agreement, as appropriate, shall prevail. The Compact shall prevail over the Program Implementation Agreement.

J. Other Provisions

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

K. Flow-Through Provisions

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

L. Combating Trafficking in Persons

1. Background

MCC has a zero tolerance policy with regard to trafficking in persons. Trafficking in persons (TIP) is the crime of using force, fraud, and/or coercion to exploit another person. Human trafficking can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. The U.S. Government, led by the Department of State, is committed to making progress against the global crime and human rights abuse of TIP. MCC is committed to working with partner countries to ensure appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the countries it

partners with and projects it funds. For more on MCC's approach to combating TIP please visit: <http://www.mcc.gov/documents/reports/issuebrief-2010002011002-mccandtip.pdf>

2. Defined Terms

For the purposes of these provisions, the terms set forth below are defined as follows:

- 2.1 "coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.
- 2.2 "commercial sex act" means any sex act on account of which anything of value is given to or received by any person.
- 2.3 "debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
- 2.4 "employee" means an employee of a bidder, supplier, contractor, subcontractor, consultant, or sub-consultant directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.
- 2.5 "forced labor" means knowingly providing or obtaining the labor or services of a person (a) by threats of serious harm to, or physical restraint against, that person or another person; (b) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (c) by means of the abuse or threatened abuse of law or the legal process.
- 2.6 "fraud" means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) any person to engage (knowingly or unknowingly) in any of the activities prohibited by this Part 15. Examples of fraud include, but are not limited to, false promises for specific employment; promises of money or other compensation that is never paid; working conditions that are not as promised; and a person being told he or she would receive legitimate immigration papers or legal authorizations necessary to work that are never received.
- 2.7 "involuntary servitude" includes a condition of servitude induced by means of (a) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or (b) the abuse or threatened abuse of the legal process.
- 2.9 "severe forms of trafficking in persons" means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 2.10 "sex trafficking" means the recruitment, harboring, transportation, provision, or

obtaining of a person for the purpose of a commercial sex act.

3. Prohibition

MCC has adopted a zero tolerance policy regarding TIP. Bidders, suppliers, contractors, subcontractors, consultants, sub-consultants and any of their respective employees shall not:

- a. engage in severe forms of trafficking in persons during the period of performance of any contract funded, in whole or in part, with MCC funding;
- b. procure commercial sex acts during the period of performance of any contract funded, in whole or in part, with MCC funding; or
- c. use forced labor in the performance of any contract funded, in whole or in part with MCC funding.

4. Requirements

- a. Each bidder, supplier, contractor, subcontractor, consultant or sub-consultant shall:
 - i. notify its employees of (i) MCC's zero tolerance policy with regard to TIP and the prohibited activities described in section P15.3; and (ii) the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
 - ii. take appropriate action, up to and including termination, against employees or subcontractors or sub-consultants that violate the prohibitions set out in section P15.3.
- b. Each bidder (whether to be a supplier or contractor) or consultant, as part of its bid or proposal, shall:
 - i. certify that it is not engaged in, facilitating, or allowing any of the prohibited activities described in section P 15.3 for the duration of the contract;
 - ii. provide assurances that the prohibited activities described in section P 15.3 will not be tolerated on the part of employees or subcontractors, or sub-consultants (as the case may be), or their respective employees; and
 - iii. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the contract.
- c. Each contractor shall prepare and implement a TIP risk management plan in form and substance satisfactory to the MCA Entity (and, at its discretion, MCC). The risk management plan will include:
 - i. a plan to raise the level of awareness of employees and subcontractors on the issue including providing information on the risk areas and the penalties for involvement in any of the prohibited activities described in section P 15.3; and

- ii. a requirement and system to report suspicions or known incidents of any of the prohibited activities described in section P 15.3 to the MCA Entity and responsible government authorities, and to refer potential victims to appropriate agencies.

The TIP risk management plan may be presented as a stand-alone document, or, to benefit from existing synergies and processes, it may be integrated into a Health & Safety Plan to be developed by the contractor following contract award and approved by the MCA Entity, and should be incorporated into any relevant training programs.

5. Notification

A bidder, supplier, contractor, subcontractor, consultant or sub-consultant shall inform the MCA Entity immediately of:

- a. any information it receives from any source (including law enforcement) that alleges its employee, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, has engaged in conduct that violates this policy; and
- b. any actions taken against any employee, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, pursuant to these requirements.

6. Remedies

In addition to other remedies available to the MCA Entity or MCC, a bidder's, supplier's, contractor's, subcontractor's, consultant's, or sub-consultant's failure to comply with the requirements of this Part 15 may result in:

- a. requiring the supplier, contractor, subcontractor, consultant or sub-consultant to remove the involved employee or employees from the performance of the contract;
- b. requiring the supplier, contractor, subcontractor, consultant or sub-consultant to terminate a subcontract;
- c. suspension of contract payments;
- d. loss of incentive payment, consistent with the incentive plan set out in the contract, if any, for the performance period in which the MCA Entity or MCC determined non-compliance;
- e. termination of the contract for default or cause, in accordance with the termination clause of the contract; and
- f. suspension or debarment of the bidder, supplier, contractor, subcontractor, consultant or sub-consultant from any contract funded, in whole or in part, with MCC funding.

7. Subcontracts

The supplier, contractor, subcontractor, consultant or sub-consultant shall include the substance of all of the provisions of this Part 15, including this section P15.7, in all

subcontracts.

8. Mitigating Factor

The MCA Entity and MCC may consider whether the bidder, supplier, contractor, subcontractor, consultant or sub-consultant had a TIP awareness program at the time of any violation as a mitigating factor when determining remedies.