

PROCUREMENT AGREEMENT

BY AND AMONG THE

MILLENNIUM CHALLENGE CORPORATION,

**THE TECHNICAL SECRETARIAT OF THE PRESIDENCY
ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA**

AND

FUNDACIÓN RETO DEL MILENIO-NICARAGUA

DATED AS OF _____, 2006

TABLE OF CONTENTS

	<u>Page</u>
Article I.	Procurement Plan 1
Section 1.1	Procurement Plan Development 1
Section 1.2	Publication of Procurement Plan Information 2
Section 1.3	Procurement Plan Implementation..... 2
Section 1.4	Deviations from Procurement Plan 2
Article II.	Obligations And Representations 3
Section 2.1	Procurement Principles 3
Section 2.2	Procurement Guidelines..... 3
Section 2.3	Bid Challenge..... 3
Section 2.4	Procurement Contracts..... 3
Section 2.5	Reports 3
Section 2.6	Other Responsibilities..... 4
Section 2.7	Technical Secretariat Representations 4
Section 2.8	MCA-Nicaragua Representations 4
Article III.	Approvals..... 4
Section 3.1	Approvals..... 4
Section 3.2	MCC Approvals 4
Article IV.	General Provisions 5
Section 4.1	Technical Secretariat Responsibility..... 5
Section 4.2	Communications 5
Section 4.3	Amendment; Waivers 6
Section 4.4	Publicity 6
Section 4.5	Nonwaiver of Remedies..... 6
Section 4.6	Attachments 6
Section 4.7	Inconsistencies 6
Section 4.8	Headings 6
Section 4.9	Severability 6
Section 4.10	Written Consents, Approvals and Notices 7
Section 4.11	Rules of Interpretation 7
Section 4.12	Counterparts; Signatures 8
Section 4.13	Assignment 8
Section 4.14	Entire Agreement 8
Section 4.15	Termination; Suspension 8
Section 4.16	Effect of Termination..... 9
Section 4.17	MCC Status..... 9
Section 4.18	Representatives 9

Section 4.19	Reports	9
Section 4.20	Consultation	10
Section 4.21	Governing Law	10
Section 4.22	Effective Date; Term.....	10
Section 4.23	Relationship of the Parties	10
Section 4.24	Language.....	10

Schedule 1: Procurement Guidelines

Schedule 2: Approvals

Schedule 3: Defined Terms

PROCUREMENT AGREEMENT

This **PROCUREMENT AGREEMENT** (the “*Agreement*”) is entered into as of _____, 2006 (the “*Effective Date*”) by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Technical Secretariat of the Presidency (the “*Technical Secretariat*”), on behalf of the Government of the Republic of Nicaragua (the “*Government*”), and *Fundación Reto del Milenio - Nicaragua*, a not-for-profit foundation established under Nicaraguan law through Decreto No. 4452, published in the official gazette, *La Gaceta*, on January 4, 2006 (“*MCA-Nicaragua*”). MCC, the Technical Secretariat and MCA-Nicaragua are sometimes referred to herein individually as a “*Party*” and together as the “*Parties*.”

Capitalized terms used and defined herein shall have the meanings given such terms in Schedule 3. Capitalized terms used but not defined herein shall have the meanings given such terms in that certain Millennium Challenge Compact signed by and between the United States of America, acting through MCC, and the Government on July 14, 2005 (the “*Compact*”).

RECITALS

WHEREAS, the Compact sets forth the general terms and conditions on which the United States, through MCC, will provide MCC Funding to the Government to use to implement the Program in Nicaragua and achieve the Compact Goal and Objectives contemplated by the Compact;

WHEREAS, it is a condition precedent to the Entry into Force that this Agreement is executed by the Parties; and

WHEREAS, the Parties wish to enter into this Agreement to further specify the terms and conditions for procurements of goods, services and works made in furtherance of the Compact and using MCC Funding;

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

ARTICLE I.

PROCUREMENT PLAN

Section 1.1 Procurement Plan Development. The Technical Secretariat shall ensure that MCA-Nicaragua develops and adopts a procurement plan on a semi-annual basis for acquiring the goods, works and services needed to implement the Compact (each, a “*Procurement Plan*”), each of which Procurement Plans shall be subject to MCC approval and shall:

- (a) Identify the purchasing needs for the goods, works, and services required to implement the Program for the six (6) month period immediately following the effective date of such Procurement Plan;
- (b) Identify the proposed method of procurement for each purchase according to the procedures set out in Schedule 1 and in Schedule 2 of this Agreement; and
- (c) Estimate the proposed budget for each procurement, and such other information as may be requested by MCC from time to time.

Each Procurement Plan shall be submitted to MCC for prior approval no less than five (5) business days prior to the date for publishing the General Procurement Notice (as defined in Schedule 1) for the period of the Procurement Plan in accordance with Section 1.2.

Section 1.2 Publication of Procurement Plan Information. On at least a semi annual basis, following receipt of MCC's approval of a Procurement Plan, and following due adoption of the Procurement Plan by MCA-Nicaragua in accordance with the Governance Agreement, MCA-Nicaragua shall publicize the procurements planned for the upcoming period identified in the approved Procurement Plan and such information derived from the Procurement Plan, as specified by MCC and in the form acceptable to MCC, in the General Procurement Notice. The General Procurement Notice shall provide reasonable notice of planned procurements and shall include a posting on the MCA-Nicaragua website, the Development Gateway Market website at www.dgmarket.com ("**dgMarket**") and the United Nations Development Business online website at www.devbusiness.com ("**UNDB Online**"). MCA-Nicaragua shall also publish the General Procurement Notice in a newspaper of wide circulation in Nicaragua and in such other media outlets as appropriate or as requested from time to time by MCC. Each General Procurement Notice under this Section 1.2 shall be in English and in Spanish, *provided that* publication in the Spanish language local media may be in Spanish only.

Section 1.3 Procurement Plan Implementation. MCA-Nicaragua shall ensure that all goods, services and works shall be procured using the procurement method approved in each Procurement Plan, unless MCC otherwise agrees, and shall ensure that the Procurement Agent complies with the methods of procurement outlined in such Procurement Plan. As set forth in the Disbursement Agreement, compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements or Re-Disbursements, if applicable, for the related Program or Project expense.

Section 1.4 Deviations from Procurement Plan. MCA-Nicaragua shall not initiate any procurement action that deviates from the applicable Procurement Plan, without the prior approval of MCC. If MCA-Nicaragua determines that deviations are necessary or appropriate, MCA-Nicaragua shall submit a request to MCC for its approval. If approved by MCC, MCA-Nicaragua shall comply with any instructions contained in the MCC approval, including any publication requirements. Without limiting the foregoing, unless otherwise agreed by the Parties, any substantial deviation from a Procurement Plan previously duly adopted by MCA-Nicaragua shall be submitted to the Board for approval in accordance with the Governance Agreement.

ARTICLE II.
OBLIGATIONS AND REPRESENTATIONS

Section 2.1 Procurement Principles. The Technical Secretariat and MCA-Nicaragua shall ensure that all procurements of goods, services or works in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC Funding shall comply with the general principles set forth in Section 3.6 of the Compact (the “*Procurement Principles*”).

Section 2.2 Procurement Guidelines. The Technical Secretariat and MCA-Nicaragua shall ensure that all procurements of goods, services or works in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC Funding shall comply with the Procurement Guidelines set forth in Schedule 1 attached hereto (the “*Procurement Guidelines*”), as such Procurement Guidelines may be amended (a) by MCC from time to time with prior notice to MCA-Nicaragua, or (b) as the Parties may otherwise agree. Such Procurement Guidelines and any amendments thereto shall be published on the MCA-Nicaragua website. The Technical Secretariat and MCA-Nicaragua shall ensure that (x) all Providers are notified of the terms of this Agreement, including the Procurement Guidelines, and the Procurement Principles, and (y) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any such Providers.

Section 2.3 Bid Challenge. The Technical Secretariat and MCA-Nicaragua shall ensure that any bid challenges are conducted under a bid challenge system that complies with the terms set forth in the Procurement Guidelines.

Section 2.4 Procurement Contracts. The terms and conditions of relevant contracts with Providers, including governing law and dispute resolution, shall be set out in the applicable Bidding and Proposal Documents (defined in the Procurement Guidelines). Notwithstanding the generality of the foregoing sentence, contracts with Providers, and as the case may be with other third parties as required under the Procurement Guidelines, shall contain provisions required by the Procurement Guidelines and other Compact Documents, including (A) MCC status and rights, (B) limitations on use or treatment of MCC Funding; (C) procurement requirements; (D) records and information, access, audits and reviews, and reports; (E) compliance with rules on prohibited activities, restricted parties, and eligibility requirements of prohibited source provisions in accordance with then-applicable US law, regulations and policy; (F) publicity, information and marking; (G) insurance requirements; (H) conflict of interest; and (I) inconsistencies, as well as any other terms and conditions as may be specified in the Compact or other Supplemental Agreement or the Supplemental Agreement Term Sheets, as applicable to a contract or agreement of that nature or otherwise as MCA-Nicaragua, solely upon the written instructions of MCC, may require from time to time. A summary of the applicable provisions described in (A) through (I) of this Section may be found on the MCC website at <http://www.mcc.gov>. MCC shall have the right to review and approve the form of relevant contracts and any material modifications to those forms.

Section 2.5 Reports. MCA-Nicaragua shall deliver or cause the delivery to MCC of quarterly reports of all procurement actions in the most recently completed quarter, including explanations of any variance from the Procurement Plan for that period.

Section 2.6 Other Responsibilities. The Technical Secretariat and MCA-Nicaragua shall comply with all applicable terms and conditions and fulfill all applicable Government Responsibilities in the other Compact Documents, including any audit or reporting requirements.

Section 2.7 Technical Secretariat Representations. The Technical Secretariat hereby represents and warrants to MCC that, as of the Effective Date, the Technical Secretariat has the power and authority to execute, deliver and perform its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated hereby on behalf of the Government. The execution, delivery and performance by the Technical Secretariat of this Agreement (a) have been duly authorized by all necessary action on the part of the Government and (b) will not violate (i) any applicable Nicaraguan laws or (ii) any obligation of the Technical Secretariat, the Government, any other Government Affiliate or any other Permitted Designee. No other action, consent, approval, registration or filing with or any other action by any governmental authority, the Government or any Government Affiliate is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of the Technical Secretariat and the Government.

Section 2.8 MCA-Nicaragua Representations. MCA-Nicaragua hereby represents and warrants to MCC that, as of the Effective Date, MCA-Nicaragua has the power and authority to execute, deliver and perform its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated hereby. The execution, delivery and performance by MCA-Nicaragua of this Agreement and the transactions contemplated herein (a) have been duly authorized by all necessary action and (b) will not violate (i) any applicable Nicaraguan laws or (ii) any obligation of MCA-Nicaragua. No other action, consent, approval, registration or filing with or any other action by any person, entity or governmental authority, the Government or any Government Affiliate is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of MCA-Nicaragua.

ARTICLE III.

APPROVALS

Section 3.1 Approvals. The Technical Secretariat and MCA-Nicaragua shall ensure that, unless otherwise agreed by the Parties in writing, all procurement actions described in Schedule 2 for goods, services or works in furtherance of the Compact and funded in whole or in part by MCC Funding shall be subject to the prior approval of the authorized entity, officer(s) or bodies designated on Schedule 2 for the corresponding type of action or dollar amount threshold.

Section 3.2 MCC Approvals. Notwithstanding Section 3.1, nothing in this Agreement shall limit the right of MCC to approve Material Agreements, Material Re-Disbursements, Material Terms of Reference or any other action or document in accordance with Section 3(c) of Annex I of the Compact or otherwise limit any other MCC approval rights set forth therein or in any applicable Governing Document or any other Supplemental Agreement. With respect to any MCC approval rights under this Agreement, MCC shall exercise its right of approval within five

(5) business days or inform MCA-Nicaragua prior to the expiration of such five (5) business day period of the extension (at MCC's sole discretion) of MCC's approval period for an additional five (5) business days..

ARTICLE IV. GENERAL PROVISIONS

Section 4.1 Technical Secretariat Responsibility. Notwithstanding any other provision of this Agreement, the Technical Secretariat shall retain overall responsibility for ensuring compliance with this Agreement by any Government Affiliate, MCA-Nicaragua and any other Permitted Designee.

Section 4.2 Communications. Any notice, certificate, request, report, approval, document or other communication required, permitted, or submitted by any Party to any other Party under this Agreement shall be (a) in writing, (b) in English, and (c) deemed duly given: (i) upon personal delivery to the Party or Parties to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day (with an original copy to follow by mail); or (iii) two (2) business days after deposit with an internationally recognized overnight courier, with written verification of receipt, to the Party or Parties to be notified at the address indicated below, or at such other address as such Party may designate by notice to the other Parties:

To MCC:

Millennium Challenge Corporation
Attention: Vice President for Operations,
(with a copy to the Vice President and General Counsel)
875 Fifteenth Street, N.W.
Washington, D.C. 20005
United States of America
Tel: (202) 521-3600
Fax: (202) 521-3700
Email: VPOperations@mcc.gov (Vice President for Operations);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To MCA-Nicaragua:

MCA-Nicaragua
c/o: Technical Secretariat of the Presidency (SETEC)
Attention: Technical Secretary (Principal Representative)
Casa Presidencial
Costado Norte Antigua Catedral
Managua, NICARAGUA
Tel: 011 (505) 228-9258
Fax: 011 (505) 228-9250

To the Technical Secretariat:

Technical Secretariat of the Presidency (SETEC)
Attention: Secretary (Principal Representative)
Casa Presidencial
Costado Norte Antigua Catedral
Managua, NICARAGUA
Tel: 011 505 228 9258
Fax: 011 505 228 9250

Whenever the time for giving a notice or performing an act under this Agreement falls on a day that is not a business day, such time shall be extended to the next day that is a business day.

Section 4.3 Amendment; Waivers. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties. The Parties further agree that any waiver, permit, consent or approval of any kind or character on any Party's part of any breach, default or noncompliance under this Agreement or any waiver on such Party's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 4.4 Publicity. In accordance with Section 5.17 of the Compact, MCA-Nicaragua shall post, or cause to be posted, a copy of this Agreement and such other materials as MCC may request, in each case on the MCA-Nicaragua website in English and in Spanish.

Section 4.5 Nonwaiver of Remedies. The Parties agree that no delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach, default or noncompliance by another Party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. All remedies, either under this Agreement, by law, or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 4.6 Attachments. Any exhibit, schedule or other attachment expressly attached hereto (together, the "**Attachments**") is incorporated herein by reference and shall constitute an integral part of this Agreement.

Section 4.7 Inconsistencies. In the event of any conflict or inconsistency between this Agreement and the Compact, the terms of the Compact shall prevail. In the event of any conflict or inconsistency between this Agreement and any other Supplemental Agreement between the Parties or any Procurement Plan, the terms of this Agreement shall prevail.

Section 4.8 Headings. The Section and Subsection headings used in this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 4.9 Severability. If one or more provisions of this Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this

Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 4.10 Written Consents, Approvals and Notices. Notices, permits, consents, licenses, approvals and authorizations, and any equivalent actions, to be provided or made hereunder shall only be effective if done in writing.

Section 4.11 Rules of Interpretation. The following rules of construction shall be followed when interpreting this Agreement:

- (a) Words importing the singular also include the plural and vice versa;
- (b) References to natural persons or parties include firms or any other entity having legal capacity;
- (c) Words importing one gender include the other gender;
- (d) The words “include,” “including,” and variants thereof mean “includes, but not limited to” and corresponding variant expressions;
- (e) Except as otherwise set forth herein, all references contained herein to the Compact, any Supplemental Agreements, contracts or other documents shall be deemed to mean the Compact, such Supplemental Agreements, contracts, or documents, as the same may be modified, supplemented, or amended from time to time;
- (f) Each reference to any applicable law shall be construed as a reference to such applicable law as it may have been, or may from time to time be, amended, replaced, extended or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such applicable law and all protocols, codes, proclamations and ordinances issued or otherwise applicable under any such law;
- (g) Except as otherwise expressly specified herein, any reference to a Section, clause or Schedule shall mean a Section, clause or Schedule of this Agreement.
- (h) The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement and not any one particular Article, Section, Schedule, or other subdivision of this Agreement;
- (i) Any reference to “business days” shall mean any day other than a Saturday, Sunday, commercial banking holiday in Managua, Nicaragua or Washington, D.C., United States, or a federal holiday in Nicaragua or the United States; and any reference to “day” shall mean a calendar day;
- (j) All references to notices, permits, licenses, consents, approvals, and authorizations and any equivalent actions hereunder shall mean written notices, permits, licenses, consents, approvals, and authorizations in accordance with Section 4.10; and

(k) Any reference to “month,” “quarter” or “year” shall have the common meaning given such terms based on a calendar year beginning on January 1 and ending on December 31 and divided into four approximately equal quarters beginning on each January 1, April 1, July 1 and October 1 of each such respective calendar year.

Section 4.12 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures and each counterpart when so executed and delivered shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature to this Agreement or any amendment to this Agreement pursuant to Section 4.3 shall be delivered only as an original signature. With respect to all other signatures, except as the Parties may otherwise agree in writing from time to time, a signature delivered by facsimile or electronic mail in accordance with Section 4.2 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying agreement on the basis of the signature’s legal effect, validity or enforceability solely because it is in facsimile or electronic form; *provided*, that a signature on an audit report shall be followed by an original in overnight express mail. Such signatures shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 4.13 Assignment. MCC may assign, delegate or contract its rights and obligations, in whole or in part, under this Agreement to any Affiliate, agent, or representative of MCC without the prior consent of the Technical Secretariat or MCA-Nicaragua. MCC shall provide notice to the Technical Secretariat and MCA-Nicaragua upon the effectiveness of such assignment, delegation or contract. Neither the Technical Secretariat nor MCA-Nicaragua may assign, delegate, revoke, rescind or contract its rights and obligations under this Agreement without the prior consent of MCC. Each of the Technical Secretariat, on behalf of the Government, MCA-Nicaragua and MCC acknowledges that MCA-Nicaragua has been designated by the Government as a “Permitted Designee,” as described in Section 3.2(c) of the Compact, pursuant to the terms of the Designation and Grant Agreement.

Section 4.14 Entire Agreement. This Agreement, including all Attachments, and all certificates, documents or agreements executed and delivered in connection with and in furtherance of this Agreement, when executed and delivered, shall constitute the entire agreement of the Parties with respect to the subject matter hereof, superseding and extinguishing all prior agreements, understandings and representations and warranties relating to the subject matter hereof.

Section 4.15 Termination; Suspension.

(a) MCC may terminate this Agreement in its entirety by giving the other Parties thirty (30) days’ notice.

(b) Notwithstanding any other provision of this Agreement or any other Supplemental Agreement between MCC and the Government (or any Government Affiliate), MCC may suspend or terminate this Agreement, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Technical Secretariat and MCA-Nicaragua notice, if MCC determines that:

(i) The Compact has been suspended in whole or in part in accordance with Section 5.4 of the Compact;

(ii) Any event that would be a basis for termination or suspension of the Compact or MCC Funding under Section 5.4 of the Compact has occurred; or

(iii) Any other event has occurred, or circumstance has arisen, which in the sole opinion of MCC, constitutes a Material Adverse Change (as defined in the Disbursement Agreement).

Section 4.16 Effect of Termination. Notwithstanding any expiration, suspension or termination of this Agreement pursuant to this Article IV, the following provisions of this Agreement shall survive: Sections 4.2, 4.5, 4.11, 4.13, 4.16, 4.17, 4.20 and 4.21.

Section 4.17 MCC Status. Each of MCA-Nicaragua and the Technical Secretariat recognizes and agrees that 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 Agreement, and is immune from any action or proceeding arising under or relating to this Agreement. In matters arising under or relating to this Agreement, MCC shall not be subject to the jurisdiction of the courts or other body of Nicaragua or any other jurisdiction.

Section 4.18 Representatives. For all purposes relevant to this Agreement, the Technical Secretariat shall be represented by the individual holding the position of, or acting as, Secretary, Technical Secretariat of the Presidency (the “**Technical Secretariat Principal Representative**”), MCC shall be represented by the individual holding the position of, or acting as, Vice President, Operations (the “**MCC Principal Representative**”), and MCA-Nicaragua shall be represented by the individual holding the position of, or acting as, General Director (the “**MCA-Nicaragua Principal Representative**” and, together with the Technical Secretariat Principal Representative and the MCC Principal Representative, the “**Principal Representatives**”), each of whom, by notice, may designate one or more additional representatives (each, an “**Additional Representative**”) for all purposes other than signing amendments to this Agreement. The names of each Party’s Principal Representative and its respective Additional Representatives shall be provided, with specimen signatures, to the other Parties, and each Party may accept as duly authorized any instrument signed by such Principal Representative or Additional Representative relating to the implementation of this Agreement, until receipt of notice of revocation of their authority. A Party may replace its Principal Representative with a new representative of equivalent or higher rank upon notice to the other Parties, which notice shall include the specimen signature of the new Principal Representative.

Section 4.19 Reports.

(a) Any reports required pursuant to this Agreement, including pursuant to Section 2.5, shall be provided to MCC in a timely manner and in form and substance acceptable to MCC to afford reasonable and appropriate review of such reports and in no event less than thirty (30) business days from the end of the prior reporting period.

(b) MCA-Nicaragua shall deliver to MCC in a timely manner any information or document that arises under or is related to this Agreement that may be required for the fulfillment of the Government's obligations under the reporting and audit requirements set forth in Section 3.8 of the Compact and any reporting requirements set forth in Section 3.12 of the Compact or as may be otherwise reasonably requested by MCC from time to time.

(c) MCC shall have the right to use any information or data delivered to MCC under this Agreement for the purpose of satisfying MCC reporting requirements or in any other manner.

Section 4.20 Consultation. Any Party may, at any time, request consultations relating to the interpretation or implementation of this Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (20) days from the commencement of the consultations then each Party shall refer the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than forty-five (45) days from date of commencement. If the matter is not resolved within such time period MCC may terminate this Agreement upon notice to the Technical Secretariat and MCA-Nicaragua. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 4.21 Governing Law. The Parties agree and acknowledge that this Agreement is entered into for the purpose of implementing the Compact, and as such, it shall be interpreted in a manner consistent with the Compact and shall be governed by the principles of international law.

Section 4.22 Effective Date; Term. This Agreement shall (a) become effective and enter into force as of the Effective Date, and (b) end one hundred twenty (120) days following the termination or expiration of the Compact (unless terminated earlier pursuant to the provisions of this Agreement); *provided, however*, no new procurements shall be made or obligations incurred after the termination or expiration of the Compact; and *provided, further*, that the term of this Agreement may be extended for a period that is longer than one hundred twenty (120) days following the termination or expiration of the Compact if MCC determines that obligations incurred prior to the expiration or termination of the Compact remain to be carried out.

Section 4.23 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship between the Parties.

Section 4.24 Language. This Agreement is prepared and executed in English and in the event of any ambiguity or conflict between this official English version and any other version translated into Spanish for the convenience of the Parties, this official English version shall prevail.

SIGNATURE PAGE BEGINS ON THE NEXT PAGE.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative as of the day and year first written above.

MILLENNIUM CHALLENGE CORPORATION

By: _____
Name: John Hewko
Title: Vice President, Operations

**TECHNICAL SECRETARIAT OF THE PRESIDENCY,
on behalf of the Government of the Republic of Nicaragua**

By: _____
Name: Dr. Carlos Guillermo Sequeira
Title: Secretary

FUNDACIÓN RETO DEL MILENIO-NICARAGUA

By: _____
Name: _____
Title: _____

SCHEDULE 1
PROCUREMENT GUIDELINES

1. Conduct and Administration of Procurement.

The principles, rules and procedures set out herein shall govern the conduct and administration of the procurement of the goods, works and services that need to be acquired to implement the projects and programs under the Compact. These principles, rules and procedures are based upon The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004 and The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004, in both cases excluding any subsequent modification, supplement or amendment thereto, (“**WB Procurement Guidelines**”) subject to the following exceptions:

(a) General Exceptions.

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

(ii) References to the “**Borrower**” unless otherwise noted refer to the Government of the Republic of Nicaragua as signatory to the Compact and the *Fundación Reto del Milenio-Nicaragua* as the management and oversight entity for the Program (the “accountable entity”) (collectively, MCA-Nicaragua).

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

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

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

(b) Specific Exceptions. The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004.¹

(i) Introduction.

(1) **Paragraphs 1.1** is deleted and replaced by the following text: Readers are strongly urged to visit the following web-sites where further information concerning procurements, including the Procurement Agreement which includes the Procurement Guidelines, may be examined: the MCC website address <http://www.mcc.gov/> and the MCA-Nicaragua website.

(2) **Paragraph 1.2** defining the purpose of the guidelines is deleted.

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

(3) **Paragraph 1.3** is changed to: The term “consultants” includes a wide variety of entities, such as consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, investment and merchant banks, universities, research institutions, nongovernmental organizations (NGOs) and individuals. Consultants help in a wide range of activities such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; and social and environmental studies.

(4) **Paragraphs 1.4 and 1.5** describing the procurement principles underlying the guidelines are deleted.

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

(6) **Paragraphs 1.8** defining the applicability of the guidelines in certain circumstances is deleted.

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

(8) Footnote 9 is deleted.

(9) **Paragraph 1.12** defining rules for advance contracting and retroactive funding is changed to the following text: In certain circumstances, such as to accelerate project implementation, MCA-Nicaragua may, with MCC’s approval, wish to proceed with the selection of consultants before the Compact comes into force. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Procurement Guidelines, and MCC shall review the process used by MCA-Nicaragua. MCA-Nicaragua undertakes such advance contracting at its own risk, and any approval issued by MCC with regard to the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCA-Nicaragua for any contract costs if the contract is signed prior to Entry into Force of the Compact.

(10) **Paragraph 1.14** providing for MCC review is modified by changing the last sentence to the following text: The thresholds for MCC review are described in Schedule 2 of this Procurement Agreement.

(11) **Paragraph 1.15** providing for Bank’s assistance in identifying consultants is deleted.

(12) **Paragraph 1.18** defining how to reference The World Bank role in the procurement is changed to: MCA-Nicaragua shall use the following language when referring to MCC in the Proposal Documents and contract documents:

The Millennium Challenge Corporation (“**MCC**”) and the Government of the Republic of Nicaragua (the “**Government**”) have entered into a Compact for Millennium Challenge Account (“**MCA**”) assistance to help facilitate poverty reduction through economic growth in Nicaragua (the “**Compact**”) in the amount of USD \$175,000,000 (“**MCC Funding**”). Nicaragua, acting through the *Fundación Reto del Milenio-Nicaragua* (“**MCA-Nicaragua**”), intends to apply a portion of the proceeds of MCC Funding (as defined in the Compact) to eligible payments under this contract. Payment by MCC will be made only at the request of MCA-Nicaragua and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Compact, including restrictions on the use of MCC Funding and conditions to the disbursements.

(13) **Paragraphs 1.20 and 1.21** defining rules for use of language are revised to a single paragraph that states: All advertisements and publications of awards for contracts at or above 30,000 USD, whether on the MCA-Nicaragua Website, Development Gateway Market, or UN Development Business Online shall be published in English. Advertisements and publications of awards for contracts valued less than 30,000 USD shall be published in English or in Spanish or both at the discretion of MCA-Nicaragua provided that in the case of discrepancies the English version will control. For contracts valued at or above 100,000USD, the documents soliciting qualifications and proposals and the documents responding to the solicitations, including the technical and financial proposals, shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between MCA-Nicaragua and the Provider. At the discretion of MCA-Nicaragua, the invitations and solicitation documents also may be prepared in the Spanish language. For contracts valued at less than 100,000USD, any invitation or solicitation document and any responding documents may be prepared in English or in the Spanish language or both at the discretion of MCA-Nicaragua. However, Consultants shall not be permitted or required to sign contracts in two languages.

(14) **Paragraph 1.22** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that MCA-Nicaragua (including the beneficiaries of the MCC grant funds), as well as consultants under MCC funded contracts, observe the highest standard of ethics during the selection and execution of such contracts. In accordance with this requirement, MCC: [*The remaining text of this paragraph remains unchanged*].

(15) **Paragraph 1.24** defining the rules for providing a Procurement Plan is deleted.

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

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

(2) **Paragraph 2.4** providing rules for developing cost estimates is changed in the second sentence to state: “As may be requested in the solicitation documents cost shall be divided... .. [*The remaining text of this paragraph remains unchanged*]

(3) **Paragraph 2.5** providing rules for advertising procurements is changed to: Subject to the exclusions stated at Paragraph 1.11 above, every procurement shall be open to foreign and national participants without restrictions or preferences. Notice of anticipated procurements for consultant service as set out in periodic procurement plans shall be published at least semi-annually as a General Procurement Notice (the “**General Procurement Notice**”). General Procurement Notices shall be posted in the English language at the MCA-Nicaragua website, the Development Gateway Market (*dgMarket*) website at www.dgmarket.com and at UN Development Business Online (*UNDB online*) at www.devbusiness.com. MCA-Nicaragua shall also publish the General Procurement Notice in a newspaper of wide circulation in Nicaragua and in such other national and international paper publications or electronic media as appropriate or as requested from time to time by MCC. The General Procurement Notice shall be posted and published in a format approved by MCC. Specific procurement notices of consultant contracts expected to cost more than 30,000USD shall be advertised at the MCA-Nicaragua website and at dgMarket website. In addition, contracts expected to cost 100,000USD or more shall be advertised in UNDB Online as well as at the MCA-Nicaragua website and at dgMarket. MCA-Nicaragua may also advertise the procurements in national and international paper publications or electronic media. The text of any advertisement or notice may be subject to review by MCC.

(4) Footnote 19 is retained unchanged.

(5) Footnote 20 is deleted.

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

(7) Footnotes 21, 22 and 23 are deleted.

(8) **Paragraph 2.9** defining the contents of the solicitation documents, including Proposal Documents, is modified in the second sentence to: MCA-Nicaragua shall use the applicable solicitation documents, including the standard Proposal Documents, as approved

by MCC pursuant to Section 3 of the Procurement Guidelines, as may be modified to address project-specific conditions, subject to MCC approval when the change is material. The third sentence of Paragraph 2.9 is deleted.

(9) **Paragraph 2.12** defining rules for contracts is changed to: Subparagraph (iv) of this Section 1 (b) of these Procurement Guidelines briefly discusses the most common types of contracts. MCA-Nicaragua shall use an appropriate form of contract, acceptable to MCC, as necessary to address specific country and project issues. Any such changes shall be introduced generally through the forms and procedures defined in the standard Proposal Documents. When the Proposal Documents are not appropriate, MCA-Nicaragua shall use other contract forms acceptable to MCC.

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

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

(12) **Paragraph 2.22** provides rules for evaluating cost proposals. In the event of inconsistency between these rules and any related provisions of the Compact and Supplemental Agreements, the provisions of the Compact and the Supplemental Agreements shall prevail.

(13) **Paragraph 2.23** defining the procedures for developing the total score and determining the winning proposal is renumbered Paragraph 2.23.1 and a new paragraph is added that states: **Paragraph 2.23.2.** Before inviting the firm obtaining the highest total score for negotiations, MCA-Nicaragua shall furnish to MCC for its review and approval a full description of the procurement process including an account of all significant problems or defects during the process and a description of how these were resolved.

(14) **Paragraph 2.26** provides rules for financial negotiations. In the event of inconsistency between these rules and any related provisions of the Compact and Supplemental Agreements, the provisions of the Compact and Supplemental Agreements shall prevail. This Paragraph 2.26 also is modified by adding the following sentence at the end of the paragraph: If the contract permits reimbursement of any costs, the reimbursement amounts shall

be limited by applicable MCC cost principles which are posted at www.mcc.gov and can be found under *program procurement*.

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

(iii) Other Methods of Selection.

(1) **Paragraph 3.7, Footnote 32** is changed to: Dollar thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed 200,000USD, except in exceptional circumstances and as specifically approved by MCC.

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

(3) **Paragraph 3.13** concerning publication of award of contracts is changed by adding, after *dgMarket*, the following text: and on the MCA-Nicaragua website.

(iv) Types of Contracts and Important Provisions.

(1) **Paragraph 4.6** defining currency related rules shall be changed to: The solicitation documents, including the Proposal Documents shall state clearly that firms must express the price for their services in the currency stated in the solicitation document which in every case must be either United States Dollars or the local currency of Nicaragua. MCA-Nicaragua may require consultants to state the portion of the price representing costs in the local currency of Nicaragua. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

(2) **Paragraph 4.7** dealing with price adjustment is deleted.

(3) **Paragraphs 4.8 and 4.9** define payment provisions. In the event of inconsistency between these rules and any related provisions of the Compact and Supplemental Agreements, the provisions set out in the Compact and the Supplemental Agreements shall prevail.

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

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

(6) **Paragraph 4.15** relating to applicable law and settlement of disputes shall be changed to: The contract shall include provisions dealing with the applicable law and the forum for settlement of disputes. Settlement of disputes shall take place in Nicaragua, with the possibility for international arbitration in the case of foreign consultants and in other cases where the parties so agree.

(v) Selection of Individual Consultants.

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

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

(1) **Paragraph 1** is changed to: 1. MCC shall review the selection process for contracting consultant services that MCA-Nicaragua proposes in its Procurement Plans in order to ensure that the proposed method of selection is appropriate and is consistent with the rules and procedures set out in these Guidelines.

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

(3) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact or such longer period if required to resolve any litigation, claims or audit findings or if required by any statutory requirement.

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

(1) **Paragraph 1** relating to use of The World Bank standard proposal documents is changed in the introductory sentences to: MCA-Nicaragua shall use the applicable standard solicitation documents, including the standard Proposal Documents, as approved by MCC pursuant to Section 3 of these Procurement Guidelines, as may be modified to address project-specific conditions, subject to MCC approval when the change is material. The solicitation documents shall include instructions to consultants that includes adequate information on the following aspects of the procurement procedures and the assignment:
[The remaining text of this Appendix remains unchanged.]

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

(viii) Appendix 3: Guidance to Consultants.

(1) Providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. Consultants can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about MCA-Nicaragua at <http://www.cuentadelmilenio.org.ni/>.

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

(i) Introduction.

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

(ii) General Considerations.

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

(2) **Paragraph 1.3** is changed to: Open competition is the basis for efficient public procurement. In most cases, therefore, MCC requires MCA-Nicaragua to obtain goods, works and services through an international competitive bidding (ICB) process open to eligible suppliers and contractors.

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

(4) **Paragraphs 1.5** defining application of guidelines is changed to: The procedures outlined in these Guidelines apply to all contracts for goods and works funded by MCC in accordance with the Compact and the Procurement Agreement. References to “goods” and “works” in these Guidelines include related services such as transportation, insurance, installation, commissioning, training and initial maintenance. “Goods” includes commodities, raw material, machinery, equipment and industrial plant. These Guidelines also apply to services which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping and similar operations.

(5) **Footnote 10** is deleted.

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

(7) **Paragraph 1.9** defining rules for advance contracting and retroactive funding is changed to: In certain circumstances, such as to accelerate project implementation, MCA-Nicaragua may, with MCC’s approval, wish to proceed with the selection of the contractor or supplier before the Compact comes into force. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement shall be in accordance with these Procurement Guidelines, and MCC shall review the process used by MCA-Nicaragua. MCA-Nicaragua undertakes such advance contracting at its own risk, and any approval by MCC with regard to the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCA-Nicaragua for any contract costs if the contract is signed prior to Entry into Force of the Compact.

(8) **Paragraph 1.11** concerning review by MCC is changed by deleting the last two sentences and inserting the following text: The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule 2.

(9) **Paragraph 1.13** defining how to reference The World Bank role in the procurement is changed to: MCA-Nicaragua shall use the following language when referring to MCC in the Bidding Documents and contract documents:

The Millennium Challenge Corporation (“**MCC**”) and the Government of the Republic of Nicaragua (the “**Government**”) have entered into a Compact for Millennium Challenge Account (“**MCA**”) assistance to help facilitate poverty reduction through economic growth in Nicaragua (the “**Compact**”) in the amount of USD \$175,000,000 (“**MCC Funding**”). Nicaragua, acting through the *Fundación Reto del Milenio-Nicaragua* (“**MCA-Nicaragua**”), intends to apply a portion of the proceeds of MCC Funding (as defined in the Compact) to eligible payments under this contract. Payment by MCC will be made only at the request of MCA-Nicaragua and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Compact, including restrictions on the use of MCC Funding and conditions to disbursements.

(10) **Paragraph 1.14** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that MCA-Nicaragua (including beneficiaries of MCC grants), as well as bidders, suppliers, and contractors under MCC funded contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In accordance with this requirement, MCC: [*The remaining text of this paragraph remains unchanged.*]

(11) **Paragraph 1.16** defining the rules for providing a Procurement Plan is deleted.

(iii) International Competitive Bidding (ICB).

(1) **Paragraph 2.7** defining the requirements for publication of General Procurement Notice is changed to: Subject to the exclusions stated at Paragraph 1.8, every procurement shall be open to foreign and national participants without restrictions or

preferences. Notice of anticipated procurements as set out in periodic procurement plans shall be published at least semi-annually as a General Procurement Notice (the “**General Procurement Notice**”). General Procurement Notices shall be posted in the English language at the MCA-Nicaragua website, the Development Gateway Market (*dgMarket*) website at www.dgmarket.com and at UN Development Business Online (*UNDB online*) at www.devbusiness.com. MCA-Nicaragua shall also publish the General Procurement Notice in a newspaper of wide circulation in Nicaragua and in such other national and international paper publications or electronic media as appropriate or as requested from time to time by MCC. The General Procurement Notice shall be posted and published in a format approved by MCC.

(2) Footnote 27 is retained unchanged.

(3) **Paragraph 2.8** defining requirements for notification and advertising of specific procurement notices is changed to: Invitations to pre-qualify or to bid, as the case may be, in an ICB procurement (generally procurements valued at or above 100,000USD) shall be advertised as Specific Procurement Notices in English at the MCA-Nicaragua website, at *dgMarket* website and at *UNDB online*. Publication in local print and broadcast and other national and international media is encouraged as long as the posting meets the same, concurrent, 30 day notice requirement.

(4) **Paragraph 2.12** prescribing use of the Standard Bidding Documents is changed to: MCA-Nicaragua shall use the applicable solicitation documents, including the standard Bidding Documents, as approved by MCC pursuant to Section 3 of these Procurement Guidelines, as may be modified to address project-specific conditions, subject to MCC approval when the change is material.

(5) **Paragraph 2.15** defining the rules for use of language is changed to: All advertisements and publications of awards for contracts at or above 50,000 USD , whether on the MCA-Nicaragua website, *dgMarket*, or *UNDB online* shall be published in English. Advertisements and publications of awards for contracts valued at less than 50,000 USD shall be published in English or in Spanish or both at the discretion of MCA-Nicaragua *provided* that in the case of discrepancies, the English version will control. For all contracts at or above 100,000USD, the documents soliciting qualifications and the Bidding Documents as well as the documents responding to these solicitations, including the bids, shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between MCA-Nicaragua and the Provider. At the discretion of MCA-Nicaragua, the invitations and solicitation documents also may be prepared in the Spanish language. For contracts valued at less than 100,000USD, any invitation or solicitation document and any responding documents may be prepared in English or Spanish language or both at the discretion of MCA-Nicaragua. However, contractors and suppliers shall not be permitted or required to sign contracts in two languages.

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

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

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

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

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

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

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

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

(14) **Paragraph 2.43** relating to applicable law and settlement of disputes shall be modified to change the first four sentences with the following text: The conditions of contract shall include provisions dealing with the applicable law and forum for the settlement of disputes. Settlement of disputes shall take place in Nicaragua, with the possibility for international arbitration in cases where foreign entities are parties to the contract and in other cases where the parties so agree.

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

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

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

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

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

(iv) Other Methods of Procurement.

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

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

(3) **Paragraph 3.4** defining the rules for National Competitive Bidding is modified, the first two sentences are changed to: All procurements valued at 50,000USD or above shall be posted at the MCA-Nicaragua website, and at dg Market (As required under Paragraph 2.8 above, procurements valued at 100,000USD and above must also be posted at *UNDB Online*). For procurements less than 100,000 USD, solicitation documents may be in Spanish only and the bids may be requested and paid only in Nicaraguan currency at the discretion of MCA-Nicaragua.

(4) **Paragraph 3.5** defining the conditions for using Shopping is modified to limit use of Shopping to procurement valued less than 50,000USD.

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

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

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

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

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

(2) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact, or such longer period if required to resolve any litigation, claims or audit findings or if required by any statutory requirements.

(vi) Appendix 2: Domestic Preferences.

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

(vii) Appendix 3: Guidance to Bidders.

(1) Providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. Bidders can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about MCA-Nicaragua on the MCA-Nicaragua Website.

2. Records.

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC and in accordance with Section 3.8 of the Compact.

3. Bidding and Proposal Documents.

Standard bidding and proposal documents (“*Bidding Documents and Proposal Documents*”) shall be developed and subject to review by MCC. The Bidding Documents and Proposal Documents must be available in the English language. Bidding Documents and Proposal Documents may also be available in the Spanish language but the English language version will control. The instructions to bidders and consultants in the Bidding Documents and Proposal Documents, respectively, must set out or reference the rules and procedures governing the procurement. The data sheet accompanying instructions to bidders and instructions to consultants must also state the currency or currencies for the offers and shall require that payment be made in the same currency as the offer which must be in either United States Dollars or the local currency of Nicaragua.

4. Review and Approval Requirements.

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

5. Bid Challenge System.

MCA-Nicaragua shall establish a bid challenge system that provides suppliers and contractors including consultants, the ability to seek review of procurement actions and decisions (“*Bid Challenge System*”). Such Bid Challenge System shall be subject to MCC approval. The review body must be impartial and independent and shall have no interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement or involved in or related to the procurement process. The review body must follow clear, written, and transparent procedures and shall issue a timely, written decision on any bid challenge that is

timely and properly filed. The review body must have the authority to order a correction of a violation of the procurement principles and procedures or to order compensation for any loss or damage suffered by a successful challenger, at least to the extent of the cost of preparation of the bid and the challenge. The review body must also have the power to order suspension of a procurement that is under challenge in order to preserve the commercial opportunity pending the outcome of the review. MCC reserves the right to review and comment on the organization and operation of the Bid Challenge System.

6. Subcontracting.

(a) Every contract or subcontract for goods, services or works with any party that receives at least 50,000USD in the aggregate of MCC Funding shall require the contracting party to follow the Procurement Principles set out in Section 3.6 of the Compact to the maximum extent consistent with the objectives and requirements of the contract when subcontracting for goods, services or works.

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

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

SCHEDULE 2 – APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		General Director	Board of Directors	MCC
Pre-qualification (Part II, Paragraphs 2.9 and 2.10)	Pre-qualification documents and advertising procedures	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed list of entities qualified	All	Above 500,000	Above 500,000
	Handling of Protest	All	All	All
Competitive Bidding (International and National) (Part II and Part III, Paragraphs 3.3 and 3.4)	Bidding Documents	All	Above 1,000,000 Goods Above 5,000,000 Works	Above 1,000,000 Goods Above 5,000,000 Works
	Extension of Bid Validity	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed award	All	Above 250,000	Above 250,000
	Final Draft of Contract	All	Above 250,000	Above 250,000
	Handling of Protest	All	All	All
Limited Bidding (Part III, Paragraph 3.2)	Selection of limited bidding because only limited number of suppliers	All	Above 100,000	Above 100,000
	Other justification	All	Above 50,000	Above 50,000
	Shortlist	All	Above 100,000	Above 100,000
	Bidding Documents	All	Above 500,000	Above 500,000
	Extension of Bid Validity	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed award	All	Above 1,000,000	Above 1,000,000
	Final Draft of Contract	All	Above 250,000	Above 250,000
	Handling of Protest	All	All	All
Shopping² (Part III, Paragraph 3.5)	Selection of Shopping because procurement is valued under 50,000	All	None	None
	Shortlist	Over 2,000	None	None

* Within each “Procurement Procedure or Method,” each separate “Decision” shown is an independent requirement, and all requisite approvals must be received for each such “Decision” before proceeding, sequentially from top to bottom, to the next “Decision” requirement.

² The General Director may delegate its approval rights with respect to Shopping to the Deputy General Director in accordance with the provisions of the Governance Agreement.

SCHEDULE 2 – APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		General Director	Board of Directors	MCC
	Record of Purchases	Weekly	Monthly	None
	Handling of Protest	All	All	Quarterly record of decisions
Direct Contracting (Part III, Paragraphs 3.6 and 3.7)	Selection of Direct Contracting to add to or extend existing contract	All	Above 100,000	Above 100,000
	Selection of Direct Contracting to be compatible with existing equipment	All	Above 50,000	Above 50,000
	Selection of Direct Contracting because obtainable only from one source	All	Above 100,000	Above 100,000
	Selection of Direct Contracting because procurement is valued under 2,000	None	None	None
	Selection of Direct Contracting on any other grounds	All	Above 50,000	Above 50,000
	Final Draft of Contract	Over 2,000 (Under 2,000 review weekly report)	Above 50,000 (Under 2,000 review monthly report)	Above 50,000
	Handling of Protest in respect of selection of Direct Contracting	All	All	All
Force Account (Part III, Paragraph 3.8)	Selection of using equipment owned by or employees of Government of Nicaragua for performing works	All	All	All
	Final Draft of Contract	All	All	All
All Procurement Actions	Contract Amendments, Modifications and Change Orders	All	Material change or increases value of Contract by 10% or more	Material change or increases value of Contract by 10% or more

SCHEDULE 2 - APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Consultant Services

Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		General Director	Board of Directors	MCC
Quality and Cost Based Selection (Part II)	Request for Expression of Interest	All	Above 500,000	Above 500,000
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	Above 500,000	Above 500,000
	Technical Evaluation Report	All	Above 100,000	Above 100,000
	Proposed Award	All	Above 100,000	Above 100,000
	Final Draft of Contract	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Quality Based Selection and Selection under Fixed Budget (Part III, Paragraph 3.2 to 3.5)	Choice of this selection procedure	All	All	All
	Request for Expression of Interest	All	Above 500,000	Above 500,000
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	Above 500,000	Above 500,000
	Technical Evaluation Report for QBS only	All	Above 100,000	Above 100,000
	Proposed Award	All	Above 100,000	Above 100,000
	Final Draft of Contract	All	Above 100,000	Above 100,000
Least-Cost Selection (Part III, Paragraph 3.6)	Choice of this selection procedure because procurement is valued under 200,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	None	None
	Proposed Award	All	Above 100,000	Above 100,000
	Final Draft of Contract	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All

* Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

SCHEDULE 2 - APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Consultant Services

Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		General Director	Board of Directors	MCC
Selection Based on Consultant's Qualifications (Part III, Paragraph 3.7 to 3.8)	Choice of this selection procedure because procurement is valued under 100,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist	All	Above 50,000	Above 50,000
	Proposal Documents	All	None	None
	Technical Evaluation Report	All	None	None
	Proposed Award	All	Above 50,000	Above 50,000
	Handling of Protest	All	All	All
Single Source Selection (Part III, Paragraphs 3.9 to 3.13)	Choice of this selection procedure	All	Above 50,000	Above 50,000
	Final Draft of Contract	All	Above 50,000	Above 50,000
	Handling of Protest in respect of choosing Single Source Selection Procedure	All	All	All
Selection of Individual Consultants (Part V)	Choice of this selection procedure	All	Above 50,000	Above 50,000
	Shortlist	All	Above 50,000	Above 50,000
	Technical Evaluation Report	All	None	None
	Proposed Award and Final Draft of Contract	All	Above 50,000	Above 50,000
	Handling of Protest	All	All	All
All Procurement Actions	Contract Amendments, Modifications and Change Orders	All	Material change or increases value of Contract by 10% or more	Material change or increases value of Contract by 10% or more

SCHEDULE 3

DEFINITIONS

***Additional Representative** shall have the meaning set forth in Section 4.18.*

***Agreement** shall have the meaning set forth in the Preamble.*

***Attachments** shall have the meaning set forth in Section 4.6.*

***Bank** shall have the meaning set forth in Schedule 1.*

***Borrower** shall have the meaning set forth in Schedule 1.*

***Bid Challenge System** shall have the meaning set forth in Schedule 1.*

***Bidding Documents and Proposal Documents**” shall have the meaning set forth in Schedule 1.*

***Compact** shall have the meaning set forth in the Preamble.*

***Compact Documents** means the Compact, the Disbursement Agreement, and any other Supplemental Agreement between the Government or any Government Affiliate or Permitted Designee and MCC or between two or more of such parties.*

***Designation and Grant Agreement** means that certain Designation and Grant Agreement dated _____, by and among the Government, MCA-Nicaragua and MCC.*

***dgMarket** shall have the meaning set forth in Section 1.2.*

***Effective Date** shall have the meaning set forth in the Preamble.*

***General Procurement Notice** shall have the meaning set forth in Schedule 1.*

***Government** shall have the meaning set forth in the Preamble.*

***Guidelines** shall have the meaning set forth in Schedule 1.*

***Loan** shall have the meaning set forth in Schedule 1.*

***Loan Agreement** shall have the meaning set forth in Schedule 1.*

***MCA-Nicaragua** shall have the meaning set forth in the Preamble.*

***MCA-Nicaragua Principal Representative** shall have the meaning set forth in Section 4.18.*

***MCA-Nicaragua Website** means www.cuentadelmilenio.org.ni/.*

***MCC** shall have the meaning set forth in the Preamble.*

***MCC Principal Representative** shall have the meaning set forth in Section 4.18.*

Party and Parties shall have the meaning set forth in the Preamble.

Principal Representatives shall have the meaning set forth in Section 4.18.

Procurement Guidelines shall have the meaning set forth in Section 2.2.

Procurement Plan shall have the meaning set forth in Section 1.1.

Procurement Principles shall have the meaning set forth in Section 2.1.

Technical Secretariat shall have the meaning set forth in the Preamble.

Technical Secretariat Principal Representative shall have the meaning set forth in Section 4.18.

UNDB Online shall have the meaning set forth in Section 1.2

WB Procurement Guidelines shall have the meaning set forth in Schedule 1.