

**Term Sheet for
Certain Supplemental Agreements**

This term sheet (this “*Term Sheet*”) confirms the mutual intentions of the Millennium Challenge Corporation, a United States government corporation (“*MCC*”), and the Ministry of Finance and Planning (“*Ministry*”), on behalf of the Government of the Republic of Cape Verde (the “*Government*”) regarding certain key terms and conditions to be included in certain Supplemental Agreements that will be executed in furtherance of that certain Millennium Challenge Compact by and between MCC and the Government dated as of July 4, 2005 (the “*Compact*”), which shall be executed and delivered to MCC as provided in the Compact or as otherwise agreed by the Parties (collectively, the “*Agreements*”).

Except as otherwise provided in the Compact or any Supplemental Agreement between the Parties executed and effective as of this date, this Term Sheet supersedes all prior correspondence, understandings, communications between the Parties (including the Ministry) with respect to the matters contemplated by this Term Sheet. Capitalized terms that are used but not defined herein shall have the meaning given such terms in the Compact. The Parties shall engage in good faith negotiations with each other or with applicable third parties to reach timely agreement with respect to each of the Agreements.

1. Governance Agreement.

The terms of the MCA-Cape Verde governance arrangements, including certain of the roles and responsibilities of the Steering Committee, Management Unit and Stakeholders’ Committee and certain approval and other rights of MCC, are included in the Compact, Resolution No. 24/2005, and forms of the Disbursement Agreement, Procurement Agreement, Bank Protocol, and Memorandum of Agreement Regarding Fiscal Agent Services for MCA-Cape Verde, which together shall satisfy the requirements of the “Governance Agreement” referenced in the Compact. Each of the Supplemental Agreements referenced in the preceding sentence will be executed in substantially the form, and on substantially the terms, of the forms delivered to MCC in connection with this Term Sheet. Additional requirements of the governance of MCA Cape-Verde (including, where appropriate, additional MCC approval rights) shall be included in the bylaws or similar internal regulations of MCA-Cape Verde or other Governing Documents, which shall be subject to MCC prior written approval.

2. Fiscal Agent Agreement

The Memorandum of Agreement Regarding Fiscal Agent Services for MCA-Cape Verde shall be executed in substantially the form, and on substantially the terms, of the form of the Memorandum of Agreement Regarding Fiscal Agent Services for MCA-Cape Verde delivered in connection with this Term Sheet. Such Memorandum of Agreement shall be deemed to satisfy the requirement for a Fiscal Agent Agreement under the Compact.

3. Bank Agreement.

The Bank Protocol shall be executed in substantially the form, and on substantially the terms, of the form of Bank Protocol delivered in connection with this Term Sheet. Such Bank Protocol shall be deemed to satisfy the requirement for a Bank Agreement under the Compact.

4. Form Implementing Entity Agreement.

(a) Parties.

- (i) MCA-Cape Verde or Outside Project Manager.
- (ii) Relevant Implementing Entity.

(b) Covenants of Implementing Entity.

(i) Compact Documents. The Implementing Entity shall comply with the relevant terms of the Compact, Disbursement Agreement, Procurement Agreement (including Procurement Guidelines), Fiscal Accountability Plan, applicable Work Plan and Detailed Financial Plan as may be amended from time to time, which agreements or documents shall be delivered to each Implementing Entity in connection with the Implementing Entity Agreement and incorporated by reference therein.

(ii) Implementation Plan. Each Implementing Entity Agreement shall contain such obligations, terms and conditions for the Implementing Entity as required for such Implementing Entity in the Implementation Plan and the Implementing Entity shall comply with such obligations, terms and conditions. The Implementing Entity shall submit to MCA-Cape Verde an implementation plan, satisfactory to MCA-Cape Verde, which implementation plan shall include, without limitation, detailed information about the implementation structure and arrangement for the implementation of the Project or Project Activity; the key personnel to be involved in the implementation and curriculum vitae for each; resources, staff and otherwise, that will be allocated to the implementation of the Project or Project Activity; all required implementation plans in conformity with MCC requirements including work plans, budgets, procurement plans and monitoring and evaluation plans and reporting schedule; and such other details as MCA-Cape Verde may request.

(iii) Services. The Implementing Entity shall provide services, goods, works required by the Implementing Entity Agreement in a timely manner and in manner otherwise consistent with requirements of Section 3.1 of the Compact. The Implementing Entity shall obtain all necessary immigration, business and other permits, licenses, consents, and approvals to enable such Implementing Entity and its personnel to fully perform such Implementing Entity Agreement.

(iv) Certifications. The Implementing Entity shall deliver such certifications and other documents necessary for any MCC Disbursement or Re-Disbursement.

(v) **Flow-Through.** In the event an Implementing Entity engages other persons, entities or Government Affiliates to implement all or any part of its responsibilities in connection with the Program, such Implementing Entity shall ensure the incorporation of the provisions of Section 4 of this Term Sheet in each agreement, document or instrument engaging such person, entity or Government Affiliate.

(c) **Required Approvals.** An Implementing Entity shall have the authority to approve Re-Disbursements and terms of reference in accordance with the dollar amount thresholds set forth in its Implementing Entity Agreement or applicable Governing Documents, and otherwise in accordance with the Disbursement Agreement or other relevant Supplemental Agreement. The Implementing Entity must submit in writing each of the following in accordance with the terms of its Implementing Entity Agreement, which responsibility may not be delegated further:

(i) Recommendation to MCA-Cape Verde on any matter submitted by the Implementing Entity to MCA-Cape Verde for a decision;

(ii) For any Re-Disbursement that is less than the dollar amount threshold that requires the consent of only the Implementing Entity under its Implementing Entity Agreement, Governing Document, or relevant Supplemental Agreement, a request to the Fiscal Agent for certification of the payment of such amount;

(iii) For any Re-Disbursement that is equal to or more than the dollar amount threshold that requires the consent of only the Implementing Entity under its Implementing Entity Agreement, Governing Document or relevant Supplemental Agreement, a request to the relevant Project Manager or Outside Project Manager for approval of payment of such amount;

(iv) For any goods, services or works that the Implementing Entity must procure the value of which is equal to or greater than the dollar amount threshold that requires the consent of only the Implementing Entity under its Implementing Entity Agreement, the Governing Document, the Procurement Agreement or other relevant Supplemental Agreement, a request for approval of such procurement from the relevant Project Manager or Outside Project Manager prior to procuring such goods or services;

(v) Certification of other procurement activities as specialized in its Implementing Entity Agreement, the Procurement Agreement or other relevant Supplemental Agreement; and

(vi) Any Compact Reports, or such other reports specified in its Implementing Entity Agreement, the Compact, or any other Supplemental Agreement that the Implementing Entity must submit to MCA Cape Verde; and

(d) **Reporting Requirements.** The Implementing Entity shall comply with reporting requirements set forth in the Implementing Entity Agreement, which requirements shall include reports or data as necessary for reports required under Section 3.12 of the Compact and any reports or data required under the M&E Plan or relevant Work Plan. Any reports shall be delivered simultaneous with a copy to MCC.

(e) **Fiscal Accountability.** The Implementing Entity shall be provided a copy of the Fiscal Accountability Plan developed and adopted by MCA-Cape Verde and approved by MCC and the Implementing Entity shall be required to materially comply with that plan.

(f) **MCC Approval.** MCC shall acknowledge and accept each Implementing Entity Agreement prior to its conclusion and effectiveness, and any amendment, modification, suspension or termination of such Implementing Entity Agreement shall require the written approval of MCC.

(g) **Fees.** The fee for the services of, and the terms of payment to, each Implementing Entity shall be set forth in the relevant Implementing Entity Agreement, which fee and terms of payment shall be subject to MCC approval.

(h) **Termination.** Agreement terminated on 30 days notice by either party or if Compact terminates or by MCA-Cape Verde automatically upon written notice, in the event of a material breach of a representation or covenant by the Implementing Entity, or in the event the Compact is terminated. Termination of this Agreement by the Government or MCA-Cape Verde shall be subject to MCC approval.

(i) **Indemnification.** Implementing Entity shall indemnify MCA-Cape Verde and MCC Indemnified Parties for any loss incurred due to negligence or willful misconduct. Any limitation of liability of the Implementing Entity shall be subject to MCC approval. MCA-Cape Verde shall not be responsible for payment of any indemnification expenses to Implementing Entity, to extent any amounts are owed, the Government shall pay those amounts from national funds and not with MCC Funding or Program Assets.

(j) **Governing Law; Dispute Resolution.** The laws of the Republic of Cape Verde shall govern the Implementing Entity Agreement, unless the parties otherwise agree and provided such choice is acceptable to MCC and does not limit MCC's rights. Dispute resolution shall be by consultation of parties and only after that by arbitration.

(k) **Insurance.** The Implementing Entity shall maintain insurance and performance bonds customary for a transaction of this size and nature.

(l) **General Terms.**

(i) **Customary representations, warranties, covenants.** Customary representations, warranties and covenants made by parties to an agreement of the particular or similar type to be executed;

(ii) **Customary conditions.** Customary conditions to be satisfied before the parties are obligated to make the Agreement effective and binding on the parties, including without limitation, (i) execution of the Agreement by duly authorized representative, the terms of which shall be mutually acceptable to the parties, and (ii) the receipt of any necessary approvals or authorizations necessary to make the Agreement effective and binding;

(iii) **Procurements.** A requirement that all procurements of goods, services or works under the Agreement or otherwise related to or in furtherance of the Compact shall be in

accordance with Section 3.6 of the Compact, the Procurement Agreement and Procurement Guidelines, as may be amended from time to time;

(iv) Use or treatment of MCC Funding. A requirement that the use or treatment of MCC Funding does not violate any limitations or requirements specified in the Compact, including Section 2.3 therein, or any other relevant Supplemental Agreements or Implementation Letters. Each relevant party that pays taxes shall promptly notify the Fiscal Agent and cooperate in seeking reimbursement of any taxes paid;

(v) Audits and Reviews. The following audit, review, and reporting requirements in accordance with Section 3.8 and 3.12 of the Compact:

(1) The relevant party or parties contracting with MCA-Cape Verde shall furnish to MCA-Cape Verde (and in the case of the Disbursement Agreement, MCA-Cape Verde shall furnish to MCC), the Compact Records specified to be delivered to MCA-Cape Verde (or MCC) in the Compact and in its respective agreement with MCA-Cape Verde (or MCC), as may be amended from time to time.

(2) The parties shall maintain proper Compact Records in accordance with, and allow such audits and reviews and comply with the access and other requirements of, the requirements of Section 3.8 of the Compact, including granting access to MCA-Cape Verde and MCC or their respective agents or representatives to records, employees and facilities.

(3) The parties shall comply with the terms of the Audit Plan described in the agreement and, upon request by MCA-Cape Verde or MCC, as appropriate, the relevant party shall take, where necessary, appropriate and timely corrective actions in response to any audit findings.

(4) The parties shall ensure the inclusion of such audit requirements in their contracts or agreements with other Providers in furtherance of the Compact.

(5) The parties shall comply with terms of the M&E Plan, including any reporting requirements contained therein.

(6) MCC shall have the right to use any information contained in any report or document delivered to or otherwise made available to MCC in any reports generated by MCC or otherwise.

(vi) Reserved Rights. A provision (i) expressly stating that certain rights are expressly reserved to MCC (including approval rights of the terms and conditions of the agreement, the Provider, and as applicable, any or all plans, reports, specifications, subcontracts, bid documents or other documents related to the agreement and the certain activities contemplated thereunder); (ii) that the parties agree that MCC, in reserving such rights, 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 the agreement; (iii) that MCC may, from time to time, exercise its rights, or discuss matters related to these rights and the activity with the parties jointly or separately, without thereby

incurring any responsibility or liability to the parties jointly or separately; and (iv) that any approval (or failure to disapprove) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, MCA-Cape Verde or MCC (or MCC Indemnified Parties) or any other person or entity from asserting any right or relieve the Provider of any liability which the Provider might otherwise have to the Government or MCC.

(vii) Supervision. The Implementing Entity shall report directly to the relevant Project Manager or Outside Project Manager, as applicable.

(viii) Other Compact requirements. Each Implementing Entity Agreement shall contain such other provisions required by (A) the Compact, including without limitation, any provisions specifically relating to an Implementing Entity therein, including Sections 2.3 (Limitations on Use and Treatment), 3.6 (Procurement), 3.8 (Access; Audits) and 3.13 (Publicity; Marking) and (B) the Procurement Agreement, including without limitation, Section 2.4.

(ix) Inconsistencies. The parties to each Implementing Entity Agreement shall agree that in the event of any conflict between such Implementing Entity Agreement and the Compact, Disbursement Agreement, Procurement Agreement, or any other Supplemental Agreement between MCC and the Government or between MCC and any Government Affiliate, the conflicting term(s) of the Compact, Disbursement Agreement, Procurement Agreement or such other Supplemental Agreement shall prevail.

5. Miscellaneous.

(a) Non-Binding. The Parties shall not be bound by the above terms until with respect to each Agreement a definitive agreement is executed and delivered by the applicable parties.

(b) Designation. In accordance with Section 3.2(c) of the Compact, MCC hereby consents to the designation of the Ministry to act on behalf of the Government in connection with this Term Sheet consistent with the Designated Rights and Responsibilities designated by the Government to the Ministry on or before the date hereof, so long as such designation is not modified or revoked.

(c) Signatures. This Term Sheet may be executed in multiple counterparts, each of which shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[Signature page begins on the next page]

Agreed this ____ day of _____, 2005

MILLENNIUM CHALLENGE
CORPORATION

MINISTRY OF FINANCE
PLANNING, ON BEHALF OF THE
GOVERNMENT OF THE REPUBLIC OF
CAPE VERDE

By: _____
Name: John Hewko
Title: Vice President for Country Programs

By: _____
Name: João António Pinto Coelho Serra
Title: Minister of Finance and Planning