



MILLENNIUM CHALLENGE ACCOUNT - MALAWI

**On Behalf of:
THE GOVERNMENT OF MALAWI**

Funded by

**THE UNITED STATES OF AMERICA
through**

THE MILLENNIUM CHALLENGE CORPORATION

PROCUREMENT OF CONSULTANT SERVICES

for

COMPACT ASSET DISPOSITION CONSULTANT

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

March 2018

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Letter of Invitation for Proposals

Re: COMPACT ASSET DISPOSITION CONSULTANT

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

MCA-Malawi requires the services of a Consultant to undertake the Compact's Assets Disposition services.

Summary of Services:

The Malawi Compact, entered into force on 20 September 2013. Being a five year Project, the Compact End Date (CED) is 20 September 2018. All compact-funded projects and works are expected to complete by CED. An additional 120 calendar days to 18 January 2019 (Closure Period) follow CED to allow for close-out of legal and administrative items such as closing out books of accounts including bank accounts, conduct final audits and archiving of Compact documents.

Specific Service:

MCA-Malawi through its Fiscal Agent maintains a record of all assets procured using MCC Compact resources. The consultant is expected to access and review the Fixed Asset Register (FAR) to establish its completeness and accuracy. The consulting firm will in collaboration with Government and MCA-Malawi, be required to perform the following tasks:

- **Conduct Physical count for all Assets**
- **Conduct an asset valuation for Administrative Assets**
- **Develop an Asset Disposition Plan to assist MCA-Malawi to dispose of all Program Assets in a manner that is transparent and accountable.**
- **Prepare and Coordinate Proposals for Granting Program Assets**
- **Coordinate the evaluation and prepare a Report on beneficiaries of Compact Assets**
- **Review and prepare the necessary documents to act as legal evidence of transfer of ownership of assets from MCA-Malawi to the respective beneficiaries.**

The period of performance for this assignment is six (6) person months, spread over a period of nine months commencing on April 2018 to 31 December 2018.

The Consultant will be selected under the Consultant's Qualifications (CQS) method, the evaluation procedure for which is described in accordance with "MCC Program Procurement Guidelines" which are provided on the MCC website: www.mcc.gov and on the MCA-Malawi web site: www.mca-m.gov.mw. The Consultant will sign a contract (**Format in Section 5**) on the basis of a fixed price.

Application Procedure:

Consultants are requested to send their Proposal, which should include a **Technical Proposal (Format in Section 2)** to be considered for the assignment, updated CVs showing the minimum requirements described in the Terms of Reference, and in compliance with the attached Terms of Reference, contact details (i.e., address, telephone and fax numbers, e-mail address, etc.), at least three references (Name, Designation, organization, Phone and Email id) that can comment on the consultant's related work experience, The Consultant shall also submit in a separate envelope a **Financial Proposal (Format in Section 3)**. The deadline for submission of the proposal is **15.00** hours (local Malawian time), **on April 3, 2018**.

To submit your Proposal, please use the following address:

MCA-Malawi Procurement Agent
1st Floor, West Wing
Kang'ombe House, City Center
Lilongwe 3, Malawi.
E-mail: MCA.MalawiPA@cardno.com

Yours sincerely,

Dye B Mawindo
Chief Executive Officer
Millennium Challenge Account-Malawi

Technical Proposal Submission Form

[Location, Date]

To:

Dye B Mawindo
Chief Executive Officer
Millennium Challenge Account-Malawi
MCA-Malawi, Pamodzi House
P.O. Box 31513, Lilongwe, Malawi.

Dear Sir,

Re: Procurement of Compact Asset Disposition Consultant

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

We, the undersigned, offer to provide the consulting services for the above mentioned assignment in accordance with your Letter of Invitation dated [Insert Date] and this Proposal.

We hereby submit our Proposal, which will be valid for a period of **60 (sixty) days**.

We hereby declare that all the information and statements made in this Proposal are true and accept that any misrepresentation contained in it may lead to our disqualification.

If negotiations are held during the initial period of validity of the Proposal, we undertake to negotiate on the basis of our availability for the assignment.

Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations, and we undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than [insert the date on which you will commence the assignment]

We understand you are not bound to accept any proposal that you may receive.

Yours sincerely,

Authorized Signatory

Name and title of Signatory

Name of Consultant

Address of Consultant

Experience of the Consultant

[Using the format below, provide information on each relevant assignment for which your firm was legally contracted for carrying out consulting services similar to the ones requested under the Terms of Reference included in this RFP. **This shall include all MCC-funded assignments of a similar nature.** The Proposal must demonstrate that the Consultant has a proven track record of successful experience in executing projects similar in substance, complexity, value, duration, and volume of services sought in this procurement.

Maximum 20 pages]

Assignment name:	Approx. value of the contract (in current US\$):
Country: Location within country:	Duration of assignment (months):
Name of client	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in current US\$):
Start date (month/year): Completion date (month/year):	No. of professional staff-months provided by associated consultants:
Name of associated consultants, if any:	Name of proposed senior professional staff of your firm involved and functions performed (indicate most significant profiles such as project director/coordinator, team leader):
Narrative description of project:	
Description of actual services provided by your staff within the assignment:	

Name of Firm: _____

References of the Consultant

[Provide contact information for at least three (3) references that can provide substantial input about:

- (a) The type of work performed
- (b) Confirm the quality of the work experience listed in Experience of the Consultant.

The MCA-Malawi reserves the right to contact other sources as well as to check references and past performance, including without limitation any source listed in Experience of the Consultant. For each reference, list a contact individual, their title, address, facsimile, phone and e-mail address.

[Maximum 3 pages]

Curriculum Vitae (CV) for Proposed Key Professional Personnel

1. Proposed Position [only one candidate shall be nominated for each position]
2. Name of Firm [Insert name of firm proposing the staff]
3. Name of Personnel [Insert full name]
4. Date of Birth [Insert birth date] Nationality [Insert nationality]
5. Education [Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment].
6. Membership in Professional Associations
7. Other Training [Indicate appropriate postgraduate and other training]
8. Countries of Work Experience [List countries where staff has worked in the last ten years]
9. Languages [For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]

Language	Speaking	Reading	Writing
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10. Employment Record [Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]
From [year]: To [year]:
Employer:
Position(s) held:
11. Detailed Tasks Assigned [List all tasks to be performed under this assignment]
12. Work undertaken that best illustrates capability to handle the tasks assigned: [Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]
Name of assignment or project:
Year:
Location:
Client:
Main project features:
Position held:
Activities performed:
13. References:

[List at least three individual references with substantial knowledge of the person's work. Include each reference's name, title, phone and e-mail contact information.] [The MCA-Malawi reserves the right to contact other sources as well as to check references, in particular for performance on any relevant MCC-funded projects.]

14. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

I, the undersigned, hereby declare that I agree to participate with the [Consultant] in the above-mentioned Request for Proposal. I further declare that I am able and willing to work:

1. for the period(s) foreseen in the specific Terms of Reference attached to the above referenced Request for Proposal for the position for which my CV has been included in the offer of the Consultant and
2. within the implementation period of the specific contract.

Signature of Key Professional Personnel

If this form has NOT been signed by the Key Professional Personnel, then in signing below the authorized representative of the Consultant is making the following declaration.

“In due consideration of my signing herewith below, if the Key Professional Personnel has NOT signed this CV then I declare that the facts contained therein are, to the best of my knowledge and belief, a true and fair statement AND THAT I confirm that I have approached the said Key Professional Personnel and obtained his assurance that he will maintain his availability for this assignment if the Contract is agreed within the Proposal validity period provided for in the RFP.”

Signature of Authorized Representative of
the Consultant

Day / month/ year

Financial Proposal Submission Form

[Location, Date]

To: **Mr. Dye B Mawindo**
Chief Executive Officer
Millennium Challenge Account Malawi
P.O. Box 31513
Lilongwe, MALAWI

Dear Sirs:

Re: Procurement of Compact Asset Disposition Consultant

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

We, the undersigned, offer to provide the consulting services for the above mentioned assignment in accordance with your Letter of Invitation dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the lump sum of [Insert amount(s) in words and figures].

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, as indicated in our Technical Proposal submission.

Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signatory

Name and title of Signatory

Name of Consultant

Price Summary

Re: Procurement of Compact Asset Disposition Consultant

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

Group of Activities	Price ¹	
	US\$	[Local Currency]
Total Price		



Terms of Reference

Re: Procurement of Compact Asset Disposition Consultant

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

Introduction

The United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Republic of Malawi (“the Government”) signed a Millennium Challenge Compact (“the Compact”) that sets forth the general terms and conditions on which MCC will provide funding of US\$350.7 million to the Government for a program to reduce poverty through economic growth in Malawi (“the Program”), and describes the terms and conditions for procurement of goods, services and works made in furtherance of the Compact using MCC funding.

In line with the provisions of the Compact, the Government of Malawi incorporated the Registered Trustees of Millennium Challenge Account - Malawi (“MCA-Malawi”), as a public trust under the Trustees Incorporation Act (Cap 5:03) of the Laws of Malawi, to act as its designee in the supervision, management, administration and implementation of the Program.

The Compact, which entered into force in September 2013, is a five-year project that is being implemented to revitalize the power sector in Malawi. It is designed to assist the country to reduce poverty through economic growth by focusing on the improved efficiency of the energy sector. The assistance is being provided through the following three investment projects:

1.1 Infrastructure Development Project (IDP) (approximately \$257.1 million): The IDP includes rehabilitation, upgrading and addition of generation, transmission and distribution infrastructure assets to improve power system reliability.

1.2 Power Sector Reform Project (PSRP) (approximately \$25.7 million): The PSRP complements the IDP by providing technical assistance and capacity building to support the GoM policy reform agenda for the power sector and strengthen pivotal energy sector institutions, including the Electricity Supply Corporation of Malawi (ESCOM) Ltd, the Malawi Energy Regulatory Authority (MERA) and the Ministry of Natural Resources, Energy and Mining (MNREM). The PSRP consists of two activities: (1) ESCOM Turnaround Activity; and (2) Regulatory Strengthening Activity.

1.3 Environmental and Natural Resource Management (ENRM) Project (approximately \$27.9 million): The ENRM Project supports the broader objective of strengthening environment and natural resource management in the Shire River Basin. The ENRM Project comprises of three activities, namely: 1) Weed and Sedimentation Management; 2) Environment and Natural Resources Management which includes the setting up of a Trust Fund for the financing of activities aimed at promoting soil erosion control through the adoption of conservation agriculture and other ecological farming practices; and the 3) Social and Gender Enhancement Fund (SGEF). The SGEF is closely related to the ENRM Project Trust Fund as it will address social and gender issues that inhibit adoption of sustainable land management practices.

2 Background of the Assignment

The Malawi Compact, entered into force on 20 September 2013. Being a five year Project, the Compact End Date (CED) is 20 September 2018. All compact-funded projects and works are expected to complete by CED. An additional 120 calendar days to 18 January 2019 (Closure Period) follow CED to allow for close-out of legal and administrative items such as closing out books of accounts including bank accounts, conduct final audits and archiving of Compact documents.

In order to ensure an orderly and efficient closure of the Malawi Compact and in line with MCC requirements, MCA-Malawi developed Program Closure Plan (PCP). The PCP was approved in November 2017 and MCC provided its approval via Letter of Implementation in December 2017. One of the main aspects of the Program Closure Plan is disposition of Program assets acquired using MCC resources. Broadly, Program assets include: any funds in permitted bank accounts, interest accrued and any other proceeds of such funding; long-term and current assets, goods, and/or property (tangible and intangible) purchased/ procured or financed in whole or in part (directly or indirectly); information technology equipment; motor vehicles; furniture; intellectual property; photos; cash in hand; cash in bank accounts; work-in-progress (WIP) and financial assets such as retention monies, bid securities, performance and advance guarantees. It is MCA-Malawi's intention to dispose of all compact assets in a transparent and accountable manner. To accomplish this objective MCA-Malawi intends to engage the services of Asset Disposition Consultant to develop an Asset Disposal Plan (ADP) and coordinate its implementation with support from MCA-Malawi Program Closure Plan Team.

3. Scope and Responsibilities

3.1 Develop an Asset Disposition Plan (ADP), to set forth the general plan and details about the disposition of Program Assets in accordance with guidance set forth in MCC Program Closure Guidelines and the MCA-Malawi PCP including the manner in which assets are transferred to beneficiaries, donated to Non-Governmental Organizations (NGO) or disposed when past their useful life. Fixed assets, which are a subset of Program Assets, are classified into two:

3.1.1 Administrative Assets

These are assets acquired using MCC Compact resources normally used by

MCA-Malawi to implement the Compact and furtherance of its objectives. These assets are located at three different locations as follows: MCA-Malawi Head Office at Pamodzi House in Lilongwe; MCA-Malawi Satellite Office at Centre House Arcade in Lilongwe and MCA-Malawi Blantyre Office at Unit House.

3.1.2 Project Assets

These are assets acquired or created using MCC funds and are defined by the Compact Project Activity namely; Infrastructure Development Project (IDP), Power Sector Reform Project (PSRP) and Environment and Natural Resources Project (ENRM). Assets under this category were either acquired with a view to support the implementation of various activities or created as an output of the implementation of project activities. Project assets are located at various project sites, project partners' premises, grantees premises and Consulting Engineer's offices.

A full list of all Administrative and Project Assets is maintained in a Fixed Asset Register and Work in Progress (WIP) Tracker at MCA-Malawi Head Office. The Directorate of Finance and Administration in support with the Fiscal Agent maintains the Fixed Asset Register for all administrative assets. The Directorates of Infrastructure Development, Power Sector Reform, Environment and Natural Resources Management and Monitoring and Evaluation maintain program assets including intellectual property. It is expected that the consultant will only deal with administrative type of assets and not programme assets created as outputs from Compact implementation such as substations, overhead lines, harvesters, dredgers, MIS, intellectual property, etc.

3.2 Coordinate the implementation of the Asset Disposition Plan with support and input from MCA-Malawi Program Closure Team and MCA Directorates.

4 Tasks

The tasks required of the Asset Disposition Consultant include but are not limited to the following general and specific tasks.

4.1 General

- Work with MCA- Malawi Compact Closure Team to develop a full understanding of the Malawi Compact Program Assets and Compact PCP.
- Provide advice to MCA-Malawi Program Closure Team on how best to dispose of Program assets so that the process is clear, objective and transparent.
- Ensure that no Program Asset is used for personal gain of any individual, including any employee or consultant of the Government, or be used as a reward or form of compensation made in connection with the termination of an employment or contractual relationship, except as a grant to a program beneficiary provided for in the PCP.
- Ensure that adequate documentation to support the disposal of any asset is developed and prepared in accordance with MCA-Malawi Archiving Plan.

4.2 Specific tasks:

4.2.1 Review Completeness of records for the Fixed Asset Register

MCA-Malawi through its Fiscal Agent maintains a record of all assets procured using MCC Compact resources. The consultant is expected to access and review the Fixed Asset Register (FAR) to establish its completeness and accuracy. The FAR should include information as outlined below for all assets purchased with MCC Compact funds, including those of grantees and contractors:

- Purchasing Entity
- Location
- Building/Site
- Contractor
- Contract reference
- Make, model and serial number
- Condition of the Asset

4.2.2 Conduct Physical count for all Assets

The consultant will conduct an asset verification exercise to establish the physical presence of each set of assets, the condition of all assets and establish the quantities thereof that reconciles with MCA-Malawi contracts.

4.2.3 Conduct an asset valuation for Administrative Assets

The consultant will conduct an asset valuation exercise for each asset in each of the sets of assets and establish the expected market value.

4.2.4 Develop an Asset Disposition Plan to assist MCA-Malawi to dispose of all Program Assets in a manner that is transparent and accountable.

Upon completion of the FAR validation and valuation of all assets purchased with MCC Malawi Compact funds, the consultant is expected to develop a clear and concise Asset Disposition Plan that outlines the findings and process of the FAR validation, the disposal strategy for MCA-Malawi Program Assets, including any implications of assets purchased under tax exemption. Upon approval of the Asset Disposal Plan by MCA-Malawi and MCC, the consultant will coordinate the implementation of the Asset Disposal plan.

4.2.5 Prepare and Coordinate Proposals for Granting Program Assets

Some of the program assets will be disposed of through transfer of the assets from MCA-Malawi to eligible recipients/beneficiaries that meet the criteria outlined in MCC Program Closure Guidelines. The Asset Disposition Plan will outline the process for determining such entities and proposed recipients. The consultant is expected to coordinate with MCA-Malawi Directorates and proposed recipients on completion of the *Proposal for Granting Program Assets* document for each entity envisioned to be granted program asset. The *Proposal for Granting Program Assets* will require MCA-Malawi and MCC approval for each grantee. The *Proposal for Granting Program Assets* will include a basic needs and/or capacity analysis to determine that the Program Assets will be properly used and maintained, and that the

receiving entities (including non-governmental organizations) have the financial and human resource capacity, as well as procedures in place, for the proper use and oversight of Program Assets. To the extent MCA-Malawi is transferring assets to a non-governmental organization or other private entity, MCC may require that the receiving entity provide appropriate documentation on their legal status.

4.2.6 Coordinate the evaluation and prepare Asset Grant Proposals

Following MCA-Malawi and MCC approval of the *Proposal for Granting Program Assets*, MCA-Malawi and the receiving entity will enter into an appropriate grant agreement. The analysis and documentation will help ensure that Program Assets will be used to sustain the objectives of the Compact and will not be used for any purpose that would have been prohibited under the Compact. The process should generally proceed according to the following steps, unless otherwise agreed in the PCP:

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

The Asset Disposition Consultant is expected to coordinate process as outlined above and specifically on the development of the *Proposal for Granting Program Assets* with MCA-Malawi Directorates and the proposed grantee.

4.2.7 Preparation of Template Grant Agreement

The consultant is expected to develop the template grant agreement that will be used as legal evidence of the transfer process of program assets from MCA-Malawi to each of the grantees and that will require MCA-Malawi and MCC approval.

5. Deliverables

The expected products of the Asset Disposition Consultancy are the following:

5.1 Inception Report providing an understanding of the assignment, methodology and approach to work and detailed work plans with milestones and delivery dates. (W/E 8 April 2018)

5.2 Updated and physically validated Fixed Asset Register (W/E 15 April 2018)

5.3 Asset Valuation Report (W/E 29 April 2018)

5.4 Initial Asset Disposition Plan (ADP) (W/E 13 May 2018)

5.5 Template Grant Agreement for legal transfer of Program Assets to beneficiaries (W/E 13 May 2018)

5.6 Draft *Proposal for Granting Program Assets* submitted for all proposed grantees (May 31, 2018)

5.7 Updated Asset Disposition Plan with approved grantees – (30 June 2018)

5.8 Preparation of grants packages for each grantee including Grant Agreement, List of Assets, Approval *Proposal for Granting Program Assets*

All deliverables shall be submitted in both printed and electronic form - with key elements in English and shall be in a format acceptable to MCA-Malawi. Electronic versions will be prepared in Microsoft Office applications software or compatible. MCA-Malawi will supply in-country, coordination and transportation logistics for the assignment.

6. Period of Performance and Level of Effort

The period of performance for this assignment is six (6) person months, spread over a period of nine months commencing on 1 April 2018 to 31 December 2018.

7. Performance Location

The Asset Disposition Consultant will perform the tasks in Lilongwe in a professional office environment with possible occasional brief travel to sites across the country. All in country travel costs to project or office sites will be met by MCA-Malawi.

8. Qualifications

Applicants are asked to possess the following qualifications:

- A university degree in a field such as Project Management/Administration, Business Administration, Accounting, or related field is required.
- Vast experience in fixed asset validation and valuation is a must.
- Prior experience in the development and implementation of any MCA Program Closure Plan is an advantage;
- Capability of interacting with staff at any level and occasionally with Government officials at upper levels is required; and Superior writing and communications skills in English are required.

Qualification and Evaluation Criteria

No.	Evaluation Criteria/Sub- Criteria	Max score
1.0	Organizational Capability and Experience of the Consultant	40
	<p><i>Evidence of organizational capability and relevant experience in the execution of projects of a similar nature-</i></p> <p><i>The evidence shall include successful experience as the prime consultant in the execution of at least 2 projects of a similar nature and scope of works during the last 3 years.</i></p> <p><i>MCA-Malawi reserves the right to contact the References as well as other sources to check references and past performance:</i></p>	
1.1	<p>Organizational capability</p> <p>a) The prospective firm should be a registered firm and with its physical presence within Malawi</p> <p>a) Demonstrate adequate staff experienced in the required activities to support its Team Leader</p>	15
1.2	<p>Experience in the disposition of assets held by a similar entity: The consultant will have the following:</p> <p>A demonstrable track record of similar successful asset dispositions.</p>	25
2.0	Technical Approach, Methodology and Work Plan	30
2.1	Proposed approach and methodology (Extent to which the proposal explains consultant's understanding of the objectives of the assignment and their approach to the services, and the methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such-output).	10
2.2	Proposed Work Plan (Extent to which the work plan clearly defines the main scope of work activities of the assignment - its content and duration, phasing and interrelationship, milestones and delivery date of the reports)	10
2.3	Proposed project organization and staffing (<i>Extent to which the Proposal provides a clear, logical and appropriate staffing pattern with responsibilities among different staff positions adequately defined</i>)	10
3	Key Personnel	30
3.1	Team Leader	30
	TOTAL	100.00
	<i>The minimum technical score St required to pass is</i>	75.00

Note: The Firm is required to obtain a minimum of 80 points in order to qualify technically.

Contract Forms



Contract for Consultant's Services

Lump-Sum

For the provision of

Procurement of Compact Asset Disposition Consultant

RFP: PA/MCA-MW/MCC/IDA/SER/119/2018

Between

**MILLENNIUM CHALLENGE ACCOUNT – MALAWI
(MCA-MALAWI)**

And

[Insert Full Name of Consultant Firm]

[Insert Month and Year]

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I. Agreement

This CONTRACT AGREEMENT (hereinafter called this “Contract”) is made this **XX** day of January, 2017, between the **Millennium Challenge Account-Malawi** (hereinafter called “MCA-Malawi”), on the one part, and [**Insert name of Consultant Firm**] (hereinafter called the “Consultant”), on the other part, (collectively referred to as the “Parties”).

RECITALS

WHEREAS the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation (“*MCC*”), and the Government of Malawi (the “*Government*”) signed on April 7, 2011 (the “*Compact*”) sets forth the general terms on which MCC will provide assistance of up to Three Hundred and Fifty Million Seven Hundred Thousand United States Dollars (US\$350,700,000) (“*MCC Funding*”) to the Government for a program to reduce poverty through economic growth in Malawi (the “*Program*”);

AND WHEREAS the Government incorporated MCA-Malawi as a public trust under the Trustees Incorporation Act (Cap 5:03) of the Laws of Malawi, to act as its designee in the supervision, management, administration and implementation of the Program;

AND WHEREAS:

- (a) The Government, acting through MCA-Malawi, intends to apply a portion of the proceeds of MCC Funding to eligible payments under this Contract. Payments made under this Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government and MCA-Malawi shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and
- (b) MCA-Malawi has requested the Consultant to provide certain consulting services as described in Appendix A to this Contract; and
- (c) The Consultant, having represented to MCA-Malawi that it has the required professional skills, and personnel and technical resources, has agreed to provide such services on the terms and conditions set forth in this Contract.

NOW THEREFORE, the Parties to this Contract agree as follows:

1. In consideration of the payments to be made by MCA-Malawi to the Consultant as set forth in this Contract, the Consultant hereby covenants with the MCA-Malawi to perform the Services in conformity in all respects with the provisions of this Contract.
2. Subject to the terms of this Contract, MCA-Malawi hereby covenants to pay the Consultant, in consideration of the performance of the Services, the Contract Price of **USD XXX,XXX.XX** (United States Dollars XXXXXXX) being base and Option period or such other sum as may become payable pursuant to the provisions of this Contract at the times and in the manner prescribed by this Contract.
3. The General Conditions of Contract, the Special Conditions of Contract, the Appendices and the Terms of Reference hereby attached shall form part of this

Contract.

IN WITNESS whereof the Parties hereto have caused this Contract to be executed in accordance with the Laws of Malawi as of the day, month and year first indicated above.

For and on behalf of:

Millennium Challenge Account - Malawi:

Signature: _____

Dye B Mawindo
Chief Executive Officer

Date: _____

Witnessed By:

Full Name: _____

Designation: _____

For and on behalf of:

[Insert Name of Company]

[Insert Name of Authorized Representative]

[Signature of Authorized Representative]

Date: _____

Witnessed By:

Full Name: _____

Designation: _____

II. General Conditions of Contract

1. Services

- (i) The Consultant shall perform the services specified in Appendix A, "Terms of Reference," which is made an integral part of this Contract ("the Services").
- (ii) The Consultant shall provide the personnel listed in Appendix C, "Consultant's Personnel," to perform the Services.
- (iii) The Consultant shall submit to the MCA-Malawi the reports in the form and within the time periods specified in Appendix B, "Consultant's Reporting Obligations."

2. Term

The Consultant shall perform the Services during the period commencing 2018 and continuing through, 2018, for a period of Eight(8) months or any other period as may be subsequently agreed by the parties in writing.

3. Termination

3.1 By the MCA-Malawi

The MCA-Malawi may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause 3.1. In case of an occurrence specified in (a) to (f) the MCA-Malawi shall give not less than ten (10) days' written notice of termination to the Consultant, and fifteen (15) days' notice in case of the event referred to in (g).

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, within five (5) days of period after the receipt of a registered mail with acknowledgment of receipt specifying the failure.
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its Members becomes) insolvent or bankrupt or enters into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 14 hereof.
- (d) If the Consultant, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.
- (e) If the Consultant submits to the MCA-Malawi a false statement which has a material effect on the rights, obligations or interests of the MCA-Malawi.
- (f) If, as the result of Force Majeure, the Consultant is unable to

perform a material portion of the Services for a period of not less than fifteen (15) days.

- (g) If the MCA-Malawi, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

Early termination shall not prejudice or affect the accrued rights or liabilities of the Parties.

3.2 By the Consultant

The Consultant may terminate this Contract, by not less than ten (10) days' written notice to the MCA-Malawi, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 3.2, and fifteen (15) days' notice in case of the event referred to in Clause 3.2 (e).

- (a) If the MCA-Malawi fails to pay any money due to the Consultant pursuant to this Contract (which is not subject to dispute pursuant to Clause 15 hereof) within fifteen (15) days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than fifteen (15) days.
- (c) If the MCA-Malawi fails to comply with any final decision reached as a result of arbitration pursuant to Clause 15 hereof.
- (d) If the MCA-Malawi is in material breach of its obligations pursuant to this Contract and has not remedied the same within ten (10) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the MCA-Malawi of the Consultant's notice specifying such breach.
- (e) If the Consultant, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

Early termination shall not prejudice or affect the accrued rights or liabilities of the Parties.

4. Payment

A. Ceiling

For Services rendered pursuant to Appendix, the MCA-Malawi shall pay the Consultant an amount not to exceed **USD XX,XXX.XX (say in words)** in accordance with the requirements and terms of reference of the Compact. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Payment Conditions

Payment shall be made in **United States Dollars (USD)** no later

than 30 days following submission by the Consultant of invoices in duplicate to the **MCA-Malawi Fiscal Agent, 1st Floor, West Wing, Kang'ombe House, City Center, Lilongwe 3, Malawi (Tel: +265 (0) 1 770 348)**, accompanied by an acceptance note from the MCA-Malawi's Coordinator designated in paragraph 6.

5. Payment upon Termination

Upon termination of this Contract pursuant to Clauses 3.1 or 3.2 hereof, the MCA-Malawi shall make the following payments to the Consultant:

- (a) cost of all accepted Deliverables performed prior to the effective date of termination and any interest rate due to the Consultant as a result of previous delays in payment of invoices, and
- (b) except in the case of termination pursuant to paragraphs (a) through (e) of Clause 3.1 hereof, reimbursement of any reasonable out-of-pocket demobilization or other direct costs incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Consultant.

6. Project Administration

A. Coordinator

The MCA-Malawi designates **MCA-Malawi Communications and Outreach Director** as the MCA-Malawi's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables by the MCA-Malawi and for receiving and approving invoices for the payment.

B. Reports.

The reports listed in Appendix C, "Consultant's Reporting Obligations," shall be submitted in the course of the assignment, and will constitute the basis for the payments to be made under paragraph 4C.

7. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the MCA-Malawi considers unsatisfactory.

8. Confidentiality

The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the MCA-Malawi's business or operations without the prior written consent of the MCA-Malawi.

9. Ownership of

Any studies reports or other material, graphic, software or

Material	otherwise, prepared by the Consultant for the MCA-Malawi under the Contract shall belong to and remain the property of the MCA-Malawi. The Consultant may retain a copy of such documents and software.
10. Consultant Not to be Engaged in Certain Activities	The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
11. Insurance	The Consultant will be responsible for taking out any appropriate insurance coverage.
12. Assignment	The Consultant shall not assign this Contract or sub-contract any portion of it without the MCA-Malawi's prior written consent which consent shall not be unreasonably withheld.
13. Law Governing Contract and Language	The Contract shall be governed by the laws of The Republic of Malawi, and the language of the Contract shall be English.
14. Dispute Resolution	Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to arbitration in accordance with the Arbitration Act (Cap 6:03) of the Laws of Malawi.
15. The Compact End Date	The MCA-Malawi may assign the whole or any part, or any benefit or interest in or under, the Contract to another person or entity of the Government (or another entity designated by the Government) without the consent of the Consultant at any time after the termination or expiration of the Compact. The MCA-Malawi shall notify the Consultant within 10 days of any such assignment. Such an assignment will not be considered a Modification under the Contract.
16. Removal and/or Replacement of Personnel	<p>16.1 Except as the MCA Entity may otherwise agree, no changes shall be made in the Key Professional Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Professional Personnel, the Consultant shall, subject to 27.1(a), provide as a replacement a person of equivalent or better qualifications.</p> <p>16.2 If the MCA Entity (a) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (b) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the MCA Entity's written request specifying the grounds therefore and subject to 28.1(a), provide as a replacement a</p>

person with qualifications and experience acceptable to the MCA Entity.

16.3 The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

17. Taxes and Duties

- (a) Except as may be exempted pursuant to the Compact or another agreement related to the Compact, available in English at <http://www.mca-m.gov.mw/>, the Consultant, the Sub-Consultants, and their respective Personnel may be subject to certain Taxes on amounts payable by the MCA Entity under this Contract in accordance with Applicable Law (now or hereinafter in effect). The Consultant, each Sub-Consultant and their respective Personnel shall pay all Taxes levied under Applicable Law. In no event shall the MCA Entity be responsible for the payment or reimbursement of any Taxes. In the event that any Taxes are imposed on the Consultant, any Sub-Consultant or their respective Personnel, the Contract Price shall not be adjusted to account for such Taxes.
- (b) The Consultant, the Sub-Consultants and their respective Personnel, and their eligible dependents, shall follow the usual customs procedures of the MCA Country in importing property into the MCA Country.
- (c) If the Consultant, the Sub-Consultants or any of their respective Personnel, or their eligible dependents, do not withdraw, but dispose of any property in the MCA Country upon which customs duties or other Taxes have been exempted, the Consultant, the Sub-Consultants or such Personnel, as the case may be, (i) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (ii) shall reimburse such customs duties and Taxes to the MCA Entity if such customs duties and Taxes were paid by the MCA Entity at the time the property in question was brought into the MCA Country.
- (d) Without prejudice to the rights of the Consultant under this clause, the Consultant, the Sub-Consultants and their respective Personnel will take reasonable steps as requested by the MCA Entity or the Government with respect to the determination of the Tax status described in this clause 17.
- (e) If the Consultant is required to pay Taxes that are exempt under the Compact or a related agreement, the Consultant shall promptly notify the MCA Entity (or such agent or representative designated by the MCA Entity) of any Taxes paid, and the Consultant shall cooperate with, and take such actions as may be requested by the MCA Entity, MCC, or

either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.

- (f) The MCA Entity shall use reasonable efforts to ensure that the Government provides the Consultant, the Sub-Consultants, and their respective Personnel the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Compact or related agreements. If the MCA Entity fails to comply with its obligations under this paragraph, the Consultant shall have the right to terminate this Contract in accordance with Clause 3.2(d).

18. Suspension

The MCA Entity may, by giving thirty (30) days' written notice to the Consultant, suspend all payments to the Consultant under this Contract if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (a) shall specify the nature of the failure, and (b) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

19. Required Provisions; Flow Through Provisions

19.1 For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Annex B reflect certain obligations of the Government and the MCA Entity under the terms of the Compact and related documents that are also required to be transferred onto any Consultant, Sub-Consultant or Associate who partakes in procurements or contracts in which MCC Funding is involved and that, as with other clauses of this Contract, the provisions of Annex B are binding obligations under this Contract.

19.2 In any subcontract or sub-award entered into by the Consultant, as permitted by the terms of this Contract, the Consultant shall ensure the inclusion of all the provisions contained in Annex B in any agreement related to such subcontract or sub-award.

20. Fraud and Corruption Requirements

20.1 MCC requires that the MCA Entity and any other beneficiaries of MCC Funding, including any bidders, suppliers, contractors, Sub-Consultants and Consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.

MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations ("MCC's AFC Policy") is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. MCC's AFC Policy requires that companies and

entities receiving MCC funds acknowledge notice of MCC's AFC Policy and certify that they have acceptable commitments and procedures in place to address the potential for fraudulent and corrupt practices.

Any entity receiving an award (including, but not limited to, both contracts and grants) of MCC Funding of over \$500,000 will be required to certify that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. Such entity will also include the substance of this clause in subcontracts that have a value in excess of \$500,000. Information regarding the establishment of business ethics and conduct programs can be obtained from numerous sources, including but not limited to:

<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>;

<http://cctrends.cipe.org/anti-corruption-compliance-guide/>

- (a) For purposes of the Contract, the terms set forth below are defined as follows, and sometimes referred to collectively in this document as "Fraud and Corruption":
 - (i) ***"coercive practice"*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence improperly the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract;
 - (ii) ***"collusive practice"*** means a tacit or explicit agreement between two or more parties to perform a coercive, corrupt, fraudulent, obstructive or prohibited practice, including any such agreement designed to fix, stabilize, or maintain prices or to otherwise deprive the MCA Entity of the benefits of free and open competition;
 - (iii) ***"corrupt practice"*** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, MCA Entity staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or

in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process, or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract;

- (iv) ***“fraudulent practice”*** means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation;
- (v) ***“obstructive practice”*** means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding:
 - (aa) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent or prohibited practice;
 - (bb) that threatens, harasses or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; and/or
 - (cc) intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or an authorized Inspector General of MCC provided for in the Contract and under the Compact and related agreements; and
- (vi) ***“prohibited practice”*** means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions) of Annex B

(Additional Provisions) of the Contract.

- (b) MCC may cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that representatives of the MCA Entity, the Consultant or any other beneficiary of the MCC Funding were engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the performance of the Contract, or another MCC-funded contract, without the MCA Entity, the Consultant or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.
- (c) MCC and the MCA Entity may pursue sanction of the Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the MCA Entity determines that the contractor has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in performance of, the Contract or another MCC-funded contract.
- (d) If the MCA Entity or MCC determines that the Consultant, any subcontractor, any of the Consultant's Personnel, or any agent or affiliate of any of them has, directly or indirectly, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices, in competing for or in the performance of the Contract, then the MCA Entity or MCC may, by notice, immediately terminate the Contract, and the provisions of Clause 3.1 shall apply.
- (e) Should any of the Consultant's Personnel be determined to have engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the competition for or execution of the Contract, but the MCA Entity or MCC determines not to terminate the Contract in accordance with the immediately preceding sub-paragraph, then the relevant Consultant's Personnel shall be removed in accordance with Clause 16.

21. Combatting

21.1 MCC, along with other United States Government entities, has

Trafficking in Persons

adopted a zero tolerance policy with regard to Trafficking in Persons (“TIP”) through its Counter-Trafficking in Persons Policy.¹ In pursuance of this policy:

(a) **Defined Terms.** For purposes of the application and interpretation of this Sub-Clause:

(i) The terms “coercion,” “commercial sex act,” “debt bondage,” “employee,” “forced labor,” “fraud,” “involuntary servitude,” and “sex trafficking” have the meanings given such terms in the MCC Counter-Trafficking in Persons Policy (“MCC C-TIP Policy”) and such definitions are incorporated by reference into this Sub-Clause; and

(ii) “Trafficking in Persons” means (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(b) **Prohibition.** Contractors, subcontractors, Consultants, Sub-Consultants and any of their respective Personnel shall not engage in any form of Trafficking in Persons during the period of performance of any contract funded, in whole or in part, with MCC funding and must also comply with those prohibitions described in U.S. laws and Executive Orders regarding TIP, including using misleading recruitment practices; charging employees recruitment fees; or destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity documents.

(c) **Consultant Requirements.**

(i) Each contractor, subcontractor, Consultant or Sub-Consultant shall:

a. notify its employees of the MCC C-TIP Policy and of the actions that will be taken against Personnel for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

¹ <https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy>

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- b. take appropriate action, up to and including termination, against Personnel or subcontractors or Sub-Consultants that violate the prohibitions set out in this policy.

(ii) Each Consultant shall:

- a. certify that it is not engaged in, facilitating, or allowing any activities constituting Trafficking in Persons, or related activities also prohibited under this policy, for the duration of the Contract;
- b. provide assurances that activities constituting Trafficking in Persons, or related activities also prohibited under this policy, will not be tolerated on the part of its Personnel, subcontractors or Sub-Consultants (as the case may be), or their respective employees; and
- c. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.

(iii) A bidder, supplier, contractor, subcontractor, Consultant or Sub-Consultant shall inform the MCA Entity immediately of:

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

(d) **Remedies.** Once the incident has been confirmed and depending on the severity of each case, the MCA Entity will apply remedies, which could include:

- (i) the MCA Entity requiring the Consultant to remove the involved Personnel, Sub-Consultant or any of its involved Personnel, or any involved agent or affiliate;
- (ii) the MCA Entity requiring the termination of a subcontract or sub-award;
- (iii) suspension of Contract payments until the breach is remedied to the satisfaction of the MCA Entity;
- (iv) loss of incentive payment, consistent with the

incentive plan set out in the Contract, if any, for the performance period in which the MCA Entity determined non-compliance;

(v) the MCA Entity pursuing sanctions against the Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract; and

(vi) termination of the Contract by the MCA Entity for default or cause in accordance with the termination clause of the Contract

22. Gender and Social Inclusion

22.1 The Consultant shall ensure that its activities under the Contract comply with the MCC Gender Policy² and the MCA Entity's Social and Gender Integration Plan, as relevant to the activities performed under this Contract. The MCC Gender Policy requires that activities funded by MCC specifically address social and gender inequalities to ensure opportunities for the participation and benefit of women and vulnerable groups, as well as to ensure that its activities do not cause significant negative social and gender impacts.

23. Prohibition of Harmful Child Labor

23.1 The Consultant shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The Consultant will identify the presence of all persons under the age of eighteen (18). Where national laws have provisions for the employment of minors, the Consultant will follow Applicable Law. Children under the age of eighteen (18) will not be employed in hazardous work. All work of persons under the age of eighteen (18) will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.

24. Prohibition of Sexual Harassment

24.1 The Consultant shall prohibit sexual harassment behaviors directed at Compact beneficiaries, MCA Entity employees or MCA Entity consultants. Examples of sexual harassment include, but are not limited to, the following behaviors: unwelcome sexual advances; requests for sexual favors; verbal or physical harassment of a sexual nature; or offensive remarks about a person's sex, sexual orientation or non-conformity with gender stereotypes. The MCA Entity may investigate allegations of sexual harassment as it determines appropriate. The Consultant shall fully cooperate with any investigation conducted by the MCA Entity regarding breach of this provision. The Consultant will ensure that any incident of sexual harassment investigated by the MCA Entity has been resolved to the

² Available at: <https://assets.mcc.gov/guidance/mcc-policy-gender.pdf>

MCA Entity's satisfaction.

25. Non-Discrimination and Equal Opportunity

25.1 The MCA Entity adheres to the principle of equal opportunity and fair treatment in its employment practices. The MCA Entity expects that the Consultant shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. Personal characteristics include sex, race, nationality, ethnic, social and indigenous origin, religion or belief, disability, age, sexual orientation, and gender identity. The MCA Entity expects that the Consultant shall base its employment decisions on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

26. Conflict of Interests

26.1 The Consultant shall hold the MCA Entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or its own corporate interests.

Prohibition of Conflicting Activities

26.2 The Consultant shall not engage, and shall cause its Personnel as well as its Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

27. Consultant's Actions Requiring the MCA Entity's Prior Approval

16.1 In addition to any modification or variation of the terms and conditions of this Contract, the Consultant shall obtain the MCA Entity's prior approval in writing before taking any of the following actions:

- (a) any change or addition to the Personnel listed in Appendix B;
- (b) entering into a subcontract with a Sub-Consultant for the performance of any part of the Services; and
- (c) any other action that may be **specified in the Contract**.

28. Use of Funds

28.1 The Consultant shall ensure that its activities do not violate provisions relating to use of funds and the prohibition of activities likely to cause a significant environmental, health or safety hazard, as set out in Annex B. Environmental, health, and safety hazards are defined in Appendix A of the MCC Environmental Guidelines available at www.mcc.gov.

29. Change in the Applicable Law

29.1 If, after the date of this Contract, there is any change in the Applicable Law with respect to Taxes and duties which increases or

**Related to Taxes
and Duties**

decreases the cost incurred by the Consultant in performing the Services, payments to the Consultant shall not be adjusted. However, the provisions of GCC Sub-Clause 17(e) shall be applicable in such a situation.

**30. The Compact End
Date**

The MCA-Malawi may assign the whole or any part, or any benefit or interest in or under, the Contract to another person or entity of the Government (or another entity designated by the Government) without the consent of the Consultant at any time after the termination or expiration of the Compact. The MCA-Malawi shall notify the Consultant within 10 days of any such assignment. Such an assignment will not be considered a Modification under the Contract.

IV. Appendices

Appendix A – Terms of Reference

Appendix B - Reporting Requirements

The expected products of the Asset Disposition Consultancy are the following:

- 5.9 Inception Report providing an understanding of the assignment, methodology and approach to work and detailed work plans with milestones and delivery dates. (W/E4 May 2018)
- 5.10 Updated and physically validated Fixed Asset Register (W/E 11 May 2018)
- 5.11 Asset Valuation Report (W/E 25 May 2018)
- 5.12 Initial Asset Disposition Plan (ADP) (W/E 8 June 2018)
- 5.13 Template Grant Agreement for legal transfer of Program Assets to beneficiaries (W/E 8 June 2018)
- 5.14 Draft *Proposal for Granting Program Assets* submitted for all proposed grantees (30 June , 2018)
- 5.15 Preparation of grants packages for each grantee including Grant Agreement, List of Assets, Approval *Proposal for Granting Program Assets* W/E 13 July 2018
- 5.16 Updated Asset Disposition Plan with approved grantees and packages – (31 July 2018)

All deliverables shall be submitted in both printed and electronic form - with key elements in English and shall be in a format acceptable to MCA-Malawi. Electronic versions will be prepared in Microsoft Office applications software or compatible. MCA-Malawi will supply in-country, coordination and transportation logistics for the assignment.

Appendix C - Key Personnel

C-1 Titles **[and names, if already available]**, detailed job descriptions and minimum qualifications of Key Personnel to be assigned to work

Appendix D - Breakdown of Contract Price in US Dollars

Appendix E - Services and Facilities to be Provided by the MCA-Malawi

The MCA-Malawi will provide the following facilities/services which will contribute towards project effectiveness and quality.

- a) Support in planning, coordination and management of the required tasks; and
- b) Access to the required Asset Register

Appendix F–Additional Provisions

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

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

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

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

2. MCC Reserved Rights.

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

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

B. Limitations on the Use or Treatment of MCC Funding

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

C. Procurement

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

D. Reports and Information; Access; Audits; Reviews

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

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

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

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

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

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

3. The Consultant shall ensure that its activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, MCA-Malawi, the Fiscal Agent, or the Bank, as may be applicable. The Consultant shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in Part 10 of the MCC Program Procurement Guidance (Eligibility Verification Procedures) that can be found on MCC’s website at www.mcc.gov. The Consultant shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable

period as MCA-Malawi or MCC may request from time to time and (B) deliver a report of such periodic monitoring to MCA-Malawi with a copy to MCC.

4. Other restrictions on the Consultant shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. laws, regulations, executive orders or policies, any misconduct injurious to MCC or MCA-Malawi, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information and Marking

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

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

G. Insurance

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

H. Conflict of Interest

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

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

I. Inconsistencies

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

J. Other Provisions

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

K. Flow-Through Provisions

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