

PROGRAM IMPLEMENTATION AGREEMENT

BY AND BETWEEN

THE UNITED STATES OF AMERICA,

ACTING THROUGH

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE REPUBLIC OF MALAWI,

Dated as of October 2, 2012

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PROGRAM IMPLEMENTATION AGREEMENT

PREAMBLE

This PROGRAM IMPLEMENTATION AGREEMENT (this “*Agreement*”), is made by and between the Republic of Malawi, acting through its government (the “*Government*”), and the United States of America, acting through the Millennium Challenge Corporation (“*MCC*” and, together with the Government, the “*Parties*” and each, a “*Party*”).

RECITALS

WHEREAS, the Millennium Challenge Compact between the United States of America, acting through MCC, and 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) to the Government for a program to reduce poverty through economic growth in Malawi;

WHEREAS, the Government has designated MCA-Malawi to carry out certain rights and obligations of the Government under the Compact and related agreements; and

WHEREAS, the Parties wish to specify further the terms for implementing the Compact and the Program;

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

ARTICLE 1.

GENERAL RESPONSIBILITIES OF THE PARTIES

Section 1.1 Definitions.

Capitalized terms used in this Agreement and not defined in this Agreement have the meanings provided in the Compact. All other capitalized terms have the meanings provided in Annex 1.

Section 1.2 Role of the Government.

(a) Government Responsibilities. The Government will promptly take all necessary or appropriate actions to carry out all of its obligations under the Compact, this Agreement, and any Supplemental Agreement (including any post-Compact Term activities, audits or other responsibilities), and to delegate its rights and responsibilities to entities, including MCA-Malawi, adequate to enable them (each a “*Permitted Designee*”) to oversee and manage the implementation of the Program on behalf of the Government.

(b) Government Undertakings. The Government hereby affirms as follows:

(i) Power, Authorization, etc. The Government has the power and authority to execute, deliver and perform its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated hereby or by the Compact.

(ii) Binding Obligation. This Agreement is a legally binding obligation of the Government.

(iii) Impoundment; Liens or Encumbrances. The Government will ensure that (A) no Program Assets are subject to any impoundment, rescission, sequestration, liquidation or to any provision of law now or hereafter in effect in Malawi that would have the effect of allowing any such impoundment, rescission or sequestration; (B) no Program Asset is subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (including any lease or sub-lease, in whole or in part) (each a “*Lien*”); and (C) no Program Asset is sold, donated or otherwise disposed of, in whole or in part; except, in each of the foregoing cases, with MCC’s prior written approval. In the event any Lien not so approved is imposed, the Government will promptly seek the release of such Lien and, if such Lien is required by a final and non-appealable court order, will pay any amounts due in order to obtain such release; *provided, however*, that the Government must apply national funds (and not Program Assets) to satisfy any such obligation.

Section 1.3 Role of MCA-Malawi.

(a) Designation of MCA-Malawi.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated MCA-Malawi (“*MCA-Malawi*”), a public trust created under the laws of Malawi, as the primary agent of the Government to implement the Program and to exercise and perform the Government’s right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of the Project and its Activities, allocating resources and managing procurements (the “*Designated Rights and Responsibilities*”). The Government will remain ultimately responsible for the performance of the Government’s obligations under or in relation to the Compact and this Agreement.

(ii) The Government will ensure that MCA-Malawi is and remains throughout the Compact Term duly organized, sufficiently staffed and empowered to exercise the Designated Rights and Responsibilities.

(iii) The “Accountable Entity” referenced in the Program Guidelines will be deemed to refer to MCA-Malawi, and all obligations assigned to the “Accountable Entity” in the Program Guidelines will be obligations of MCA-Malawi.

(b) Additional Government Undertakings with Respect to MCA-Malawi. The Government hereby affirms to MCC as follows:

(i) Power and Authorization. MCA-Malawi has the power and authority to (A) bind the Government to the full extent of the Designated Rights and Responsibilities, (B) execute and deliver each agreement, certificate, or instrument contemplated hereby or by the Compact, and (C) perform its obligations under this and each such other agreement, certificate, or instrument contemplated by this Agreement or by the Compact.

(ii) Government Responsibilities. MCA-Malawi (A) will properly and fully carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Malawi obligations in the Compact, this Agreement or any other Supplemental Agreement), (B) except as provided in Section 2.10(a) or with respect to a Project Partner, will not assign, delegate or otherwise transfer any of the Designated Rights and Responsibilities without the prior written consent of MCC, and (C) will not undertake any activities, duties or responsibilities other than the Designated Rights and Responsibilities without the prior written consent of MCC.

(iii) Government Representations. MCA-Malawi will confirm each representation that it makes on behalf of the Government in any agreement, certificate or instrument delivered by MCA-Malawi with all necessary Permitted Designees prior to providing such representation to MCC.

(iv) Autonomy. The Government will ensure that (A) no decision of MCA-Malawi is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a final and non-appealable judicial decision, and (B) the authority of MCA-Malawi will not be expanded, restricted or otherwise modified, except in accordance with this Agreement and the Compact.

(v) Constitution and Governance of MCA-Malawi. MCA-Malawi will conduct its operations and management in accordance with the Governing Documents and Governance Guidelines. MCA-Malawi will act in accordance with its Trust Deed, substantially in the form of the trust deed attached as Annex 3 (the “*Trust Deed*”).

(vi) Funded Agreements. MCA-Malawi will provide the Fiscal Agent (and MCC if it so requests) a copy of each agreement that is funded (directly or indirectly) with MCC Funding, regardless of whether MCC has approval rights with respect to such agreement.

(vii) Insurance; Performance Guaranties. MCA-Malawi will, to MCC’s satisfaction, cause all Program Assets to be insured (including, without limitation, through self-insurance) and will arrange such other appropriate insurance to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. With MCC’s prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Malawi (or, as appropriate and with MCC’s prior approval, another entity) will be named as the payee on any such insurance and the beneficiary of any such guaranty or bonds. If not already named as the insured party, MCA-Malawi (and MCC, if it so requests) will be named as additional insureds on any such insurance. The Government will promptly notify MCC of the

payment of any proceeds from claims paid under such insurance or guaranty, and will ensure that such proceeds will be used to replace or repair any lost or damaged Program Assets; *provided, however*, that, at MCC's election, such proceeds will be deposited in a Permitted Account as designated by MCA-Malawi or as otherwise directed by MCC.

(viii) MCA-Malawi Indemnity. If MCA-Malawi is held liable under any indemnification or other similar provision of any agreement, then the Government will pay such indemnity in full on behalf of MCA-Malawi and will do so with national funds (and not with Program Assets). In addition, the Government will indemnify and hold harmless each member of MCA-Malawi's Board (including Government and Non-Government Trustees and the MCC Observer), each member of the Stakeholders' Committee and each of MCA-Malawi's Officers, employees and agents from any claim, loss, action, liability, cost, damage or expenses incurred by such person in the performance of its duties on behalf of MCA-Malawi, *provided, however*, that the Government will have no obligation to indemnify any such person if and to the extent that any such claims, losses, actions, liabilities, costs, damages or expenses are attributable to the fraud, gross negligence or willful misconduct of such person; and *provided, further*, that the Government will apply national funds to satisfy its obligations under this Section 1.3(b)(viii) and no MCC Funding, accrued interest thereon, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 1.3(b)(viii).

Section 1.4 General Provisions Annex. Unless otherwise instructed by MCC, MCA-Malawi will include in each agreement (a "**Program Agreement**") executed by it with a third party (a "**Counter-party**") that will receive any portion of MCC Funding (a) a covenant that such Counter-party will comply with (i) the General Provisions Annex and (ii) any instruction received by it from MCC in respect of the performance by such Counter-party of the General Provisions Annex notwithstanding any other instruction given by MCA-Malawi; and (b) MCA-Malawi's right to terminate such Program Agreement if such Counter-party fails to comply with the General Provisions Annex or any such instruction of MCC.

ARTICLE 2.

IMPLEMENTATION FRAMEWORK

Section 2.1 Implementation Plan. The framework for implementation of the Program will be further elaborated in a set of documents, in form and substance approved by MCC, consisting of (i) a Work Plan, (ii) a Detailed Financial Plan, (iii) an Audit Plan, and (iv) a Procurement Plan (each, an "**Implementation Plan Document**" and collectively the "**Implementation Plan**"). MCA-Malawi will submit its proposed Implementation Plan for review and approval by MCC before the initial Disbursement of Program Funding and at least on an annual basis thereafter (or in such other interval as may be required by the Program Guidelines). MCC will review the proposed Implementation Plan and as necessary may request MCA-Malawi to submit clarifications or adjustments. MCA-Malawi will submit an updated Implementation Plan or updated Implementation Plan Document during any quarter in which significant changes or modifications are made to a Project or to the Program, or when MCA-Malawi determines that the

expected results, targets and milestones for the specified year are not likely to be achieved; *provided, however*, that an updated Detailed Financial Plan will be submitted each quarter. In such instances, MCA-Malawi will submit to MCC for approval a proposed revised Implementation Plan or updated Implementation Plan Document (as applicable) on the same date as the next Periodic Report is due. MCA-Malawi will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Work Plan. MCA-Malawi will develop and implement a work plan, in form and substance satisfactory to MCC, for the overall administration of the Program (the “**Work Plan**”).

(b) Detailed Financial Plan. The Multi-Year Financial Plan Summary for the Program, which is set forth in Annex II to the Compact, shows the estimated annual contribution of MCC Funding to administer, monitor and evaluate the Program and to implement each Project (the “**Multi-Year Financial Plan**”). Except as MCC agrees otherwise in writing, MCA-Malawi will develop and implement for each quarter for the upcoming year and on an annual basis for each year of the remaining years of the Compact, a detailed financial plan (substantially in the form of the “Detailed Financial Plan” posted on the MCC Website and as approved by MCC), setting forth funding requirements for the Program (including administrative costs) and for the Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis (each a “**Detailed Financial Plan**”).

(c) Audit Plan. MCA-Malawi will develop and implement a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of the entities that are subject to audit pursuant to the Audit Guidelines (the “**Audit Plan**”). The Audit Plan will be in form and substance satisfactory to MCC and will be developed no later than sixty (60) days before the end of the first period to be audited.

(d) Procurement Plan. MCA-Malawi will prepare periodic procurement plans for acquiring the goods, works, and consultant and non-consultant services needed to implement the Compact (each a “**Procurement Plan**”). Each Procurement Plan will be prepared and updated in accordance with the MCC Program Procurement Guidelines. In addition, no later than six months after the Compact enters into force as provided in Article 7 of the Compact, MCA-Malawi will develop and implement a bid challenge system (“**BCS**”) that provides suppliers, contractors and consultants that are interested parties the ability to seek review of procurement actions and decisions. The organization, rules and procedures of such BCS will be subject to MCC approval. Upon MCC’s approval of the BCS, MCA-Malawi will publish the BCS on the MCA-Malawi website.

Section 2.2 Fiscal Accountability Plan. Except as MCC agrees otherwise, MCA-Malawi will develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that MCA-Malawi will use to ensure appropriate fiscal accountability for the use of MCC Funding, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and in the procurement of goods, works and services. The Fiscal Accountability Plan will also include, among other things, requirements

with respect to (a) budgeting, (b) accounting, (c) cash management, (d) financial transactions (receipts and payments), (e) opening and managing Permitted Accounts, (f) personnel and payroll, (g) travel and vehicle use, (h) asset and inventory control, (i) audits, and (j) reporting. The Fiscal Accountability Plan will be revised periodically, subject to review and approval by MCC.

Section 2.3 M&E Plan. Unless MCC agrees otherwise, no later than ninety (90) days after the Compact enters into force as provided in Article 7 of the Compact, MCA-Malawi will develop and implement an M&E Plan that will serve as the primary governing document for monitoring and evaluation activities for the Program over the Compact Term. The M&E Plan will be developed and updated in accordance with the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

Section 2.4 Taxes. As set forth in Section 2.8 of the Compact, the Government will ensure that all MCC Funding is free from the payment or imposition of any existing or future Taxes. The mechanisms that the Government will use to implement the tax exemption required by Section 2.8(a) of the Compact are set forth in Annex 2 to this Agreement (the “*Tax Schedules*”). Such mechanisms may include exemptions from the payment of Taxes that have been granted in accordance with applicable law, refund or reimbursement of Taxes by the Government to MCC, MCA-Malawi or to the taxpayer, or payment by the Government to MCA-Malawi or MCC, for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in Section 2.8 of the Compact. The Government will provide without charge all assistance to MCA-Malawi and any Provider, Covered Provider, Project Partner, contractor (prime contractors and subcontractors), consultant, and any other entity or individual that receives MCC Funding directly or indirectly in furtherance of the Compact necessary to allow any such person or entity to implement the procedures described in the Tax Schedules.

Section 2.5 Environmental and Social Accountability.

(a) Unless MCC and the Government agree otherwise in writing, MCA-Malawi will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Environmental Guidelines, including the provisions related thereto in Annex I to the Compact.

(b) Unless MCC and the Government agree otherwise in writing, MCA-Malawi will ensure that activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Gender Policy. MCA-Malawi will on an annual basis, review and update the Social and Gender Integration Plan as needed to reflect lessons learned and project-specific analysis.

Section 2.6 MCC Program Procurement Guidelines. In accordance with Section 3.6 of the Compact, MCA-Malawi will comply with the MCC Program Procurement Guidelines in the procurement (including solicitation) of all goods, works and services and the award and administration of contracts in furtherance of the Compact. In addition, the Government will

ensure that any bid challenges are conducted in accordance with the MCC Program Procurement Guidelines and the BCS.

Section 2.7 Notice to Providers; Incorporation.

(a) MCA-Malawi will notify all Providers (and all other entities or individuals receiving MCC Funding in connection with the Program) of the requirements of Section 2.7 of the Compact and will include, or ensure the inclusion of, the requirements of Section 2.7 of the Compact in all agreements with a Provider if MCC is not a party to such agreements.

(b) MCA-Malawi will include, or ensure the inclusion of, the requirements of:

(i) Sections 2.1(c) and 2.8(c) of this Agreement and Section 3.7 of the Compact and paragraphs (b)(i) and (ii), (c), and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Section 3.7 of the Compact and paragraphs (b)(i) and (ii) and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Provider that does not meet the definition of a Covered Provider, on the other hand; and

(iii) Section 3.7 of the Compact and paragraphs (b)(i) and (ii), (c), and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Covered Provider that is a non-profit organization domiciled in the United States, on the other hand.

Section 2.8 Reports; Notices.

(a) Unless MCC agrees otherwise in writing, MCA-Malawi will periodically provide to MCC, in form and substance satisfactory to MCC, the reports and information required by the Reporting Guidelines (each, a “**Periodic Report**”). MCA-Malawi will provide the Periodic Reports to MCC on the schedule specified in the Reporting Guidelines, and the Periodic Reports will be consistent with the Reporting Guidelines in all respects. As of the date hereof, the following Periodic Reports are required to be submitted under the Reporting Guidelines:

(i) On a quarterly basis:

(A) a narrative report setting forth the proposed use for the Disbursement in the upcoming quarter together with an explanation of the use of funds of the previous quarter and any adjustments to the Implementation Plan, substantially in the form of the “Narrative Report” posted on the MCC Website;

(B) a quarterly financial report of MCA-Malawi's financial activities during the preceding quarter and documentation supporting any proposed cash requirements for the upcoming quarter, substantially in the form of the "Form of Quarterly Financial Report" posted on the MCC Website (the "*Quarterly Financial Report*");

(C) an updated Detailed Financial Plan;

(D) a procurement performance report, setting forth a cumulative summary of executed procurement actions compared to the Procurement Plan approved by MCC for the preceding quarter, substantially in the form of the "Procurement Performance Report" posted on the MCC Website;

(E) a conditions precedent report, describing progress toward meeting conditions precedent to Disbursements proposed for the upcoming quarter, substantially in the form of the "Conditions Precedent Report" posted on the MCC Website; and

(F) an indicator tracking table, setting forth the performance indicators contained in the M&E Plan and tracking MCA-Malawi's progress against said indicators, substantially in the form of the "Indicator Tracking Table" posted on the MCC Website.

(b) On October 30 of each year of the Compact Term (or within thirty (30) days of any written request by MCC), MCA-Malawi will provide to MCC an annual supplemental report containing the following information:

(i) the progress made by the Government toward achieving the Compact Goal, Program Objective and Project Objective;

(ii) additional information on accomplishments not presented in the Periodic Reports;

(iii) developments in Compact implementation related to the consultative process, donor coordination, and lessons learned; and

(iv) any report or document required to be delivered to MCC in connection with the Program under the MCC Environmental Guidelines, any Audit Plan, or any Implementation Plan Document.

(c) MCA-Malawi will furnish, or use its best efforts to furnish, to MCC an audit report in a form satisfactory to MCC for each audit required under the Compact, other than audits arranged for by MCC, no later than ninety (90) days after the end of the period under audit, or such other time as may be agreed by MCC from time to time.

(d) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other governmental authority of Malawi at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces

the allocation in its budget of the normal and expected resources that the Government or such governmental authority, as applicable would have otherwise received or budgeted, from external or domestic sources, or fails to timely distribute an allocation budgeted for the activities contemplated under the Compact or the Program, the MCA-Malawi must notify MCC in writing within thirty (30) days of such reallocation, reduction, or failure to distribute, such notification to contain information regarding the amount of the reallocation, reduction, or failure to distribute, the affected activities, and an explanation for the reallocation or reduction.

(e) In addition to the Periodic Reports, MCA-Malawi will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MCA-Malawi in writing, such other reports, documents or information as MCC may request from time to time related to the Program, including any component of the Implementation Plan, the Fiscal Accountability Plan, the Program Guidelines or any Disbursement.

(f) MCA-Malawi will submit the Periodic Reports and any other reports required hereunder electronically if requested by MCC or otherwise required by the Reporting Guidelines.

Section 2.9 Transactions Subject to MCC Approval. Each of the following transactions, activities, agreements, and documents requires MCC's prior written approval:

- (a) Disbursements;
- (b) the Implementation Plan (including each element or component thereof), the Fiscal Accountability Plan and the M&E Plan, and any modification of any of the foregoing;
- (c) agreements between the Government and MCA-Malawi, and agreements in which any of the following are appointed, hired or otherwise engaged (each, a "**Material Agreement**"):
 - (i) Auditor or Reviewer;
 - (ii) Fiscal Agent;
 - (iii) Procurement Agent;
 - (iv) Bank;
 - (v) Project Partner;
 - (vi) Outside Project Manager; and
 - (vii) a member of the Board (including any Observer) or any Officer of MCA-Malawi (including agreements regarding compensation for any such person);
- (d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;

- (e) any agreement or transaction of MCA-Malawi that is not arm's-length;
- (f) any pledge of any MCC Funding or any Program Assets, or any incurrence of material indebtedness, or any guarantee, directly or indirectly of any indebtedness;
- (g) any decree, legislation, regulation, charter, trust deed, contractual arrangement or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization or governance of, MCA-Malawi (including the Trust Deed and any staffing plan), and all amendments thereof (each, a "**Governing Document**");
- (h) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Malawi, including any revocation or modification of or supplement to any Governing Document related thereto;
- (i) any change in character or location of any Permitted Account;
- (j) (i) any change of any member of the Board (including any Observer), of the member serving as the chairperson or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any Observer), (ii) any change of any Officer of MCA-Malawi or in the composition or size of its management unit, and the filling of any vacant position of any Officer of MCA-Malawi, and (iii) any material change in the composition or size of the Stakeholders' Committee;
- (k) any decision by MCA-Malawi to engage, to accept or to manage any funds in addition to MCC Funding (including from any donor agencies or organizations) in during the Compact Term, or to engage in any activities or undertake any duties or responsibilities other than the Designated Rights and Responsibilities; and
- (l) any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing documents or arrangements.

Section 2.10 Role of Certain Entities in Implementation.

(a) Outside Project Manager. MCA-Malawi may engage qualified persons or entities to serve as outside project managers (each, an "**Outside Project Manager**") in the event that it is advisable to do so for the proper and efficient day-to-day management of the Project; *provided, however,* that, if so required by the MCC Program Procurement Guidelines, the appointment or engagement of any Outside Project Manager will be made using a competitive selection process and, if required by the MCC Program Procurement Guidelines, will be subject to approval by the Board and by MCC prior to such appointment or engagement. Upon such approval, MCA-Malawi may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Project Partners and the implementation of the Project; and *provided, further,* that MCA-Malawi will remain accountable for those duties and responsibilities and all reports delivered by the Outside Project

Manager notwithstanding any such delegation, assignment or contract and the Outside Project Manager will be subject to the oversight of the Fiscal Agent and Procurement Agent. The Board may determine that it is advisable to engage one or more Outside Project Managers and instruct MCA-Malawi and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(b) Fiscal Agent. MCA-Malawi will engage a Fiscal Agent, who will be responsible for, among other things, (i) ensuring and certifying that Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Fiscal Agent Agreement and the Bank Agreement, (ii) instructing the Bank to make Disbursements from a Permitted Account or requesting Disbursement be made directly to a provider as payment for goods, works or services in accordance with the Common Payment System or any alternate payment system approved by MCC, as the case may be, and in each case following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding financial transactions, and (v) producing reports on Disbursements in accordance with established procedures set forth in the Fiscal Agent Agreement or the Bank Agreement. MCA-Malawi will enter into an agreement with the Fiscal Agent, in form and substance satisfactory to MCC, which sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions (the “**Fiscal Agent Agreement**”). Unless MCC agrees otherwise in writing, the Fiscal Agent will be a third party, independent of the Government.

(c) Auditors and Reviewers. MCA-Malawi will engage one or more auditors as contemplated in the Audit Guidelines (each, an “**Auditor**”). As requested by MCC in writing from time to time, MCA-Malawi will also engage an independent (i) reviewer to conduct reviews of performance and compliance under the Compact, which reviewer will have the capacity to (A) conduct general reviews of performance or compliance, (B) conduct environmental and social audits, and (C) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III to the Compact, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a “**Reviewer**”). MCA-Malawi will select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MCA-Malawi will enter into an agreement with each Auditor or Reviewer, in form and substance acceptable to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions (the “**Auditor/Reviewer Agreement**”).

(d) Procurement Agent. MCA-Malawi will engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Malawi will enter into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions (the “**Procurement Agent Agreement**”). Unless MCC

agrees otherwise in writing, the Procurement Agent will be a third party, independent of the Government.

Section 2.11 Publicity and Transparency.

(a) Subject to Section 2.12, MCA-Malawi will give appropriate publicity to the Compact as a program to which the United States, through MCC, has contributed, including by identifying Program Activity sites, and marking Program Assets, all in accordance with the MCC “*Standards for Global Marking*” posted from time to time on the MCC Website. Upon the termination or expiration of the Compact, the Government, upon MCC’s request, will cause the removal of any such references and markings on the MCA-Malawi Website or in any Government or MCA-Malawi publicity materials.

(b) MCA-Malawi will make information concerning implementation of the Compact publicly available, including by posting the following documents in English, on the website operated by MCA-Malawi (the “*MCA-Malawi Website*”), all to the extent contemplated by and in accordance with the Governance Guidelines: (i) Compact, (ii) this Agreement, (iii) minutes of the meetings of the Board, and minutes of the meetings of the Stakeholders’ Committee as they relate to MCA-Malawi; (iv) the M&E Plan, along with periodic reports on Program performance; (v) all environmental and social impact assessments for the Projects and supporting documents; (vi) all audit reports by an Auditor and any periodic reports or evaluations by a Reviewer; (vii) all Disbursement Requests; (viii) all reports required to be submitted to MCC under the terms of this Agreement (including the quarterly reports pursuant to Section 2.7(a)(i)); (ix) all procurement policies and procedures (including standard documents, procurement plans, contracts awarded and the BCS) and any other procurement documents required to be made publicly available under the MCC Program Procurement Guidelines; (x) a copy of the trust deed or other documents related to the formation, organization or governance of MCA-Malawi (except to the extent classified), including the Governing Documents and any amendments thereto; and (xi) such other materials as MCC may request; *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 will be subject to MCC’s prior approval and must be consistent with any instructions provided by MCC in relevant Implementation Letters.

(c) Notwithstanding Section 2.11(b), information relating to procurements prior to the award of a contract and confidential information relating to MCA-Malawi’s agreements with employees, contractors and consultants will be excluded from the information and documents made publicly available; *provided, however*, that MCC and MCA-Malawi will mutually determine whether any information to be excluded is confidential.

Section 2.12 Branding and Enforcement.

(a) Subject to Section 5.7(d), MCC hereby grants MCA-Malawi a revocable, royalty-free, fully paid and non-exclusive right and license to use (i) the names “Millennium Challenge Corporation” and “MCC” and (ii) MCC’s logo, in each case of (i) and (ii) solely in accordance with the MCC Standards for Global Marking. Any such use of the names and the logo will

solely be for the benefit of MCC, and not inure to the benefit of MCA-Malawi. The use of MCC's names and logo will not create any agency or legal representation, and MCA-Malawi has no authority to bind MCC in any way.

(b) MCA-Malawi will (i) create its own logo, and (ii) use such logo as well as the names "Millennium Challenge Account-Malawi" and "MCA-Malawi," in each case of (i) and (ii) solely in accordance with the MCC Standards for Global Marking. Subject to Section 5.7(d), MCA-Malawi hereby grants MCC an irrevocable, royalty-free, fully paid and non-exclusive right and license to use (1) the names "Millennium Challenge Account-Malawi" and "MCA-Malawi," and (2) MCA-Malawi's logo.

(c) MCA-Malawi will take all reasonable steps to ensure that the names "Millennium Challenge Account-Malawi" and "MCA-Malawi," as well as its own logo, will enjoy maximum protection under the laws now or hereafter in effect in Malawi throughout the term of this Agreement. This includes the registration of the names and the logo as a trademark, if appropriate, the monitoring of unauthorized use by third parties, and, in case of detection of unauthorized use, the enforcement of such rights. MCA-Malawi will inform MCC as soon as practicable if it becomes aware of any infringement, threat of infringement, or any other use by a third party that has not been authorized by MCC of any of (i) the names "Millennium Challenge Account -Malawi," "MCA-Malawi" and/or MCA-Malawi's logo; or (ii) the names "Millennium Challenge Corporation," "MCC" and/or MCC's logo. MCA-Malawi will provide MCC assistance to enforce MCC's rights to the names "Millennium Challenge Corporation" and "MCC," as well as to MCC's logo.

ARTICLE 3.

DISBURSEMENT OF MCC FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. MCA-Malawi may request Disbursements to be made under the Compact by submitting a written request substantially in the form of the "Disbursement Request and Quarterly Financial Report" posted on the MCC Website (each a "***Disbursement Request***"), duly completed, to MCC not later than twenty (20) days (or such other period of time as may be agreed by MCC) prior to the commencement of each Disbursement Period. Requests for Disbursement of Program Funding and Compact Implementation Funding for any Disbursement Period will be made by separate Disbursement Requests using the applicable form. Unless MCC agrees otherwise, MCA-Malawi may submit only one Disbursement Request for Program Funding, and one Disbursement Request for Compact Implementation Funding, for each quarter (such quarter, or any other period of time as agreed by MCC, the "***Disbursement Period***"). Each Disbursement Request submitted must be accompanied by the Periodic Reports covering the corresponding Disbursement Period.

(b) Approval of Disbursement Requests; Release of Proceeds.

(i) Upon receipt of a Disbursement Request, MCC will determine the appropriate amount of the Disbursement to be made based on, among other things, (A) the progress achieved under the Implementation Plan, (B) the amount of funds required to complete the activities described in the accompanying Periodic Reports during the corresponding Disbursement Period and (C) the satisfaction, waiver or deferral of applicable conditions to such Disbursement. MCC reserves the right to reduce the amount of any Disbursement below that proposed in a Disbursement Request in accordance with this Section 3.1(b) and Section 3.5.

(ii) Upon MCC's approval of a Disbursement Request, the proceeds of the Disbursement may be transferred, at MCC's sole election, (A) to a Permitted Account, or (B) directly to a provider as payment for goods, works or services received by MCA-Malawi in accordance with the Common Payment System or any alternate payment system approved by MCC; *provided however*, that expenditures of such proceeds (including amounts transferred directly to a provider) are authorized by MCA-Malawi, and the related payment complies, as certified by the Fiscal Agent, with the most recently approved Detailed Financial Plan and the standards and procedures set forth in the Fiscal Agent Agreement and the Fiscal Accountability Plan.

(c) Permitted Accounts.

(i) Any MCC Funding to be disbursed to a bank account must be deposited in an interest-bearing account established by MCA-Malawi in the local currency of Malawi (the "**Local Account**") at a financial institution acceptable to MCC. The Local Account will be a Permitted Account. MCC and MCA-Malawi also may mutually agree in writing to the establishment of additional Permitted Accounts from time to time at financial institutions acceptable to MCC. MCA-Malawi will notify MCC promptly if any account information for a Permitted Account changes during the Compact Term and provide MCC with the updated information.

(ii) Unless otherwise authorized by MCC, no funds will be co-mingled in a Permitted Account other than MCC Funding and accrued interest and earnings thereon. MCC will have the right, among other things, to view any Permitted Account statements and activity directly on-line, and where such viewing is not feasible, MCA-Malawi will provide copies of such statements to MCC upon its request. Before any MCC Funding is deposited into a Permitted Account, MCA-Malawi will enter into an agreement, in form and substance satisfactory to MCC, with the financial institution approved by MCC to hold such Permitted Account (the "**Bank**") that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to such Permitted Account (the "**Bank Agreement**"). The Fiscal Agent will be the sole signatory on each Permitted Account.

(iii) MCC Funding held in a Permitted Account will accrue interest or other earnings in accordance with the Bank Agreement. On a quarterly basis and upon the termination

or expiration of the Compact or the Bank Agreement, MCA-Malawi will ensure the transfer of all accrued interest to MCC.

(iv) Unless MCC agrees otherwise, if MCC Funding is held in any Permitted Account other than the Local Account, MCA-Malawi will ensure that such MCC Funding will be denominated in the currency of the United States of America prior to its expenditure or transfer to the Local Account. To the extent that any amount of MCC Funding held in U.S. Dollars must be converted into the currency of Malawi for any purpose, MCA-Malawi will ensure that such amount is converted consistent with the requirements of the Bank Agreement or any other applicable Supplemental Agreement.

Section 3.2 Conditions Precedent to Disbursement of Compact Implementation Funding. Prior to the initial Disbursement of Compact Implementation Funding or any subsequent Disbursement of Compact Implementation Funding, the applicable conditions set forth in Annex IV to the Compact must have been met to MCC's satisfaction.

Section 3.3 Conditions Precedent to the Initial Disbursement of Program Funding. Unless waived or deferred by MCC, the conditions of this Section 3.3 and the conditions set forth in Section 3.4 must have been met to MCC's satisfaction prior to the initial Disbursement of Program Funding:

(a) Entry into Force. The Compact has entered into force as provided in Article 7 of the Compact.

(b) Officers. Each of the Officers has been selected and engaged by MCA-Malawi and approved by MCC.

(c) Fiscal Accountability Plan. MCA-Malawi has developed the Fiscal Accountability Plan (or an interim version).

(d) M&E Plan. MCA-Malawi has developed the M&E Plan, and the plan has been approved by the Board and MCC.

(e) Implementation Plan. MCA-Malawi has developed a complete Implementation Plan.

(f) Trust Deed. The Government has formed MCA-Malawi and the Board has adopted the Trust Deed and such Trust Deed has been approved by MCC.

Section 3.4 Conditions Precedent to Each Disbursement of Program Funding. Unless waived or deferred by MCC, the following conditions must have been met to MCC's satisfaction prior to each Disbursement of Program Funding (including the initial Disbursement of Program Funding):

(a) Deliveries. MCA-Malawi has delivered to MCC the following documents, in form and substance satisfactory to MCC:

(i) a completed Disbursement Request, together with the Periodic Reports covering the related Disbursement Period;

(ii) copies of any reports from any technical (including environmental) auditors engaged by MCA-Malawi for any Activity delivered since the previous Disbursement Request;

(iii) a certificate of MCA-Malawi, dated as of the date of such Disbursement Request, substantially in the form provided by MCC (the “*MCA Disbursement Certificate*”);

(iv) a certificate of the Procurement Agent, substantially in the form provided by MCC (the “*Procurement Agent Disbursement Certificate*”); and

(v) a certificate of the Fiscal Agent, substantially in the form provided by MCC (the “*Fiscal Agent Disbursement Certificate*”).

(b) Other Conditions Precedent. MCC has determined in its sole discretion that:

(i) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Malawi or any Government entity has occurred and is continuing under this Agreement, the Compact or any Supplemental Agreement;

(ii) the activities to be funded with such Disbursement will not violate any applicable law or regulation;

(iii) the Implementation Plan Documents and Fiscal Accountability Plan are current and updated and are in form and substance satisfactory to MCC, and there has been progress satisfactory to MCC on the components of the Implementation Plan for any relevant Project or Activities related to such Disbursement;

(iv) there has been progress satisfactory to MCC on the M&E Plan and Social and Gender Integration Plan for the Program, the Project or relevant Activity and substantial compliance with the requirements of the M&E Plan and Social and Gender Integration Plan (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period);

(v) there has been no material negative finding in any financial audit report delivered in accordance with the Compact and Audit Plan, for the prior two quarters (or such other period as the Audit Plan may require);

(vi) any Taxes paid with MCC Funding through the date ninety (90) days prior to the start of the applicable Disbursement Period have been reimbursed by the Government in full in accordance with Section 2.8(c) of the Compact;

(vii) the Government has satisfied all of its payment obligations, including any insurance, indemnification, tax payments or other obligations, and contributed all resources required from it, under the Compact, this Agreement and any Supplemental Agreement;

(viii) MCC does not have grounds for concluding that any matter certified to it in the related MCA Disbursement Certificate, Procurement Agent Disbursement Certificate or Fiscal Agent Disbursement Certificate is not as certified;

(ix) no act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, the Compact or MCC Funding in accordance with Section 5.1 of the Compact;

(x) each of the Officers remains engaged, or if a position is vacant, MCA-Malawi is actively engaged, to MCC's satisfaction, in recruiting a replacement; and

(xi) MCA-Malawi has complied in all material respects with its obligations set forth in Section 2.1(d) with respect to the establishment of a BCS and its obligations set forth in Section 2.3 with respect to the establishment of an M&E Plan.

Section 3.5 Project Conditions Precedent.

(a) Prior to the second Disbursement of Program Funding, MCA-Malawi will have developed a comprehensive Social and Gender Integration Plan, in form and substance satisfactory to MCC.

(b) Prior to the initial Disbursement of MCC Funding for payment under a particular works or construction contract for the Project or any Activity, MCA-Malawi will have submitted to MCC in form and substance evidence satisfactory to MCC that (i) an Environmental Impact Assessment (EIA), an Environmental Management Plan (EMP) and/or a Resettlement Action Plan (RAP) (as appropriate) has been developed and adopted with respect to such Activity; and (ii) MCA-Malawi or the appropriate Government entity is in compliance with the requirements of the EIA, EMP or RAP, as appropriate, consistent with the MCC Environmental Guidelines and MCC Gender Policy.

Section 3.6 Failure to Satisfy Conditions Precedent; Partial Disbursements. MCC may, in its sole discretion, disapprove any Disbursement completely or reduce the amount of any Disbursement for any Project or Activity for which the relevant conditions precedent have not been satisfied, waived or deferred.

Section 3.7 Authorized Expenditures. Except as MCC otherwise agrees, a Disbursement, or financial commitment involving MCC Funding may be made, and a Disbursement Request may

be submitted, only if the related expense is provided for in the Detailed Financial Plan and sufficient uncommitted funds exist in the Detailed Financial Plan for the relevant period.

ARTICLE 4.

ENTRY INTO FORCE OF THIS AGREEMENT; CONSEQUENCES OF COMPACT TERMINATION, SUSPENSION AND EXPIRATION

Section 4.1 Entry into Force of this Agreement. This Agreement will enter into force upon the later of (a) the signing of this Agreement by each of the Parties to this Agreement, or (b) the date that the Compact enters into force as provided in Article 7 of the Compact; *provided, however,* that the Parties agree that upon signature of this Agreement, and until this Agreement enters into force, the Parties will provisionally apply the terms of this Agreement.

Section 4.2 Consequences of Compact Termination, Suspension or Expiration.

(a) Upon the suspension, in whole or in part, of the Compact or any MCC Funding, all applicable Disbursements will be suspended, and MCC may request the Government to return any MCC Funding (or portion thereof) on deposit in any Permitted Account; *provided, however,* MCC Funding may be used, in compliance with the Compact and this Agreement and with written consent of MCC, to pay for (i) reasonable expenditures for goods, works or services that were properly incurred under or in furtherance of the Program before the suspension of the Compact or any MCC Funding; and (ii) reasonable costs incurred in connection with the suspension of the Compact or any MCC Funding.

(b) Upon the termination, in whole or in part, of the Compact or any MCC Funding, all applicable Disbursements will cease; *provided, however,* MCC Funding may be used, in compliance with the Compact and this Agreement and with written consent of MCC, to pay for (i) reasonable expenditures for goods, works or services that were properly incurred under or in furtherance of the Program before termination of the Compact or any MCC Funding, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program (or any part thereof) within 120 days after the termination of the Compact or any MCC Funding.

(c) Upon expiration of the Compact, all Disbursements will cease; *provided, however,* MCC Funding may be used, in compliance with the Compact and this Agreement, to pay for (i) reasonable expenditures for goods, works or services that were properly incurred under or in furtherance of the Program before expiration of the Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration.

(d) Subject to Sections 4.2(b) and (c), upon the expiration or termination of the Compact or MCC Funding, the Government will return to MCC any amounts of MCC Funding on deposit in any Permitted Account but not expended before the expiration or termination, plus accrued interest thereon within thirty (30) days after the Government receives MCC's request for

such return; *provided, however*, that if the Compact is terminated in part, only the amount of MCC Funding allocated to the terminated portion will be subject to return.

(e) Upon the full or partial termination of the Compact or any MCC Funding, MCC may, at its expense, direct that title to any Program Assets be transferred to MCC if such Program Assets are in a deliverable state, and the Government will promptly effect such transfer upon such direction; *provided however*, that, for any Program Asset not in a deliverable state and any Program Asset partially purchased or funded with MCC Funding, the Government, upon MCC's request, will reimburse MCC in United States Dollars the cash equivalent of the fair market value of such Program Asset or portion thereof, as such is determined by MCC.

(f) Prior to expiration, or upon termination, of the Compact, the Parties will consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Malawi, (ii) the process for ensuring the refunds of Disbursements that have not yet been released from a Permitted Account or committed in accordance with Sections 4.2(b) and (c), and (iii) any other matter related to the winding up of the Program and the Compact.

ARTICLE 5.

GENERAL PROVISIONS

Section 5.1 Representatives. The provisions of Section 4.2 of the Compact are incorporated herein by reference as if fully set forth herein.

Section 5.2 Communications. The provisions of Section 4.1 of the Compact are incorporated herein by reference as if fully set forth herein.

Section 5.3 Assignments.

(a) Assignment by the Government. The Government may not assign, delegate or contract its rights or obligations under this Agreement without MCC's prior written consent. The Government agrees, upon request by MCC, to execute an assignment to MCC of any contractual right or cause of action which may accrue to the Government or MCA-Malawi in connection with or arising out of the contractual performance or breach of performance by a party to a contract financed in whole or in part by MCC Funding.

Section 5.4 Amendment; Waivers. This Agreement may be amended only by a written agreement signed by the Principal Representative (or such other government official designated by the relevant Principal Representative of the Government and MCC); *provided, however*, that the Parties may agree in a writing, signed by any Additional Representative of a Party, to modify any Schedule hereto. Any amendment to this Agreement will be binding on the Government without the need for further action by the Government, any further parliamentary action, or satisfaction of any additional domestic requirements of Malawi. Any waiver of a right or obligation arising under this Agreement will be effective only if provided in writing.

Section 5.5 Attachments. Each exhibit, schedule and annex attached to this Agreement constitutes an integral part of this Agreement.

Section 5.6 Inconsistencies. In the event of any conflict or inconsistency between this Agreement and the Compact, the terms of the Compact will prevail. In the event of any conflict or inconsistency between this Agreement and any other Supplemental Agreement or any Implementation Plan Document the terms of this Agreement will prevail.

Section 5.7 Termination of this Agreement.

(a) MCC may terminate this Agreement in whole or in part by giving the Government thirty (30) days' written notice. This Agreement will terminate simultaneously with the termination of the Compact by the Government in accordance with Section 5.1(a) of the Compact.

(b) MCC may immediately terminate this Agreement, in whole or in part, by written notice to MCA-Malawi and the Government, if MCC determines that any event that would be a basis for termination or suspension of the Compact or MCC Funding under Section 5.1(b) of the Compact has occurred.

(c) Unless terminated earlier in accordance with the terms hereof or the Compact, this Agreement will expire upon the expiration or termination of the Compact; *provided, however*, that, if MCC determines, consistent with Section 4.2 (b) or (c), that obligations incurred (and previously approved by MCC in a Disbursement Request) prior to the expiration or termination of the Compact remain to be paid, then the provisions of this Agreement will apply until such date as such obligations are satisfied.

(d) No later than 120 days after the expiration or termination of this Agreement, unless MCC agrees otherwise, (i) the licenses granted to MCA-Malawi in Section 2.12(a) will terminate with immediate effect; (ii) the Government will ensure that MCA-Malawi ceases to be named "Millennium Challenge Account-Malawi" and/or "MCA-Malawi;" and (iii) the Government will ensure that such names and any associated logo, as well as the names "Millennium Challenge Corporation" and "MCC," as well as any logo associated therewith, are no longer used by MCA-Malawi or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of this Agreement, MCA-Malawi will assign and hereby assigns and transfers to MCC all right, title, and interest to the names "Millennium Challenge Account-Malawi," "MCA-Malawi," "Millennium Challenge Corporation," "MCC," as well as MCA-Malawi's logo and MCC's logo that it might have acquired during the term of this Agreement.

Section 5.8 Survival. Notwithstanding any expiration, suspension or termination of this Agreement, the following provisions of this Agreement will survive: Sections 1.2(b)(iii), 2.10(a), 2.12, 4.2, 5.1, 5.2, 5.3, 5.7(d), 5.8, 5.9 and 5.10.

Section 5.9 Information Provided to MCC. MCC may use or disclose any information in any Disbursement Request, report or document developed or delivered in connection with the Program: (a) to its employees, contractors, agents and representatives, (b) to any United States inspector general or the US General Accountability Office or otherwise for the purpose of satisfying MCC's own reporting requirements, (c) to post on the MCC Website for the purpose of making certain information publicly available and transparent, (d) in connection with publicizing MCC and its programs or (e) in any other manner.

Section 5.10 Governing Law. The Parties acknowledge and agree that this Agreement is an international agreement entered into for the purpose of implementing the Compact and as such will be interpreted in a manner consistent with the Compact and will be governed by the principles of international law.

Section 5.11 Counterparts; Electronic Delivery. Signatures to this Agreement and to any amendment to this Agreement will be original signatures appearing on the same page or in an exchange of letters or diplomatic notes. With respect to all documents arising out of this Agreement and amendments thereto, signatures may, as appropriate, be delivered by facsimile or electronic mail and in counterparts and will be binding on the Party delivering such signature to the same extent as an original signature would be.

SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE

IN WITNESS WHEREOF, each Party has caused this Program Implementation Agreement to be executed by a duly authorized representative as of the date first written above.

THE UNITED STATES OF AMERICA,
acting through the Millennium Challenge Corporation

/ s /

By: _____
Name: Patrick C. Fine
Title: Vice President of Compact Operations

THE REPUBLIC OF MALAWI,
acting through its Ministry of Finance

/ s /

By: _____
Name: Dr. K.D. Lipenga
Title: Minister

ANNEX 1 DEFINITIONS

Agreement has the meaning provided in the Preamble.

Audit Plan has the meaning provided in Section 2.1(c).

Auditor has the meaning provided in Section 2.10(c).

Auditor / Reviewer Agreement has the meaning provided in Section 2.10(c).

Bank has the meaning provided in Section 3.1(c)(ii).

Bank Agreement has the meaning provided in Section 3.1(c)(ii).

BCS has the meaning provided in Section 2.1(d).

Board means the board of trustees of MCA-Malawi.

Common Payment System means the system pursuant to which payments of MCC Funding are made directly to vendors as further described in the Fiscal Accountability Plan.

Compact has the meaning provided in the Recital.

Counter-party has the meaning provided in Section 1.4.

Designated Rights and Responsibilities has the meaning provided in Section 1.3(a)(i).

Detailed Financial Plan has the meaning provided in Section 2.1(b).

Disbursement Period has the meaning provided in Section 3.1(a).

Disbursement Request has the meaning provided in Section 3.1(a).

Exempt Employers has the meaning provided in Schedule D to Annex 2.

Exempt Entity has the meaning provided in Schedule A to Annex 2.

Exempt Individual has the meaning provided in Schedule A to Annex 2.

Exempt Personal Income has the meaning provided in Schedule D to Annex 2.

Fiscal Accountability Plan has the meaning provided in Section 2.2.

Fiscal Agent Agreement has the meaning provided in Section 2.10(b).

Fiscal Agent Disbursement Certificate has the meaning provided in Section 3.4(a)(v).

General Provisions Annex means the annex entitled “General Provisions” posted from time to time on the MCC Website or otherwise made available to the Government.

Governing Document has the meaning provided in Section 2.9(g).

Government has the meaning provided in the Preamble.

Implementation Plan has the meaning provided in Section 2.1.

Implementation Plan Document has the meaning provided in Section 2.1.

Indirect Taxes has the meaning provided in Schedule H to Annex 2.

Lien has the meaning provided in Section 1.2(b)(iii).

Local Account has the meaning provided in Section 3.1(c)(i).

Material Agreement has the meaning provided in Section 2.9(c).

MCA Disbursement Certificate has the meaning provided in Section 3.4(a)(iii).

MCA-Malawi has the meaning provided in Section 1.3(a)(i).

MCA-Malawi Website has the meaning provided in Section 2.11(b), with the following address as of the date hereof: <http://www.mca-m.gov.mw/>.

MCC has the meaning provided in the Preamble.

MCC Standards for Global Marking means the MCC “Standards for Global Marking” posted from time to time on the MCC Website or otherwise made available to the Government.

MRA has the meaning provided in Annex 2.

Multi-Year Financial Plan has the meaning provided in Section 2.1(b).

Observer has the meaning provided in the Governance Guidelines.

Officer has the meaning provided in the Governance Guidelines.

Outside Project Manager has the meaning provided in Section 2.10(a).

Party and Parties have the meaning provided in the Preamble.

Periodic Report has the meaning provided in Section 2.8(a).

Permitted Designee has the meaning provided in Section 1.2(a).

Personal Income Tax has the meaning provided in Schedule D to Annex 2.

Procurement Agent Agreement has the meaning provided in Section 2.10(d).

Procurement Agent Disbursement Certificate has the meaning provided in Section 3.4(a)(iv).

Procurement Plan has the meaning provided in Section 2.1(d).

Program Agreement has the meaning provided in Section 1.4.

Quarterly Financial Report has the meaning provided in Section 2.8(a)(i)(B).

Reviewer has the meaning provided in Section 2.10(c).

Stakeholders' Committee means each of the consultative mechanisms described in paragraph 3(b) of Part C of Annex I to the Compact, and any successor or other body (approved by MCC) of representatives of the private sector, civil society and local and regional governments that has been formally established in accordance with the Governance Guidelines to provide advice and input to MCA-Malawi regarding the implementation of the Program.

Tax Agent has the meaning provided in Schedule H to Annex 2.

Tax Schedules has the meaning provided in Section 2.4.

Trust Deed has the meaning provided in Section 1.3(b)(v).

Work Plan has the meaning provided in Section 2.1(a).

ANNEX 2

TAX SCHEDULES

The Government will ensure that MCA-Malawi and all Providers, Covered Providers, Project Partners, contractors (prime contractors and subcontractors), consultants, and other entities and individuals that receive MCC Funding directly or indirectly in furtherance of the Compact are exempt from Taxes in accordance with Section 2.8 of the Compact.

The following Schedules identify specific taxes and mechanisms to implement compliance with the tax exemption under the Compact. The Government will provide a copy of the Compact, this Agreement, and the Tax Schedules to the Malawi Revenue Authority (“**MRA**”) to ensure that the MRA implements the terms of the Compact and the mechanisms to implement the tax exemption as agreed herein, or as otherwise adopted under the Compact.

As the direct beneficiary of the tax exemption under the Compact, MCA-Malawi will facilitate and assist all other indirect beneficiaries of the tax exemption, including Providers, Covered Providers, Project Partners, contractors (prime contractors and subcontractors), consultants, and other entities and individuals that receive MCC Funding directly or indirectly in furtherance of the Compact, to ensure compliance with the exemption terms herein that apply to Taxes.

SCHEDULE A
VALUE ADDED TAX (VAT)

Legal Basis for Exemption or Reimbursement

1. Section 2.8 of the Compact.
2. Malawi Vat Act of 2005, Third Schedule, paragraph 4, under Section 23.

Beneficiaries of Exemption

1. MCA-Malawi – a registered entity with the Malawi Revenue Authority for the purposes of tax exemptions.
2. Each Project Partner, and any Provider, Covered Provider, or any other entity, including prime contractors and any subcontractors working directly with prime contractors and all natural persons, providing goods, works or services in furtherance of the Compact (an “*Exempt Entity*” in the case of a legal entity or an “*Exempt Individual*” in the case of a natural person).

Procedures

MCA-Malawi, Exempt Entity or Exempt Individual will procure goods, works and services exempted from VAT.

(Note: for exemptions related to the procurement of petroleum products, see Schedule F.)

Specific Procedures

Tax exemption for local purchase of goods on which VAT has already attached – locally manufactured or imported and purchased from a vendor

- Pursuant to Regulation 43 under the Malawi VAT Act of 2005, vendors may exempt VAT for local purchases made in furtherance of the Compact for goods to which VAT has already been paid. To secure this exemption, the purchaser, either MCA-Malawi, the Exempt Entity, or the Exempt Individual, must utilize the Form VAT 5 (commonly referred to as the ST14) to secure a VAT exemption for the purchase of such goods. The MRA will provide MCA-Malawi with certified Forms VAT 5 for purchases to be made hereunder by MCA-Malawi or Exempt Entities or Exempt Individuals.
- MCA-Malawi will use the Form VAT 5 as the direct beneficiary of the tax exemption under this Compact. Otherwise, MCA-Malawi will engage Exempt Entities or Exempt Individuals to implement the Compact on behalf of MCA-Malawi. For purchases to be made by Exempt Entities or Exempt Individuals in this capacity, MCA-Malawi will provide to them an endorsed Form VAT 5 and a certificate issued by MCA-Malawi to cover their specific purchases under the Compact. For each purchase, or combined

purchase, MCA-Malawi, the Exempt Entity or Exempt Individual will provide a copy of the Form VAT 5 to the local vendor that is providing the goods as evidence that the goods should be sold net of VAT. The vendor's invoice will reflect the tax exemption. The vendor will thereafter attach a copy of the Form VAT 5 (and the MCA-Malawi certificate if the purchase is made by an Exempt Entity or Exempt Individual) and the tax exempt invoice with its VAT filing as justification for not paying VAT to the Government on such sales. This exemption procedure will not apply to open-stock goods.

Goods – Imported or Bonded

- In the case of goods to be imported or goods to be purchased at a bonded warehouse, MCA-Malawi, the Exempt Entity or the Exempt Individual will contemporaneously claim an exemption from VAT as it claims an exemption under Schedule B from import and customs duties. In completing the Form 12 for an exemption of customs and import duties, the importing or purchasing entity shall simultaneously claim an exemption from import VAT on the same form.

Goods – Open Stock

- For open stock goods, if a vendor is unable to provide a VAT exemption at the point of sale, MCA-Malawi, each Exempt Entity and Exempt Individual will receive a refund for VAT paid on such purchases using the Form ST11. Each of MCA-Malawi, an Exempt Entity, or Exempt Individual that has incurred VAT on the purchase of open stock goods shall file for a refund on a quarterly basis. This application for a refund shall include a completed Form ST11 and each "tax invoice" that indicates the amount of VAT charged. The MRA will process the refund within 60 days from date of receipt of the Form ST11 and supporting tax invoices.

All Services – Sourced Locally and Imported

- The procurement of services within Malawi will be inclusive of VAT, which will be reimbursed by the MRA to MCA-Malawi. MCA-Malawi will complete a refund application form and submit it to the MRA no later than 10 days after the end of each calendar month to request refund of all VAT paid by MCA-Malawi using MCC Funding during such month. All such amounts will be refunded by the MRA within 60 days of receipt of MCA-Malawi's refund application.
- VAT on services sourced from outside Malawi and imported shall be exempt from VAT, and reverse VAT or related withholding shall not attach to or be required for any payments made for such services, regardless of whether those payments are made within or without Malawi.

SCHEDULE B
IMPORT AND CUSTOMS DUTIES

Legal Basis for Exemption

Section 2.8 of the Compact.

Beneficiaries of Exemption

1. MCA-Malawi – a registered entity with the Malawi Revenue Authority for the purposes of tax exemptions.
2. Each Exempt Entity or Exempt Individual.

Procedures

1. Prior to the importation of any goods or for the purchase of goods from a bonded warehouse for use on Compact projects, MCA-Malawi will submit to the Ministry of Finance the Compact projects or activities that will receive duty-free status. The Ministry of Finance will notify the MRA as to which projects and activities will be a duty-free project.
2. Contracts with Exempt Entities and Exempt Individuals will indicate that they are working on a duty-free project.
3. In order to obtain clearance for each importation of goods or purchase from a bonded warehouse related to a duty-free project, an Exempt Entity or Exempt Individual, or MCA-Malawi in the case of its own purchases hereunder, will submit a completed Form 12, Custom Exemption Certificate, for signature by MCA-Malawi with respect to the importation of goods or purchases from a bonded warehouse that will enter Malawi import and custom duty free. MCA-Malawi shall secure an import declaration stamp from the MRA on the Custom Exemption Certificate. The stamped Custom Exemption Certificate shall then be attached to the import declaration that the clearing agent will submit to the customs officials. Prior to the import of any item for which import or customs duty shall not apply, the Exempt Entity or Exempt Individual, or MCA-Malawi, or its clearing agent, importing such items will submit to MCA-Malawi a copy of the Bill of Quantities for each such importation. MCA-Malawi will forward that copy to the Ministry of Finance. The Ministry of Finance shall forward this Bill of Quantities to the MRA as approved for duty free entry.

SCHEDULE C

CORPORATE INCOME TAX

Legal Basis for Exemption

1. Section 2.8 of the Compact.
2. The Taxation Act, Section 13, (as a general basis for income tax exemption) and the First Schedule to the Taxation Act.

Beneficiaries of Exemption

1. MCA-Malawi.
2. Each Exempt Entity, other than legal persons that are legal entities registered under the laws of Malawi. Any income that is derived from MCC Funding by legal entities or persons, but not individuals, that are considered taxable, per the tax code, due to residence in Malawi solely with respect to their work under the Compact will not be considered taxable or subject to taxation in Malawi.

Procedures

1. MCA-Malawi and all Exempt Entities will be entitled to an exemption from Malawian corporate income tax, and related tax, on income earned from supplying goods, works, or services in furtherance of the Compact.
2. MCA-Malawi will not be required to withhold tax from payments made from or with respect to MCC Funding to an Exempt Entity.
3. Exempt Entities will be required to register as a “taxable person.” MCA-Malawi will arrange this registration with the MRA so that the Exempt Entity and all income derived from MCC Funding will be exempt from taxation. This exemption will not extend to filing requirements, and an Exempt Entity may be required to file an income tax return pursuant to applicable law in Malawi. However, all income derived from MCC Funding will be recorded as exempt income, and an Exempt Entity will not be liable to pay tax with respect to any such income. In the event that an Exempt Entity will earn taxable income from Malawian sources other than from Compact-related activities, then such income will be recorded and accounted for by the Exempt Entity separately from the income from Compact-related activities and will be outside the scope of the tax exemptions provided under this Compact.

SCHEDULE D
INDIVIDUAL INCOME TAX

Legal Basis for Exemption

1. Section 2.8 of the Compact.
2. The Taxation Act cap 41:01 of the Laws of Malawi, Section 13, and the First Schedule to the Taxation Act.

Beneficiaries of Exemption

All natural persons, whether paid internally or externally, working in furtherance of the Compact (each “***Exempt Individual***”), other than citizens or residents of Malawi. Persons who derive income hereunder who otherwise were not citizens or residents prior to receiving that income will also be deemed Exempt Individuals.

Procedures

1. The Exempt Individuals will be exempt from any income, social security, medical insurance or other mandatory taxes and charges imposed by Malawi or any subdivision thereof, regarding personal income (the “***Personal Income Taxes***”) received in connection with income earned from works and services performed in furtherance of the Compact (the “***Exempt Personal Income***”).
2. MCA-Malawi, the Implementing Entities, the Fiscal Agent and the Procurement Agent and any other Vendor who employs Exempt Individuals (the “***Exempt Employers***”) will not withhold or pay Personal Income Taxes for the Exempt Individuals.
3. The Exempt Individual will have no obligation to file an income tax return in Malawi in relation to Exempt Personal Income.
4. The Exempt Employers will have no obligation under Malawian law in connection with the completion of any mandatory filings, registrations and periodic reporting in relation to the Exempt Personal Income of the Exempt Individuals.

SCHEDULE E
FRINGE BENEFIT TAX

Legal Basis for Exemption

Section 2.8 of the Compact.

Beneficiaries of Exemption

1. All legal persons who would be required to pay fringe benefits tax on the taxable value of fringe benefits under the Taxation Act provided to their employees with respect to employment or services received in furtherance of the Compact for MCA-Malawi or an Exempt Entity, other than with respect to fringe benefits provided to or on behalf of citizens or residents of Malawi.
2. All natural persons, not citizens or residents of Malawi, who would be liable to pay fringe benefits tax for fringe benefits received (an “*Exempt Individual*”).

Procedures

Neither MCA-Malawi nor Exempt Entities will be required to pay or report fringe benefits tax for any fringe benefits provided to their employees with respect to employment or services provided in furtherance of the Compact. Otherwise, all legal persons, including MCA-Malawi and Exempt Entities, will be required to pay or report fringe benefits tax for any fringe benefits provided to non-Exempt Individuals with respect to employment or services provided in furtherance of the Compact.

SCHEDULE F
TAXATION OF PETROLEUM PRODUCTS

Legal Basis for Exemption or Reimbursement

Section 2.8 of the Compact.

Beneficiaries of Exemption

1. MCA-Malawi.
2. All legal or natural persons providing works or services in furtherance of the Compact (each an “*Exempt Entity*” or “*Exempt Individual*”).

Procedures

1. Each beneficiary under this Schedule shall be exempted from paying any of the following taxes on wholesale or bulk purchases of petroleum products with respect to any purchases made in furtherance of the Compact:
 - Excise Duties
 - Custom Import Duty
 - Road Maintenance Levy
 - Safety Net Levy
 - Electrification Levy

MCA-Malawi shall facilitate the registration and purchasing of petroleum products wholesale or in bulk, including providing any necessary certifications or approvals to permit beneficiaries under this Schedule to make such purchases.

2. For non-wholesale or bulk purchases made from retail outlets from which an exemption is not available, the Government will reimburse MCA-Malawi, an Exempt Entity or Exempt Individual for any duties, taxes and levies suffered. On a quarterly basis, MCA-Malawi, an Exempt Entity or Exempt Individual will compile its own receipts made for petroleum products for which any of the duties or levies identified under this Schedule have been paid, and shall file such with the Ministry of Finance for reimbursement. The Ministry of Finance will reimburse MCA-Malawi, the Exempt Entity or Exempt Individual for this total amount of duties and levies paid on petroleum products, within 60 days of receipt of this request for reimbursement.

SCHEDULE G
**TEMPORARY ADMISSION OF EQUIPMENT,
VEHICLES, AND HOUSEHOLD GOODS**

Legal Basis for Exemption

1. Section 2.8 of the Compact
2. Section 36 to the Customs and Excise Act and Regulations made under this Section by the Commissioner General of Malawi Revenue Authority.

Beneficiaries of Exemption

1. MCA-Malawi and the goods of each Exempt Entity or Exempt Individual imported on a temporary basis to be used in furtherance of the Compact during the Compact Term or that Exempt Entity's or Exempt Individual's contract under the Compact.
2. Each Exempt Individual importing equipment, vehicles, and household goods for personal use for the duration of their work in furtherance of the Compact.

Procedures

The temporary admission of equipment, vehicles, and household goods is granted by the customs office, without payment of VAT, customs duties, excise duties, or any other Taxes, based on the request submitted by the beneficiary of the exemption. All importations under this Schedule are declared using Form 12. Form 12 must also be used for the re-export of goods originally imported under this Schedule. MCA-Malawi will provide a certificate for the import of any goods covered by this Schedule, stating that the goods are being imported in furtherance of the Compact. This certificate will exempt the importer or owner from both (a) the six-month time limit that applies to the importation of goods under this Schedule, and thus it will not be necessary to renew the customs declaration related to those goods, and (b) a bond requirement related to the import of those goods. The disposition of goods in Malawi imported under this Schedule will be subject to customs duty at the depreciated value of the item at the time of sale.

SCHEDULE H INDIRECT TAXES

Legal Basis for Exemption or Reimbursement

Section 2.8 of the Compact.

Beneficiaries of Exemption

MCA-Malawi, Exempt Entities, and Exempt Individuals, importing or acquiring property or otherwise performing an act or action within the scope of the Compact that triggers payment of any tax under Malawi or local law, such as city rates, property tax, stamp duties, payroll tax, turnover tax, and any other tax other than those addressed in Schedules A through Schedule G above (the “*Indirect Taxes*”).

Procedures

1. Whereas Indirect Taxes may be chargeable not only by the tax offices, but also by third parties as agents of the tax offices (the “*Tax Agent*”), such as a landlord, any beneficiary of an exemption will require an official letter from MCA-Malawi for the purposes of filing it with the tax office or the Tax Agent in order to justify the claimed exemption from an Indirect Tax.
2. The official letter from MCA-Malawi is issued on official letterhead, which will confirm that the event that triggers payment of any indirect Tax is within the scope of the Compact, and which contains the name of the project and the name of the beneficiary of the exemption.
3. The Government will ensure that the Government actions implementing the exemptions covered by the Compact will address the procedures applicable to Indirect Taxes. This shall include that MCA-Malawi shall apply to the Ministry of Finance for a Stamp Duty exemption certificate to permit MCA-Malawi to exempt any payments made in furtherance of the Compact from Stamp Duty.

SCHEDULE I
NON-APPLICABLE TAXES

1. Motor Vehicle Registration Fees
2. Road Tax
3. Motor Vehicle Insurance

ANNEX 3

MCA-MALAWI TRUST DEED

TRUST DEED

made and entered into by and between

THE GOVERNMENT OF THE REPUBLIC OF MALAWI

(“the Government”)

of the first part

and

TRUSTEES OF MCA-MALAWI

(“the Trustees”)

of the second part

ARTICLE 1.

PREAMBLE

Section 1.1 The Government and the Millennium Challenge Corporation, a United States government corporation (“*MCC*”), have entered into a Millennium Challenge Compact (“*Compact*”).

Section 1.2 Recognizing that MCC wishes to help Malawi implement the program described in the Compact (as such description may be amended from time to time in accordance with the terms hereof, the “*Program*”) by making available to the Government an amount not to exceed Three Hundred and Fifty Million Seven Hundred Thousand United States Dollars (US\$350,700,000) (hereinafter referred to as “*MCC Funding*”), subject to the terms and conditions of the Compact.

Section 1.3 Pursuant to Section 3.2(b) of the Compact, the Government hereby designates MCA-Malawi, a public trust for the benefit of the people of Malawi, as the accountable entity to implement the Program and to exercise and perform the Government’s rights and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of the Project and its Activities, allocating resources and managing procurements.

Section 1.4 MCA-Malawi will have the authority to act as an agent of and to bind the Government with regard to all activities undertaken in furtherance of the Compact.

Section 1.5 Subject to the terms of the Compact, the Government hereby grants the MCC Funding received under the Compact to the MCA-Malawi trust fund to be held on and subject to the trust (the “*Trust*”) hereby created under the supervision and control of the Trustees in terms of this trust deed (“*Trust Deed*” or “*Deed*”), and the Trustees hereby accept delivery of and to hold such MCA-Malawi trust fund in accordance with this Deed.

Section 1.6 MCC and the Government make the settlement and donation described above for the benefit of the people of Malawi.

Section 1.7 The Government may in the future pay or donate further assets to the Trustees to be held and subject to the terms herein, unless otherwise agreed in writing between MCC and the Government and the Trustees.

**NOW THEREFORE THESE PRESENTS WITNESSETH THAT IT HAS BEEN
AGREED BY THE PARTIES AS FOLLOWS:**

ARTICLE 2.

DEFINITIONS

Section 2.1 In this Deed, unless otherwise specifically stated, words defined in the Compact bear the meanings therein assigned to them, and unless inconsistent with the context all the

words and expressions importing the masculine gender shall include the feminine, and words signifying the singular shall include the plural and vice versa.

Section 2.2 In this Deed, unless inconsistent with the context, the following expressions shall have the following meanings:

Accountable Entity Guidelines	Means the MCC Guidelines for Accountable Entities and Implementation Structures as posted on the MCC Website
Activities	Means the Infrastructure Development Activity and the Power Sector Reform Activity as described in <u>Annex I</u> to the Compact.
Board	Means the Board of Trustees constituted pursuant to Section 6.1.
CEO	Means the Chief Executive Officer of the MCA-Malawi appointed pursuant to Section 7.6.
Chairperson	Means the Chairperson of the Board elected pursuant to Section 6.10.
Compact	Means the international agreement signed by and between the United States of America, acting through MCC, and the Republic of Malawi, acting through its government (“ <i>Government</i> ”), signed on April 7, 2011 (the “ <i>Compact</i> ”), which sets forth the general terms on which MCC will provide assistance of up to Three Hundred and Fifty Million and Seven Hundred Thousand United States Dollars (US\$350,700,000) to the Government for a program to reduce poverty through economic growth in Malawi.
Compact Term	Means the period of time that the Compact will remain in force, as defined in Section 7.4 of the Compact.
Compact Documents	Means any of the Compact, the Program Implementation Agreement, and any Supplemental Agreement.
Detailed Financial Plan	Means a financial plan developed and adopted by MCA-Malawi (and approved by MCC) for each quarter for the upcoming year and on an annual basis for each year of the remaining years of the Compact, setting forth funding requirements for the Program (including administrative costs) and for the Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis.
Disbursement	Means each disbursement of MCC Funding for expenditures incurred in furtherance of the Program as provided in the Compact and the Project Implementation Agreement.

Fiscal Accountability Plan	Means a manual prepared and adopted by MCA-Malawi (and approved by MCC), setting forth the principles, mechanisms and procedures that MCA-Malawi will use to ensure appropriate fiscal accountability for the use of MCC Funding, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and in the procurement of goods, works and services.
Governing Document	Means any decree, legislation, regulation, charter, contractual arrangement or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization or governance of, MCA-Malawi (including the Trust Deed and any staffing plan), and all amendments thereof.
Government Trustees	Means the members of the Board of Trustees nominated and appointed by the Government pursuant to Section 6.7(a) hereof.
Project Partner	Means one or more entities engaged by MCA-Malawi to implement any Project or Activity (or component thereof) in furtherance of the Compact.
M&E Plan	Means the monitoring and evaluation plan developed by MCA-Malawi and MCC pursuant to the Compact.
Material Agreement	Means each agreement as identified under Exhibit A hereof.
MCA-Malawi	Means the Millennium Challenge Account-Malawi, a public trust established by the Government pursuant to this Trust Deed.
MCA-Malawi Website	Means the website operated by MCA-Malawi.
MCC	Means the Millennium Challenge Corporation, a United States government corporation.
MCC Funding	Means Program Funding and Compact Implementation Funding and includes any refunds or reimbursements of Program Funding or Compact Implementation Funding paid by the Government in accordance with the Compact.
Members	Means and includes all Trustees.
Multi-Year Financial Plan	Means the financial plan summary for the Program, which is set forth in <u>Annex II</u> to the Compact that shows the estimated annual contribution of MCC Funding to administer, monitor and evaluate the Program and to implement the Project.

Non-Government Trustees	Means non-government members of the Board of Trustees nominated and appointed by key private sector and civil society organizations pursuant to Section 6.7(b) hereof.
Object	Means the object of the Trust pursuant to Section 4.1 hereof.
Program	Means the collective objective under the Compact to achieve the Compact Goal (as defined in the Compact) of reducing poverty through economic growth, through the Program Objective to (i) increase investment and employment income by raising the profitability and productivity of enterprises, (ii) expand access to electricity for the Malawian people and businesses, and (iii) improve delivery of social services, by implementing the Project and Activities agreed upon by MCC and the Government with MCC Funding.
Program Assets	Means the MCC Funding, interest accrued thereon, and any assets, goods, or property (real or personal, tangible or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.
Program Implementation Agreement (“PIA”)	Means the international agreement entered or to be entered by MCC and the Government providing further detail on the implementation arrangements, fiscal accountability and disbursement and use of MCC Funding under the Compact.
Project	Means the Power Sector Revitalization Project described in <u>Annex I</u> of the Compact.
Purpose	Means MCA Malawi’s purpose of acting as the Government’s agent to implement the Program pursuant to Section 4.2 hereof.
Reserved Matters	Means the matters listed in Exhibit A hereto which may not be implemented without the approval of MCC.
Secretary	Means the person for the time being entrusted with the responsibility of taking minutes at meetings of the Board or any of its sub-committees
Stakeholders’ Committee	Means the committee of stakeholders established by MCA-Malawi and approved by MCC, as provided in <u>Annex I</u> to the Compact and Section 3.5 of the Accountable Entity Guidelines.

Supplemental Agreement Means any agreement between (a) the Government (or any Government affiliate) and MCC (including, but not limited to, the PIA), or (b) MCC and/or the Government (or any Government affiliate), on the one hand, and any third party, on the other hand, including any of the Providers (as defined in the Compact) in each case, setting forth the details of any funding, implementing or other arrangements in furtherance of this Compact.

Trustees Means the Government Trustees and the Non-Government Trustees.

ARTICLE 3.

CONSTITUTION AND NAME OF THE TRUST

Section 3.1 Name. The name of the Trust shall be “*Millennium Challenge Account – Malawi*” (in abbreviated form “*MCA-Malawi*”).

Section 3.2 Location. The principal office of MCA-Malawi shall be located in Lilongwe, Malawi, at the Millennium House, Convention Drive, P.O. Box 31513, but meetings of the Board of Trustees of MCA-Malawi (the “*Board*”) may be held at such places as the Board may designate.

Section 3.3 Nature. MCA-Malawi is being constituted as an independent legal entity empowered to carry out the Government’s obligations, and to implement the Program in accordance with the Compact.

ARTICLE 4.

OBJECTS, PURPOSE AND POWERS

Section 4.1 The Object of the Trust. The object of MCA-Malawi (“*Object*”) is to achieve the Compact Goal and the Program Objective through implementation of the Power Sector Revitalization Project, as may be amended from time to time.

Section 4.2 Purpose and Authority. MCA-Malawi will have the purpose of acting as the Government’s agent to implement the Program and to perform the Government’s rights and responsibilities to oversee, manage and implement the Program, including without limitation, managing the implementation of the Project and their activities, allocating resources and managing procurements (“*Purpose*”). It will be empowered by the Compact and the Program Implementation Agreement to act as an agent of the Government and will have the authority to perform the Government's obligations under the Compact in an independent, transparent and accountable manner.

Section 4.3 Requirements. MCA-Malawi, including its Trustees, employees, and Stakeholders’ Committee:

(a) shall not, directly or indirectly, engage in any activity prohibited under the Compact; and

(b) shall at all times operate in accordance with the requirements set forth in the Accountable Entity Guidelines, as amended from time to time.

ARTICLE 5.

TRUSTEES

Section 5.1 Composition. The Trust will have a minimum of seven (7) Trustees, and a maximum of nine (9) Trustees, of which a minimum of three (3) shall be nominated and appointed by the Government, and a minimum of four (4) shall be nominated and appointed by the private sector and civil society organizations, who shall comprise a Board of Trustees. The procedure and process of appointing the Trustees is described in Section 6.7, hereof.

Section 5.2 MCA-Malawi will be autonomous and its Board of Trustees will have ultimate authority to direct MCA-Malawi.

Section 5.3 The names and addresses of the incorporation Trustees are as stipulated in Exhibit B hereto.

ARTICLE 6.

BOARD OF TRUSTEES

Section 6.1 Role of the Board of Trustees. MCA-Malawi will be governed by the Board of Trustees (the “**Board**” or “**Trustees**,” and each individually, a “**Trustee**”), which will be an independent decision making authority with final authority and responsibility for: (a) the oversight, direction and decisions of MCA-Malawi; and (b) the overall implementation of the Program in accordance with the Compact, the Program Implementation Agreement and all Supplemental Agreements.

Section 6.2 The Board of Trustees is to be independent and the final decision maker to perform the Government’s rights and obligations to oversee, manage and implement the Program, including without limitation, managing the implementation of the Project and its Activities, allocating resources, and managing procurements, subject to the terms of the Compact and the Program Implementation Agreement, MCC’s approval rights, and the Reserved Matters, as herein described.

Section 6.3 Powers and Functions of the Board. In furtherance of the MCA-Malawi Object and Purpose, to the exclusion of any other, the Trustees, subject to the Reserved Matters and limitations imposed by the Compact, and without limiting the generality of their responsibilities, will have the following powers and functions:

- (a) To perform the designated rights and responsibilities under the Compact and related agreements;
- (b) To make and implement its own budget;
- (c) To make regulations for the conduct of the Trust affairs;

- (d) To collate and disseminate information on all relevant matters affecting the Compact, Project and the related activities, and exchange such information with all relevant stakeholders;
- (e) To raise funds and invite and receive donations or contributions from any person for purposes and use that is consistent with the objectives of the Compact;
- (f) To arrange and provide for, or join in arranging and providing for, meetings, seminars, and lectures for the Trust's stakeholders;
- (g) To promote and carry out research, or assist in promoting or carrying out research, surveys and investigations and publish such findings for the benefit of the public, the Government or MCC;
- (h) To employ and pay any person to supervise, organize or carry on the work of the Trust and make all reasonable and necessary provision for the remuneration of such person or persons;
- (i) To expend MCC Funding;
- (j) To acquire, own and dispose of property in the name of MCA-Malawi, it being recorded that MCA-Malawi's property will be separate from any Government-owned property;
- (k) To sue and be sued in the name of the Trust;
- (l) To enter into, be bound by and enforce contracts in the name of the Trust, including international agreements as may be necessary, with private and public entities including MCC, other Government ministries and sub-entities (such as project implementation units), employees, service providers, consultants, etc;
- (m) To engage Project Partners, including other Government ministries and sub-entities (such as project implementation units) and third parties, through Project Cooperation Agreements approved by MCC, and to delegate certain powers in accordance with the Compact with the approval of MCC;
- (n) To insure against all normal commercial risks associated with the Compact and its activities;
- (o) To open bank accounts, both domestically and abroad, in the name of the Trust and be able to draw, make, accept, guarantee and issue promissory notes, bills of exchange, certificates and all sorts of obligations including negotiable and transferable instruments for any purpose for which this Trust is established;
- (p) To follow MCA-Malawi's Governing Documents including its mission to implement the Compact;
- (q) To participate actively in the management of MCA-Malawi including evaluation of its reports as well as performance of its staff;

- (r) To oversee and provide direction to the Management Unit;
- (s) To protect, preserve and manage the assets financed with MCC Funding and ensure that MCC Funding is used for its intended purposes;
- (t) To keep written minutes of all meetings held by the Board, which shall reflect all decisions made and all actions to be taken;
- (u) To ensure that MCA-Malawi's records and accounts are accurate and complete;
- (v) To ensure that regular audits of MCA-Malawi by an independent auditor are performed annually;
- (w) To actively engage with and consider the recommendations and advice of the Management Unit made pursuant to Section 7.2(a) hereof, and, if necessary, request that the Stakeholders' Committee provide responsive information and documents to the Board or, as applicable, to the Management Unit;
- (x) To actively engage with and consider the recommendations and advice of the Stakeholders' Committee, established pursuant to this Trust Deed, and, if desirable, require the Management Unit to provide the Board with responsive information and documents or, as applicable, each Stakeholders' Committee; and
- (y) Generally, to perform such duties and exercise such powers of the Accountable Entity as contemplated by the Compact, the Program Implementation Agreement, the Program Guidelines, any Supplemental Agreement and Governance Guidelines.

Section 6.4 Non-Delegable Responsibilities of the Board. Notwithstanding the contents of Section 6.3, to the extent that such decisions are allowable by the Compact, the Board reserves to itself the following powers which it may not delegate to the Management Unit or otherwise:

- (a) The approval of any request for Disbursement;
- (b) The approval of each Implementation Plan Document or any modification thereto;
- (c) the approval of the Multi-Year Financial Plan or any modification thereof;
- (d) the approval of the M&E Plan or any modification thereof;
- (e) the approval of a Material Agreement (as defined in Exhibit A) or any modification, termination, or suspension of, or any other action that would have the effect of a modification, termination or suspension of, a Material Agreement;
- (f) the pledging of any MCC Funding or any assets or properties acquired (in whole or in part) with MCC Funding, or any guarantee, directly or indirectly, of any indebtedness;

(g) approval of any disposition in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Malawi, including any revocation of, or any modification or supplement to, any Governing Document;

(h) approval of any change of any member of the Board, of any member serving as the Chairperson or in the composition or size of the Board, and the filling of any vacant seat of any members of the Board;

(i) the hiring or dismissal of any Officer or any other key employee of MCA-Malawi;

(j) any material change in the composition or size of the Stakeholders' Committee;

(k) the decision to amend, supplement, replace, terminate or otherwise change any of the foregoing; and

(l) any other activity, agreement, document or transaction requiring MCC approval in the Compact, any Governing Document, the Program Implementation Agreement, any other Supplemental Agreement, or as otherwise required by MCC.

Section 6.5 Committees. The Board of Trustees may form sub-committees from its own members, and delegate to such sub-committee such of its functions as it considers necessary. The Board may rely on information, opinions, reports and the like prepared by committees the Board may create, but the members of the Board remain responsible for actually taking decisions on matters addressed or raised by committees or that are otherwise necessary or prudent on behalf of MCA-Malawi and the proper implementation of the Program. Subject to any special or general directions of the Trustees, a subcommittee may regulate its own procedure.

Section 6.6 Fiduciary Duties of Board Members. Except for the non-voting MCC Representative (as defined in Section 6.13 on the Board), the Trustees shall owe a fiduciary duty to MCA-Malawi. They shall discharge their responsibilities by staying informed and providing appropriate oversight of MCA-Malawi during Compact implementation, and regularly attend meetings to consider and approve activities of MCA-Malawi. Members of the Board are expected to exercise objective and independent judgment and discharge their duties in a manner that is in the best interests of MCA-Malawi. Board members who fail to adhere to their fiduciary duties may be removed from their position as a Trustee by the organization or entity authorized to nominate and appoint that individual to the Board.

Section 6.7 Composition of the Board of Trustees. The Board shall consist of a minimum of seven (7) Trustees, to a maximum of nine (9) Trustees, composed of Government and Non-Government Trustees, as follows:

(a) Government Trustees. The Government Trustees shall consist of those individuals serving in the following positions within the Government:

(i) Secretary to the Treasury;

(ii) the Secretary of Energy and Mines; and

- (iii) the Secretary for Economic Planning and Development.

If a person serving as a Government Trustee resigns or is removed from such Government office, that person's position on the Board will be taken by the person's successor in such Government capacity, provided that the replacement individual accepts in writing the responsibilities of his or her position as a Trustee with MCA-Malawi. The incorporation Government Members are set forth in Exhibit B, which shall be updated from time to time without amending this Deed in order to reflect the changes in the membership of the Board made in accordance with this Deed.

(b) Non-Government Trustees. The Non-Government Members shall consist of individuals nominated and appointed from key private sector and civil society organizations, which nominations and appointment shall occur according to a transparent and fair manner. In selecting such Trustees, each organization shall take into account the person's standing in the community, his or her technical abilities in light of the Objects of the Trust, and other characteristics normally required of a Trustee.

(i) Each of the following organizations shall nominate and appoint one Trustee:

- (A) Malawi Institute of Engineers
- (B) Council for Non-Governmental Organizations in Malawi ("CONGOMA");
- (C) Society of Accountants in Malawi ("SOCAM"); and
- (D) The Malawi Confederated Chambers of Commerce and Industry ("MCCCI").

Each organization authorized to nominate and appoint a Non-Government Trustee shall be authorized to nominate and appoint replacement Trustees in cases of expiration of a Trustee's term, resignation, removal or other circumstance that no longer permits that Trustee to serve as Trustee. Non-Government Trustees shall hold their position for a period of three years or until they are no longer affiliated with their nominating organization, whichever event occurs first, and may be nominated and appointed for successive terms if so determined by their respective organization.

Section 6.8 Amendment of Composition.

(a) Government Trustees. The Government Trustees may be amended from time to time through the replacement of *ex officio* positions as Government Trustees, upon approval of Malawi's Office of the President and Cabinet.

(b) Non-Government Trustees. The organizations authorized to nominate and appoint Non-Government Trustees may be revised from time to time upon request of and the proposal of a replacement organization by the Board, or the Government and as approved by Board.

(c) Increase or Decrease in Trustees. Upon recommendation of the Board, or the Government and as approved by Board, the number of Trustees may be increased or decreased, provided that the number is either seven or nine, upon a determination that there is a need for improved capacity, knowledge, particular expertise, or improved efficiency.

Section 6.9 Compensation and Indemnification.

(a) Members of the Board shall not be entitled to receive remuneration from MCC Funding in connection with the performance of their duties as members of the Board except for reimbursement of reasonable expenses arising from their attendance at regular or special meetings, so long as such reimbursements are consistent with the Compact and the detailed budget for the Program, are made with the prior approval of MCC, and are in accordance with MCC's "Cost Principles for Government Affiliates Involved in Compact Implementation," which may be found on the MCC Website. Government Trustees are prohibited from receiving remuneration from the Government or any other source in connection with the performance of their Board duties. The Non-Government Trustees are entitled to receive remuneration from Government sources in connection with the performance of their Board duties, subject to the requirements set forth in the Governance Guidelines.

(b) Pursuant to the Program Implementation Agreement, the Government is responsible for insuring, indemnifying and holding harmless each Member of the Board, *provided that* the Government shall have no obligation to indemnify any Members if and to the extent that any such claims, losses, actions, liabilities, costs, damages or expenses are attributable to the fraud, gross negligence or willful misconduct of such member.

Section 6.10 Chairperson.

(a) The Chairperson of the Board shall be elected from the Board by a majority vote of the Trustees;

(b) The Chairperson shall certify that (i) all documents and reports submitted to MCC by the Board in accordance with this Deed or the Compact have been approved by the Board, and (ii) such submissions are true, accurate and complete.

Section 6.11 Role of Legal Director as Secretary to the Board.

(a) MCA-Malawi's Legal Director will act as the corporate secretary of MCA-Malawi (the "**Secretary**"); if the Legal Director is not available to perform the function of Secretary, the Chairperson may designate another Officer to serve as the Secretary until the Legal Director is available to perform such functions.

(b) The Secretary will be responsible for maintaining MCA-Malawi's corporate books and records at the offices of MCA-Malawi, giving notice of Board meetings, attending and keeping minutes of Board meetings, signing all documents on which the signature of the Secretary is necessary or appropriate, and attesting to the authenticity of any MCA-Malawi generated documents.

(c) The Secretary will prepare minutes that will include at a minimum, the agenda and information regarding when notice was delivered to the members of the Board, the list of attendees and absentees, and summaries of the discussion of agenda items and actions taken by the Board.

(d) The written minutes of each Board meeting will be published on MCA-Malawi's website within two weeks of the next Board meeting in accordance with the requirements of Section 6.3 of this Deed.

Section 6.12 Conduct of Meetings and Decisions at such Meetings.

(a) The Board should hold as many meetings as are necessary to discharge its duties and ensure the effective implementation of the Compact; such meetings shall be at such times and at such places as may from time to time be determined by the Board. At a minimum, the Board should meet once a quarter for regular meetings.

(b) Each meeting of the Board should meet certain minimum standards in order to be considered a valid meeting at which actions taken by the Board are considered valid and effective. These standards shall include the following:

(i) Notice. Adequate notice of meetings should be provided to all members of the Board. Notice for regular meetings shall be by at least seven (7) days written notice, while notice for special meetings may be by forty-eight (48) hours. Such notice shall (i) be given to the Trustees; (ii) specify the date, time and location of the meeting; and (iii) include a copy of an agenda of issues and documents to be considered. Notwithstanding the foregoing, all the Trustees by written agreement may waive the requirement of the minimum notice. The presence of any Trustee at any such meeting of which the minimum notice has been waived shall constitute waiver by such member of the Board of the requirement to receive notice of such meeting, unless the attendance is to raise an objection to the legality of such meeting. A valid meeting of the Board may not be held unless each member of the Board entitled to receive a notice receives such notice or waives or is deemed to have waived receipt of notice of such meeting.

(ii) Quorum. A quorum for all meetings of the Board shall be a majority of the Trustees, of which at least two (2) must be Government Members and two (2) must be Non-Government Members.

(A) If within 30 minutes of a meeting a quorum is not present at any meeting of the Board, the meeting shall stand adjourned to the same day in the next week, and at the same time and venue, or if that day is not a business day, to the next succeeding business day. If within 30 minutes of the time appointed for the adjourned meeting a quorum is not present, then the Trustees present at the adjourned meeting will constitute a quorum. Where a meeting is adjourned as aforesaid, MCA-Malawi will be obliged to provide three-days written notice to all members entitled to receive notice of the date, time and place of the adjourned meeting.

(iii) Deliberations. All issues and documents for consideration by the Board shall be prepared for the Board by the Management Unit pursuant to the Section 7.2(12) hereof.

(iv) Voting. Except as may otherwise expressly be provided herein or by applicable law, all actions of the Board of Trustees shall be taken upon or pursuant to a majority vote of the Trustees present at a duly held meeting of the Board of Trustees entitled to vote in person. Each Trustee shall have one vote. In the event of an equality of votes, the Chairperson presiding at the meeting shall have a casting or tie-breaking vote. Each decision, election, appointment or action by the Board, whether specifically set forth in this Deed or otherwise, shall be made in accordance with the procedure set forth in this Section 6.12(b)(4).

(A) Decisions without a meeting. Any decision required or permitted to be taken at a meeting of the Board of Trustees or any of its sub-committees thereof may be taken without a meeting if all of the Trustees consent in writing that such a decision be taken without a meeting and in such event, such decision may be taken by way of a written resolution signed by all the Trustees, without a formal meeting.

(B) The Secretary (or the person acting in that capacity at the relevant time) shall make such executed resolution part of the minutes of the meeting of the Board of Trustees.

(C) Meetings by video or telephone conference. Unless as otherwise provided in this Deed, any Trustee unable to attend in person may require that he be entitled to attend the meeting by means of telephonic or video conference or similar communication equipment that allows all persons participating in the meeting to see or hear one another at the same time. Participation in a Board meeting pursuant to this Section 6.12(b)(4)(iii) constitutes presence in person at such meeting.

(D) The minutes of the meeting shall be recorded by the Secretary (or the person acting as such at the relevant meeting) in accordance with the Accountable Entity Guidelines. Such minutes shall be signed by the Chairperson (or the person acting as such at the relevant meeting) and posted on the MCA-Malawi Website within two (2) weeks after approval by the Trustees at the subsequent meeting.

(c) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson, a Trustee elected by a majority of the Trustees present at the meeting shall preside. Once the Trustees have had an opportunity to discuss a particular issue, the Chairperson should facilitate the decision-making process and formal action by the Board to approve, disapprove or delay its decision on the item or document.

(d) The Board shall ensure that MCA-Malawi will not take (or fail to take) any action with respect to which MCC approval is required pursuant to the Compact, any Governing Document, the Program Implementation Agreement, any Implementation Plan Document, any other Supplemental Agreement, or as otherwise agreed by the Parties, without in each case obtaining the prior approval of MCC (which approval shall be in writing unless otherwise indicated).

Section 6.13 MCC Representative.

(a) MCC may appoint a representative (the "MCC Representative") who will participate in all Board meetings. This shall include the right to attend all Board meetings,

participate in Board discussions, and receive and review all correspondence and documentation provided to the Board.

(b) The MCC Representative represents MCC's interests with respect to implementation of and compliance with the Compact. The MCC Representative does not owe any fiduciary duty to MCA-Malawi, and will not have the right to vote at any meeting.

(c) Each of the Government and MCA-Malawi hereby waives and releases all claims related to any liability or action arising out of the MCC Representative's role as a non-voting observer on the Board.

ARTICLE 7.

MANAGEMENT UNIT

Section 7.1 Role and Duties of Management Unit. There is hereby established a Management Unit comprising staff as detailed in Section 7.5 hereof.

Section 7.2 The Board of Trustees shall appoint, on such terms and conditions as it may determine, but subject to the approval of the MCC, a Chief Executive Officer to whom the Board of Trustees will assign the responsibility of day to day administration and implementation of the Program and its activities.

(a) Without derogating from the generality of the responsibilities, the Management Unit shall assist the Board in overseeing the implementation of the Program and shall have the principal responsibility (subject to the direction and oversight of the Board, and subject to MCC's rights of approval as set forth in the Compact, the Program Implementation Agreement, this Trust Deed, the Governance Guidelines and in any Supplemental Agreement) for the overall management of the implementation of the Program, including those roles and responsibilities specifically set forth in the PIA. The specific duties of the Management Unit include the:

(i) development and administration of financial, procurement, monitoring and evaluation, fiscal accountability, work, audit and staffing plans, including the Implementation Plan Documents and the M&E Plan;

(ii) maintenance of accounting records for the Program and its projects;

(iii) preparation, review and submission of reports regarding finances, accounting, audits, monitoring and evaluation, procurement and performance of MCA-Malawi and the Program, including all compliance reports required under the Compact, the PIA and applicable law, and such other reports and accounts as may be required by the Board;

(iv) coordination of the Program and the Project consistent with the Compact, the PIA and other ancillary agreements related thereto;

(v) management, implementation and coordination of all components of the M&E Plan;

(vi) oversight of the implementation of the Program, including preparation of the Disbursement Requests to be submitted to MCC for approval by the Board;

(vii) ongoing oversight of procurements and procurement-related activities in accordance with the MCC Program Procurement Guidelines as required by the Compact and PIA;

(viii) preparation and submission of documentation necessary to ensure the tax exemption of MCC funding related to the Compact and the Tax Schedules under the PIA;

(ix) the acquisition and maintenance of a management information system to allow the systematic tracking of programmatic and financial implementation of, and performance under, the Compact, including for the Project;

(x) the administration of the MCA-Malawi website to post current information about Compact related activities, M&E Plan reporting, financial reporting, and Compact related procurements;

(xi) development, oversight, management, coordination and implementation of such policies and procedures as may be necessary to facilitate the effective implementation of the Compact and as may be advisable in connection with any Supplemental Agreement, and such other policies, procedures or activities as may be required or requested by the Board in furtherance of the Compact;

(xii) provision of advice and written recommendations to the Board in matters requiring Board actions and, in connection therewith, the Management Unit shall prepare and submit to the Board the relevant agreements, documents or actions to be approved, along with a written recommendation to the Board on how to proceed with such agreements, documents or action needed to support such recommendation;

(xiii) preparation of and submission to the Board of any other report, document, agreement or action required by the Compact, the PIA or other Supplemental Agreement, or as may be designated or requested by the Board from time to time, along with the written recommendation to the Board on how to proceed;

(xiv) implementation of measures to develop public awareness of the Program and its activities;

(xv) reporting and meeting with the Stakeholders' Committees on at least a quarterly basis; and

(xvi) carrying out of any other responsibilities within the scope of Program implementation that may be required or requested from time to time by the Board, and any other responsibilities set forth in the Compact, the PIA, or any other Supplemental Agreement.

Section 7.3 All plans, reports and other documents delivered to MCA-Malawi's Board should also be delivered by the Management Unit to MCC.

Section 7.4 Each member of the Management Unit shall exercise his or her duties solely in accordance with the best interests of MCA-Malawi, the Program, the Compact Goal, Program Objective and the Project Objective, and shall not undertake any action that is contrary to those interests or would result in personal gain or a conflict of interest.

Section 7.5 Composition.

(a) The Management Unit shall be composed of the following (each of the positions listed in sub-clauses (1) through (12), an “**Officer**”): (1) A Chief Executive Officer (“**CEO**”); (2) Deputy Chief Executive Officer; (3) Legal Director; (4) Infrastructure Development Activity Director; (5) Communications and Outreach Director; (6) Administration and Finance Director; (7) Environmental and Social Performance Director; (8) Social and Gender Assessment Director; (9) Procurement Director; (10) Power Sector Reform Activity Director; (11) M&E and Economics Director; and (12) such other key officers as may be agreed upon by the Government and MCC.

(b) The CEO will manage the day-to-day activities of MCA-Malawi and will be supported by the Deputy Chief Executive Officer. The CEO may enter into contracts on behalf of MCA-Malawi, subject to the prior approval of the Board and MCC as set forth herein, in the Compact and in other Supplemental Agreements.

(c) The Officers will be supported by appropriate administrative and other personnel as needed and in accordance with the staffing plan agreed with MCC and the Detailed Financial Plan.

Section 7.6 Selection, Appointment and Termination

(a) The CEO and Officers will be selected and appointed by the Board following an open, transparent and competitive recruitment and selection process. The appointment, and termination, of employment of the CEO and all Officers (and the terms of their respective employment agreements) will be subject to MCC’s prior written approval.

(b) The other staff of the Management Unit will be selected and appointed by the CEO following an open, transparent and competitive recruitment and selection process.

(c) MCA-Malawi will use only qualified, experienced, and reliable staff for the performance of its responsibilities under the Compact, the PIA and other Supplemental Agreements.

(d) MCA-Malawi will be responsible for and will take all necessary action with respect to any misconduct or failure of any staff retained by MCA-Malawi, subject to the applicable labour laws and practice in Malawi. Further, upon the request of MCC, MCA-Malawi will take all reasonable action requested by MCC to address any misconduct or failure of the MCA-Malawi staff, again, subject to the applicable labour laws and practice in Malawi.

(e) The terms of employment for each Officer and for any other employee shall be governed by an employment agreement, subject to the prior written approval of MCC, to be

entered into between MCA-Malawi and each such member or employee, as applicable. MCC will not have any direct or indirect liability under such agreements or arrangements.

(f) The Government is responsible for ensuring that the Management Unit is composed of qualified experts from the public or private sectors, appointed through an open, fair and competitive recruitment and selection process.

(g) The CEO, Officers and staff of the Management Unit may be nationals of Malawi or of any other country. The terms of their employment shall be comparable to those of employees of a private sector entity.

Section 7.7 Remuneration. The Remuneration of each member of the Management Unit shall be determined by the Board, *provided that* such remuneration shall be approved in advance by MCC and comply with the Detailed Financial Plan and the standards provided in the Cost Principles for Government Affiliates Involved in Compact Implementation, which may be found on the MCC Website

ARTICLE 8.

STAKEHOLDERS' COMMITTEE

Section 8.1 Role of the Stakeholders' Committee.

(a) A Stakeholders' Committee, in form satisfactory to MCC, will be created to represent the constituencies of the Project. MCA-Malawi will use the Stakeholders' Committee to continue the consultative process throughout Compact implementation. The Stakeholders' Committee will be used primarily to inform the various constituent groups about Program implementation and provide advice and input to MCA-Malawi concerning the Program.

(b) The Stakeholders' Committee is intended to be used as a mechanism for feedback and to inform the stakeholders about Program implementation rather than to provide an opportunity for direct participation in the governance and decision-making of MCA-Malawi. It is a mechanism for on-going consultation throughout Project implementation. To that end, the Stakeholders' Committee shall:

- (i) engage the various constituents and intended beneficiaries of the Program on the Program's implementation;
- (ii) provide advice, guidance and recommendations to MCA-Malawi in regard to the implementation of the Program;
- (iii) advise MCA-Malawi on the selection of private sector or civil society organizations that may nominate or appoint Trustees to the Board; and
- (iv) act in an advisory and liaison role with no line responsibilities with regards to the day-to-day operations of MCA-Malawi.

(c) The Stakeholders' Committee shall provide advice and input to the Board and the Management Unit regarding implementation of the Compact, with the goal of promoting transparency. The Stakeholders' Committee shall be provided with copies of relevant documents with respect to implementation of the Compact, as well as periodic reports related to those documents to permit the Stakeholders' Committee to achieve the goals provided herein.

(d) Members of the Stakeholders' Committee shall regularly have the opportunity to present their views and recommendations to the Management Unit and the Board. Members of the Stakeholders' Committee shall be accessible to the beneficiaries they represent in order to receive their comments or suggestions regarding the Program.

Section 8.2 Appointment and Composition.

(a) Within six months of the registration of MCA-Malawi, all members of the Stakeholders' Committee shall be appointed and approved by the Board of Trustees. In order to identify members of the Stakeholders' Committee, the Government shall undertake a broad consultative process, with participation from civil society, private sector, large energy users, and local government groups. Members of the Stakeholders' Committee shall be chosen by these civil society, private sector, large energy users, and local government groups, and approved by the Board of Trustees.

(b) The size and composition and manner of selection of members of the Stakeholders' Committee shall be agreed between the Government and MCC and ratified by the Board. These matters should be dictated by the Project areas and scope of the Program. The membership should, however, include Government, the private sector, civil society and all structures that were consulted in developing the Compact. The Government representation in the membership of the Stakeholders' Committees shall reflect local, regional and national representation. The non-governmental organizations, civil society and private sector representatives should not be selected by the Government, but rather through a transparent process established by the Stakeholders' Committee and as agreed to by MCC in accordance with the Accountable Entity Guidelines.

Section 8.3 Term. The term of service for members of the Stakeholders' Committee will be two years, which term of service may be renewed.

Section 8.4 Conduct of Meetings and Decisions.

(a) The Stakeholders' Committee shall adopt and adhere to appropriate principles and policies of corporate governance. Such principles shall afford the Stakeholders' Committee the proper level of accountability, independence and transparency to permit the necessary level of input and advice expected of that Committee as envisioned under the Compact and this Trust Deed. These principles and policies will include at a minimum:

(i) Meetings. The Stakeholders' Committee shall hold at least two general meetings per year, and any other periodic meetings that may be required to discharge its functions. In compliance with requirements of the Compact and in related governing documents, the Stakeholders' Committee shall prepare written summaries of its meetings, including, but not limited to, the following information for each meeting: names of all attendees, agenda items

discussed and recommendations made by the Stakeholders Committee at the meeting. The Stakeholders' Committee and its members should be subject to the same conflict of interest and confidentiality rules contemplated in Part IX below.

(ii) Notice. The Stakeholders' Committee shall provide notice to each member for each meeting, stating the place, date, time and agenda of each meeting by the secretary of the Stakeholders' Committee, as selected by the members, (i) in respect of regular meetings, either by hand, mail, email, facsimile or telephone at least seven (7) days prior to the date of the regular quarterly meeting, and (ii) in respect of a special meeting, either by email not less than 48 hours before the date of the special meeting or by hand or telephone not less than 24 hours before the date of such special meeting.

(iii) Quorum. A majority of the members of the Stakeholders' Committee shall constitute a quorum at any meeting.

(iv) Compensation. Members of the Stakeholders' Committee shall not be entitled to receive remuneration in connection with the performance of their duties as members, except for reimbursement for reasonable expenditures incurred for attendance at Stakeholders' Committee meetings as budgeted for and approved by the Board, with the prior approval of MCC.

(v) Chair. Stakeholders' Committee meetings shall be chaired by a chairperson, who shall be selected annually by a simple majority vote of the Stakeholders' Committee.

(vi) Decisions. All decisions of the Stakeholders' Committee shall be taken by a simple majority of the members present at a meeting at which a quorum is present, each member having one (1) vote. Except as set forth in Section 8.4(a)(7), each decision, election, appointment or action by the Stakeholders' Committee, whether specifically set forth in this Deed or otherwise, shall be made in accordance with the procedures set forth in this Section 8.4(a)(6).

(vii) Deemed Resignation. If any member of the Stakeholders' Committee fails to attend meetings of the Stakeholders' Committee twice in a row, such member shall be deemed to have resigned from the Stakeholders' Committee, and a replacement shall be appointed as provided in Section 8.2.

Section 8.5 Accessibility; Transparency. Stakeholders' Committee members shall make themselves accessible to the beneficiaries they represent for the purpose of receiving the beneficiaries' comments or suggestions regarding the Program. The minutes of all meetings of the Stakeholders' Committee shall be made public on the MCA-Malawi Website within five (5) business days after MCA-Malawi receives such minutes, as approved by the Stakeholders' Committee, from the secretary of the Stakeholders' Committee.

Section 8.6 Confidentiality. Each member of the Stakeholders' Committee shall abide by the confidentiality requirements set forth in Article IX.

Section 8.7 Conflicts of Interest. Each member of the Stakeholders' Committee shall abide by the conflict of interest requirements set forth in Article IX.

ARTICLE 9.

POLICIES OF MCA-MALAWI

Section 9.1 Conflict of Interest Policy.

(a) MCA-Malawi shall ensure that no employee, director, officer, subcontractor, agent or representative of MCA-Malawi shall participate in the selection, award or administration of a contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by MCC Funding in which (i) the entity, 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 interest, or (ii) the person is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to MCA-Malawi and MCC the conflict of interest and, following such disclosure, MCC-Malawi and MCC have agreed in writing to proceed notwithstanding such conflict. MCA-Malawi's Trustees, officers, employees, contractors, subcontractors, affiliates, agents, advisors and representatives shall not, and MCA-Malawi shall ensure that no person or entity involved in the selection, award, administration or implementation of any contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by MCC Funding shall, solicit or accept or offer 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 guidelines that MCC may provide from time to time. None of MCA-Malawi's Trustees, officers, employees, contractors, subcontractors, affiliates, agents, advisors and representatives active in the Program shall engage in any activity which is, or gives the appearance of being, a conflict of interest.

(b) Except for the MCC Representative on the Board, all Trustees, Officers, employees and agents of MCA-Malawi and members of the Stakeholder Committees shall assume a duty of undivided loyalty to MCA-Malawi when making decisions impacting or in respect of MCA-Malawi. In this regard, the Board shall formulate and adopt a conflict of interest policy consistent with Section 9.1(a) and approved by MCC, which will require all Trustees, Officers, employees and agents of MCA-Malawi, and members of the Stakeholders' Committee, to disclose potential conflicts of interest prior to deliberating upon or handling a transaction that poses a potential conflict of interest. Potential conflicts of interest include not only situations in which a person covered directly by the policy is involved, but also decisions in which members of such person's immediate family or household, the person's business partner(s) or entities or organizations that the person controls or is substantially involved (whether directly or indirectly).

(c) If any such person has or acquires any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board of Trustees or any of its sub-committees, Management Unit deliberation, or any Stakeholders' Committee meeting at which the matter is the subject of consideration, the concerned person shall as soon as practicable after the

commencement of the meeting, disclose all material facts, and shall not take part in the consideration or discussion of the matter or vote on any question with respect to the matter.

(d) Trustees, Officers, employees and agents of MCA-Malawi and members of the Stakeholders' Committee shall comply with the conflicts of interest policy adopted by the Board of Trustees, which shall be incorporated by reference into the employment agreements to be entered into between MCA-Malawi and each such member or employee, as applicable.

Section 9.2 Confidentiality Policy.

(a) All documents, reports, cost estimates, technical data and information concerning the Program that is not otherwise publicly available shall be treated by the Board of Trustees, the Management Unit and the Stakeholders' Committee confidentially in a reasonable and appropriate manner and in accordance with applicable professional standards, *provided, however,* all such documents, reports, cost estimates, technical data and other information may be provided by MCC to any employees, contractors, agents, representatives of MCC, the Inspector General, the General Accountability Office, or others designated by MCC; *provided further,* that the Board may cause to be posted on the MCA-Malawi website or otherwise make publicly available certain information, including quarterly financial reports.

(b) The Board and the Management shall ensure that only those with a need to know and under similar obligations of confidentiality shall have access to any and all information, documents, cost estimates data and information provided to such party or otherwise generated in connection with this Deed and the Program.

(c) The Board, Officers, employees and agents of MCA-Malawi and members of the Stakeholders' Committee shall comply with the confidentiality policy in this Section 9.2 or that confidentiality policy adopted by the Board, which shall be incorporated by reference into the employment agreements to be entered into between MCA-Malawi and each such member or employee, as applicable, or any board charter.

Section 9.3 Transparency Policy.

(a) Transparency and accountability to MCC and to the beneficiaries of the Program are important aspects of the Program. Transparency is essential for facilitating accountability. In an effort to achieve these goals, MCA-Malawi shall, among other requirements included in the Compact and the PIA:

(i) develop and maintain an MCA-Malawi Website in a timely, accurate and appropriately comprehensive manner;

(ii) post on the MCA-Malawi Website, the important documents of the Program including the Compact, minutes of meetings and other agreements specified in the Compact; and

(iii) establish an e-mail suggestion box as well as a means for other written comments that interested persons can use to communicate ideas, suggestions or feedback to MCA-Malawi.

Section 9.4 Audit Policy.

(a) Audits performed on MCA-Malawi shall be performed by an independent external auditor appointed by MCA-Malawi and approved by MCC, and in conformance with the requirements of the Compact and the PIA.

(b) The office of the Auditor General may be consulted even though the audits of MCA-Malawi will be performed by an independent auditor.

Section 9.5 Indemnification. MCA-Malawi ensure that the Government, in accordance with the PIA, shall indemnify and hold harmless each member of the Board, each member of the Management Unit, and each member of the Stakeholders' Committee from and against any and all claims, losses, actions, liabilities, costs, damages or expenses, including reasonable attorney's fees and expenses, arising or incurred by such member of the Board, such Management Unit member, or such member of the Stakeholders' Committee by reason of such person being a "member of the Board," a "member of the Management Unit," or a "member of the Stakeholders Committee," as applicable, *provided that* the Government shall have no obligation to indemnify the member of the Board, member of the Management Unit or member of the Stakeholders Committee if and to the extent any such claims, losses, actions, liabilities, costs, damages or expenses are attributable to the fraud, gross negligence or willful misconduct of such individual.

Section 9.6 Accountable Entity Guidelines. MCA-Malawi shall comply with the Accountable Entity Guidelines.

ARTICLE 10.

MISCELLANEOUS

Section 10.1 Common Seal. MCA-Malawi shall have a common seal, which shall not be affixed to any instrument except by authority of a resolution of the Board, and in the presence of at least two Trustees or in the presence of any one Trustee and of the Secretary or such other person as the Trustees may appoint for the purpose; and those two Trustees or such Trustees and the Secretary or other person as aforesaid shall sign every instrument to which the Seal of MCA-Malawi is so affixed in their presence.

Section 10.2 Term. The Trust will exist as long as is necessary to implement the Compact, and the close-out thereof, and thereafter may expire, unless otherwise agreed in writing with MCC.

Section 10.3 Amendments.

(a) This Deed may be altered, amended or repealed at any regular or special meeting of the Board of Trustees by the affirmative vote of at least seventy-five percent (75%) of the Trustees at a meeting, *provided that* any such alteration, amendment or repeal shall be subject to MCC approval, and is in accordance with the relevant laws of Malawi covering trust deeds.

(b) Prior notice of such amendments must be sent to MCC through the MCC Representative.

(c) The Board shall not have the power to alter or amend this Deed in such manner as to create a conflict with the terms of the Compact, the PIA or any Supplemental Agreement.

SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE

IN WITNESS HEREOF the Government of Malawi has by its duly authorised representative signed this Deed as donor of the trust and a representative of the Trustees has duly signed to bind the trustees to the provisions hereof this _____ day of _____, 2012.

For: **THE GOVERNMENT OF MALAWI**

Name of Signatory: _____

Capacity: _____

AS WITNESS: _____

Name of Witness: _____

For: **THE TRUSTEES**

Name of Signatory: _____

Capacity: _____

AS WITNESS: _____

Name of Witness: _____

EXHIBIT A
RESERVED MATTERS

MCC's prior written approval is required for many activities and transactions pertaining to implementation of the Compact. The list below is intended to provide basic guidelines of some of the common types of transactions that require MCC approval but is not intended to be exhaustive. The provisions of the Compact, the PIA, all Supplemental Agreements, and MCC's policies are the final authority regarding whether an action of the Board requires MCC's approval. Capitalized terms used but not defined herein are defined in the Compact or the PIA. Common transactions requiring MCC approval are:

- (a) Disbursements;
- (b) the Implementation Plan (including each element or component thereof), the Fiscal Accountability Plan and the M&E Plan, and any modification of any of the foregoing;
- (c) agreements between the Government and MCA-Malawi, and agreements in which any of the following are appointed or otherwise engaged (each, a "***Material Agreement***"):
 - (i) Auditor or Reviewer;
 - (ii) Fiscal Agent;
 - (iii) Procurement Agent;
 - (iv) Bank;
 - (v) Implementing Entity;
 - (vi) Outside Project Manager; and
 - (vii) a member of the Board (including any Observer) or any Officer of MCA-Malawi (including agreements regarding compensation for any such person);
- (d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;
- (e) any agreement or transaction of MCA-Malawi that is not arm's-length;
- (f) any pledge of any MCC Funding or any Program Assets, or any incurrence of material indebtedness, or any guarantee, directly or indirectly, of any indebtedness;
- (g) each Governing Document, and all amendments thereof;
- (h) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Malawi, including any revocation or modification of or supplement to any Governing Document related thereto;

- (i) any change in character or location of any Permitted Account;
- (j) (i) any change of any member of the Board (including any observer), of the member serving as the chairperson or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any observer), (ii) any change of any Officer of MCA-Malawi or in the composition or size of its management unit, and the filling of any vacant position of any Officer of MCA-Malawi, and (iii) any material change in the composition or size of the Stakeholders' Committee;
- (k) any decision by MCA-Malawi to engage, to accept or to manage any funds in addition to MCC Funding (including from any donor agencies or organizations) during the Compact Term, or to engage in any activities or undertake any duties or responsibilities other than the Designated Rights and Responsibilities; and
- (l) any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing documents or arrangements.

EXHIBIT B
TRUSTEES

	Organizations Represented	Contact Person (name and position)	Contact number and e-mail
1.			