

PROGRAM IMPLEMENTATION AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA,

ACTING THROUGH

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE REPUBLIC OF BENIN

Dated as of March 23, 2016

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. GENERAL RESPONSIBILITIES OF THE PARTIES	1
Section 1.1 Definitions.....	1
Section 1.2 Role of the Government.....	1
Section 1.3 Role of MCA-Benin II	2
ARTICLE 2. IMPLEMENTATION FRAMEWORK	5
Section 2.1 Implementation Plan	5
Section 2.2 Fiscal Accountability Plan	6
Section 2.3 M&E Plan	6
Section 2.4 Environmental and Social Performance Plans	6
Section 2.5 Social Inclusion and Gender Integration	7
Section 2.6 MCC Program Procurement Guidelines and MCC Approval of Grants	7
Section 2.7 Notice to Providers; Incorporation	7
Section 2.8 Reports; Notices	8
Section 2.9 Transactions Subject to MCC Approval	9
Section 2.10 Role of Certain Entities in Implementation	11
Section 2.11 Publicity and Transparency.....	12
Section 2.12 Branding and Enforcement.	13
Section 2.13 Government Contribution	14
Section 2.14 Additional Government Obligations.....	14
ARTICLE 3. DISBURSEMENT OF MCC FUNDING	15
Section 3.1 Disbursement Process	15
Section 3.2 Conditions Precedent to Disbursement of Compact Implementation Funding	16
Section 3.3 Conditions Precedent to the Initial Disbursement of Program Funding	17
Section 3.4 Conditions Precedent to Each Disbursement of Program Funding	17
Section 3.5 Authorized Expenditures	19
ARTICLE 4. ENTRY INTO FORCE OF THIS AGREEMENT; CONSEQUENCES OF COMPACT TERMINATION, SUSPENSION AND EXPIRATION.....	19
Section 4.1 Entry into Force of this Agreement	19
Section 4.2 Consequences of Compact Termination, Suspension or Expiration.....	20
ARTICLE 5. GENERAL PROVISIONS	21
Section 5.1 Representatives	21
Section 5.2 Communications	21
Section 5.3 Assignments by the Government	21
Section 5.4 Amendment; Waivers	22
Section 5.5 Attachments	22

Section 5.6	Inconsistencies	22
Section 5.7	Termination of this Agreement	22
Section 5.8	Survival	23
Section 5.9	Information Provided to MCC	23
Section 5.10	Governing Law.	23
Section 5.11	Counterparts; Electronic Delivery..	23

Annex I: Definitions

Annex II: Tax Schedules

Annex III: Conditions Precedent to Program Funding

Annex IV: Government Contribution

PROGRAM IMPLEMENTATION AGREEMENT

PREAMBLE

This PROGRAM IMPLEMENTATION AGREEMENT (this “*Agreement*”) is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (“*MCC*”), and the Republic of Benin (“*Benin*”), acting through its government (the “*Government*”) (individually, a “*Party*” and collectively, the “*Parties*”).

Recalling that the Millennium Challenge Compact between the United States of America, acting through MCC, and the Government signed on September 9, 2015 (the “*Compact*”), sets forth the general terms on which MCC will provide assistance of up to Three Hundred Seventy Five Million United States Dollars (US\$375,000,000) to the Government for a program to reduce poverty through economic growth in Benin as defined in the Compact (“*Program*”);

Recalling that Grant and Implementation Agreement for the development of a Millennium Challenge Compact entered into between MCC and the Government dated as of September 24, 2013, as amended (“*Grant and Implementation Agreement*”);

Recalling that the Government has designated MCA-Benin II to carry out certain rights and obligations of the Government under the Compact and related agreements; and

Recognizing that the Parties wish to specify further the terms for implementing the Compact and the Program;

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 I.

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 other Supplemental Agreement (including any post-Compact Term activities, audits or other responsibilities), and to delegate its rights and responsibilities to entities, including MCA-Benin

II, 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) 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 Benin that would have the effect of allowing any such impoundment, rescission or sequestration and (B) no Program Asset is subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each, a “*Lien*”), except 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 will not use MCC Funding or any Program Assets to satisfy any such obligation.

(ii) Environmental and Social Performance. Unless MCC and the Government agree otherwise in writing, the Government will ensure that all Projects and Activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding under the Compact comply with the MCC Environmental Guidelines, including the IFC Performance Standards that have been incorporated by reference into the MCC Environmental Guidelines. The Government also will ensure that the Projects and Activities comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with the Compact. Unless MCC agrees otherwise in writing, the Government will fund all necessary costs of environmental and social mitigation measures (including, without limitation, costs of resettlement) not specifically provided for, or that exceed the MCC Funding specifically allocated for such costs in, the Detailed Financial Plan for any Project or Activity.

(iii) Social Inclusion and Gender Integration. Unless MCC and the Government agree otherwise in writing, the Government will ensure that all Projects and Activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Gender Policy and the MCC Gender Integration Guidelines.

Section 1.3 Role of MCA-Benin II.

(a) Designation of MCA-Benin II.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated MCA-Benin II as the primary agent of the Government to implement the Program and to exercise and perform the Government’s right and responsibility to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and Activities, allocating resources and managing procurements (the “*Designated Rights and Responsibilities*”). The Parties note that the Government remains 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-Benin II 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-Benin II, and all obligations assigned to the “Accountable Entity” in the Program Guidelines will be obligations of MCA-Benin II.

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

(i) Power and Authorization. MCA-Benin II 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 by this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines, and (C) perform its obligations under this and each such other agreement, certificate, or instrument contemplated by this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines.

(ii) Government Responsibilities. MCA-Benin II (A) will carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Benin II obligations in the Compact, the Grant and Implementation Agreement, this Agreement or any other Supplemental Agreement) with due care, efficiency and diligence in conformity with sound technical, financial and management practices, and in conformity with the Compact, this Agreement, each other Supplemental Agreement and the Program Guidelines, (B) except as provided in Section 2.10 or with respect to an Implementing Entity, 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-Benin II will confirm each representation that it makes on behalf of the Government in any agreement, certificate or instrument delivered by MCA-Benin II with all necessary Permitted Designees prior to providing such representation to MCC.

(iv) Autonomy. The Government will ensure that (A) no decision of MCA-Benin II 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-Benin II will not be expanded, restricted or otherwise modified, except in accordance with this Agreement and the Compact.

(v) Governance of MCA-Benin II. MCA-Benin II will adopt internal rules and regulations or bylaws, in form and substance satisfactory to MCC (the “*Bylaws*”). MCA-Benin II will conduct its operations and management in accordance with the Governing Documents (including the Bylaws) and the Governance Guidelines.

(vi) Funded Agreements; General Provisions Annex. MCA-Benin II 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 (each, a “**Funded Agreement**”), regardless of whether MCC has approval rights with respect to such agreement. Unless otherwise instructed by MCC, MCA-Benin II will include in each Funded Agreement (i) a covenant that the counterparty to such agreement (each, a “**Counterparty**”) will comply with (A) the General Provisions Annex and (B) any instruction received by such Counterparty from MCC regarding the performance by such Counterparty of the terms of the General Provisions Annex notwithstanding any other instruction given by MCA-Benin II; and (ii) a right for MCA-Benin II to terminate such Funded Agreement if such Counterparty fails to comply with the General Provisions Annex or any such instruction of MCC.

(vii) Insurance; Performance Guaranties. MCA-Benin II 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 guarantees. With MCC’s prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Benin II (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-Benin II (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-Benin II or as otherwise directed by MCC.

(viii) MCA-Benin II Indemnity. If MCA-Benin II 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-Benin II and, unless otherwise agreed in writing by MCC, will not use MCC Funding or any Program Assets to satisfy such obligation. In addition, the Government will indemnify and hold harmless each member of MCA-Benin II’s Board (including each Observer), each member of any Stakeholder Committee and each of MCA-Benin II’s Officers and employees from any claim, loss, action, liability, cost, damage or expenses incurred by such person in the performance of its duties on behalf of MCA-Benin II, **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, unless otherwise agreed in writing by MCC, the Government will not use MCC Funding or any Program Assets to satisfy its obligations under this Section 1.3(b)(viii).

(ix) MCA-Benin II Severance/Separation Payments. MCC Funding may not be used to make any payment for severance or any related payment or damages for an individual’s

separation or termination from employment with MCA-Benin II, whether or not due under local law, absent agreement between MCA-Benin II and MCC in writing.

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-Benin II 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-Benin II to submit clarifications or adjustments. MCA-Benin II 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-Benin II 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-Benin II 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-Benin II will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Work Plan. MCA-Benin II 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-Benin II will develop and implement for each quarter of the remaining years of the Compact, a detailed financial plan in accordance with the Reporting Guidelines, setting forth funding requirements for the Program (including administrative costs) and for each Project and Activity (supported by breakdowns at 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. Consistent with Section 3.8(a) of the Compact, MCA-Benin II will develop and implement an 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-Benin II 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-Benin II 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-Benin II will publish the BCS on the MCA-Benin II Website.

Section 2.2 Fiscal Accountability Plan. Except as MCC agrees otherwise in writing, MCA-Benin II will develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that MCA-Benin II will use to ensure appropriate fiscal accountability for the use of MCC Funding and the Government Contribution. 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 in writing, no later than ninety (90) days after the Compact enters into force as provided in Article 7 of the Compact, MCA-Benin II 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, implemented and updated in accordance with the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs. Recognizing that certain information may not be available ninety (90) days after the Compact enters into force, the Parties will endeavor to communicate regularly regarding availability of appropriate data and reasonable expectations regarding the content of the M&E Plan in respect thereof.

Section 2.4 Environmental and Social Performance Plans. In accordance with Section 1.2(b)(ii), MCA-Benin II will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding or Government Contribution comply with the MCC Environmental Guidelines, including the IFC Performance Standards that are incorporated by reference therein. Specifically, MCA-Benin II will: (i) cooperate with or complete, as the case may be, any ongoing environmental and social impact assessments, and if necessary, undertake and complete any additional environmental and social assessments and analyses, such as environmental and social management plans, environmental and social audits, resettlement policy frameworks, and resettlement action plans required under the laws of Benin, the MCC Environmental Guidelines, this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines, or as otherwise required by MCC, each in form and substance satisfactory to MCC; (ii) ensure that Project or Activity-specific environmental and social management plans are developed and all relevant measures contained in such plans are integrated into project design, the applicable procurement documents and associated finalized contracts, in each case, in form and substance satisfactory to MCC; and (iii) implement to MCC’s satisfaction appropriate

environmental and social mitigation measures identified in such assessments or plans or developed to address environmental and social issues identified during Compact implementation.

Section 2.5 Social Inclusion and Gender Integration. To ensure social inclusion and gender integration across the Projects and Activities, address human trafficking, and ensure compliance with the MCC Gender Policy and the MCC Gender Integration Guidelines, MCA-Benin II will: develop a comprehensive social and gender integration plan (the “***Social and Gender Integration Plan***”) that, at a minimum, (i) identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable and/or underrepresented groups; sets forth strategies for consolidating the findings and recommendations of Project-specific social and gender analyses into final Project designs; and specifies actions to be taken during the Compact Term to meet the social inclusion and gender equality objectives for the Projects; and (ii) ensures, through monitoring and coordination during Compact implementation, that final Activity designs, construction tender documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses. MCA-Benin II 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 and MCC Approval of Grants. In accordance with Section 3.6 of the Compact:

(a) MCA-Benin II 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; and

(b) Unless MCC otherwise consents in writing, MCA-Benin II will ensure that grants awarded to any non-Government entity in furtherance of the Program are awarded and administered pursuant to an open, fair and competitive procedure administered in a transparent manner.

Section 2.7 Notice to Providers; Incorporation.

(a) MCA-Benin II 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-Benin II 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 or Government Contribution 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 or Government Contribution 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;

(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 or Government Contribution 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; and

(iv) Section 3.7 of the Compact and paragraphs (b)(iii), (c) and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding or Government Contribution between the Government or any entity of the Government, on the one hand, and a non-U.S. Covered Provider, on the other hand.

Section 2.8 Reports; Notices.

(a) Unless MCC agrees otherwise in writing, MCA-Benin II 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-Benin II 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.

(b) On October 30 of each year of the Compact Term (or within thirty (30) days of any written request by MCC), MCA-Benin II 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 Objectives;

(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 (including the IFC Performance Standards that are incorporated by reference therein), any Audit Plan, or any Implementation Plan Document.

(c) MCA-Benin II will furnish to MCC, or use its best efforts to furnish, 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 Benin 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 Government, acting through MCA-Benin II, 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-Benin II will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MCA-Benin II 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-Benin II will submit the Periodic Reports and any other reports required hereunder electronically if requested by MCC or otherwise required by the Reporting Guidelines.

(g) MCA-Benin II will furnish MCC with a report, in form and substance satisfactory to MCC, within ninety (90) days after the end of each calendar year regarding the Government's contribution to the objectives of the Program required by Section 2.6(a) of the Compact. The report will cover the calendar year just ended and the projected contributions for the current fiscal year.

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-Benin II, 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) Implementing Entity;
 - (vi) Outside Project Manager; and
 - (vii) a member of the Board (including any Observer) or any Officer of MCA-Benin II (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-Benin II that is conducted between parties: (1) who are on close terms or are related by birth or marriage; or (2) who are not presumed to have roughly the same bargaining power;
- (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, 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-Benin II (including the Bylaws and any staffing plan) (each a “*Governing Document*”);
- (h) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Benin II;
- (i) any change in character or location of any Permitted Account;
- (j) (A) 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), (B) any change of any Officer of MCA-Benin II or in the composition or size of its Management Team, and the filling of any vacant position of any Officer of MCA-Benin II (including any process related to the recruitment and selection of any such Officer), and (C) any material change in the composition or size of any Stakeholder Committee;
- (k) any decision by MCA-Benin II to engage, accept or manage any funds in addition to MCC Funding (including from the Government or 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;
- (l) any adoption or modification to the Additional Sector Documents;
- (m) finalization or modification of the Master Plan;

(n) any transaction, and associated documents, relating to an IPP for which MCC Funding is used in whole or in part;

(o) any agreement, transaction, decision or other action or document for which MCC approval is required under any of the Program Guidelines; and

(p) any amendment, supplement, replacement, termination, revocation or other change to any of the foregoing documents or arrangements.

Section 2.10 Role of Certain Entities in Implementation.

(a) Outside Project Manager. MCA-Benin II 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 a Project or Activity; ***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-Benin II 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 Implementing Entities and the implementation of the specific Projects or Activities; and ***provided, further,*** that MCA-Benin II 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-Benin II and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(b) Fiscal Agent. MCA-Benin II has engaged 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 or Government Contribution 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-Benin II has entered into an agreement dated as of September 1, 2015 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 (such agreement, and any subsequent agreement with a Fiscal Agent as may be entered into by MCA-Benin II, 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-Benin II 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-Benin II will also engage an independent (i) reviewer to conduct reviews of performance and compliance under the Compact, which reviewer will have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct audits of environmental and social performance, and (3) 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-Benin II will select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MCA-Benin II 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-Benin II has engaged a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Benin II has entered into an agreement with the Procurement Agent dated as of September 1, 2015, 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 (such agreement, and any subsequent agreement with a Procurement Agent as may be entered into by MCA-Benin II, 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-Benin II 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 MCC’s *Standards for Global Marking*. 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-Benin II Website or in any Government or MCA-Benin II publicity materials.

(b) MCA-Benin II will make information concerning implementation of the Compact publicly available, including by posting the following documents in English and French (unless MCC agrees otherwise in writing), on the website operated by MCA-Benin II (the “**MCA-Benin II 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 Committees as they relate to MCA-Benin II; (iv) the M&E Plan, along with periodic reports and final evaluations on Program performance; (v) all environmental and social impact assessments and resettlement action plans for the Projects and supporting

documents; (vi) all social and gender assessments and the Social and Gender Integration Plan; (vii) all audit reports by an Auditor and any periodic reports or evaluations by a Reviewer; (viii) all Disbursement Requests; (ix) all reports required to be submitted to MCC under the terms of this Agreement (including the reports required under Section 2.8(a)); (x) all procurement policies and procedures (including standard bidding 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; (xi) a copy of any legislation or other documents related to the formation, organization or governance of MCA-Benin II (except to the extent classified), including the Governing Documents and any amendments thereto; and (xii) 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-Benin II's agreements with employees, contractors and consultants will be excluded from the information and documents made publicly available; **provided, however**, that MCC and MCA-Benin II 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-Benin II a revocable, royalty-free, fully paid and non-exclusive right and license to use MCC's logo and the names "Millennium Challenge Corporation," "Millennium Challenge Account" and "MCC," in each case, solely in accordance with the MCC *Standards for Global Marking*. Any such use of the logo and names will be solely for the benefit of MCC, and not inure to the benefit of MCA-Benin II. The use of MCC's logo and names will not create any agency or legal representation, and MCA-Benin II has no authority to bind MCC in any way.

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

(c) MCA-Benin II will take all reasonable steps to ensure that the names "Millennium Challenge Account - Benin II" and "MCA-Benin II," as well as its own logo, will enjoy maximum protection under the laws now or hereafter in effect in Benin 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-Benin II 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 – Benin

II,” “MCA-Benin II” and/or MCA-Benin II’s logo; or (ii) the names “Millennium Challenge Corporation,” “MCC” and/or MCC’s logo. MCA-Benin II will provide MCC assistance to enforce MCC’s rights to the names “Millennium Challenge Corporation” and “MCC,” as well as to MCC’s logo.

Section 2.13 Government Contribution.

(a) In accordance with Section 2.6(a) of the Compact, the Government will make an appropriate contribution, relative to its national budget and taking into account prevailing economic conditions, toward meeting the objectives of the Compact (the “**Government Contribution**”). Such contribution will be in addition to the Government’s spending allocated toward such objectives in its budget for its fiscal year 2014. The Government’s anticipated contributions from its national budget for fiscal years 2016 through 2021 are set forth in Annex IV to this Agreement. Such contributions remain subject to any legal requirements in Benin for the budgeting and appropriation of such contributions, including approval of the Government’s annual budget by Benin’s legislature. The Government’s contribution may include in-kind and financial contributions (including obligations of the Government on any debt incurred toward meeting the Objectives). The Government and MCA-Benin may agree that any interest accrued in a Permitted Account on the Government Contribution may be used in furtherance of the Compact, and any such use will be subject to the same terms and conditions as the Government Contribution.

(b) Unless otherwise agreed by the Parties in writing, contributions denominated in the local currency of Benin or other foreign currency will be recorded and converted to U.S. dollars at the exchange rate on the date the contribution payment is made or using an average rate over the period of contribution, in each case, using the exchange rates published by the Central Bank of West African States or such other source acceptable to MCC.

(c) The Government Contribution may be used for any reasonable severance or related payment or damages for an individual’s separation or termination from employment with MCA-Benin II, as agreed with MCC.

(d) The Government will ensure that the exemption from Taxes provided at Section 2.8 of the Compact will extend to the use of the Government Contribution as provided in Annex II to this Agreement.

Section 2.14 Additional Government Obligations.

(a) The Government will ensure that the annual Government budget for fiscal year 2016, and each annual budget thereafter, provides a budget allocation sufficient for the operation of ARE based on a consideration of ARE’s projected expenses for such fiscal year, ARE’s operating costs for the immediately preceding fiscal year, and a statement of ARE’s income (including amounts owing to and amounts collected by ARE) for the immediately preceding fiscal year.

(b) In furtherance of point 1(c) of Annex VI to the Compact, to evidence its compliance with the Tariff Plan, the Government will submit to MCC: (A) evidence of publication of tariff decisions by ARE; and (B) copies of SBEE invoices showing applicable tariff rates.

ARTICLE 3.

DISBURSEMENT OF MCC FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. MCA-Benin II may request Disbursements to be made under the Compact by submitting a request in accordance with the Reporting Guidelines (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 in writing, MCA-Benin II 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 may, in its sole discretion, disapprove any Disbursement completely or modify the amount of any Disbursement below proposed in a Disbursement Request based on its determination of any of the factors set forth in this Section 3.1(b)(i).

(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-Benin II 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-Benin II, 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 account established by MCA-Benin II in the local currency of Benin (the “**Local Account**”) at a financial institution acceptable to MCC, such Local Account to be interest-bearing to the extent practicable. The Local Account will be a Permitted Account. MCC and MCA-Benin II also may mutually agree in writing to the establishment of a Permitted Account for the deposit of the Government Contribution (the “**Government Account**”), and additional Permitted Accounts from time to time at financial institutions acceptable to MCC. MCA-Benin II 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 in writing, no funds will be commingled in a Permitted Account other than MCC Funding and accrued interest and earnings thereon. The Government Contribution will be kept in a Government Account and no other funds will be commingled in such Permitted Account other than the Government Contribution and interest accrued 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-Benin II will provide copies of such statements to MCC upon its request. Before any MCC Funding or Government Contribution is deposited into a Permitted Account, MCA-Benin II 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, and in certain specified cases in the Bank Agreement, designated representatives of MCC, will be the sole signatories on each Permitted Account.

(iii) MCC Funding or Government Contribution held in separate Permitted Accounts 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-Benin II will ensure the transfer of all interest accrued on MCC Funding to MCC. Accrued interest on the Government Contribution held in a Permitted Account will be transferred by the Bank to the Government according to instructions agreed upon between MCA-Benin and the Government, unless otherwise agreed between those two entities.

(iv) Unless MCC agrees otherwise in writing, if MCC Funding is held in any Permitted Account other than the Local Account, the Government 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 Benin for any purpose, MCA-Benin II 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-Benin II and approved by MCC.

(c) Fiscal Accountability Plan. MCA-Benin II has developed the Fiscal Accountability Plan (or an interim version), and the plan has been approved by MCC.

(d) Implementation Plan. MCA-Benin II has developed a complete Implementation Plan.

(e) Governing Documents. The Government has adopted the Governing Documents necessary to ensure MCA-Benin II's operation, and such Governing Documents are in full force and effect.

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-Benin II has delivered to MCC the following documents, reports and information 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-Benin II for any Activity delivered since the previous Disbursement Request;

(iii) a certificate of MCA-Benin II, 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) all applicable conditions precedent in Annex III have been duly satisfied, deferred or waived as provided in this Agreement;

(ii) (A) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Benin II or any Government entity has occurred and is continuing under the Compact, this Agreement or any other Supplemental Agreement, or under any systems, rules, policies, plans or guidance issued by MCA-Benin II or the Government (including CEB and SBEE) in fulfillment of any obligation set forth in the Compact or this Program Implementation Agreement (including any condition set forth in Annex III hereto); (B) the Government (including CEB and SBEE) or MCA-Benin II, as applicable, has made sufficient progress on implementing any systems, rules, policies, plans or guidance issued by the Government or MCA-Benin II, as the case may be, in fulfillment of any obligation set forth in the Compact or this Program Implementation Agreement (including any condition set forth in Annex III hereto); and (C) the Government has obtained MCC's written consent to any modification of any systems, rules, policies, plans or guidance issued by the Government or MCA-Benin II, as the case may be, in fulfillment of any obligation set forth in the Compact or this Program Implementation Agreement (including any condition set forth in Annex III hereto);

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

(iv) 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 Projects or Activities related to such Disbursement;

(v) there has been progress satisfactory to MCC on the M&E Plan and Social and Gender Integration Plan for the Program, relevant Project or 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);

(vi) there has been progress satisfactory to MCC on the Government's implementation of the Master Plan and the Additional Sector Documents;

(vii) all Government entities involved in the implementation of the Program, including the Implementing Entities, are coordinating successfully with MCA-Benin II and dedicating the necessary staff and other resources to ensure successful implementation of the Program;

(viii) 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);

(ix) 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;

(x) 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 other Supplemental Agreement;

(xi) 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;

(xii) 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;

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

(xiv) MCA-Benin II 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;

(xv) the Government has complied in all material respects with its obligations set forth in Section 2.13 with respect to the making of its contributions in accordance with the projected timeline set forth in Annex IV; and

(xvi) any Implementing Entity Agreements appropriate or necessary for MCA-Benin II to implement the Activities contemplated during the Disbursement Period have been executed and delivered to MCC and are in full force and effect.

Section 3.5 Authorized Expenditures. Except as MCC agrees otherwise in writing, 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 and (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-Benin II, (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.

(g) Without limiting the terms of Section 4.2(f), MCC and the Government recognize that the effects of the Compact will be long-ranging and its impact on reducing poverty may not be measurable for several years after the Compact's expiration. Accordingly, MCC and the Government agree to cooperatively monitor the results and evaluate the impacts of the Compact on reducing poverty through economic growth in Benin after the Compact's termination or expiration. As part of this cooperation, prior to the Compact's termination or expiration, the Parties will develop a post-Compact monitoring and evaluation plan that describes the future monitoring and evaluation activities, the individuals and organizations that will undertake these activities, and a budget framework for future monitoring and evaluation, provided, however, that nothing in this Section 4.2(g) will be construed as committing MCC to provide any assistance to the Government after the Compact's expiration. The Government agrees to provide all resources necessary (including both financial and personnel) to fulfill the tasks undertaken by the Government under the post-Compact monitoring and evaluation plan.

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, provided that documents or communications submitted to MCA-Benin II will be submitted at the following address:

Millennium Challenge Account-Benin II
Attention: National Coordinator
Immeuble KOUGBLENOU, 3ème étage
Domaine de l'OCBN
Derrière la Compagnie Territoriale de Gendarmerie du Littoral
Cotonou, République du Bénin
Tel: + 229 21 31 82 40
Fax: + 229 21 31 46 92

Section 5.3 Assignments 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-Benin II 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. The Parties may amend this Agreement only by a written agreement signed by the Principal Representative (or such other government official who holds a position of higher authority, provided prior notice is given) of each Party; **provided, however**, that the Parties may agree in a writing, signed by the Principal Representative or any Additional Representative of each Party, to modify any Annex hereto without amending this Agreement. 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, without cause, 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-Benin II 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 in writing, (i) the licenses granted to MCA-Benin II in Section 2.12(a) will terminate with immediate effect; (ii) the Government will ensure that MCA-Benin II ceases to be named "Millennium Challenge Account-Benin II" and/or "MCA-Benin II"; and (iii) the Government will take reasonable steps to 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-Benin II or any other entity for any purpose not authorized

by MCC. Furthermore, upon expiration or termination of this Agreement, MCA-Benin II will assign and hereby assigns and transfers to MCC all rights, title, and interest to the names “Millennium Challenge Account - Benin II,” “MCA-Benin II,” “Millennium Challenge Corporation,” “MCC,” as well as MCA-Benin II’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)(ii), 2.10(a), 2.11, 4.2, 5.1, 5.2, 5.3, 5.7(c), 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 United States Government 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 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, by its duly authorized representative, has signed this Program Implementation Agreement, in the English language only.

FOR THE UNITED STATES OF AMERICA,
acting through THE MILLENNIUM
CHALLENGE CORPORATION

FOR THE REPUBLIC OF BENIN, acting
through THE MINISTRY OF ECONOMY,
FINANCE AND DENATIONALIZATION
PROGRAMS

/S/

Name: Kamran M. Khan
Title: Vice President
Department of Compact Operations

/S/

Name: Komi Koutché
Title: Minister of State in charge of
Economy, Finance and
Denationalization Programs

ANNEX I

DEFINITIONS

Additional Sector Documents means the Government Arrears Payment Plan, the Reform Agenda and any other document related to the policy and operation of the electricity sector in Benin as identified by MCC.

Agreement has the meaning provided in the preamble to this Agreement.

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 Directors of MCA-Benin II.

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

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 first recital to this Agreement.

Counterparty has the meaning provided in Section 1.3(b)(vi).

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).

Fiscal Agent has the meaning provided in the Compact.

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).

Funded Agreement has the meaning provided in Section 1.3(b)(vi).

ANNEX I

General Provisions Annex means the annex titled *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 to this Agreement.

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

Government Contribution has the meaning provided in Section 2.13(a).

Grant and Implementation Agreement means that certain *Grant and Implementation Agreement for the Development of a Millennium Challenge Compact* entered into between MCC and the Government dated as of September 24, 2013, as amended, and as such may be further amended from time to time.

IFC Performance Standards has the meaning provided in Section 1.2(b)(ii).

Implementation Plan has the meaning provided in Section 2.1.

Implementation Plan Document has the meaning provided in Section 2.1.

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

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-Benin II has the meaning provided in Section 1.3(a)(i).

MCA-Benin II Website has the meaning provided in Section 2.11(b), with the following address as of the date hereof (which address may be updated from time to time by MCA-Benin II in writing to MCC): www.mcabenin2.bj

MCC has the meaning provided in the preamble to this Agreement.

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

Observer has the meaning provided in the *Governance Guidelines*.

Officer means, with respect to MCA-Benin II, the following positions: National Coordinator, the General Counsel, any Director, the Head of Construction, the Head of Policy, the Head of Decentralized Energy, the Head of Environmental and Social Performance, the Head of Gender and Social Inclusion, and any other position as determined by MCC.

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

ANNEX I

Party and Parties have the meaning provided in the preamble to this Agreement.

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

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

Procurement Agent has the meaning provided in the Compact.

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 has the meaning provided in the preamble to this Agreement.

Reform Agenda means Agenda of Reforms in Electricity Sub-Sector as adopted by the Council of Ministers in December 2014.

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

Social and Gender Integration Plan has the meaning provided in Section 2.5.

Stakeholder Committee means each of the consultative mechanisms described in paragraph C.1.(d) to 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-Benin II regarding the implementation of the Program.

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

ANNEX II

TAX SCHEDULES

The Government will ensure that MCA-Benin II and all Providers, Covered Providers, Implementing Entities, contractors (prime contractors and subcontractors), consultants, and other entities and individuals (each, an “*Exempt Entity*” in the case of a legal entity or an “*Exempt Individual*” in the case of a natural person) that receive MCC Funding or Government Contribution directly or indirectly in furtherance of the Grant and Implementation Agreement or the Compact (both forms of funding hereinafter to be referred to as “*Compact Funding*”) are exempt from Taxes in accordance with Section 2.2(1) of the Grant and Implementation Agreement and Section 2.8 of the Compact.

All applications and requests made of Government of Benin authorities in connection with the procedures included in these schedules are free of any fees or charges.

The following schedules identify specific taxes and mechanisms to implement compliance with the tax exemption under the Grant and Implementation Agreement and the Compact. The Government will provide a copy of the Grant and Implementation Agreement and the Compact to the *Direction Générale des Douanes et Droits Indirects (“DGDDI”)*, and the *Direction Générale des Impôts (“DGI”)* through the *Mission Fiscale des Régimes d’Exception (“MFRE”)* to ensure that they implement the terms of the Grant and Implementation Agreement and the Compact and the mechanisms to implement the tax exemption as agreed herein, or as otherwise adopted under the Compact.

Beneficiaries of the tax exemption will have to provide the documents listed in the following schedules or those which provide substantially equivalent information but for which terminology may vary. No additional requirements may be demanded without modification of these schedules.

As the direct beneficiary of the tax exemption under the Grant and Implementation Agreement and the Compact, MCA-Benin II will facilitate and assist all other indirect beneficiaries of the tax exemption, including Providers, Covered Providers, Implementing Entities, contractors (prime contractors and subcontractors), consultants, and other entities and individuals that receive MCC Funding directly or indirectly in furtherance of the Grant and Implementation Agreement and the Compact, to ensure compliance with the exemption terms herein.

Consistent with Section 2.2(1) of the Grant and Implementation Agreement and the Section 2.8 of the Compact, and notwithstanding the exemption methodologies described in these schedules, if a tax has been paid by an eligible beneficiary of tax relief in connection with the Grant and Implementation Agreement or the Compact, the Government will refund the amount of tax paid to the eligible beneficiary within thirty (30) days of the receipt of documentation providing evidence of taxes paid. Eligible beneficiaries of tax relief should present this documentation to *MFRE* and to MCA-Benin II for their tracking purposes.

ANNEX II

SCHEDULE A

VALUE ADDED TAX (VAT)

Legal Basis for Exemption or Reimbursement.

- 1- The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).
- 2- Articles 2 and 3 of the Decree No. 212/MF/DC/DI dated October 19, 1992 on the tax regime for public procurement under foreign financing.
- 3- Ministerial Order n°0892/MEF/DC/SGM/DGDDI/DGID/DGAE dated April 4, 2014 on the tax and customs duties exemption classification in the Republic of Benin.
- 4- Articles 224 & 225 new of General Tax Code of Benin Republic.

Beneficiaries of Exemption.

Each Exempt Individual and Exempt Entity (whether foreign or Beninese private or public entities or individuals), as further specified below, providing goods, works or services in furtherance of the Grant and Implementation Agreement and the Compact.

Procedures.

- A. VAT on Imported Goods. Tax exemption authorization is granted by the Customs Division. In order to secure the exemption on VAT levied on imported goods, the beneficiary of exemption must follow these steps:
 1. **Registration of the contract.** Upon contract signature for the provision of goods, works or services covered by this schedule (the “*Contract*”), and within a period of one month, MCA-Benin II will forward for registration all contracts signed to the Directorate in charge of Registration and Stamps (*Direction de l’Enregistrement et des Timbres*) along with a certification that they are made in connection with the Grant and Implementation Agreement or the Compact.
 2. **Direct removal of goods procedure.** This procedure is instituted to facilitate the rapid removal of goods by the recipient of an exemption from duties and taxes. It is to submit a direct removal request to the *DGDDI* through the Secretariat of the Directorate for Legislation and International Relations (*Direction de la Législation et des Relations Internationales* (“*DLRI*”) including the following documents:
 - i. Copy of the bill of lading (“*B/L*”) or an unbundled B/L if it is a B/L which included other goods not covered by the Contract, or the airway bill (“*ETA*”);
 - ii. Copy of invoices;
 - iii. Packing lists;

ANNEX II

- iv. Copy of the Contract duly registered per the procedure above, in this case the pages providing information confirming the funding source as related to the MCC grant, the implementation time, the name of the contract parties, and the tax and customs arrangements specified in the Contract and the signature page of contracting parties;
- v. Duty-free request signed by the vendor.

Note 1: In the event that the goods imported include explosives and accessories this application for exemption must also include authorization for import from the *Office Béninois de Recherches Géologiques et Minières* (“**OBRGM**”).

Note 2: The processing time of the application for direct removal of goods is seventy-two (72) hours if all the parts listed above are included in the file and if all documents listed above are included in full in the file. The processing of the file is done by *DLRI* on behalf of the *DGDDI*. The *DGDDI* is responsible for ensuring that the *DLRI* executes their responsibilities according to these schedules.

3. **Provision of credit customs procedure.** As soon as possible, but no later than two weeks after the direct removal of the goods under step 2 above, an Exempt Individual or Exempt Entity, or their representative, must file the following documents with the *MFRE*, depending on the nature of the exemption:

- i. Import for works. The required documents are:

1. Duly Registered Markets;
2. Global Statement MP1 (import successive arrivals);
3. Statement MP1 (white color) in triplicate for inward concerned;
4. Copy of invoices (original & copy);
5. Copy of the B/L or the ETA (original & copy);
6. Certificate value issued by the Unit Value of Customs (except cases not subject to inspection);
7. Customs declaration, certificate of insurance;
8. Freight bill (if the value is in FOB); and
9. Application for clearance signed by the contractor in triplicate (if imported by a local supplier).

- ii. Import for supplies. The required documents are:

1. Duly Registered Markets;
2. Global Statement MP1 (import successive arrivals);
3. Statement MP1 (white color) in triplicate for inward concerned;
4. Copy of invoices (original & copy);
5. Copy of the B/L or the ETA (original & copy);
6. Certificate value issued by the Unit Value of Customs (except cases not subject to inspection);
7. Customs declaration, certificate of insurance;
8. Freight bill (if the value is in FOB);
9. Application for clearance signed by the contractor in triplicate (if imported by a local supplier); and

ANNEX II

10. Duty-free request signed by the successful bidder.

- B. VAT on Services Imported into Benin. Services sourced from outside of Benin and imported will be exempt from VAT, and reverse VAT or related withholding will not attach to or be required for any payments made for such services, regardless of whether those payments are made within or without Benin. MCA-Benin II may file any documentation appropriate to record VAT on imported services exempted under this provision.
- C. VAT on Goods and Services purchased in Benin. In order to secure the exemption on VAT levied on goods purchased in Benin (“*domestic credit*”), the beneficiary of exemption must follow these steps:
1. MCA-Benin II will issue a copy of an exemption certificate to indirect beneficiaries for presentation to vendors to exempt VAT on goods, works and services procured in Benin. The certificate must be presented to vendors of goods, works and services when purchasing the same for use on compact projects.
 2. Vendors who have paid VAT related to the goods, works and services transacted in Step 1, will then present to *MFRE* the certificate presented along with the following documents in order to secure their domestic credit equivalent to the VAT not collected:
 - i. Works.
 1. MP1 declaration (white color) in duplicate;
 2. Signed contract;
 3. Count; and
 4. Proof of payment (transfer order, credit advice or bank statement).
 - ii. Goods and services.
 1. Declaration MP1 (white color) in duplicate;
 2. Duly registered contract or purchase order;
 3. Invoice copy;
 4. Delivery order; and
 5. Proof of payment (transfer order, credit advice or bank statement).

ANNEX II

SCHEDULE B

IMPORT AND CUSTOMS DUTIES

Legal Basis for Exemption.

- 1- The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).
- 2- Articles 2 and 3 of the Decree No. 212 / MF / DC / DI dated October 19, 1992, on the tax regime for public procurement under foreign financing.
- 3- Ministerial Order n°0892/MEF/DC/SGM/DGDDI/DGID/DGAE dated April 4, 2014, on the tax and customs duties exemption classification in Benin Republic.

Beneficiaries of Exemption.

Exempt Individuals or Exempt Entities (whether foreign or Beninese private or public entities or individuals), as further specified below, providing goods, works or services in furtherance of the Grant and Implementation Agreement and the Compact.

Procedures.

The Customs Division of Benin grants the tax exemption authorization for contracts, imports or enterprises working for the beneficiary of the tax exemption with the approval of that beneficiary or exempt entity.

In order to secure this exemption, which relates to all taxes and duties on imported goods, the beneficiary of exemption must follow these steps:

1. **Registration of the contract.** Upon contract signature for the provision of goods, works or services funded, and within a period of one month, MCA-Benin II will forward for registration all contracts signed to the Directorate in charge of Registration and Stamps (*Direction des Domaines, de l'Enregistrement et des Timbres*) along with a certification that they are made in connection with the Grant and Implementation Agreement or the Compact.
2. **Direct removal of goods procedure.** This procedure is instituted to facilitate the rapid removal of goods by the recipient of an exemption from duties and taxes. It is to submit a direct removal request to the *DGDDI*. The record must be filed at the Secrétariat of the *DLRI* includes the following documents:
 - i. Copy of the B/L or an unbundled B/L if it is a B/L which included other goods not covered by the Contract, or the ETA;
 - ii. Copy of invoices;
 - iii. Packing lists;
 - iv. Copy of the contract duly registered per the procedure above, in this case the pages providing information confirming the funding source as related to

ANNEX II

the MCC grant, the implementation time, the name of the contract parties, and, if applicable, tax and customs arrangements specified in the contract; and

- v. Duty-free request signed by the vendor.

Note 1: In the event that the goods imported include explosives and accessories this application for exemption must also include authorization for import from the *OBRGM*.

Note 2: The processing time of the application for direct removal of goods is seventy-two (72) hours if all the parts listed above are included in the file and if all documents listed above are included in full in the file.

- 3. **Provision of credit customs procedure.** As soon as possible, but no later than two weeks after the direct removal of the goods under step 2 above, an Exempt Individual or Exempt Entity, or their representative, must file the following documents with the *MFRE*, depending on the nature of the exemption:
 - i. For works. The required documents are:
 1. Duly Registered Markets;
 2. Global Statement MP1 (import successive arrivals);
 3. Statement MP1 (white color) in triplicate for inward concerned;
 4. Copy of invoices (original & copy);
 5. Copy of the B/L or the ETA (original & copy);
 6. Certificate value issued by the Unit Value of Customs (except cases not subject to inspection);
 7. Customs declaration, certificate of insurance;
 8. Freight bill (if the value is in FOB); and
 9. Application for clearance signed by the contractor in triplicate (if imported by a local supplier).
 - ii. Import for supplies. The required documents are:
 1. Duly Registered Markets;
 2. Global Statement MP1 (import successive arrivals);
 3. Statement MP1 (white color) in triplicate for inward concerned;
 4. Copy of invoices (original & copy);
 5. Copy of the B/L or the ETA (original & copy);
 6. Certificate value issued by the Unit Value of Customs (except cases not subject to inspection);
 7. Customs declaration, certificate of insurance;
 8. Freight bill (if the value is in FOB);
 9. Application for clearance signed by the contractor in triplicate (if imported by a local supplier); and
 10. Request for clearance of the beneficiary of the supplies.

ANNEX II

SCHEDULE C

CORPORATE INCOME TAX

Legal Basis for Exemption.

- 1- The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).
- 2- Article 146 of General Tax Code of Benin Republic.

Beneficiaries of Exemption.

Any Exempt Entity not legally incorporated in Benin, and MCA-Benin II, providing goods, works, or services under the Grant and Implementation Agreement or Compact will be entitled to an exemption from Benin Republic corporate income tax, and related taxes, on income earned from providing services in furtherance of either agreement.

Procedures.

Tax exemption authorization is granted by the *MFRE*. Foreign Exempt Entities or Exempt Individuals covered hereunder must apply to *MFRE* and provide the following documentation:

1. An income declaration form;
2. A tax exemption certificate as provided by MCA-Benin II to the Exempt Entity or Exempt Individual; and
3. A copy of the contract funder under the Compact covered by this Schedule.

Note 1: MCA-Benin II and all exempted entities will be entitled to an exemption from Benin Republic corporate income tax, and related taxes, on income earned from providing services in furtherance of the Compact.

Note 2: MCA-Benin II will not be required to withhold tax from payments made from or with respect to MCC Funding to an Exempt Entity.

ANNEX II

SCHEDULE D

INDIVIDUAL INCOME TAX

Legal Basis for Exemption.

- 1- The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).
- 2- Article 7 of General Tax Code of Benin Republic.

Beneficiaries of Exemption.

Each Exempt Individual, other than citizens and permanent residents of Benin (unless such individual does not have residence but for the Compact).

Procedures.

1. Eligible beneficiaries will be exempt from any income or other mandatory taxes and charges imposed by Benin Republic 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-Benin II, the Implementing Entities, the Fiscal Agent and the Procurement Agent and any other vendor who employs eligible beneficiaries (the "***Exempt Employers***"), will not withhold or pay Personal Income Taxes for the eligible beneficiaries.
3. Eligible beneficiaries will have no obligation to file an income tax return in Benin Republic in relation to Exempt Personal Income.
4. Exempt Employers will have no obligation under Benin Republic law in connection with the completion of any mandatory filings, registrations and periodic reporting in relation to the Exempt Personal Income of the eligible beneficiaries.

ANNEX II

SCHEDULE E

FRINGE BENEFITS TAX

Legal Basis for Exemption.

The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).

Beneficiaries of Exemption.

Each Exempt Individual, other than citizens and permanent residents of Benin (unless such individual does not have residence but for the Compact).

Procedures.

Neither MCA Benin II 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.

ANNEX II

SCHEDULE F

TAXATION OF PETROLEUM PRODUCTS

Legal Basis for Exemption or Reimbursement.

The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).

Beneficiaries of Exemption.

Each Exempt Individual and Exempt Entity.

Procedures.

1. Exempt Entities and Exempt Individuals will be exempted from paying any taxes on wholesale or bulk purchases of petroleum products with respect to any purchases made in furtherance of the Compact.
2. MCA-Benin II will facilitate the registration and purchasing of petroleum products wholesale or in bulk for transactions which exceed a *de minimis* threshold which is consistent with MCC policy and the Benin tax code, and is updated from time to time in MCA-Benin II's written procedures. MCA-Benin II's facilitation will include providing any necessary certifications or approvals to permit Exempt Entities and Exempt Individuals to make such purchases without tax.
2. For non-wholesale or bulk purchases made from retail outlets below the *de minimis* threshold, MCA-Benin II may not be able to provide exemptions as described above. Eligible beneficiaries should not make non-wholesale or bulk purchases made from retail outlets from which an exemption is not available and should purchase petroleum products wholesale or in bulk to take advantage of the procedure described above.

Internal MCA-Benin II Procedures.

Exempt Entities and Exempt Individuals will obtain a proforma invoice from any supplier of petroleum products, indicating an estimate of their fuel requirements for six (6) months. This will then be submitted to the MCA-Benin II project manager for the relevant Project who will be required to verify the amounts in the proforma invoice against the bill of quantities in the Exempt Entity or Exempt Individual's bid documents. Then, the MCA-Benin II Project manager will request an exemption certification on behalf of the Exempt Entity or Exempt Individual. The Director of Administration and Finance of MCA-Benin II will also review the proforma invoices to ensure that the fuel required corresponds with the relevant bid documents and then submits application for exemption of taxes/levies on fuel to the *MFRE*.

In some cases, the Director of Administration and Finance of MCA-Benin II may ask the Exempt Entity or Exempt Individual's fuel depot to verify if the total liters of fuel on which tax exemptions were requested were actually delivered to the depot and were used for the relevant Projects.

ANNEX II

SCHEDULE G

COMMUNICATION SERVICE TAX

Legal Basis for Exemption.

The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).

Beneficiaries of Exemption.

Each Exempt Individual and Exempt Entity.

Procedures.

MCA-Benin II will provide phone companies its tax exemption certificate, and the tax certificate for eligible beneficiaries of the exemption, for the phone companies to take it into account in the billing of telephone charges paid with Compact Funding. Reports of charges related to tax which are not properly exempted in response will be reported to MCA-Benin II for resolution.

ANNEX II

SCHEDULE H

TEMPORARY IMPORT OF VEHICLE OR EQUIPMENT

Legal Basis for Tax Relief.

The Grant and Implementation Agreement (Section 2.2(1)) and the Compact (Section 2.8).

Beneficiaries for Tax Relief.

Each Exempt Entity and Exempt Individual that receive Compact Funding for goods, works or services for Compact Projects.

Procedures.

For temporary imports, the beneficiary of the exemption will submit an application for temporary admission to the *DGDDI*. The application must be filed at the Secrétariat of the *DLRI*, and should include the following documents:

- i. Copy of the B/L or an unbundled B/L if it is a B/L which included other goods not covered by the Compact contract, or the ETA;
- ii. Copy of invoices;
- iii. Packing lists;
- iv. Copy of the contract duly registered per the procedure above, in this case the pages providing information confirming the funding source as related to the MCC grant, the implementation time, the name of the contract parties, and tax and customs arrangements specified in the contract; and
- v. Exemption certificate issued to MCA-Benin II.

ANNEX III

CONDITIONS PRECEDENT TO PROGRAM FUNDING

All documentation and evidence submitted in connection with the below-listed conditions precedent must be satisfactory, in form and substance, to MCC.

PART A. Conditions Precedent for All Projects.

(i) Prior to the initial Disbursement of Program Funding, MCA-Benin II will have developed and adopted an environmental, social, health and safety management system (“*ESHSMS*”) (including a stakeholder engagement plan) in accordance with the MCC Environmental Guidelines (including the IFC Performance Standards that are incorporated by reference therein) as evidenced by (a) a resolution of the MCA-Benin II Board of Directors adopting the ESHSMS; and (b) the corresponding staffing plan, training plan and budget for implementing the ESHSMS.

(ii) Prior to the second Disbursement of Program Funding, MCA-Benin II will have developed and approved a comprehensive Social and Gender Integration Plan.

(iii) Prior to the initial Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Benin II must have submitted to MCC evidence that MCA-Benin II or the appropriate Government entity has developed and adopted, or validated, as the case may be, an ESIA, an environmental and social management plan, or a RAP (as appropriate) with respect to such Project or Activity.

(iv) Prior to the Disbursement of Program Funding after the first anniversary of entry into force, MCC and the Government shall have revised Annex III to the Compact.

(v) Prior to any Disbursement of Program Funding after the commencement of year five (5) of the Compact Term, the Government must have submitted to MCC an initial draft Compact Closure Plan in accordance with the MCC Program Closure Guidelines.

PART B. Conditions Precedent for the Policy Reform and Institutional Strengthening Project.

(i) Prior to the second Disbursement of Program Funding for the Policy Reform and Institutional Strengthening Project, the Government will have submitted proposed clarifications regarding Benin’s right to pursue electricity generation independent of CEB: (A) to the National Assembly for the amendment of the Benin-Togo Electricity Code, as evidenced by a decree transmitting the draft law regarding the ratification authorization of the amendments of the Benin-Togo Electricity Code; and (B) to the National Assembly for the amendment of the Benin Electricity Code, as evidenced by a decree transmitting the draft law regarding the amended Benin Electricity Code.

(ii) Prior to the second Disbursement of Program Funding for the Policy Reform and Institutional Strengthening Project, the Government will have submitted proposed clarifications regarding regulation by ARE to the National Assembly for the amendment of the

ANNEX III

Benin Electricity Code, as evidenced by a decree transmitting the draft law regarding the amended Benin Electricity Code.

(iii) Prior to the Disbursement of Program Funding for the Policy Reform and Institutional Strengthening Project after the second anniversary of entry into force, the Government will provide evidence of legislative approval of the amendments described in Part B(i) and Part B(ii) above, in form and substance satisfactory to MCC.

(iv) Prior to the Disbursement of Program funding for the Policy Reform and Institutional Strengthening Project after the third anniversary of entry into force, the Government will adopt appropriate implementing decrees, in form and substance satisfactory to MCC, in furtherance of the amendments described in Part B(i) above to the Benin-Togo Electricity Code and the Benin Electricity Code.

PART C. Conditions Precedent for the Electricity Generation Project.

(i) Prior to the Disbursement of Program Funding for the Photovoltaic Generation Activity under the Electricity Generation Project after the first anniversary following entry into force, the Government will: (A) adopt the Tariff Plan, as evidenced by a decree or other appropriate legal instrument from ARE and resolution by the Council of Ministers; and (B) provide evidence of ARE's publication of a tariff schedule, in form and substance satisfactory to MCC, including feed-in tariffs and lifeline tariffs.

(ii) Prior to the Disbursement of Program Funding for the Electricity Generation Project for construction or works for assets owned, to be owned or to be purchased by SBEE, SBEE will adopt the SBEE ESHSMS, as evidenced by (A) a resolution of the SBEE Board of Directors; and (B) the corresponding staffing plan, training plan and budget for implementing the SBEE ESHSMS.

PART D. Conditions Precedent for the Electricity Distribution Project.

(i) Prior to the Disbursement of Program funding for the Electricity Distribution Project for construction on relevant sites, the Government will adopt the Hazardous Waste Management Plan, together with any implementing regulations as may be required under the Government's existing domestic and international legal obligations.

(ii) Prior to the Disbursement of Program Funding for the Electricity Distribution Project for construction or works for assets owned, to be owned or to be purchased by SBEE, SBEE will adopt the SBEE ESHSMS, as evidenced by (A) a resolution of the SBEE Board of Directors; and (B) the corresponding staffing plan, training plan and budget for implementing the SBEE ESHSMS.

(iii) Prior to the Disbursement of Program Funding for any payment under a particular works or construction contract for the Cotonou Grid Strengthening Activity, SBEE will adopt an appropriate maintenance management system, as evidenced by a resolution or other legal instrument of the SBEE Board of Directors adopting such maintenance management system.

ANNEX III

(iv) Prior to the Disbursement of Program Funding for the Electricity Distribution Project for construction or works for assets owned, to be owned or to be purchased by CEB, the Government will provide evidence acceptable to MCC that CEB: (a) has adopted the CEB ESHSMS, as evidenced by a resolution or other appropriate decision of the CEB board, as well as corresponding staffing plan, training plan and budgetary allocation for implementing the CEB ESHSMS; and (b) has entered into an agreement with MCA-Benin II setting forth CEB's roles and responsibilities with respect to the investments contemplated under the Electricity Distribution Project.

PART E. Condition Precedent for the Off-Grid Electricity Access Project.

Prior to the Disbursement of Program Funding for grants or other funding mechanisms under the OCEF, MCA-Benin II will adopt the OCEF Operational Manual in form and substance satisfactory to MCC.

ANNEX IV

GOVERNMENT CONTRIBUTION

Consistent with the requirements of each of Section 2.6(a) and Annex II of the Compact, as well as Section 2.13 of this Program Implementation Agreement, the Government will make the Government Contribution over the Compact Term to supplement MCC Funding through direct financial contributions toward expenditures of MCA-Benin II, or as otherwise agreed by the Parties in writing. The Government Contribution does not incorporate costs incurred by the Government prior to the Compact. Any reallocation across any line item or time period of the amounts below must be agreed to in writing between MCA-Benin II and MCC.

The Government Contribution will support:

- (a) Electricity Distribution Project activities; and
- (b) Expenses for Program administration and oversight.

The Government Contribution is anticipated to be appropriated and allocated as follows:

Component	Base Year	Year 1 ¹	Year 2	Year 3	Year 4	Year 5	Total
1. Electricity Distribution Project							
1.1 Regional Grid Strengthening Activity: Government of Benin funding for large works contracts.	N/A	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$2,000,000	\$18,000,000
1.2 Cotonou Grid Strengthening Activity: Government of Benin funding for large works.	N/A	\$1,000,000	\$1,000,000	\$2,030,000	\$1,000,000	-	\$5,030,000
Sub-total		\$5,000,000	\$5,000,000	\$6,030,000	\$5,000,000	\$2,000,000	\$23,030,000
2. Program Administration and Oversight – MCA-Benin II							
2.1 Personnel Costs	N/A	\$712,320	\$356,160	\$356,160	\$356,160	\$356,160	\$2,136,960
2.2 Office utility and security expenses	N/A	\$245,344	\$122,672	\$122,672	\$122,672	\$163,565	\$776,925
2.3 Program vehicles and fuel expenses	N/A	\$561,230	\$80,115	\$80,115	\$80,115	\$106,823	\$908,398
2.4 Office rent	N/A	\$463,260	\$277,956	\$277,956	\$277,956	\$370,608	\$1,667,736
2.5 Training	N/A	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$300,000
Sub-total		\$2,042,154	\$896,903	\$896,903	\$896,903	\$1,057,156	\$5,790,019
Total		\$7,042,154	\$5,896,903	\$6,926,903	\$5,896,903	\$3,057,156	\$28,820,019

Notes

1 - Year 1 refers to the period from Compact signing through one year after entry into force.