

PROGRAM IMPLEMENTATION AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA,

ACTING THROUGH

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE REPUBLIC OF GHANA

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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 Ghana (“*Ghana*”), 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 August 5, 2014 (the “*Compact*”), sets forth the general terms on which MCC will provide assistance of up to Four Hundred Ninety Eight Million Two Hundred Thousand United States Dollars (US\$498,200,000) to the Government for a program to reduce poverty through economic growth in Ghana;

Recalling that the Government has designated the Millennium Development Authority (“*MiDA*”) 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 to this Agreement.

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 MiDA, adequate to enable them (each a “*Permitted Designee*”) to oversee and manage the implementation of the Program on behalf of the Government.

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

(i) Power, Authorization, Etc. The Government has the power and authority to execute, deliver and perform its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated by this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines. The signatory to this Agreement is duly empowered to act on behalf of and to bind the Government with respect to the obligations contained herein.

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

(iii) Impoundment; Liens or Encumbrances. The Government will ensure that (A) no Program Assets are subject to any impoundment, rescission, sequestration, liquidation or to any provision of law now or hereafter in effect in Ghana 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.

(iv) Disposal of Program Assets Consisting of Real Property. The Government will ensure that no Program Asset consisting of real property is (A) subject to any lease or sub-lease arrangement, in whole or in part or (B) sold, donated or otherwise disposed of, in whole or in part; except, in each of the foregoing cases, with MCC’s prior written approval. In addition, any Program Asset consisting of real property that is retained by MiDA, subject to the terms of the Program Closure Guidelines, after the expiration or termination of the Compact will be subject to a reversionary interest of MCC for a period of five (5) years commencing on the last day of the closure period; and if at any time during that five-year period, the Government wishes to sell the real property or use it for a purpose that is not related to the Program or does not continue to further the Program objectives, the Government will compensate MCC for its interest in the real property by paying to MCC an amount equal to the fair market value of MCC’s reversionary interest in the real property determined at such time.

(v) 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 environmental and social performance standards set forth in the *Performance Standards on Environmental and Social Sustainability of the International Finance Corporation* (as in effect from time to time, 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.

(vi) 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 MiDA.

(a) Designation of MiDA.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated MiDA, 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 Government will remain ultimately responsible for the performance of the Government's obligations under or in relation to the Compact and this Agreement.

(ii) The Government will ensure that MiDA 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 MiDA, and all obligations assigned to the "Accountable Entity" in the Program Guidelines will be obligations of MiDA.

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

(i) Power and Authorization. MiDA 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. MiDA (A) will carry out the Designated Rights and Responsibilities (including all obligations specified as MiDA obligations in the Compact, 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. MiDA will confirm each representation that it makes on behalf of the Government in any agreement, certificate or instrument delivered by MiDA with all necessary Permitted Designees prior to providing such representation to MCC.

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

(v) Governance of MiDA. MiDA's internal rules and regulations or bylaws are attached hereto as Annex IV to this Agreement (the "*Bylaws*"). MiDA 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. MiDA 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, MiDA will include in each Funded Agreement (A) a covenant that the counterparty to such agreement (each a, "*Counterparty*") will comply with (1) the General Provisions Annex and (2) 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 MiDA; and (B) a right for MiDA 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. MiDA will, to MCC's satisfaction, cause all Program Assets to be insured (including, without limitation, through self-insurance) and will arrange such other appropriate insurance to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. With MCC's prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MiDA (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, MiDA (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 MiDA or as otherwise directed by MCC.

(viii) MiDA Indemnity. If MiDA 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 MiDA and 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 MiDA's Board (including each Observer), each member of any Stakeholder Committee and each of MiDA'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 MiDA, *provided, however*, that the Government will have no obligation to indemnify any such person if and to the extent that any such claims, losses, actions, liabilities, costs, damages or expenses are attributable to the fraud, gross negligence or willful misconduct of such person; and *provided, further*, that the Government will not use MCC Funding or any Program Assets to satisfy its obligations under this Section 1.3(b)(viii).

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**"). MiDA 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 MiDA to submit clarifications or adjustments. MiDA 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 MiDA 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, MiDA 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. MiDA will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Work Plan. MiDA 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, MiDA will develop and implement for each quarter for the upcoming year and on an annual basis for each

year of the remaining years of the Compact, a detailed financial plan in accordance with the Reporting Guidelines, setting forth funding requirements for the Program (including administrative costs) and for each Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis (each a “**Detailed Financial Plan**”).

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

(d) Procurement Plan. MiDA 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, MiDA 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, MiDA will publish the BCS on the MiDA website.

Section 2.2 Fiscal Accountability Plan. Except as MCC agrees otherwise in writing, MiDA will develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that MiDA will use to ensure appropriate fiscal accountability for the use of MCC Funding, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and in the procurement of goods, works and services. The Fiscal Accountability Plan will also include, among other things, requirements with respect to (a) budgeting, (b) accounting, (c) cash management, (d) financial transactions (receipts and payments), (e) opening and managing Permitted Accounts, (f) personnel and payroll, (g) travel and vehicle use, (h) asset and inventory control, (i) audits and (j) reporting. The Fiscal Accountability Plan will be revised periodically, subject to review and approval by MCC.

Section 2.3 M&E Plan. Unless MCC agrees otherwise in writing, no later than ninety (90) days after the Compact enters into force as provided in Article 7 of the Compact, MiDA 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.

Section 2.4 Environmental and Social Performance Plans. In accordance with Section 1.2(b)(v), MiDA will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Environmental Guidelines, including the IFC Performance Standards that are incorporated by reference therein. Specifically, MiDA will: (a) 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 Ghana, 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; (b) 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 (c) 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, MiDA will: (a) develop a comprehensive social and gender integration plan ("***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. MiDA 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) MiDA 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, MiDA 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) MiDA 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) MiDA will include, or ensure the inclusion of, the requirements of:

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

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

(iii) Section 3.7 of the Compact and paragraphs (b)(i) and (ii), (c), and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Covered Provider that is a non-profit organization domiciled in the United States, on the other hand; 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 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, MiDA 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*”). MiDA 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), MiDA 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) MiDA will furnish, or use its best efforts to furnish, to MCC an audit report in a form satisfactory to MCC for each audit required under the Compact, other than audits arranged for by MCC, no later than ninety (90) days after the end of the period under audit, or such other time as may be agreed by MCC from time to time.

(d) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget of the normal and expected resources that the Government 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, MiDA 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, MiDA will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MiDA 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) MiDA will submit the Periodic Reports and any other reports required hereunder electronically if requested by MCC or otherwise required by the Reporting Guidelines.

(g) MiDA will furnish MCC with a report, in form and substance satisfactory to MCC, within 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 MiDA, 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 Key Staff Member (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 MiDA that is not arm’s-length;
- (f) any pledge of any MCC Funding or any Program Assets, or any incurrence of material indebtedness, or any guarantee, directly or indirectly of any indebtedness;
- (g) any decree, legislation, regulation, charter, 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, MiDA (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 MiDA;
- (i) any change in character or location of any Permitted Account;
- (j) (i) any change of any member of the Board (including any Observer), of the member serving as the chairperson or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any Observer), (ii) any change of any Key Staff Member or in the composition or size of the Management Team, and the filling of any

vacant position of any Key Staff Member, and (iii) any material change in the composition or size of any Stakeholder Committee;

(k) any decision by MiDA to engage, accept or manage any funds in addition to MCC Funding (including from any donor agencies or organizations) during the Compact Term, or to engage in any activities or undertake any duties or responsibilities other than the Designated Rights and Responsibilities;

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

(m) 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. MiDA 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, MiDA 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 MiDA 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 MiDA and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

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

responsibilities of the Fiscal Agent and other appropriate terms and conditions (the “**Fiscal Agent Agreement**”). Unless MCC agrees otherwise in writing, the Fiscal Agent will be a third party, independent of the Government.

(c) Auditors and Reviewers. MiDA 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, MiDA will also engage an independent (i) reviewer to conduct reviews of performance and compliance under the Compact, which reviewer will have the capacity to (A) conduct general reviews of performance or compliance, (B) conduct audits of environmental and social performance, and (C) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III to the Compact, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a “**Reviewer**”). MiDA will select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MiDA 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. MiDA will engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MiDA will enter into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions (the “**Procurement Agent Agreement**”). Unless MCC agrees otherwise in writing, the Procurement Agent will be a third party, independent of the Government.

Section 2.11 Publicity and Transparency.

(a) Subject to Section 2.12, MiDA 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 MiDA Website or in any Government or MiDA publicity materials.

(b) MiDA will make information concerning implementation of the Compact publicly available, including by posting the following documents in English, on the website operated by MiDA (the “**MiDA 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 MiDA; (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 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 MiDA (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 MiDA's agreements with employees, contractors and consultants will be excluded from the information and documents made publicly available; *provided, however*, that MCC and MiDA 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 MiDA 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 MiDA. The use of MCC's logo and names will not create any agency or legal representation, and MiDA has no authority to bind MCC in any way.

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

(c) MiDA will take all reasonable steps to ensure that the names "Millennium Challenge Account-Ghana" and "MiDA," as well as its own logo, will enjoy maximum protection under the laws now or hereafter in effect in Ghana 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. MiDA 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 - Ghana," "MiDA" and/or MiDA's logo; or (ii) the names "Millennium Challenge Corporation," "MCC" and/or MCC's logo. MiDA 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, toward meeting the objectives of the Compact. 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 2015 through 2020 are set forth in Annex III to this Agreement. Such contributions remain subject to any legal requirements in Ghana for the budgeting and appropriation of such contributions, including approval of the Government's annual budget by Ghana'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).

(b) Unless otherwise agreed by the Parties in writing, contributions denominated in the local currency of Ghana 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 Ghana or such other source acceptable to MCC.

ARTICLE 3.

DISBURSEMENT OF MCC FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. MiDA 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, MiDA 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

reduce the amount of any Disbursement below that 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 MiDA 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 MiDA, 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 MiDA in the local currency of Ghana (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 MiDA also may mutually agree in writing to the establishment of additional Permitted Accounts from time to time at financial institutions acceptable to MCC. MiDA 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. 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, MiDA will provide copies of such statements to MCC upon its request. Before any MCC Funding is deposited into a Permitted Account, MiDA 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 held in a Permitted Account will accrue interest or other earnings in accordance with the Bank Agreement. On a quarterly basis and upon the termination or expiration of the Compact or the Bank Agreement, MiDA will ensure the transfer of all accrued interest to MCC.

(iv) Unless MCC agrees otherwise in writing, if MCC Funding is held in any Permitted Account other than the Local Account, MiDA 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 Ghana for any purpose, MiDA 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) Key Staff Members. Each Key Staff Member has been selected and engaged by MiDA and approved by MCC.

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

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

(e) Implementation Plan. MiDA has developed a complete Implementation Plan.

(f) Bylaws. MiDA is conducting its operations and management in accordance with the Governing Documents (including the Bylaws) and the Governance Guidelines.

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. MiDA 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 MiDA for any Activity delivered since the previous Disbursement Request;

(iii) a certificate of MiDA, dated as of the date of such Disbursement Request, substantially in the form provided by MCC (the "*MiDA 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 II to this Agreement have been duly satisfied, deferred or waived as provided in this Agreement;

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

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

(vii) 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);

(viii) 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;

(ix) 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;

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

(xi) 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;

(xii) each of the Key Staff Members remains engaged, or if a position is vacant, MiDA is actively engaged, to MCC's satisfaction, in recruiting a replacement;

(xiii) MiDA 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;

(xiv) 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 III to this Agreement;

(xv) the Government has implemented the quarterly tariff adjustments in accordance with the existing formula for each calendar quarter since the Compact has entered into force until such time as the current automatic tariff adjustment is replaced by the Tariff Plan, and

(xvi) the Government has substantially complied with each of the following plans:

(A) the Tariff Plan;

(B) the Electric Distribution Utility Payment Action Plan; and

(C) the Gas Action Plan and the Gas Sector Master Plan.

(xvii) the Government has substantially complied with each of the following plans once completed and approved:

(A) the IRP; and

(B) the IPP Solicitation Plan.

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 MiDA, (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 Ghana 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.

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 MiDA 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 MiDA 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 MiDA in Section 2.12(a) will terminate with immediate effect; (ii) the Government will ensure that MiDA ceases to be named "Millennium Challenge Account-Ghana" and/or "MiDA;" 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 MiDA or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of this Agreement, MiDA will assign and hereby assigns and transfers to MCC all right, title, and interest to the names "Millennium Challenge

Account-Ghana,” “MiDA,” “Millennium Challenge Corporation,” “MCC,” as well as MiDA’s logo and MCC’s logo that it might have acquired during the term of this Agreement.

Section 5.8 Survival. Notwithstanding any expiration, suspension or termination of this Agreement, the following provisions of this Agreement will survive: Sections 1.2(b)(iii), 2.10(a), 2.11, 4.2, 5.1, 5.2, 5.3, 5.7(d), 5.8, 5.9 and 5.10.

Section 5.9 Information Provided to MCC. MCC may use or disclose any information in any Disbursement Request, report or document developed or delivered in connection with the Program: (a) to its employees, contractors, agents and representatives, (b) to any United States inspector general or the 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.

Done at Washington, DC, this 5th day of August, 2014, in the English language only.

FOR THE UNITED STATES OF
AMERICA, ACTING THROUGH THE
MILLENNIUM CHALLENGE
CORPORATION

FOR THE REPUBLIC OF GHANA,

/S/

Name: Dana J. Hyde
Title: Chief Executive Officer

/S/

Name: Seth Emmanuel Terkper
Title: Minister of Finance

ANNEX I
DEFINITIONS

***Agreement** has the meaning provided in the Preamble.*

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

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

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

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

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

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

***Board** means the board of directors of MiDA.*

***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 Preamble.*

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

***CST** has the meaning provided in Schedule G of Annex V.*

***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).*

***DTD** has the meaning provided in Schedule A of Annex II.*

***ESMS** has the meaning provided in paragraph 1(a) of Annex II.*

***Exempt Employers** has the meaning provided in Schedule D of Annex V.*

***Exempt Entity** has the meaning provided in Schedule A of Annex V.*

***Exempt Individual** has the meaning provided in Schedule A of Annex V.*

***Exempt Personal Income** has the meaning provided in Schedule D of Annex V.*

***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).

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.

Ghana has the meaning provided in the Preamble.

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

Government has the meaning provided in the Preamble.

GRA has the meaning provided in Annex V.

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

Implementation Plan has the meaning provided in Section 2.1.

Implementation Plan Document has the meaning provided in Section 2.1.

Indirect Taxes has the meaning provided in Schedule H of Annex V.

Internal Revenue Act has the meaning provided in Schedule C of Annex V.

Key Staff Members means, collectively:

- (i) each member of the Management Team;
- (ii) Energy Efficiency and Demand Side Management Project Manager;
- (iii) ECG Financial and Operational Turnaround Project Manager;
- (iv) NEDCo Financial and Operational Turnaround Project Manager;
- (v) Power Generation Sector Improvement Project Manager;
- (vi) Regulatory Strengthening and Capacity Building Project Manager; and
- (vii) Access Project Manager.

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

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

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

MCC has the meaning provided in the Preamble.

MiDA has the meaning provided in the Preamble.

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

MiDA Website has the meaning provided in Section 2.11(b), with the following address as of the date hereof: www.mida.gov.gh.

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

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

Officer means each member of the *Management Team*.

OMC has the meaning provided in Schedule F of Annex V.

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

Party and Parties have the meaning provided in the *Preamble*.

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

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

Personal Income Taxes has the meaning provided in Schedule D of Annex V.

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).

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

Semi-Annual Review Guidelines has the meaning provided in paragraph 1(c) of Annex II.

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

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

Tax Agent has the meaning provided in Schedule H of Annex V.

VAT has the meaning provided in Schedule A of Annex V.

VAT Act has the meaning provided in Schedule A of Annex V.

VRPO has the meaning provided in Schedule A of Annex V.

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

ANNEX II

CONDITIONS PRECEDENT TO PROGRAM FUNDING

1. Conditions Precedent for All Projects.

(a) Prior to the initial Disbursement of Program Funding, MiDA will provide evidence, in form and substance satisfactory to MCC, that it has developed an Environmental and Social Management System (“*ESMS*”).

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

(c) Prior to the second Disbursement of Program Funding, MiDA will have developed guidelines establishing a semi-annual review process (the “*Semi-Annual Review Guidelines*”), in form and substance satisfactory to MCC, that facilitates an assessment of the performance toward meeting the Program Objectives by reviewing progress complying with relevant conditions precedent, key M&E indicators and other issues that may be identified by the Government, MiDA, and MCC.

(d) Prior to each Disbursement of Program Funding commencing with the first Disbursement of Program Funding that occurs more than six (6) months following the approval of the Semiannual Review Guidelines, MiDA must have submitted evidence, in form and substance satisfactory to MCC, that the Board has convened relevant stakeholders in accordance with the Semi-Annual Review Guidelines.

(e) Prior to the initial Disbursement of MCC Funding for payment under a works contract for a given Project or Activity, MiDA must have submitted evidence, in form and substance satisfactory to MCC, that MiDA or the appropriate Government Entity has developed and adopted required environmental or social instruments (i.e. ESIA, ESMP, and/or a RAP);

(f) Prior to each Disbursement of Program Funding for payment under a particular works contract for any Project or Activity, MiDA must have submitted evidence, in form and substance satisfactory to MCC, that MiDA or the appropriate Government entity is successfully implementing and in compliance with the requirements of the ESMS, ESIA, ESMP, and/or RAP, as appropriate, consistent with the MCC Environmental Guidelines, the IFC Performance Standards, and the MCC Gender Policy and Gender Integration Guidelines;

(g) Prior to any Disbursement of Program Funding on or after the commencement of year five (5) of the Compact Term, the Government must have submitted to MCC an initial draft of the Compact Closure Plan and Post-Compact M&E Plan in accordance with the MCC Program Closure Guidelines.

2. Conditions Precedent for ECG Financial and Operational Turnaround Project.

(a) Prior to the initial Disbursement of MCC Funding for payment under any works contract under the ECG Financial and Operational Turnaround Project, MiDA must have

submitted evidence, in form and substance satisfactory to MCC, that ECG has developed and adopted an ESMS;

(b) Prior to the initial Disbursement of Program Funding for the ECG Financial and Operational Turnaround Project, MiDA must have submitted evidence, in form and substance satisfactory to MCC, that ECG has environmental, social, health and safety staff and resources needed to manage risks and opportunities. Staff and resource needs will be identified through an assessment jointly conducted by MiDA and ECG. In the event a position is vacant, the relevant organization will actively recruit for that position; and

(c) Prior to the initial Disbursement of Program Funding for the ECG Financial and Operational Turnaround Project, MiDA must have delivered to MCC an executed copy of the ECG Implementing Entity Agreement, in form and substance satisfactory to MCC.

3. Conditions Precedent for NEDCo Financial and Operational Turnaround Project.

(a) Prior to the initial Disbursement of MCC Funding for payment under any works contract under the NEDCo Financial and Operational Turnaround Project, MiDA must have submitted evidence, in form and substance satisfactory to MCC, that NEDCo has developed and adopted an ESMS;

(b) Prior to the initial Disbursement of Program Funding for the NEDCo Financial and Operational Turnaround Project, MiDA must have submitted evidence, in form and substance satisfactory to MCC, that NEDCo has environmental, social, health and safety staff and resources needed to manage risks and opportunities. Staff and resource needs will be identified through an assessment jointly conducted by MiDA and NEDCo. In the event a position is vacant, the relevant organization will actively recruit for that position;

(c) Prior to any Disbursement of Program Funding for the NEDCo Financial and Operational Turn Around Project beyond the initial funding under the Multi-Year Financial Plan for studies and technical assistance under the NEDCo Private Sector Participation and Modernizing Utility Operations Activities:

(i) MiDA must have submitted to MCC for review and approval a set of proposed strategic investments that satisfy MCC criteria for cost effectiveness, technical feasibility, and meet other MCC environmental and social screening criteria;

(ii) The Government must have submitted to MCC a financial plan, in form and substance acceptable to MCC, to cover operating losses and contributions to an approved capital expenditure plan of NEDCo and, evidence, in form and substance acceptable to MCC, and that the Government is implementing the financial plan; and

(d) Prior to any Disbursement of Program Funding for the NEDCo Financial and Operational Turnaround Project, MiDA must have delivered to MCC an executed copy of (i) the NEDCo Implementing Entity Agreement and (ii) the VRA Implementing Entity Agreement, each in form and substance satisfactory to MCC.

4. Conditions Precedent for Regulatory Strengthening and Capacity Building Project.

Prior to any Disbursement of Program Funding for the Regulatory Strengthening and Capacity Building Project, MiDA must have delivered to MCC an executed copy of (a) the MoEP Implementing Entity Agreement; (b) the PURC Implementing Entity Agreement, and the (c) EC Implementing Entity Agreement, each in form and substance satisfactory to MCC.

5. Conditions Precedent for Access Project.

Prior to any Disbursement of Program Funding for the Access Project, MiDA must have delivered to MCC an executed copy of (a) the NEDCo Implementing Entity Agreement, and (b) the ECG Implementing Entity Agreement, each in form and substance satisfactory to MCC.

6. Conditions Precedent for Power Generation Sector Improvement Project.

Prior to any Disbursement of Program Funding for the Power Generation Sector Improvement Project, the Government must have delivered to MCC: (a) a clear policy statement clarifying the Government's approach to addressing requests for guarantees from independent power projects; and (b) an executed copy of the MoEP Implementing Entity Agreement, in form and substance satisfactory to MCC.

7. Conditions Precedent for Energy Efficiency and Demand Side Management Project.

Prior to any Disbursement of Program Funding for the Energy Efficiency and Demand Side Management Project, MiDA must have delivered to MCC an executed copy of the EC Implementing Entity Agreement in form and substance satisfactory to MCC.

ANNEX III

ANTICIPATED GOVERNMENT CONTRIBUTIONS

Incremental Budget Increase from Base Period used as Contribution (US\$)							
Componant	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1 Private Sector Participation	3,852,500	3,852,500	3,852,500	-	-	-	11,557,500-
2 Modernizing ECG Operations	3,852,500	3,852,500	3,852,500	-	-	-	11,557,500
9 Commercial Loss Reduction	-	-	-	7,125,000	7,125,000	-	14,250,000
GRAND TOTAL	7,705,000	7,705,000	7,705,000	7,125,000	7,125,000	-	37,365,000

ANNEX IV
MiDA BYLAWS

ARTICLE 1.

GENERAL

Section 1.1 Name and Type. Millennium Development Authority (“**MiDA**”). MiDA is a statutory Corporation established under Acts 702 and 709 as amended, (the “**Enabling Statute**”).

Section 1.2 Bylaws. Notwithstanding any provisions to the contrary in the establishment legislation, during the term of the Compact, MiDA will be governed by these Bylaws.

Section 1.3 Organization. MiDA’s board of directors will have ultimate authority to direct MiDA. MiDA will consist of (a) a board of directors comprised of the members described in Section 3.7 of these Bylaws (the “**Board**”), (b) a Management Team, and (c) one or more stakeholders committees to provide advice and input to MiDA and to disseminate information concerning Compact implementation to the public (each a “**Stakeholder Committee**” and together the “**Stakeholders Committees**”), each as more particularly described in these Bylaws.

ARTICLE 2.

PURPOSE AND POWERS

Section 2.1 Purpose and Authority. MiDA will have the purpose of acting as the Government’s primary agent to implement the Program and to perform the Government’s right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and their activities, allocating resources and managing procurements. It will be empowered by the Compact, the Program Implementation Agreement and the Enabling Statute with the authority to perform the Government’s obligations under the Compact in an independent, transparent and accountable manner.

Section 2.2 Powers. MiDA will have the following powers and legal capacities without limitation:

- (a) to perform the Designated Rights and Responsibilities under the Program Implementation Agreement and related agreements, and to bind the Government to the full extent of such rights and responsibilities;
- (b) to make its own budget and implement the decisions of its Board;
- (c) to expend MCC Funding;
- (d) to acquire, own, possess and dispose of property in its own name;

- (e) to sue and be sued in its own name;
- (f) to enter into, be bound by and enforce contracts in its own name], with private and public entities including MCC, other Government ministries and sub-entities (such as project implementation units), employees, service providers and consultants;
- (g) to engage Implementing Entities, through Implementing Entity Agreements approved by MCC, and to delegate certain powers in accordance with the Compact with the approval of MCC;
- (h) to insure against all normal commercial risks associated with its activities;
- (i) to open bank accounts in its own name; and
- (j) generally, to perform such duties and exercise such powers of the accountable entity as contemplated by the Compact, the Program Implementation Agreement and the Program Guidelines.

Section 2.3 MiDA will not, directly or indirectly, engage in any activity prohibited under the Compact.

ARTICLE 3.

BOARD OF DIRECTORS

Section 3.1 Role of the Board. MiDA will be governed by the Board. The Board will have independent decision making authority and will have ultimate authority and responsibility (a) for the oversight, direction and decisions of MiDA, and (b) for the overall implementation of the Program in accordance with the Compact, the Program Implementation Agreement and all other Supplemental Agreements. The Board is to be independent and the final decision maker with respect to Compact matters, subject to the rights of approval of MCC contained in the Compact and the Program Implementation Agreement. The Board's decisions will not be subject to review and reversal by any other Government entity or official other than a judicial authority exercising proper jurisdiction.

Section 3.2 Responsibilities of the Board. Without limiting the general responsibilities of the Board as described in Section 3.1 of these Bylaws, and the non-delegable responsibilities of the Board described in Section 3.3 of these Bylaws, the Board will:

- (a) follow MiDA's Governing Documents including its mission to implement the Compact;
- (b) participate actively in overseeing the management of MiDA, including evaluation of its reports as well as performance of its staff;
- (c) oversee and provide direction to the Management Team; and ensure that the Management Team is composed of qualified experts from the public or private sectors, hired through an open and competitive recruitment and selection process;

(d) protect, preserve and manage the assets financed with MCC Funding and ensure that MCC Funding is used for its intended purposes;

(e) keep written minutes of all meetings held by the Board, which will reflect all decisions made and all actions taken;

(f) ensure that MiDA's records and accounts are accurate and complete;

(g) ensure that regular audits of MiDA by an independent auditor are performed annually; and

(h) actively engage with and consider the recommendations and advice of the Management Team made pursuant to Article 4 of these Bylaws, and, if the Board deems advisable, request that the Stakeholders Committees provide responsive information and documents to the Board or, as applicable, to the Management Team.

Section 3.3 Non-delegable responsibilities of the Board. The Board will have responsibility for considering and approving or disapproving the following items (and such responsibility may not be delegated to the Management Team or otherwise):

(a) each Procurement Plan and M&E Plan or any material modification thereto;

(b) each Material Agreement or any modification, termination, or suspension of, or any other action that would have the effect of a modification, termination or suspension of, a Material Agreement;

(c) any pledge of any MCC Funding or any Program Assets, any incurrence of material indebtedness, or any guarantee, directly or indirectly, of any indebtedness;

(d) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change, of MiDA, including any revocation of, or any modification or supplement to, any Governing Document;

(e) any change of any member of the Board (including any non-voting member of the Board), 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 non-voting member);

(f) the hiring, dismissal or filling of any vacant position in the Management Team, in consultation with the Ghanaian Public Service Commission ("**PSC**"), or the composition or size of the Management Team;

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

(h) any formation or acquisition of a subsidiary or other affiliate of MiDA;

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

(j) any other document, agreement or proposed action identified under any Program Guidelines as being a document, agreement or action that must be approved by the Board.

Section 3.4 Executive Committee. The Board may, in accordance with the terms of the Governance Guidelines, form an executive committee of its members authorized to take certain limited actions described below (the “*Executive Committee*”). If formed by the Board, the majority of the Executive Committee will be voting members of the Board, with at least one member appointed from the Private Sector Members. The Chief Executive Officer also will be a member of the Executive Committee. All Board members will be entitled to receive the documents provided to the Executive Committee and to participate as observers in the meetings of the Executive Committee upon request. The Board must review the actions of the Executive Committee for consistency with the Compact, the Governing Documents and overall Program implementation during regular meetings of the Board. Notice of any actions taken and copies of any documents approved by the Executive Committee will be provided to all members of the Board within seven (7) calendar days following such action or approval. If formed, the Executive Committee may review and approve the following documents, if so authorized by a resolution of the Board:

- (a) any request for Disbursement;
- (b) any Implementation Plan Document other than Procurement Plans and any modification thereto;
- (c) any Audit Plan and any modification thereto; and
- (d) any Periodic Report.

To the extent an Executive Committee does not exist or these responsibilities have not been delegated to it by a resolution of the Board, the authority with respect to these actions and approvals may be delegated to the Chief Executive Officer (subject to the same review process set forth above), but are not otherwise delegable by the Board and will be performed by the Board in accordance with Section 3.3 of these Bylaws.

Section 3.5 Other Committees. The Board may form other committees, which make recommendations to the Board as appropriate. Such committees may be composed of Voting Members and non-voting members of the Board and such other persons that may have particular expertise necessary for the committee. The Board may rely on information, opinions, reports and the like prepared by committees the Board may create, but the members of the Board remain responsible for actually taking decisions on matters addressed or raised by committees or that are otherwise necessary or prudent on behalf of MiDA and the proper implementation of the Program.

Section 3.6 Fiduciary Duties of Board Members. Except for the non-voting MCC Representative on the Board, the members of the Board will owe a fiduciary duty to MiDA. They will discharge their responsibilities by staying informed and providing appropriate oversight of MiDA during Compact implementation, and holding regular meetings to consider and approve activities of MiDA as necessary. Members of the Board are expected to exercise objective and

independent judgment and discharge their duties in a manner that is in the best interests of the Program and MiDA.

Section 3.7 Composition. The Board will be comprised of nine (9) voting members, and three (3) non-voting members.

(a) Voting Members. The voting members of the Board will consist of:

- (i) Chairperson of the Board of MiDA, as appointed by the President of Ghana;
- (ii) The Minister or any other government official of the rank of director or higher from the Ministry of Energy and Petroleum, initially to be the Minister of Energy and Petroleum;
- (iii) The Minister or any other government official of the rank of director or higher from the Ministry of Finance, initially to be the Minister of Finance;
- (iv) The Minister or any other government official of the rank of director or higher from the Ministry of Trade and Industry;
- (v) the Chief Executive Officer of MiDA;
- (vi) The Minister or any other government official of the rank of director or higher from the Ministry with oversight responsibility for MiDA ((i) through (vi) collectively, the “**Government Board Members**”);
- (vii) one representative, selected by the Private Enterprise Foundation;
- (viii) one representative, selected by the Association of Ghana Industries; and
- (ix) one representative, selected by the Ghana Association of Private Voluntary Organizations in Development ((vii) through (ix) collectively, the “**Private Sector Members**,” and together with the Government Board Members, the “**Voting Members**”).

(b) Non-Voting Members. The non-voting members of the Board will consist of:

- (i) the MCC Representative
- (ii) the Chairman of the Board of NEDCo;
- (iii) the Chairman of the Board of ECG; and
- (iv) any other non-voting member added to Board with the agreement of the Government and MCC ((i) through (iv) collectively, the “**Non-Voting Members**”).

Non-voting members will be entitled to attend and participate in all Board meetings and receive all correspondence and documentation provided to the Board.

Section 3.8 Selection; Appointment; Terms.

(a) Each Government Board Member (except the Chairperson and the Chief Executive Officer) will be a Minister or senior official from the applicable Ministry with the authority to act on behalf of and bind the Ministry he or she represents. Each Minister or Government official will serve in his or her capacity as a Minister or Government official and not in a personal capacity. If a person serving as a Government Board Member resigns or is removed from such Government office, that person's position on the Board will be taken by such person's successor in such Government capacity.

(b) The Private Sector Members will be selected through a transparent process established by the Stakeholders Committees or relevant non-governmental civil society and private sector organizations, as agreed with MCC.

(c) The term of office for Private Sector Members will be two and one half (2.5) years which term of office may be renewed. In the event that a vacancy is created with respect to one or more Private Sector Members at any time, a successor will be selected in accordance with this Section 3.8.

Section 3.9 Compensation; Indemnification.

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

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

Section 3.10 Chairperson.

(a) The chairperson of the Board will be appointed by the President in accordance with Article 195 of the 1992 Ghanaian Constitution. (the "*Chairperson*").

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

Section 3.11 Role of General Counsel as Secretary to the Board.

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

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

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

(d) The written minutes of each Board meeting will be published on MiDA's website within two weeks of the next Board meeting in accordance with the requirements of Section 6.3 of these Bylaws. While they can be published in other languages as well, the minutes are, at a minimum, to be recorded and published in English.

Section 3.12 Meetings; Decisions.

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

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

(i) Notice. Adequate notice of meetings will be provided to all members of the Board. Notice for regular meetings will be delivered to each member of the Board at least seven (7) days prior to the date of such regular meeting. Notice for special meetings will be delivered to each member of the Board at least forty-eight (48) hours prior to the time of such special meeting. Such notice will (A) be given to both Voting Members and nonvoting members of the Board; (B) specify the date, time and location of the meeting; and (C) include a copy of an agenda of issues and documents to be considered. Notwithstanding the foregoing, (x) any member of the Board may waive, in writing, the requirement to receive notice in respect of any such meeting, and (y) the presence of a member of the Board at any such meeting will constitute waiver by such member of the requirement to receive notice of such meeting. A valid meeting of the Board may not be held unless each member of the Board receives notice (or waives or is deemed to waive notice) of such meeting.

(ii) Quorum. A quorum for all meetings of the Board will be the majority of Voting Members. The Voting Members may be represented by their alternates appointed

pursuant to Section 3.12(c) of these Bylaws. If the size of the Board is altered with the approval of MCC, the thresholds for quorum and voting will also be adjusted in a manner approved by MCC. If a quorum is not present at any meeting of the Board, the members of the Board present at the meeting will adjourn the meeting until a quorum is present.

(iii) Voting.

(A) Except as provided in clause (B) below and Section 7.1 of these Bylaws, decisions of the Board will be taken by a majority of the Voting Members present at a meeting at which there is a quorum.

(B) Any decision to dispose of, in whole or in part, liquidate, dissolve, wind up, reorganize or effect other material change to MiDA will require approval of at least seventy-five percent (75%) of the Voting Members present at a meeting at which there is a quorum.

(C) Each Voting Member will have one vote.

(D) In the event of an equality of votes, the Chairperson presiding at the meeting will have a casting or tie-breaking vote.

(E) Each decision, election, appointment or action by the Board, whether specifically set forth in these Bylaws or otherwise, will be made in accordance with the procedure set forth in this Section 3.12(b).

(iv) Decisions without a meeting. Urgent decisions may be taken by the Board without a formal meeting if (A) a written draft resolution is circulated to all members of the Board and (B) at least five (5) Voting Members consent in writing to the resolution (of which at least three (3) must be Government Board Members and at least one (1) must be a Private Sector Member).

(v) Meetings by Telephone Conference. Except as otherwise provided in these Bylaws, the members of the Board may participate in a meeting of the Board by means of a telephone conference or similar communications equipment that enables all persons participating in the meeting to hear and speak to each other. Participation in a Board meeting pursuant to this Section 3.12(b)(v) constitutes presence in person at such meeting.

(c) In the event that a Voting Member is unable to participate in a meeting of the Board, such Voting Member may appoint in writing, specifying the duration of such appointment, an alternate to participate for such Voting Member, *provided, however*, that (i) in the case of a Government Board Member, such alternate will be such member's principal deputy or an official of equivalent authority from the same government body as the Voting Member, (ii) in the case of a Private Sector Member, such alternate must be approved by majority vote of the Voting Members present at such meeting, and (iii) in the case of the MCC Representative, MCC may designate an alternate representative in its sole discretion.

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

(e) The Board will ensure that MiDA will not take (or fail to take) any action with respect to which MCC approval is required pursuant to the Compact, any Governing Document, the Program Implementation Agreement, any Implementation Plan Document, any other Supplemental Agreement, or any Program Guidelines without in each case obtaining the prior approval of MCC (which approval will be in writing unless otherwise indicated).

Section 3.13 MCC Representative.

(a) MCC's Resident Country Director for Ghana or such other person as MCC may appoint (the "***MCC Representative***"), will participate in all Board meetings. This will include the right to attend all Board meetings, participate in Board discussions, and receive and review all correspondence and documentation provided to the Board.

(b) The MCC Representative represents MCC's interests with respect to implementation of and compliance with the Compact, and does not owe any fiduciary duty to MiDA.

ARTICLE 4.

MANAGEMENT TEAM

Section 4.1 Role and Duties of Management Team.

(a) The Management Team will have the principal responsibility (subject to the direction and oversight of the Board, and to any applicable approval or other rights of MCC) for the day-to-day management of the Program, including those roles and responsibilities specifically set forth in the Program Implementation Agreement. The specific duties of the Management Team include the following:

(i) development and administration of financial, procurement, monitoring and evaluation, fiscal accountability, work, audit and staffing plans;

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

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

(iv) coordination of the Program and the Projects consistent with the Compact, the Program Implementation Agreement and any other Supplemental Agreements;

- M&E Plan;
- (v) management, implementation and coordination of all components of the M&E Plan;
 - (vi) preparation of the Disbursement Requests (as defined in the Program Implementation Agreement) to be submitted to MCC;
 - (vii) ongoing oversight of procurements and procurement-related activities in accordance with the MCC Program Procurement Guidelines as required by the Compact and the Program Implementation Agreement;
 - (viii) preparation and submission of appropriate documentation pertaining to the tax exemption of MCC Funding required by Section 2.8 of the Compact;
 - (ix) acquisition and maintenance of a management information system to allow the systematic tracking of programmatic and financial implementation of, and performance under, the Compact, including for each Project;
 - (x) administration of the MiDA Website to post current information about Compact related activities, M&E Plan reporting, financial reporting, and Compact related procurements;
 - (xi) development, oversight, management, coordination and implementation of such policies and procedures as may be necessary to facilitate the effective implementation of the Compact and as may be advisable in connection with any Supplemental Agreement, and such other policies, procedures or activities as may be required or requested by the Board in furtherance of the Compact;
 - (xii) provision of the advice and written recommendations to the Board in matters requiring Board actions and, in connection therewith, the Management Team will prepare and submit to the Board the relevant agreements, documents or actions to be approved, along with a written recommendation to the Board on how to proceed with such agreements, documents or action needed to support such recommendation;
 - (xiii) preparation of and submission to the Board of any other report, document, agreement or action required by the Compact, the Program Implementation Agreement or other Supplemental Agreement, or as may be designated or requested by the Board from time to time, along with the written recommendation to the Board on how to proceed;
 - (xiv) reporting to and meeting with the Stakeholders Committees on at least a quarterly basis with respect to the MiDA Program implementation progress; and
 - (xv) undertaking any other responsibilities within the scope of Program implementation that may be required or requested from time to time by the Board, and any other responsibilities set forth in the Compact, the Program Implementation Agreement, or any other Supplemental Agreement.

(b) All plans, reports and other documents delivered to MiDA's Board will also be delivered by the Management Team to MCC.

(c) Each member of the Management Team will exercise his or her duties solely in accordance with the best interests of MiDA, the Program, the Compact Goal, Program Objectives and the Project Objectives, and will not undertake any action that is contrary to those interests or would result in personal gain or a conflict of interest.

Section 4.2 Composition.

(a) The Management Team will be composed of the following positions (each, an “**Officer**” and together, the “**Management Team**”): (i) Chief Executive Officer (“**Chief Executive Officer**” or “**CEO**”); (ii) Chief Operating Officer; (iii) Chief Financial Officer; (iv) General Counsel; (v) Procurement Director, (vi) Monitoring and Evaluation and Economics Director; (vii) Distribution Projects Director; (viii) Generation Projects Director; (ix) Reform Unit Director; (x) Environment and Social Performance Director; (xi) Social and Gender Assessment Director; (xii) the Communications Director; and (xiii) Internal Auditor.

(b) The CEO will manage the day-to-day activities of MiDA and will be supported by the Chief Operating Officer. The CEO may (i) enter into contracts on behalf of MiDA, subject to the prior approval of the Board and MCC if required herein, in the Compact, any Supplemental Agreement or any Program Guidelines; and (ii) review and, if delegated by the Board by resolution, approve Disbursement Requests to be submitted to MCC. Copies of any Disbursement Requests so approved will be submitted to the Board within 7 calendar days after such approval.

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

Section 4.3 Selection; Appointment; Dismissal.

(a) MiDA. The Board shall select the CEO to serve a term not exceeding five (5) years after an open and competitive recruitment and selection process, and appointment in accordance with the Millennium Development Authority Act of 2006, which appointment shall be subject to MCC approval.

(b) The members of the Management Team will be selected and hired by the CEO, in consultation with the PSC, following an open and competitive recruitment and selection process. MiDA will use only qualified and experienced staff for the performance of its responsibilities under the Compact, the Program Implementation Agreement and other Supplemental Agreements. MiDA will be responsible for and will take all necessary action with respect to any misconduct or failure of any staff retained by MiDA.

(c) The terms of employment for each Key Staff Member will be governed by an employment agreement, subject to MCC’s approval, to be entered into between MiDA and each such employee. MCC will not have any direct or indirect liability under such agreements or arrangements.

(d) The appointment and dismissal of each Key Staff Member (and the terms of their respective employment agreements) will be subject to the prior approval of MCC.

(e) The Officers may be nationals of Ghana or of any other country. They will not be considered civil servants pursuant to Article 195(1) of the 1992 Constitution of Ghana.

Section 4.4 Remuneration. The remuneration of each member of the Management Team will be determined by the Board, *provided, however*, that such remuneration will be approved in advance by MCC and comply with the Detailed Financial Plan and the standards provided in the *MCC Cost Principles for Government Affiliates Involved in Compact Implementation*, which may be found on the MCC Website.

ARTICLE 5.

STAKEHOLDERS COMMITTEES

Section 5.1 Role of the Stakeholders Committees.

(a) One or more Stakeholders Committees, each in form satisfactory to MCC, will be created to represent the constituencies of the various Projects. MiDA will use the Stakeholders Committees to continue the consultative process throughout Compact implementation. The Stakeholders Committees will be used primarily to inform the various constituent groups about Program implementation and provide advice and input to MiDA concerning the Program, with the goal of promoting transparency. To that end:

(i) the MiDA Project directors will present Program-related matters to the Stakeholders Committees and report back to the Board on the advice provided by them, and regular, periodic interaction between MiDA and the Stakeholders Committees is anticipated; and

(ii) each Stakeholders Committee will (A) engage the various constituents and intended beneficiaries of the Program on the Program's implementation; (B) provide advice, guidance and recommendations to MiDA with respect to the implementation of the Program; and (C) propose candidates for the private sector and/or civil society members of the Board.

(b) At the request of the Board, a Stakeholders Committee will be responsible for reviewing certain reports, agreements and documents, including the Implementation Plan Documents and the M&E Plan, and providing recommendations to the Board regarding the implementation of the Program. The Board will exercise discretion in choosing which documents, agreements and reports to disclose to any Stakeholders Committee for its review and, subject to appropriate treatment of such information and documents by the members of the Stakeholders Committee, will generally include all documents, agreements and reports except for those which may impede execution of the Program or violate confidentiality. Members of the Stakeholders Committees will regularly have the opportunity to present their views and recommendations to the Management Team and the Board. Members of the Stakeholders Committees will be accessible to the beneficiaries they represent in order to receive their comments or suggestions regarding the Program.

Section 5.2 Composition.

(a) The size, composition and manner of selection of members of the Stakeholders Committees will be agreed between the Government and MCC and ratified by the Board. These matters will be dictated by the Project areas and scope of the Program. The membership will, however, include Government, the private sector, civil society and all structures that were consulted in developing the Compact proposal.

(b) The “government” representation in the membership of the Stakeholders Committees will be the local and regional governments that were consulted by the Government in the development of its Compact proposal. The non-governmental organizations, civil society and private sector representatives will not be selected by the Government, but rather through a transparent process established by the Stakeholders Committees and as agreed to by MCC.

Section 5.3 Appointment; Term. The term of service for members of each Stakeholders Committee will be two years, which term of service may be renewed.

Section 5.4 Meetings; Decisions.

(a) Each Stakeholders Committee will hold the number of periodic general meetings per year that may be required to discharge its functions.

(b) In compliance with requirements of the Compact, the Governance Guidelines and related Governing Documents, each Stakeholders Committee will prepare written summaries of its meetings, including, but not limited to, the following information for each meeting: names of all attendees, agenda items discussed and recommendations made by the Stakeholders Committee at the meeting.

(c) Adequate notice of meetings will be provided to all members of the Stakeholders Committee. At least seven (7) days prior written notice will be provided for general meetings.

(d) A majority of the members of a Stakeholders Committee will constitute a quorum at any meeting.

(e) Each Stakeholders Committee and its members will be subject to the same conflict of interest and confidentiality rules contemplated in Article 6 of these Bylaws.

Section 5.5 Compensation. Members of the Stakeholders Committee will not be entitled to receive remuneration in connection with the performance of their duties as members. Members of the Stakeholders Committee may be entitled to reimbursement for reasonable expenditures arising from their attendance at Stakeholder Committee meetings as budgeted for and approved by the Board, with the prior approval of MCC.

ARTICLE 6.

POLICIES OF MiDA

Section 6.1 Conflict of Interest Policy.

(a) MiDA will develop and maintain a conflict of interest policy designed to ensure that no director, officer, employee, subcontractor, affiliate, agent, advisor or representative of MiDA will participate in the selection, award or administration of a contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by MCC Funding in which (i) the entity, person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial interest, or (ii) the person is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to MiDA and MCC the conflict of interest and, following such disclosure, MiDA and MCC have agreed in writing to proceed notwithstanding such conflict. MiDA's directors, officers, employees, contractors, subcontractors, affiliates, agents, advisors and representatives will not, and MiDA will ensure that no person or entity involved in the selection, award, administration or implementation of any contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by MCC Funding will, solicit or accept or offer a third-party or seek or be promised directly or indirectly for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidelines that MCC may provide from time to time. None of MiDA's directors, officers, employees, contractors, subcontractors, affiliates, agents, advisors and representatives active in the Program will engage in any activity which is, or gives the appearance of being, a conflict of interest.

(b) Except for the MCC Representative on the Board, all Board members, Officers, employees and agents of MiDA and members of the Stakeholders Committees will assume a duty of undivided loyalty to MiDA when making decisions impacting or in respect of MiDA. In this regard, the Board will formulate and adopt a conflict of interest policy (as approved by MCC) to protect and preserve the integrity of MiDA's internal decision-making process and to prevent the personal interests of persons involved in that process from compromising the performance of their duties to MiDA. The policy will address, among other things, the matters discussed in Section 6.1(a) of these Bylaws and will require all Board members, Officers, employees and agents of MiDA, and members of the Stakeholder Committees, to disclose potential conflicts of interest prior to deliberating upon or handling a transaction that poses a potential conflict of interest. Potential conflicts of interest include not only situations in which a person covered directly by the policy is involved, but also decisions in which members of such person's immediate family or household, the person's business partner(s), or entities or organizations controlled by or substantially involving (whether directly or indirectly) such person, has or have an interest.

(c) If any such person has or acquires any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board, Management Team deliberation, or any Stakeholder Committee's meeting at which the matter is the subject of consideration, the concerned person will as soon as practicable after the commencement of the meeting, disclose all

material facts, and will not take part in the consideration or discussion of the matter or vote on any question with respect to the matter.

(d) Board members, Officers, employees and agents of MiDA and members of the Stakeholder Committees will comply with the conflicts of interest policy adopted by the Board, and, for Officers and employees, the policy will be incorporated by reference into the employment agreements entered into between MiDA and each such person.

Section 6.2 Confidentiality Policy.

(a) Subject to Section 6.3 of these Bylaws, all documents, reports, cost estimates, technical data and information concerning the Program that is not otherwise publicly available will be treated by the Board, the Management Team and the Stakeholders Committees confidentially in a reasonable and appropriate manner and in accordance with applicable professional standards, *provided, however*, all such documents, reports, cost estimates, technical data and other information may be provided by MCC to any employees, contractors, agents, representatives of MCC, any United States inspector general, the United States General Accountability Office, or others designated by MCC.

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

(c) Board members, Officers, employees and agents of MiDA and members of the Stakeholder Committees will comply with the confidentiality policy in this Section 6.2 or that confidentiality policy adopted by the Board, and, for Officers and employees, the policy will be incorporated by reference into the employment agreements entered into between MiDA and each such person.

Section 6.3 Transparency Policy.

(a) Transparency and accountability to MCC and to the beneficiaries of the Program are critical aspects of the Program. Transparency is essential for facilitating accountability. In an effort to achieve these goals, MiDA will, among other requirements included in the Compact and the Program Implementation Agreement:

(i) develop and maintain the MiDA Website in a timely, accurate and appropriately comprehensive manner;

(ii) post on the MiDA Website, the important documents of the Program including the Compact, minutes of meetings and other agreements specified in the Compact or Program Implementation Agreement or contemplated in the Governance Guidelines; and

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

Section 6.4 Audit Policy.

(a) Audits performed on MiDA will be performed by an independent external auditor appointed by MiDA and approved by MCC, and in conformance with the requirements of the Compact and the Program Implementation Agreement.

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

ARTICLE 7.

MISCELLANEOUS

Section 7.1 Amendments.

(a) These Bylaws and any other Governing Document may be altered, amended or repealed at any regular or special meeting of the Board by the affirmative vote of at least seventy-five percent (75%) of the Voting Members present at a meeting at which there is a quorum in accordance with Section 3.12(b)(ii) of these Bylaws, *provided, however*, that any such alteration, amendment or repeal will be subject to MCC approval.

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

(c) The Board will not have the power to alter or amend the Bylaws in such manner as to create a conflict with the terms of the Compact, the Program Implementation Agreement or any other Supplemental Agreement.

Section 7.2 Conflict. In the event of conflict between the terms of these Bylaws and the Compact, the Program Implementation Agreement or any of the Program Guidelines, the provisions of the Compact, the Program Implementation Agreement or the Program Guidelines, as the case may be, will prevail.

Section 7.3 Defined Terms. Capitalized terms used in these Bylaws and not defined in these Bylaws will have the following meanings:

***Board** has the meaning provided in Section 1.3 of these Bylaws.*

***Chairperson** has the meaning provided in Section 3.10(a) of these Bylaws.*

***Chief Executive Officer** or **CEO** has the meaning provided in Section 4.2(a) of these Bylaws.*

***Compact** means that certain Millennium Challenge Compact, by and between the United States of America acting through the Millennium Challenge Corporation and the Republic of Ghana, signed on August 5, 2014, as amended or otherwise modified from time to time.*

***Designated Rights and Responsibilities** has the meaning provided in the Program Implementation Agreement.*

Detailed Financial Plan has the meaning provided in the Program Implementation Agreement.

Disbursement has the meaning provided in the Compact.

Enabling Statute has the meaning provided in Section 1.1 of these Bylaws.

Executive Committee has the meaning provided in Section 3.4 of these Bylaws.

Governance Guidelines has the meaning provided in the Compact.

Governing Document has the meaning provided in of the Program Implementation Agreement.

Government has the meaning provided in the Compact.

Government Board Members has the meaning provided in Section 3.7(a)(vi) of these Bylaws.

Implementation Plan Document has the meaning provided in the Program Implementation Agreement.

Implementing Entity has the meaning provided in the Compact.

Implementing Entity Agreement has the meaning provided in the Compact.

M&E Plan has the meaning provided in the Compact.

Management Team has the meaning provided in Section 4.2(a) of these Bylaws.

Material Agreement has the meaning provided in the Program Implementation Agreement.

MiDA Website has the meaning provided in the Program Implementation Agreement.

MCC Funding has the meaning provided in of the Compact.

MCC Representative has the meaning provided in Section 3.13(a) of these Bylaws.

Officer has the meaning provided in Section 4.2(a) of these Bylaws.

Private Sector Members has the meaning provided in Section 3.7(a)(ix) of these Bylaws.

Procurement Plan has the meaning provided in the Program Implementation Agreement.

Program has the meaning provided in the Compact.

Program Assets has the meaning provided in the Compact.

Program Guidelines has the meaning provided in the Compact.

Program Implementation Agreement means that certain Program Implementation Agreement made by and between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Ghana, signed on August 5, 2014, as amended or otherwise modified from time to time.

Project(s) has the meaning provided in the Compact.

Secretary has the meaning provided in Section 3.11(a) of these Bylaws.

Stakeholder Committee has the meaning provided in Section 1.3 of these Bylaws.

Supplemental Agreement has the meaning provided in the Compact.

Voting Members has the meaning provided in Section 3.7(a)(ix) of these Bylaws.

ANNEX V

TAX SCHEDULES

The Government will ensure that MiDA and all 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 Compact are exempt from Taxes in accordance with Section 2.8 of the Compact.

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

As the direct beneficiary of the tax exemption under the Compact, MiDA 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 Compact, to ensure compliance with the exemption terms herein.

SCHEDULE A
VALUE ADDED TAX (VAT)

Legal Basis for Exemption or Reimbursement.

1. Section 2.8 of the Compact.
2. Ghana Value Added Tax (“*VAT*”) Act of 1998, Schedule 3, as amended (the “*VAT Act*”).

Beneficiaries of Exemption.

1. MiDA.
2. Each Implementing Entity, and any Provider, Covered Provider, or any other entity, including prime contractors and any subcontractors working directly with prime contractors and all natural persons, providing goods, works or services in furtherance of the Compact (an “*Exempt Entity*” in the case of a legal entity or an “*Exempt Individual*” in the case of a natural person).

Procedures.

Tax exemption for local purchases on which VAT has already been applied (including, locally manufactured or imported goods and goods purchased from a vendor).

Pursuant to the VAT Act, vendors may exempt VAT for local purchases made in furtherance of the Compact for goods to which VAT is to be paid. To secure this exemption, the purchaser, either MiDA, the Exempt Entity, or the Exempt Individual, must utilize a VAT Relief Purchase Order (“*VRPO*”). GRA will provide MiDA with VRPO booklets for purchases to be made pursuant to the Compact by MiDA, Exempt Entities, or Exempt Individuals.

MiDA will submit the names of all, Exempt Entities or Exempt Individuals to the GRA and also submit the details of approved items each will require. MiDA will then make formal requests for the VRPO booklets on behalf of the Exempt Entities or Exempt Individuals and will ensure they use the VRPO in accordance with the terms and conditions set out in the letter granting MiDA the authority to use VRPO. VRPOs will be reviewed by MiDA and then forwarded to the VAT Service for final review and approval.

VAT on cars, entertainment, hotel accommodation, meals and personal expenses cannot be recovered under the VAT Act. Such taxes must be paid and may be reimbursed by MiDA, when the necessary paperwork is received.

Goods – VAT at Importation.

In the case of goods to be imported or goods to be purchased at a bonded warehouse, MiDA, the Exempt Entity or the Exempt Individual will simultaneously claim an exemption from VAT as it claims an exemption under Schedule B from import and customs duties. GRA has registered MiDA as an institution qualified for relief from payment of VAT at importation under the VAT Act. (The registration number is RV 0021.) By this arrangement MiDA will only need to forward their application with import documents (for example, a bill of lading) directly to the Commissioner of the Customs Division of GRA with a copy to the Commissioner of the Domestic Tax Division (“*DTD*”) of GRA for each application.

Exempt Entities and Exempt Individuals will only be able to access the bonded warehouse if they execute joint applications naming both the Exempt Entity or Exempt Individual and MiDA, with all import documents bearing both names.

Goods – Open Stock (For Small Purchases).

For open stock goods, a vendor may not be able to provide a VAT exemption at the point of sale. As a result, MiDA, each Exempt Entity and Exempt Individual will not be able to request a refund for VAT paid on such purchases. Exempt Entities and Exempt Individuals should not make purchases of open stock good and instead should buy in bulk and take advantage of the use of VRPO as indicated above.)

All Services – Sourced Locally and Imported.

The procurement of services within Ghana will be inclusive of VAT, which will be reimbursed by GRA through the use of VRPO. The same procedures as indicated under local purchase of goods also applies to the procurement of services.

VAT on services sourced from outside Ghana 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 Ghana.

Internal MiDA Procedures.

For VAT purchases requiring a VRPO, Exempt Entities and Exempt Individuals must submit their VAT invoice or a computer generated invoice (for institutions authorized by the VAT Service to use such invoices) to the Management Accountant of MiDA who will review and approve the VRPO if the necessary documentation is received.

For VAT on cars, entertainment, hotel accommodation, meals and personal expenses where the VAT has already been paid and a refund is being sought, Exempt Entities and Exempt Individuals must submit original receipts and invoices to the Management Accountant of MiDA for verification to ensure that indeed those expenses were incurred in furtherance of the Compact. A request for a refund is then forwarded to the DTD together with the original

receipts/invoices by MiDA on behalf of the Exempt Entity or Exempt Individual. The original receipts are returned to the Exempt Entity or Exempt Individual through MiDA once DTD is satisfied.

For VAT at importation, Exempt Entities and the Exempt Individuals submit the import documents to the relevant engineer or MiDA project manager who reviews the import documents to ensure that they are in accordance with the Exempt Entity's or Exempt Individual's proposal and is required to execute the contract. The engineer then submits the documents to the General Counsel of MiDA who also reviews them and prepares an application together with the import documents and a copy of the GRA registration document to both the Commissioner of the Customs Division of GRA and the Commissioner of the DTD of GRA.

SCHEDULE B
IMPORT AND CUSTOMS DUTIES

Legal Basis for Exemption.

1. Section 2.8 of the Compact.
2. Customs & Excise (Duties and Other Taxes) Act 1996 (Act 512) as amended.

Beneficiaries of Exemption.

1. MiDA.
2. Each Exempt Entity or Exempt Individual.

Procedures.

1. Pursuant to the tax exemption provisions in the Compact, the Commissioner of Customs has created two (2) custom procedure codes for MiDA as follows:
 - 40P31 - For Direct Imports, and
 - 47P31 - Purchases from Bonded Warehouses.

Once the goods have been imported or purchased from the bonded warehouse for use on work related the Program, MiDA will write to the Commissioner of the GRA by indicating the appropriate procedure codes that will exempt MiDA from the payment of all custom duties, taxes and levies. Such communication will also include a copy of the waybill, copy of invoice and the GRA letter that confirms MiDA's tax exemption. In cases where levies are involved a copy of the application will be sent to the Ministry of Trade and Industry.

2. Contracts with Exempt Entities and Exempt Individuals will indicate that they are working on a duty-free project.

Internal MiDA Procedures.

The procedures for accessing the exemption of the customs duties, taxes and levies are the same as the procedures used for VAT at importation (see Schedule A).

SCHEDULE C
CORPORATE INCOME TAX

Legal Basis for Exemption.

1. Section 2.8 of the Compact.
2. The Internal Revenue Act 2000 (Act 592), as amended from time to time (the “*Internal Revenue Act*”).

Beneficiaries of Exemption.

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

Procedures.

1. MiDA and all Exempt Entities will be entitled to an exemption from Ghanaian corporate income tax, and related taxes, on income earned from providing services in furtherance of the Compact.
2. MiDA will not be required to withhold tax from payments made from or with respect to MCC Funding to an Exempt Entity.

SCHEDULE D
INDIVIDUAL INCOME TAX

Legal Basis for Exemption.

1. Section 2.8 of the Compact.
2. The Internal Revenue Act.

Beneficiaries of Exemption.

All Exempt Individuals, other than citizens or residents of Ghana. Persons who derive income hereunder who otherwise were not citizens or residents prior to receiving that income will also be deemed Exempt Individuals.

Procedures.

1. Exempt Individuals will be exempt from any income, social security, medical insurance or other mandatory taxes and charges imposed by Ghana 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. MiDA, the Implementing Entities, the Fiscal Agent and the Procurement Agent and any other vendor who employs Exempt Individuals (the “*Exempt Employers*”), will not withhold or pay Personal Income Taxes for the Exempt Individuals.
3. Exempt Individuals will have no obligation to file an income tax return in Ghana in relation to Exempt Personal Income.
4. Exempt Employers will have no obligation under Ghanaian law in connection with the completion of any mandatory filings, registrations and periodic reporting in relation to the Exempt Personal Income of the Exempt Individuals.

SCHEDULE E
FRINGE BENEFIT TAX

Legal Basis for Exemption.

1. Section 2.8 of the Compact.
2. The Internal Revenue Act.

Beneficiaries of Exemption.

1. All legal persons who would be required to pay fringe benefits tax on the taxable value of fringe benefits under the Internal Revenue Act provided to their employees with respect to employment or services received in furtherance of the Compact for MiDA or an Exempt Entity, other than with respect to fringe benefits provided to or on behalf of citizens or residents of Ghana.
2. All natural persons, not citizens or residents of Ghana, who would be liable to pay fringe benefits tax for fringe benefits received.

Procedures.

Neither MiDA 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.

SCHEDULE F
TAXATION OF PETROLEUM PRODUCTS

Legal Basis for Exemption or Reimbursement.

1. Section 2.8 of the Compact.
2. Customs & Excise -Petroleum Taxes and Petroleum Related Levies Act 2005, (Act 685)

Beneficiaries of Exemption

1. MiDA.
2. Exempt Entities and Exempt Individuals.

Procedures

1. Exempt Entities and Exempt Individuals will be exempted from paying any of the following taxes on wholesale or bulk purchases of petroleum products with respect to any purchases made in furtherance of the Compact:
 - Excise Duties,
 - Cross-Subsidy Levy,
 - Road Fund Levy,
 - Social Impact Mitigating Levy,
 - Hydrocarbon Exploration Levy,
 - Ad-Valorem Duty, and
 - Debt Recovery Levy.

MiDA will facilitate the registration and purchasing of petroleum products wholesale or in bulk, including providing any necessary certifications or approvals to permit Exempt Entities and Exempt Individuals to make such purchases.

2. For non-wholesale or bulk purchases made from retail outlets from which an exemption is not available, MiDA may not be able to provide refunds as described above. Exempt Entities and Exempt Individuals 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 MiDA Procedures.

Exempt Entities and Exempt Individuals will obtain a proforma invoice from any supplier of petroleum products, an oil marketing company (an “*OMC*”), indicating an estimate of their fuel requirements for six (6) months. This will then be submitted to the MiDA 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 MiDA project manager will request an exemption certification on behalf of the Exempt Entity or Exempt Individual. The General Counsel of MiDA 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 Commissioner of the DTD of GRA.

In some cases, the Internal Audit Division of MiDA 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.

SCHEDULE G
COMMUNICATION SERVICE TAX

Legal Basis for Exemption.

1. Section 2.8 of the Compact
2. Ghana Communication Service Tax (the “*CST*”) Act 2008 (Act 754)

Beneficiaries of Exemption.

1. MiDA
2. Exempt Entities and Exempt Individuals.

Procedures.

On a quarterly basis, MiDA, Exempt Entities and Exempt Individuals will compile its own receipts for communications services for which any CSTs have been paid and request a refund from the DTD. The DTD will reimburse MiDA, the Exempt Entity or Exempt Individual for the total amount of taxes paid, within ninety (90) days of receipt of this request for reimbursement. The request will be made by MiDA on behalf of Exempt Entities and Exempt Individuals.

SCHEDULE H
INDIRECT TAXES & LEVIES

Legal Basis for Exemption or Reimbursement.

1. Section 2.8 of the Compact.

Beneficiaries of Exemption.

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

Procedures.

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