

**PROGRAM IMPLEMENTATION AGREEMENT**

**by and between**

**THE UNITED STATES OF AMERICA,**

**ACTING THROUGH**

**THE MILLENNIUM CHALLENGE CORPORATION**

**and**

**THE REPUBLIC OF INDONESIA,**

**ACTING THROUGH**

**THE MINISTRY OF NATIONAL DEVELOPMENT PLANNING/NATIONAL  
DEVELOPMENT PLANNING AGENCY (BAPPENAS)**

**Dated as of September 19, 2012**

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# PROGRAM IMPLEMENTATION AGREEMENT

## PREAMBLE

This PROGRAM IMPLEMENTATION AGREEMENT (this “*Agreement*”), is made by and between the United States of America, acting through the Millennium Challenge Corporation (“*MCC*”), and the Republic of Indonesia, acting through the Ministry of National Development Planning/ National Development Planning Agency (the “*Government*” and, together with MCC, the “*Parties*” and each, a “*Party*”).

## RECITALS

WHEREAS, the Millennium Challenge Compact between the United States of America, acting through MCC, and the Government signed on November 19, 2011 (the “*Compact*”), sets forth the general terms on which MCC will provide Millennium Challenge Corporation assistance of up to US\$600,000,000 to the Government for a program to reduce poverty through economic growth in Indonesia;

WHEREAS, the Government has designated MCA-Indonesia (as defined below) to carry out certain rights and obligations of the Government under the Compact and related agreements; and

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

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

## ARTICLE 1.

### GENERAL RESPONSIBILITIES OF THE PARTIES

#### Section 1.1 Definitions.

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

#### Section 1.2 Role of the Government.

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

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

(i) Power, Authorization, Etc. The Government has the power and authority to execute, deliver and perform its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated hereby or by the Compact. The signatory to this Agreement is duly empowered to act on behalf of and 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 Indonesia that would have the effect of allowing any such impoundment, rescission or sequestration, (B) no Program Asset is subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a "***Lien***"), and (C) no Program Asset is sold, donated or otherwise disposed of, in whole or in part; except, in each of the foregoing cases, with MCC's prior written approval. In the event any Lien not so approved is imposed, the Government will promptly seek the release of such Lien and, if such Lien is required by a final and non-appealable court order, will pay any amounts due in order to obtain such release; *provided, however*, that the Government must apply national funds (and not Program Assets) to satisfy any such obligation.

### Section 1.3 Role of MCA-Indonesia.

(a) Designation of MCA-Indonesia.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated MCA-Indonesia, an entity established through passage of the Establishment Decree ("***MCA-Indonesia***"), as the primary agent of the Government to implement the Program and to exercise and perform the Government's right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and their Activities, allocating resources and managing procurements (the "***Designated Rights and Responsibilities***"). The Government will remain ultimately responsible for the performance of the Government's obligations under or in relation to the Compact and this Agreement.

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

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

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

(i) Power and Authorization. MCA-Indonesia has the power and authority to (A) bind the Government to the full extent of the Designated Rights and Responsibilities, (B) execute and deliver each agreement, certificate, or instrument contemplated hereby or by the

Compact, and (C) perform its obligations under this and each such other agreement, certificate, or instrument contemplated by this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines.

(ii) Government Responsibilities. MCA-Indonesia (A) will properly and fully carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Indonesia obligations in the Compact, this Agreement, any other Supplemental Agreement or the Program Guidelines), (B) except as provided in Section 2.9(a) or with respect to an Implementing Entity, will not assign, delegate or otherwise transfer any of the Designated Rights and Responsibilities without the prior written consent of MCC, and (C) will not undertake any activities, duties or responsibilities other than the Designated Rights and Responsibilities without the prior written consent of MCC.

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

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

(v) Constitution and Governance of MCA-Indonesia. MCA-Indonesia will conduct its operations and management in accordance with the Governing Documents and Governance Guidelines. The Government shall ensure that the Establishment Decree remains in full force and effect, without modification, alteration, rescission, or suspension of any kind, either directly or by operation of law, unless otherwise agreed by MCC. The Government shall ensure that any decree, regulation, charter, contractual arrangement or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization or governance of MCA-Indonesia (including PMK No. 124/PMK.05/2012, the KPA Decree No. 86/M.PPN/HK/09/2012, Permen PPN/Bappenas number 2/2012 as amended by Permen PPN/Bappenas number 5/2012, the PPK Decree No. 89/M.PPN/HK/09/2012 and the Implementing Bylaw Regulations) (each, a “**Governing Document**”) remains in full force and effect, without modification, alteration, rescission, or suspension of any kind, either directly or by operation of law, unless otherwise agreed by MCC. MCA-Indonesia adopted an initial version of the implementing bylaw regulations on August 31, 2012, and the Parties agree that MCA-Indonesia will adopt a revised version of the Implementing Bylaw Regulations in form and substance satisfactory to MCC within sixty (60) days of the date hereof (as revised, the “**Implementing Bylaw Regulations**”).

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

(vii) Insurance; Performance Guaranties. MCA-Indonesia will, to MCC's satisfaction, cause all Program Assets to be insured (including, without limitation, through self-insurance) and will arrange such other appropriate insurance to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. With MCC's prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Indonesia (or, as appropriate and with MCC's prior approval, another entity) will be named as the payee on any such insurance and the beneficiary of any such guaranty or bonds. If not already named as the insured party, MCA-Indonesia (and MCC, if it so requests) will be named as additional insureds on any such insurance. MCA-Indonesia will promptly notify MCC of the payment of any proceeds from claims paid under such insurance or guaranty, and will ensure that such proceeds will be used to replace or repair any lost or damaged Program Assets; *provided, however,* that, at MCC's election, such proceeds will be deposited in a Permitted Account as designated by MCA-Indonesia or as otherwise directed by MCC.

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

(ix) MCA-Indonesia Allocation to the PSF. The Government shall ensure that there is no law or regulation preventing MCA-Indonesia from allocating MCC Funding to the PSF and the PSF from contributing such funds to the Government for utilization in accordance with the terms of the Grant Agreement between the Government and the World Bank as trustee for the PSF. MCC understands that the MCC Funding will be allocated to the PSF from MCA-Indonesia as set forth in Schedule 3 hereto.

(x) MCA-Indonesia Personnel. The Government will ensure that MCA-Indonesia: (A) is empowered to engage personnel for one-year, renewable terms not to exceed the Compact Term and any associated winding up period; and (B) is not required to treat such personnel as permanent employees for purposes of Indonesian law.

(xi) Allocations to Multi-lateral Institutions. The Government shall ensure that there is no law or regulation preventing MCA-Indonesia from allocating MCC Funding to multi-lateral institutions in order to carry out the Program.

Section 1.4 Taxation. Unless otherwise agreed by MCC in writing, set forth in Schedule 6 are procedures that the Government will promptly implement to effectuate the relief from Taxes contemplated by Section 2.8 of the Compact.

Section 1.5 Assessment. In accordance with Section 1 of Schedule 3 to Annex I of the Compact, MCA-Indonesia shall engage an independent third party to undertake the Assessment. MCA-Indonesia shall comply with the requirements for the Assessment set forth in Schedule 4 hereto.

Section 1.6 Disposition of Green Prosperity Project Program Assets. In accordance with Section 1(c) of Schedule 1 to Annex I of the Compact, prior to the end of the fourth year of the Compact Term, MCA-Indonesia and MCC will complete a plan for the disposition of financial assets generated by the GP Facility Activity, including, without limitation, a plan for the monitoring and evaluation of the projects funded by the GP Facility and any associated environmental safeguards or other requirements in accordance with the Program Guidelines.

Section 1.7 General Provisions Annex. Unless otherwise agreed with MCC, MCA-Indonesia will include in each agreement (a “**Program Agreement**”) executed by it with a third party (a “**Counter-party**”) that will receive any portion of MCC Funding (i) a covenant that such Counter-party will comply with (1) the General Provisions Annex and (2) any instruction received by it from MCC in respect of such Counter-party’s performance of, and compliance with, the requirements of the General Provisions Annex, notwithstanding any other instruction given by MCA-Indonesia; and (ii) a right for MCA-Indonesia to terminate such Program Agreement if such Counter-party fails to comply with the requirements of the General Provisions Annex or any such instruction of MCC under sub-clause (i) of this Section 1.7.

## ARTICLE 2.

### IMPLEMENTATION FRAMEWORK

Section 2.1 Implementation Plan. The framework for implementation of the Program will be further elaborated in a set of documents, in form and substance approved by MCC, consisting of (i) a Work Plan, (ii) a Detailed Financial Plan, (iii) an Audit Plan and (iv) a Procurement Plan (each, an “**Implementation Plan Document**” and collectively the “**Implementation Plan**”). MCA-Indonesia will submit its proposed Implementation Plan for review and approval by MCC before initial Disbursement of Program Funding and at least on an annual basis thereafter (or in such other interval as may be required by the Program Guidelines). MCC will review the proposed Implementation Plan and as necessary may request MCA-Indonesia to submit clarifications or adjustments. MCA-Indonesia will submit an updated Implementation Plan or updated Implementation Plan Document during any quarter in which significant changes or modifications are made to a Project or to the Program, or when MCA-Indonesia determines that the expected results, targets and milestones for the specified year are not likely to be achieved; *provided, however*, that an updated Detailed Financial Plan will be submitted each quarter. In such instances, MCA-Indonesia will submit to MCC for approval a proposed revised Implementation Plan or updated Implementation Plan Document (as applicable) on the same date as the next Periodic Report is due. MCA-Indonesia will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

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

(b) Detailed Financial Plan. The Multi-Year Financial Plan Summary for the Program, which is set forth in Annex II to the Compact, shows the estimated annual contribution of MCC Funding to administer, monitor and evaluate the Program and to implement each Project (the “*Multi-Year Financial Plan*”). Except as MCC agrees otherwise in writing, MCA-Indonesia will develop, adopt and implement for each quarter for the upcoming year and on an annual basis for each year of the remaining years of the Compact, a detailed financial plan (substantially in the form of the “Detailed Financial Plan” posted on the MCC Website and as approved by MCC), setting forth funding requirements for the Program (including administrative costs) and for 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. MCA-Indonesia will develop, adopt and implement a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of Covered Providers that are subject to audit pursuant to the Audit Guidelines (the “*Audit Plan*”). The Audit Plan will be in form and substance satisfactory to MCC and will be developed no later than sixty (60) days before the end of the first period to be audited.

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

Section 2.2 Fiscal Accountability Plan. Except as MCC agrees otherwise, MCA-Indonesia will develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “*Fiscal Accountability Plan*”) that MCA-Indonesia will use to ensure appropriate fiscal accountability for the use of MCC Funding. The Fiscal Accountability Plan will also include, among other things, requirements with respect to: (a) budgeting, (b) accounting, (c) cash management, (d) financial transactions (receipts and payments), (e) opening and managing Permitted Accounts, (f) personnel and payroll, (g) travel and vehicle use, (h) asset and inventory control, (i) audits and (j) reporting. The Fiscal Accountability Plan will be revised periodically, subject to review and approval by MCC.

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

developed and updated in accordance with the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

Section 2.4 Environmental and Social Accountability.

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

(b) Unless MCC and the Government agree otherwise in writing, MCA-Indonesia will ensure that activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Gender Policy. MCA-Indonesia 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 2.5 MCC Program Procurement Guidelines and MCC Approval of Grants. In accordance with Section 3.6 of the Compact:

(a) MCA-Indonesia 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) The Government will ensure that grants issued to any non-Government entity in furtherance of the Program are selected, implemented and administered pursuant to open, fair, and competitive procedures administered in a transparent manner.

Section 2.6 Notice to Providers; Incorporation.

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

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

(i) Sections 2.1(c) and 2.7(b) of this Agreement and Section 3.7 of the Compact and paragraphs (b), (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) and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Provider that does not meet the definition of a Covered Provider, on the other hand; and

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

Section 2.7 Reports; Notices.

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

(i) On a quarterly basis:

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

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

(C) an updated Detailed Financial Plan;

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

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

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

(b) MCA-Indonesia 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.

(c) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other governmental authority of Indonesia at a provincial, or district level materially reallocates or reduces the allocation in its budget of the normal and expected resources that the Government or such governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, or fails to timely distribute an allocation budgeted for the activities contemplated under the Compact or the Program, the Government, acting through MCA-Indonesia, 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.

(d) In addition to the Periodic Reports, MCA-Indonesia will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MCA-Indonesia 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.

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

Section 2.8 Transactions Subject to MCC Approval. Each of the following transactions, activities, agreements, and documents requires MCC's prior written approval:

- (a) Disbursements;
- (b) the Implementation Plan (including each element or component thereof), the Fiscal Accountability Plan and the M&E Plan, and any modification of any of the foregoing;
- (c) agreements between the Government and MCA-Indonesia, 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 (including the GP Facility Manager); and
  - (vii) a member of the Board (including any Observer) or any Officer of MCA-Indonesia (including agreements regarding compensation for any such person);

- (d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;
- (e) any agreement or transaction of MCA-Indonesia 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 disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Indonesia, including any revocation or modification of or supplement to any Governing Document related thereto;
- (h) any change in character, number, or location of the Permitted Accounts;
- (i) (A) any change of any member of the Board (including any Observer), of the member serving as the chairperson or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any Observer), (B) any change of any Officer of MCA-Indonesia or in the composition or size of its management unit, and the filling of any vacant position of any Officer of MCA-Indonesia, and (C) any material change in the composition or size of any Stakeholder Committee;
- (j) any decision by MCA-Indonesia 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;
- (k) any agreement, transaction, decision or other action or document for which MCC approval is required under any of the Program Guidelines; and
- (l) any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing documents or arrangements.

## Section 2.9 Role of Certain Entities in Implementation.

(a) Outside Project Manager. MCA-Indonesia 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 any Activity; *provided, however*, that, if so required by the MCC Program Procurement Guidelines, the appointment or engagement of any Outside Project Manager will be made using a competitive selection process and, if required by the MCC Program Procurement Guidelines, will be subject to approval by the Board and by MCC prior to such appointment or engagement. Upon such approval, MCA-Indonesia may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects or Activities; and *provided, further*, that MCA-Indonesia will remain accountable for those duties and responsibilities and all reports delivered by the Outside Project Manager notwithstanding any such delegation, assignment or contract and the Outside Project Manager will be subject to the oversight of the Fiscal Agent and Procurement Agent. The Board may determine that it is

advisable to engage one or more Outside Project Managers and instruct MCA-Indonesia and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager. Unless MCC agrees otherwise in writing, MCA-Indonesia will engage one or more Outside Project Manager(s) for the GP Facility Activity.

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

(c) Auditors and Reviewers. MCA-Indonesia will engage one or more auditors as contemplated in the Audit Guidelines (each, an “*Auditor*”). As requested by MCC in writing from time to time, MCA-Indonesia will also engage an independent (i) reviewer to conduct reviews of performance and compliance under the Compact, which reviewer will have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct environmental and social audits, and (3) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III to the Compact, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a “*Reviewer*”). MCA-Indonesia will select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MCA-Indonesia will enter into an agreement with each Auditor or Reviewer, in form and substance acceptable to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions (the “*Auditor / Reviewer Agreement*”).

(d) Procurement Agent. MCA-Indonesia will engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Indonesia 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 2.10 Publicity and Transparency.

(a) Subject to Section 2.11, MCA-Indonesia will give appropriate publicity to the Compact as a program to which the United States, through MCC, has contributed, including by identifying Program Activity sites, and marking Program Assets, all in accordance with the MCC Standards for Global Marking posted from time to time on the MCC Website. Upon the termination or expiration of the Compact, the Government, upon MCC's request, will cause the removal of any such references and markings on the MCA-Indonesia Website or in any Government or MCA-Indonesia publicity materials.

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

(c) Notwithstanding Section 2.10(b), information relating to procurements prior to the award of a contract and confidential information relating to MCA-Indonesia's agreements with employees, contractors and consultants will be excluded from the information and documents made publicly available; *provided, however*, that MCC and MCA-Indonesia will mutually determine whether any information to be excluded is confidential.

## Section 2.11 Branding and Enforcement.

(a) For the period set forth in Section 5.7(d), MCC hereby grants MCA-Indonesia a revocable, royalty-free, fully paid and non-exclusive right and license to use (i) the names "Millennium Challenge Corporation" and "MCC" and (ii) MCC's logo, in each case of (i) and (ii) solely in accordance with the MCC Standards for Global Marking. Any such use of the names and the logo will solely be for the benefit of MCC, and not inure to the benefit of MCA-Indonesia. The use of MCC's names and logo will not create any agency or legal representation, and MCA-Indonesia has no authority to bind MCC in any way.

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

(c) MCA-Indonesia will take all reasonable steps to ensure that the names “Millennium Challenge Account-Indonesia” and “MCA-Indonesia,” as well as its own logo, will enjoy maximum protection under the laws now or hereafter in effect in Indonesia throughout the term of this Agreement. This includes the registration of the names and the logo as a trademark, if appropriate, the monitoring of unauthorized use by third parties, and, in case of detection of unauthorized use, the enforcement of such rights. MCA-Indonesia 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 – Indonesia,” “MCA-Indonesia” and/or MCA-Indonesia’s logo; or (ii) the names “Millennium Challenge Corporation,” “MCC” and/or MCC’s logo. MCA-Indonesia will provide MCC assistance to enforce MCC’s rights to the names “Millennium Challenge Corporation” and “MCC,” as well as to MCC’s logo.

### ARTICLE 3.

#### DISBURSEMENT OF MCC FUNDING

##### Section 3.1 Disbursement Process.

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

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

(i) Upon receipt of a Disbursement Request, MCC will determine the appropriate amount of the Disbursement to be made based on, among other things, (A) the progress achieved under the Implementation Plan, (B) the amount of funds required to complete the activities described in the accompanying Periodic Reports during the corresponding Disbursement Period and (C) the satisfaction, waiver or deferral of applicable conditions to such

Disbursement. MCC reserves the right to reduce the amount of any Disbursement below that proposed in a Disbursement Request in accordance with this Section 3.1(b) and Section 3.5.

(ii) Upon MCC's approval of a Disbursement Request, the proceeds of the Disbursement may be transferred, at MCC's sole election, (A) to a Permitted Account, or (B) directly to a provider as payment for goods, works or services received by MCA-Indonesia in accordance with the Common Payment System or any alternate payment system approved by MCC; *provided however*, that expenditures of such proceeds (including amounts transferred directly to a provider) are authorized by MCA-Indonesia, 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) Unless MCC otherwise agrees in writing, any MCC Funding to be disbursed to a bank account must be deposited in an interest-bearing account established by MCA-Indonesia in the local currency of Indonesia (the "**Local Account**") at a financial institution acceptable to MCC. The Local Account will be a Permitted Account. MCC and MCA-Indonesia also may mutually agree in writing to the establishment of additional Permitted Accounts from time to time at financial institutions acceptable to MCC. MCA-Indonesia will notify MCC promptly if any account information for a Permitted Account changes during the Compact Term and provide MCC with the updated information.

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

(iii) In the event that MCC Funding held in a Permitted Account will accrue interest or other earnings in accordance with the Bank Agreement, then on a quarterly basis, and upon the termination or expiration of the Compact or the Bank Agreement, MCA-Indonesia will ensure the transfer of all accrued interest, if any, to MCC.

(iv) Unless MCC agrees otherwise, if MCC Funding is held in any Permitted Account other than the Local Account, MCA-Indonesia 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 Indonesia for any purpose, MCA-Indonesia will

ensure that such amount is converted consistent with the requirements of the Bank Agreement or any other applicable Supplemental Agreement.

**Section 3.2 Conditions Precedent to Disbursement of Compact Implementation Funding.**

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

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

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

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

(c) MCA-Indonesia Initial Disbursement Certificate. MCA-Indonesia has delivered a duly executed certificate substantially in the form provided by MCC, together with any required attachments thereto.

(d) Fiscal Accountability Plan. MCA-Indonesia has developed the Fiscal Accountability Plan (or an interim version).

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

(f) Implementing Bylaw Regulations. The Board has adopted the Implementing Bylaw Regulations in accordance with Section 1.3(b)(v), and such Implementing Bylaw Regulations have been approved by MCC.

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

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

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

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

(iii) except with respect to the initial Disbursement of Program Funding (for which a separate certificate is required to be delivered pursuant to Section 3.3(c) above), a certificate of MCA-Indonesia, dated as of the date of such Disbursement Request, substantially in the form provided by MCC (the “*MCA Disbursement Certificate*”);

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

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

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

(i) all applicable conditions precedent in Schedule 2 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, MCA-Indonesia or any Government entity has occurred and is continuing under this Agreement, the Compact or any Supplemental Agreement, or under any agreement, regulations, policies, rules or guidance issued by MCA-Indonesia or the Government in fulfillment of a condition precedent set forth on Schedule 2 hereto;

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

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

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

(vi) there has been 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);

(vii) 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;

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

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

(x) 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;

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

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

Section 3.5 Failure to Satisfy Conditions Precedent; Partial Disbursements. MCC may, in its sole discretion, disapprove any Disbursement completely or reduce the amount of any Disbursement requested for any Project or Activity for which the relevant conditions precedent have not been satisfied, waived or deferred.

Section 3.6 Authorized Expenditures. Except as MCC otherwise agrees, a Disbursement, or financial commitment involving MCC Funding may be made, and a Disbursement Request may be submitted, only if the related expense is provided for in the Detailed Financial Plan and sufficient uncommitted funds exist in the Detailed Financial Plan for the relevant period.

#### **ARTICLE 4.**

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

Section 4.1 Entry into Force of this Agreement. This Agreement will enter into force upon the later of (i) the signing of this Agreement by each of the Parties to this Agreement and (ii) 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 in accordance with Section 5.1 of the Compact, 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 in accordance with Section 5.1 of the Compact, 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 any 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 expiration or full or partial termination of the Compact or any MCC Funding, MCC may, at its expense, direct that title to any Program Assets be transferred to MCC if such Program Assets are in a deliverable state, and the Government will promptly effect such transfer upon such direction; *provided however*, that, for any Program Asset not in a deliverable state and any Program Asset partially purchased or funded with MCC Funding, the Government, upon MCC's request, will reimburse MCC in United States Dollars the cash equivalent of the fair market value of such Program Asset or portion thereof, as such is determined by MCC.

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

## **ARTICLE 5.**

### **GENERAL PROVISIONS**

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

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

Section 5.3 Assignments. The Government may not assign, delegate or contract its rights or obligations under this Agreement without MCC's prior written consent. The Government agrees, upon request by MCC, to execute an assignment to MCC of any contractual right or cause of action which may accrue to the Government or MCA-Indonesia 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 designated by the relevant Principal Representative) of each Party; *provided, however*, that the Parties may agree in a writing, signed by the Principal or Additional Representatives of each Party, to modify any Schedule hereto, without amending this Agreement. Any amendment to this Agreement will be binding on the Government without the need for further action by the Government, any further parliamentary action, or satisfaction of any additional domestic requirements of Indonesia. 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 Supplemental Agreement or any Implementation Plan Document the terms of this Agreement will prevail.

Section 5.7 Termination of this Agreement.

(a) MCC may terminate this Agreement in whole or in part, without cause by giving the Government thirty (30) days' written notice. This Agreement will terminate simultaneously with the termination of the Compact by the Government in accordance with Section 5.1(a) of the Compact.

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

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

(d) No later than 120 days after the expiration or termination of this Agreement, unless MCC agrees otherwise, (i) the licenses granted to MCA-Indonesia in Section 2.11(a) will terminate with immediate effect; (ii) the Government will ensure that MCA-Indonesia ceases to

be named “Millennium Challenge Account – Indonesia” and/or “MCA-Indonesia;” and (iii) the Government will ensure that such names and any associated logo, as well as the names “Millennium Challenge Corporation” and “MCC,” as well as any logo associated therewith, are no longer used by MCA-Indonesia or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of this Agreement, MCA-Indonesia will assign and hereby assigns and transfers to MCC all right, title, and interest to the names “Millennium Challenge Account – Indonesia,” “MCA-Indonesia,” “Millennium Challenge Corporation,” “MCC,” as well as MCA-Indonesia’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), 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: (i) to its employees, contractors, agents and representatives, (ii) to any United States inspector general or the U.S. Government Accountability Office or otherwise for the purpose of satisfying MCC’s own reporting requirements, (iii) to post on the MCC Website for the purpose of making certain information publicly available and transparent, (iv) in connection with publicizing MCC and its programs or (v) 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 has caused this Program Implementation Agreement to be executed by a duly authorized representative as of the date first written above.

Done at Washington, DC, this 19th day of September, 2012, in the English language only.

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

/ s /

By: \_\_\_\_\_  
Name: Patrick Fine  
Title: Vice President, Compact Operations

**THE REPUBLIC OF INDONESIA,**  
acting through the Ministry of National Development Planning/ National Development Planning Agency (BAPPENAS)

/ s /

By: \_\_\_\_\_  
Name: Lukita Dinarsyah Tuo  
Title: Vice Minister of National Development Planning/ National Development Planning Agency (BAPPENAS)

## **SCHEDULE 1**

### **DEFINITIONS**

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

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

***Auditor** has the meaning provided in Section 2.9(c).*

***Auditor / Reviewer Agreement** has the meaning provided in Section 2.9(c).*

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

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

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

***Board** means the board of trustees of MCA-Indonesia, also referred to as the MWA in the Implementing Bylaw Regulations.*

***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 Recitals.*

***Counter-party** has the meaning provided in Section 1.7.*

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

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

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

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

***Fiscal Accountability Plan** has the meaning provided in Section 2.2.*

***Fiscal Agent Agreement** has the meaning provided in Section 2.9(b).*

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

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

***Governing Document** means any decree, regulation, charter, contractual arrangement or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization or governance of MCA-Indonesia (including PMK No. 124/PMK.05/2012, the KPA Decree No. 86/M.PPN/HK/09/2012, Permen PPN/Bappenas number 2/2012 as amended by Permen PPN/Bappenas number 5/2012, the PPK Decree No. 89/M.PPN/HK/09/2012 and the Implementing Bylaw Regulations).*

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

**Implementing Bylaw Regulations** has the meaning provided in Section 1.3(b)(v).

**Implementation Plan** has the meaning provided in Section 2.1.

**Implementation Plan Document** has the meaning provided in Section 2.1.

**ISP Sub-Activity** has the meaning provided in Schedule 4.

**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 2.8(c).

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

**MCA-Indonesia** has the meaning provided in Section 1.3(a)(i) and is also referred to herein as “MCA-I.”

**MCA-Indonesia Website** has the meaning provided in Section 2.10(b), with one or both of the following addresses as of the date hereof: [www.mca-i.go.id](http://www.mca-i.go.id) or [www.mca-indonesia.go.id](http://www.mca-indonesia.go.id).

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

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

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

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

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

**Outside Project Manager** has the meaning provided in Section 2.9(a).

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

**Periodic Report** has the meaning provided in Section 2.7(a).

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

**Procurement Agent Agreement** has the meaning provided in Section 2.9(d).

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

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

**Program Agreement** has the meaning provided in Section 1.7.

**Program Guidelines** has the meaning provided in the Compact.

**Quarterly Financial Report** has the meaning provided in Section 2.7(a)(i)(B).

**Reviewer** has the meaning provided in Section 2.9(c).

**Stakeholder Committee** means each of the consultative mechanisms described in paragraph C.4. of Annex I to the Compact, and any successor or other body (approved by MCC) of representatives of the private sector, civil society and local and regional governments that has been formally established in accordance with the Governance Guidelines to provide advice and input to MCA-Indonesia regarding the implementation of the Program.

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

**SCHEDULE 2**  
**CONDITIONS PRECEDENT TO PROGRAM FUNDING**

**1. Conditions Precedent for All Projects.**

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

(b) Prior to the initial Disbursement of Program Funding for payment under a particular works or construction contract for a given Activity, MCA-Indonesia will submit to MCC evidence satisfactory to MCC (i) that MCA-Indonesia has adopted Tier I of its ESMS acceptable to MCC; (ii) an Environmental and Social Impact Assessment (ESIA), an Environmental and Social Management Plan (ESMP) and/or a Resettlement Action Plan (RAP) (as appropriate) has been developed and adopted with respect to such Activity; and (iii) MCA-Indonesia or the appropriate Government entity is in compliance with the requirements of the ESIA, ESMP or RAP, as appropriate, consistent with the MCC Environmental Guidelines.

(c) Prior to the initial Disbursement of Program Funding for payment of any Grant, the Government and MCC shall agree upon written procedures to govern the identification of potential recipients, the selection and the award of Grants.

(d) Prior to the second disbursement of Program Funding for the Targeted Gender Activities, MCA-Indonesia shall have completed detailed action plans and provided evidence of demonstrated commitment of relevant stakeholders to addressing policy constraints identified in the Work Plan.

**2. Conditions Precedent for Green Prosperity Project.**

(a) Prior to the initial Disbursement of Program Funding for the Participatory Land Use Planning Activity, the Technical Assistance and Oversight Activity or the GP Facility Activity in any district, MCA-Indonesia shall have entered into memoranda of understanding, in form and substance satisfactory to MCC, with such district and its related province

(b) Prior to the initial Disbursement of Program Funding to the GP Facility, MCA-Indonesia shall have designed and established an ESMS consistent with the requirements of Section 3 of Schedule 1 to Annex I of the Compact, and reflected applicable requirements of Schedule 1 to Annex I, of the Compact in the Operations Manual.

(c) Prior to the initial Disbursement of Program Funding to the GP Facility, MCA-Indonesia developed the Operations Manual consistent with the requirements of Section 1(c) of Schedule 1 to Annex I of the Compact and Schedule 5 of this Agreement.

**3. Conditions Precedent for Community-Based Health and Nutrition to Reduce Stunting Project.**

(a) Prior to the initial Disbursement of Program Funding to the PSF, MCA-Indonesia shall have entered into a Transfer Agreement, in form and substance satisfactory to MCC, with the World Bank.

(b) Prior to the initial Disbursement of MCC Funding to the PSF, a manual, satisfactory to MCC, will be developed outlining the mechanisms for delivery of incentives to Service Providers, the types of incentives that will be tested and made available to Service Providers, and the performance criteria for receiving incentives, as further described in Section 1(b) of Schedule 2 to Annex I of the Compact.

**4. Conditions Precedent for Procurement Modernization Project.**

(a) Prior to the initial Disbursement of Program Funding for Phase Two, MCA-Indonesia shall submit evidence, satisfactory to MCC, that the Government has established procurement as a functional profession in the civil service with a defined career path.

### **SCHEDULE 3**

#### **FLOW OF FUNDS TO PSF**

In accordance with Section 1 of Schedule 2 to Annex I of the Compact and Section 1.3(b)(ix) of this Agreement, MCA-Indonesia and the World Bank will sign a Transfer Agreement. This Transfer Agreement is not a grant agreement but it is a mechanism to allocate funds from MCA-Indonesia to the World Bank as the administrator of the PNPM Support Facility (PSF).

The Transfer Agreement will be implemented as follows:

- 1.** The Board of Trustees (*Majelis Wali Amanat*) of MCA-Indonesia will make a resolution on the allocations of the Program Funding, including an allocation of funds to PSF through the World Bank to be forwarded to the Ministry of Home Affairs (MoHA) for the implementation of PNPM Generasi.
- 2.** Based on the said allocation, MCA-Indonesia will enter into a Transfer Agreement with the World Bank. The agreement will at least stipulate the following:
  - (a) The amount of funds allocated to the PSF through the World Bank;
  - (b) The purpose of funds allocation;
  - (c) The responsibilities of each party i.e. MCA-Indonesia and the World Bank.
- 3.** The said Transfer Agreement between MCA-Indonesia and the World Bank will be signed by the Chair of the Board of Trustees (*Ketua MWA*) and the principal representative of the World Bank in Indonesia, following MCC's approval of the form and substance of the Transfer Agreement.
- 4.** Based on the said Transfer Agreement, MCA-Indonesia will periodically submit a request to MCC to disburse funds, according to the agreed schedule in the Transfer Agreement, to the World Bank acting as the trustee for the PSF.

## **SCHEDULE 4**

### **PROCUREMENT MODERNIZATION ASSESSMENT REQUIREMENTS**

In accordance with Section 1 of Schedule 3 to Annex I of the Compact, the Institutional Structure and Professionalization of Procurement Service Units (PSUs) Sub-Activity will be conducted in two phases. Prior to the conclusion of Phase One, MCA-Indonesia will ensure an Assessment of Phase One is concluded. The design and scope of the Assessment and the application of its results to Phase Two is specified herein, and any requests for data or other information will be in accordance with the government procurement regulations.

Although the phasing decision only applies to the Institutional Structure and Professionalization of PSU's Sub-Activity (hereafter the "**ISP Sub-Activity**"), information will be gathered on applicable institutional and regulatory frameworks that limit or enhance the effectiveness of the ISP Sub-Activity. The information gathered will then be used to inform any necessary modifications to the design of Phase Two.

MCA-Indonesia — in consultation with and approval by LKPP — will develop the terms of reference, in form and substance satisfactory to MCC, to engage an entity to perform the Assessment in accordance with the following:

- 1.** The Assessment will examine and further develop the analytical framework of the ISP Sub-Activity by:
  - (a) Clearly defining the theory by which the Sub-Activity is expected to achieve the Procurement Modernization Project's Objective; and
  - (b) Providing a basis for calculating the parameters and procurement statistics needed to estimate the likely benefits and costs of the procurement activities.
  
- 2.** The Assessment will draw detailed data from up to thirty (30) PSUs targeted under this Sub-Activity, as well as any critical data from a representative sample of PSUs that permits a comparison group. This data is intended to help assess the adequacy of the components of the ISP Sub-Activity to achieve the Procurement Modernization Project's Objective. Such an assessment is expected to examine the adaptability of the ISP Sub-Activity to the variety of conditions faced by the existing PSUs, where:
  - (a) Variety includes, at a minimum:
    - (i) the authority and echelon level of the PSU relative to the spending unit(s);
    - (ii) types and sectors of procurement;
    - (iii) regions; and
  - (b) Adaptability refers to the ability to adjust delivery of the ISP Sub-Activity to meet the needs of different PSUs. This includes:

(i) the appropriate level and nature of training based on characteristics of the PSUs in which the professionals serve;

(ii) staffing level and arrangements;

(iii) suitability or anticipated suitability of procurement audit training modules to develop competencies among the Government's auditors to conduct compliance and performance audits of the procurement system (see also paragraph 3.c below).

**3.** The Assessment should also critically question the Project activities in the context of the institutional environment in which PSUs operate. In particular, it should examine applicable institutional and regulatory frameworks that could limit or enhance the effectiveness of Project components, as well as the interdependence of those components.

Accordingly, the Assessment will consider the adequacy of the following factors:

(a) Incentives to enter, remain in, and perform well within the procurement profession, with consideration of incentives examining both monetary and non-monetary factors;

(b) Status of the trained and accredited procurement professionals to be effective in improving procurement outcomes within the PSU's direct control, where status refers primarily to issues of independence and autonomy such that procurement professionals are able to act on their best judgment to improve procurement outcomes, free from adverse pressures;

(c) The Government's procurement control structures to capitalize on the ISP Sub-Activity, including the procurement audit training modules, and general ability to present procurement professionals with appropriate incentives. Where anticipated changes to these control structures are not fully implemented at the time of the Assessment, the Assessment will describe the state of implementation and also consider the adequacy of changes anticipated to occur during Phase Two;

(d) Skills possessed by — and the incentive structure faced by — staff outside the PSU whose performance may limit or enhance the ability of procurement professionals to achieve cost and efficiency savings on procured goods and services;

(e) Possible interdependence between the ISP Sub-Activity, procurement management information system deployment, and other information systems that support the procurement and budgeting process; and

(f) Whether the benefits of a well-functioning procurement system are appreciated and capitalized on within the larger budgetary process.

**4.** The Assessment must also propose a feasible methodology for rigorously evaluating the impacts of Phase Two of the ISP Sub-Activity to improve current understanding of how the ISP Sub-Activity contributes to the Procurement Modernization Project's Objective. This methodology should also permit an improved estimate of the ISP Sub-Activity's economic rate of return.

To satisfy the performance criteria outlined in the Compact, the Assessment — done in consultation with LKPP — will define an impact evaluation methodology that is feasible to implement and can be used by MCA-Indonesia and MCC to conduct the evaluation of Phase Two.

5. The entity performing the Assessment will seek to conduct interviews of firms eligible to participate in Government procurements and procurement service unit staff. In addition to supporting the Assessment and the calculation of the economic rate of return, the entity will need to have access to procurement data and other data related to the procurement process. A sample of procurement and procurement-related data will be analyzed to identify the link to the expected results of quality-controlled cost savings of procured goods, works and services. All identifying information for staff, bidders and awardees will be kept anonymous and confidential.

A list of expected data needs for the Assessment is included below. In considering these items, the Parties acknowledge that:

- Inclusion of an item in the list is not intended to suggest that a particular change in that item is associated with improved or worsened procurement outcomes; rather, it is expected that the data will help build a more complete picture of change within the procurement system.
  - While the majority of items will fall within the procurement cycle and therefore are expected to be provided by participating PSUs, this is not true for all items. Subject to cost and feasibility considerations (as specified below), some items may require:
    - Engagement with other ministries or government offices; and
    - Specialized data collection efforts, such as surveys of firms or procurement professionals. Such efforts may also be necessary to assess aspects of the Assessment for which specific measures have not yet been identified.
  - Where items are defined as derived statistics or indicators, it is expected that the assessing entity would have access to the underlying data needed to calculate such statistics.
  - The ultimate data requirements will be informed by both the utility of the data and the feasibility or cost of acquisition; provided, however, that MCC Funding may be used to finance all or part of the costs of acquiring such data.
- (a) This procurement-related data is expected to include the following, among others:

(i) General procurement statistics at the PSU level. Proportion of procurement not completed, by value and/or number of procurement; proportion of procurements evaluated against benchmarking frameworks such as Total Life-cycle Cost, Value for Money and Total Cost of Ownership, where appropriate.

(ii) Contract-specific measures.

(A) Contract planning. budget allocation for contracted item; responsible party for source selection (PPK, KPA, or ULP); use of framework contract or e-catalog (where use may be defined broadly to include benefits achievable without actually procuring via e-catalog); incidence of combining packages of like goods to achieve better pricing;

(B) Contract type. by manual or electronic; direct appointment, limited tender, or full and open competitive tender; type, quantity, and specifications of good, work, service in tender documents;

(C) Competition statistics. Number of bidders (total and by region, including fraction of contractors from inside and outside district/kota/province);

(D) Time and efficiency. Time taken for each step of the procurement process and whether changes in duration are occurring over time. The steps considered are expected to include those that influence contractor satisfaction and interest (and therefore competitiveness of the procurement process), recognizing that some of these steps may be outside the procurement cycle and therefore outside the responsibility of a participating PSU to provide. The procurement process steps include at least the procurement announcement, bid evaluation, contract award, and submission of payment order;

(E) Cost estimates and final prices. Owner estimated price and the responsible party for owner estimated price (PPK, KPA, or ULP), with the estimator's identity anonymous; award price; final price; dates and amounts of invoices; dates and amounts of payment orders; contractual reductions in scope (post-modification quantities or amended scope); assessed quality and specifications of delivered goods, works and services by receiving committee; date of receipt by receiving committee;

(F) Complaints and mis-procurements. Occurrence of failed procurements and reason; number of re-bid procurements; occurrence of contract terminations/cancellations; the number of protests or complaints; the number of complaints accepted/rejected; number of clarifications; the length of time for disposition of each protest/complaint; the number of protests resulting in reversed award; and

(G) Inspections. Whether inspection of procurement by internal inspectors occurred; whether there was a negative audit or inspection finding and severity of such finding; assessed quality and specification of delivered goods, works and services by inspector, if internal inspection occurred, occurrence of supervision reports, and occurrence of qualifications and warnings.

## **SCHEDULE 5**

### **FURTHER DETAIL ON CALCULATING ERRS FOR THE GP FACILITY ACTIVITY**

MCC's standard economic analysis guidelines (available on the MCC Website) will be the primary reference for methodological questions related to calculating economic rates of return for the projects financed with funding from the GP Facility. Estimates of benefit streams will be based initially on income changes or cost savings to the beneficiary population; provided, however, that the Parties may agree to adjust this approach to account for alternative benefits, as appropriate. In particular, the merit of including benefits to the environment and to broader society, but which lack direct links to the incomes of targeted households, will be assessed by MCC in consultation with MCA-Indonesia once a set of model projects has been specified in sufficient detail. The results of this determination will be codified in the Operations Manual for the GP Facility. The manual will also include guidance on conducting uncertainty analysis for economic rates of return for projects and how such analysis should be accounted for in the selection of projects to be financed with funding from the GP Facility. Finally, the Operations Manual will include a description of MCC's approval rights over selected economic rates of return for prospective projects financed with MCC Funding from the GP Facility.

**SCHEDULE 6**  
**SPECIFIC TAX MECHANISMS**

The following terms and conditions are applicable to Tax Appendices A to F:

1. MCA-Indonesia receives the entire Compact <sup>1</sup> budget of US\$600,000,000 (US Dollar six hundred million). However, MCA-Indonesia only holds the DIPA for the Compact budget less the amount allocated to PSF as set forth in Schedule 3.
2. The Government allocates funds from the State Budget to establish the MCA-I Tax Relief Account specifically to bear or to fund such Tax reimbursements as referred to throughout Appendices A to F (“*MCA-I Tax Relief Account*”).
3. *De Minimis* exception: Taxes, duties or other similar charges on transactions valued at less than US\$500 (US Dollar five hundred) need not be exempted.

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<sup>1</sup>The “Compact” refers to that certain Millennium Challenge Compact, executed between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Indonesia, dated November 19, 2011.

**APPENDIX A**  
**VALUE ADDED TAX (VAT)**

**Legal Basis for Tax Relief.**

1. The Compact and the Program Implementation Agreement.
2. Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
3. Minister of Finance Decree Number 239/KMK.01/1996 as lastly amended by Minister of Finance Decree Number 486/KMK.04/2000 about Implementation of Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
4. Minister of Finance Regulation to be drafted as required.

**Beneficiaries of Tax Relief.**

Millennium Challenge Account-Indonesia (“*MCA-I*”) and any vendors (main contractor, *whether* foreign or Indonesian entities or individuals) or sub-contractors, as further specified below, providing services, goods, or works for Compact projects.

**Procedures.**

1. Services, goods, or works provided by an **Indonesian main contractor** (“*MC*”):
  - (a) MC submits invoice to MCA-I exclusive of VAT. It will also present a Tax Invoice (*Faktur Pajak*), which MC will stamp: “VAT Not Collected.”<sup>2</sup>
  - (b) MC requires either that all VAT input charged by its subcontractors (“*SC*”) relating to Compact project is creditable or refundable for the excess of VAT input over VAT output, in accordance with applicable Indonesian law.
2. Services, goods, or works provided by a **foreign MC**, including professional services providers (foreign individuals), which are divided into the following two categories:
  - (a) Those which are nonresident for tax purposes and have no branch or Permanent Establishment in Indonesia:

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<sup>2</sup>In accordance with Minister of Finance Decree Number 239/KMK.01/1996 as lastly amended by Minister of Finance Decree Number 486/KMK.04/2000.

The foreign MC will submit invoices excluding VAT to the MCA-I. MCA-I must maintain documents as evidence that such procurements are related to the Compact and therefore, “VAT is Not Collected.”

(b) For those which are nonresident but with a Permanent Establishment in Indonesia (as such is defined by Indonesian Tax law and regulation), the foreign MC submits invoice to MCA-I exclusive of VAT. It will also present a Tax Invoice (*Faktur Pajak*), which the foreign MC will stamp: “VAT Not Collected.”

The foreign MC requires either that all VAT input charged by its SCs relating to Compact project is creditable or refundable for the excess of VAT input over VAT output, in accordance with applicable Indonesian law.

**3.** MCA-I requires reimbursement out of MCA-I Tax Relief Account for VAT charged by MCs on which the VAT Not Collected mechanism is not able to be applied.

This situation could arise for the following reasons:

(a) The vendor is too small, and therefore does not have the capability to process VAT Not Collected.

(b) The purchase is made immediately and therefore the VAT Not Collected mechanism cannot be complied with as a practical matter.

For the purpose of reimbursement, MCA-I must provide Tax Invoice (*Faktur Pajak*) from vendors.

**4.** For VAT incurred by MC or SC, which is not recoverable through the input-output system, the MC and SC require prompt reimbursement out of the MCA-I Tax Relief Account. Examples are as follows:

(a) MCs (Indonesian / Foreign with a permanent establishment) incur non recoverable VAT, in the following situations:

(i) The MC or SC is VAT exempt, therefore all VAT arising from goods or services from its suppliers cannot be recovered.

(ii) VAT on vehicle purchases by MC (not creditable) will be reimbursed at the end of the term of the applicable contract with MCA-I, provided that: (1) such vehicle was paid for using MCC Funding and used exclusively for Compact-related activities; and (2) at the end of the contract term, the MC assigns title of the vehicle to MCA-I and delivers such vehicle to MCA-I.

(b) MCs, foreign without a Permanent Establishment, incurs VAT from an Indonesia SC that provides goods or services.

**APPENDIX B**  
**CUSTOMS DUTIES AND OTHER TAXES ON IMPORT**

**Legal Basis for Tax Relief.**

1. The Compact and the Program Implementation Agreement.
2. Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
3. Minister of Finance Decree Number 239/KMK.01/1996 as lastly amended by Minister of Finance Decree Number 486/KMK.04/2000 about Implementation of Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
4. Minister of Finance Regulation Number 28/PMK.04/2008 about Import Duties Exemption on Transfer Goods (household goods).
5. Minister of Finance Regulation to be drafted as required.

**Beneficiaries of Tax Relief.**

MCA-I and any vendors (MC local or international) providing services, goods or works on Compact projects or any SC to a MC (each a “Vendor”).

**Procedures.**

1. Purchases of imported goods:

For permanent imports related to the Compact project:

- (a) Master list of imported items requiring tax relief is prepared by MCA-I.
- (b) The Master list is submitted to the Director of Customs Facility, Directorate General of Customs and Excise.
- (c) Director of Customs Facility, Directorate General of Customs and Excise issues Minister of Finance Decree issuing tax relief.
- (d) MCA-I or MCs prepare Import Declaration (PIB).
- (e) On the PIB document, MCA-I or MC write the number and date of the approval of tax relief as mentioned in point c.

(f) In the event that customs duties or other import taxes are levied under the Indonesian law on goods imported for the Compact projects, the MCA-I or MC will be reimbursed for said duties and import taxes from the MCA-I Tax Relief Account.

**2. Household goods for Expatriates Staff of Vendor.**

(a) For household goods the amount and type of goods exempted will be based on the 'reasonableness' as determined by the Directorate General of Customs and Excise.

(b) The individual requesting the temporary import of household goods applies at Customs Office at port of import for the tax exemption.

## APPENDIX C

### CORPORATE INCOME TAX

#### **Legal Basis for Tax Relief.**

1. The Compact and the Program Implementation Agreement.
2. Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
3. Minister of Finance Decree Number 239/KMK.01/1996 as lastly amended by Minister of Finance Decree Number 486/KMK.04/2000 about Implementation of Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
4. Minister of Finance Regulation to be drafted as required.

#### **Beneficiaries of Tax Relief.**

All vendors that are foreign MCs (with or without a branch office or Permanent Establishment in Indonesia and foreign professionals as individual MCs) and Indonesian companies formed under the laws of Indonesia and individuals who are MCs.

#### **Procedures.**

1. For vendors that are nonresidents without a Permanent Establishment and are not exempt under applicable tax treaties, any withholding tax made by MCA-I on behalf of vendors will be reimbursed from MCA-I Tax Relief Account.
2. Beneficiaries, either resident entities for tax purposes in Indonesia or nonresident with a Permanent Establishment, will present their calculations of their annual corporate tax payable in the form of the Annual Corporate Tax Return (*SPT PPh Badan*) to Government to support the request for tax due in the name of the Beneficiary to be borne by the Government.
3. For Beneficiaries that are residents or Permanent Establishments, the following taxes are to be borne by the Government
  - (a) Corporate Income Tax (*PPh Badan Pasal 25/29*).
  - (b) For Beneficiaries that are Permanent Establishments, provided that such Permanent Establishments are working exclusively for Compact projects and their Corporate Income Tax is borne by the Government as mentioned above, their Deemed Distribution Tax (*PPh Pasal 26 (4)*) or Branch Profit Tax is also borne by the Government.

**APPENDIX D**  
**INDIVIDUAL INCOME TAX (EMPLOYEE INCOME TAX)**

**Legal Basis for Tax Relief.**

1. The Compact and the Program Implementation Agreement.
2. Minister of Finance Regulation to be drafted as required.

**Beneficiaries for Tax Relief.**

All individuals, other than citizens and permanent residents of Indonesia, working for MCs or SCs including professional service providers contracting as individuals in connection with the Compact. In determining whether an individual is a permanent resident for the purposes of this Appendix D, the status of such individual shall be based on his/her status as of the time that he/she commenced Compact-related work, and such initial determination shall not change regardless of: (i) the type of contract used to employ/engage such individual and/or (ii) any laws of Indonesia that purport to change such status based on period of contract performance or period of time residing and/or working in Indonesia.

**Procedures.**

1. For individuals, Government will bear employee income tax applicable to the cash or in kind remuneration to the extent that such expatriates are working for Compact (exclusively or on a confirmed part time basis). Such tax would be reimbursed from MCA-I Tax Relief Account.
2. MC will be responsible for calculating, withholding, and reporting for each employee in accordance with Indonesian law and for requesting tax reimbursement from the MCA-I Tax Relief Account.

## APPENDIX E

### TAX ON TEMPORARY IMPORT OF EQUIPMENT AND VEHICLE

#### **Legal Basis for Tax Relief.**

1. The Compact and the Program Implementation Agreement.
2. Government Regulation Number 42 year 1995 as lastly amended by Government Regulation Number 25 year 2001 about Import Duties, Additional Duties, Value Added Tax, and Sales Tax on Luxury Goods and Income Tax in the Framework of Implementation of Government Projects Funded by Grants or Foreign Loan Fund.
3. Minister of Finance Regulation number 142/PMK.04/2011 about Temporary Import.
4. Minister of Finance Regulation to be drafted as required.

#### **Beneficiaries for Tax Relief.**

MCA-I and any vendors providing services, goods or works for Compact projects, including SCs to MCs on Compact projects (each a “Vendor”).

#### **Procedures.**

For temporary imports:

1. The request for exemption is submitted to Customs Office at port of import by importers.
2. Approval is provided by the Head of Customs Office at port of import.
3. Importers must prepare an Import Declaration (PIB).
4. Importers are required to provide:
  - (a) bank guarantee / custom bond for the goods if an exemption is requested; or
  - (b) pay the Customs Import Duty (2% per month), pay VAT (100%), and provide bank guarantee / custom bond for the rest of Customs Duty and income Taxes on import (*PPh Pasal 22*) if tax relief is requested.

**APPENDIX F**  
**OTHER TAXES**

Regional taxes are not under the authorization of the Government and the granting process of tax exemption will require approval from the relevant regional parliaments. However the Government will put its best effort to communicate the possibility to obtain tax exemption from the Regional Governments during the entry into force period (approximately one year as of the signing of the Compact up to the “entry into force” period).