

**COMPACT DEVELOPMENT FUNDING AGREEMENT
EXECUTION VERSION**

COMPACT DEVELOPMENT FUNDING GRANT AGREEMENT

BETWEEN

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE GOVERNMENT OF THE REPUBLIC OF MALAWI

**ACTING THROUGH THE MINISTRY OF FINANCE, ECONOMIC PLANNING, AND
DEVELOPMENT**

**FOR THE DEVELOPMENT AND FACILITATION OF IMPLEMENTATION OF A
MILLENNIUM CHALLENGE COMPACT**

Dated May 22, 2020

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COMPACT DEVELOPMENT FUNDING AGREEMENT

COMPACT DEVELOPMENT FUNDING GRANT AGREEMENT

This COMPACT DEVELOPMENT FUNDING GRANT AGREEMENT (this “*Agreement*”), dated May 22, 2020, is made between the Millennium Challenge Corporation (“*MCC*”), a United States Government corporation, and the Government of the Republic of Malawi (the “*Government*”), acting through the Ministry of Finance, Economic Planning, and Development (the “*Ministry*”). The Government and MCC are referred to herein as the “*Parties*” and each, individually, a “*Party*.” Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the respective meanings given to such terms in Exhibit A.

RECITALS

WHEREAS, the Board of Directors of MCC has determined that the Republic of Malawi (“*Malawi*”) is eligible for assistance from MCC, and the Parties are seeking to enter into a second Millennium Challenge Compact to advance economic growth and poverty reduction in Malawi (the “*Compact*”);

WHEREAS, the Government submitted to MCC concept notes in October 2019 (the “*Concept Notes*”) which request assistance for certain projects in transport and farm-to-market linkages (“*TML Activity*”) and increased land productivity (“*Land Activity*”);

WHEREAS, based on the Concept Notes, the Parties wish to facilitate the development and implementation of the Compact (the “*Objective*”) and to engage in certain activities described herein;

WHEREAS, MCC wishes to make a grant to the Government to support such activities under the authority of Section 609(g) of the Millennium Challenge Act of 2003, as amended (funding under Section 609(g) of the Millennium Challenge Act of 2003 shall be referred to as the “*Compact Development Funds*” or “*CDF*”);

WHEREAS, to facilitate the development of the Compact, the Government has established an institution incorporated under the Trustees Incorporation Act (Chapter 5:03 of the Laws of the Republic of Malawi) named Malawi Millennium Development Trust (“*MMD*”), that is empowered to implement some or all of the Government’s obligations under this Agreement;

WHEREAS, to facilitate the implementation of the Compact, the Government shall establish an institution to be incorporated under the Trustees Incorporation Act aforementioned to be named Millennium Challenge Account - Malawi (“*MCA-Malawi*”), that shall be empowered to implement some or all of the Government’s obligations under the Compact; and

WHEREAS, management of the Grant and any procurements and contracts under the Grant may be performed by MCC, or subject to MCC’s approval, *MMD*, or another Permitted Designee (as defined in Section 4.2(b)(i));

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

ARTICLE 1.

MCC GRANT

Section 1.1 MCC Grant. MCC hereby grants to the Government, under the terms of this Agreement, an amount not to exceed seven million six hundred thousand U.S. Dollars (US\$7,600,000) (the “**Grant**”) to fund the activities described in more detail in Annex I (each, an “**Activity**” and, collectively, the “**Activities**”).

Section 1.2 Financial Plan. The Grant funding shall be allocated among the Activities as generally described in Annex II or as otherwise agreed in accordance with Section 7.9 of this Agreement.

ARTICLE 2.

IMPLEMENTATION FRAMEWORK

Section 2.1 CDF Implementation Documents. The framework for implementation of each of the Government-contracted activities, as described in Annex I (the “**Government-Contracted Activities**”) shall be further elaborated in a set of documents, in form and substance approved by MCC, consisting of (i) the CDF Detailed Financial Plan, (ii) one or more CDF Procurement Plans, and (iii) one or more Government Service Provider Contracts (collectively, the “**CDF Implementation Documents**”). MCC may review the CDF Implementation Documents, or any portion thereof and, as necessary, request the Government to submit clarifications or adjustments.

(a) CDF Detailed Financial Plan. The Permitted Designee shall develop, adopt, and implement a detailed financial plan in accordance with the MCC Reporting Guidelines, setting forth funding requirements for each of the Government-Contracted Activities (including administrative costs), broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis (as supplemented or otherwise modified from time to time, the “**CDF Detailed Financial Plan**”).

(b) CDF Procurement Plan. The Permitted Designee shall develop a procurement plan relating to the Activities (“**CDF Procurement Plan**”) and submit such CDF Procurement Plan to MCC for approval before commencing the relevant procurement with respect to any Government-Contracted Activities. Each CDF Procurement Plan shall identify, among other things, the method of procurement of the goods, works or services to be procured. The Permitted Designee shall ensure, except for MCC-contracted Activities (as defined in Annex I, the “**MCC-Contracted Activities**”), that all goods, works or services are procured using the procurement method as approved in each CDF Procurement Plan, and shall comply with the method of procurement outlined in such CDF Procurement Plan. The proportion of Grant funding for each of the Government-Contracted Activities and the MCC-Contracted Activities shall be stipulated in the CDF Procurement Plan, as such may be amended from time to time.

(c) Service Provider Contracts. As identified in the CDF Procurement Plan, and consistent with the Activities in Annex I, each of MCC or the Permitted Designee, as the case

may be, may procure and manage the services of one or more providers of goods, works, or services to implement each of the Activities.

(i) Government Service Provider Contracts. The Permitted Designee shall procure and manage the services of one or more providers of goods, works or services for each of the Government-Contracted Activities (each a “**Government Service Provider**”), and the Permitted Designee shall enter into one or more contracts, in a form acceptable to MCC, with the Government Service Providers implementing the Government-Contracted Activities (“**Government Service Provider Contracts**”). The Permitted Designee shall be the primary point of contact for each Government Service Provider throughout the term of each Government Service Provider Contract. Any and all instructions to the Government Service Provider shall be made by and through the Permitted Designee unless otherwise provided in such Government Service Provider Contract. No Government Service Provider Contract may be assigned by the Permitted Designee without the prior written approval of MCC.

(ii) MCC Service Provider Contracts. MCC shall procure and manage the services of one or more providers of goods, works or services for each of the MCC-Contracted Activities (each a “**MCC Service Provider**”) and in accordance with the U.S. Government’s Federal Acquisition Regulation. MCC shall enter into one or more contracts with the MCC Service Providers implementing the MCC-Contracted Activities (“**MCC Service Provider Contracts**”). MCC shall be the primary point of contact for each MCC Service Provider throughout the term of each MCC Service Provider Contract. All instructions to the MCC Service Provider shall be made by and through MCC, unless otherwise provided in such MCC Service Provider Contract.

(iii) For the purposes of this Agreement, (A) MCC Service Providers and Government Service Providers shall be collectively referred to herein as “**Service Providers**” and (B) MCC Service Provider Contracts and Government Service Provider Contracts shall be collectively referred to herein as “**Service Provider Contracts**.”

Section 2.2 Procurement.

(a) MCC Program Procurement Guidelines. The Permitted Designee shall comply with the “Program Procurement Guidelines” provided by MCC or posted on the MCC Website (the “**MCC Program Procurement Guidelines**”) in the procurement (including solicitation) of goods, works and services and the award and administration of contracts for each of the Government-Contracted Activities.

(b) Procurement Agent. Except as MCC otherwise agrees, any reference in this Agreement to the “**Procurement Agent**” shall be deemed a reference to (i) any interim service provider approved by MCC to provide procurement agent services to MMD until such time as MMD delivers to MCC a true and complete copy of a duly-executed procurement agent agreement or other instrument in form and substance satisfactory to MCC (the “**Procurement Agent Agreement**”), and the party named as procurement agent therein has mobilized or (ii) thereafter, the Service Provider named in the Procurement Agent Agreement. For the avoidance of doubt, MCC in its sole discretion may permit the Procurement Agent to be a procurement

management unit within a Permitted Designee until such time as MCA-Malawi is created, and thereafter within MCA-Malawi.

(c) Interim Procurement Operations Manual. Unless MCC has agreed to act as the Procurement Agent, prior to undertaking any procurements for the Government-Contracted Activities, the Government shall develop, adopt and implement a manual (as approved by MCC), as may be updated from time to time, describing applicable procedures for executing procurement functions, including but not limited to preparing procurement documents, conducting procurements, and administering contracts (the “*Interim Procurement Operations Manual*”). The provisions of the Interim Procurement Operations Manual shall apply as relevant to the procurements the Permitted Designee will undertake, and shall include basic forms for procurement notices and recordkeeping, and processes to ensure adequate MCC oversight and approval of procurement documents and actions.

Section 2.3 Fiscal Accountability.

(a) Fiscal Agent. Except as MCC otherwise agrees, any reference in this Agreement to the “*Fiscal Agent*” shall be deemed a reference to (i) any interim service provider approved by MCC to provide fiscal agent services until such time as the Permitted Designee delivers to MCC a true and complete copy of a duly executed fiscal agent agreement or other instrument in form and substance satisfactory to MCC (the “*Fiscal Agent Agreement*”), and the party named as fiscal agent therein has mobilized or (ii) thereafter, the Service Provider named in the Fiscal Agent Agreement. For the avoidance of doubt, MCC in its sole discretion may permit the Fiscal Agent to be a financial management unit within a Permitted Designee until such time as MCA-Malawi is created, and thereafter within MCA-Malawi. Except as MCC otherwise agrees, the Fiscal Agent shall be responsible for, among other things, (A) ensuring and certifying that Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Fiscal Agent Agreement and Bank Agreement(s) as applicable, (B) instructing a 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 MCC’s Common Payment System (as defined in Exhibit A) or any alternate payment system approved by MCC, as the case may be, and in each case, following applicable certification by the Fiscal Agent, (C) providing applicable certifications for Disbursement Requests, (D) maintaining proper accounting of all financial transactions involving Grant funding, and (E) producing reports on Disbursements in accordance with established procedures set forth in the Interim Fiscal Accountability Plan.

(b) Interim Fiscal Accountability Plan. Except as MCC otherwise agrees, the Permitted Designee shall develop, adopt and implement a manual (as approved by MCC), as may be updated from time to time, setting forth the principles, mechanisms and procedures (the “*Interim Fiscal Accountability Plan*”) that shall be used to ensure appropriate fiscal accountability for the use of the Grant funding for the Government-Contracted Activities, including the process to ensure that open, fair, and competitive procedures shall be used in a transparent manner in the administration of grants or cooperative agreements and in the procurement of goods, works and services. The Interim Fiscal Accountability Plan shall also include, among other things, requirements with respect to: (i) budgeting, (ii) accounting, (iii)

financial transactions (receipts and payments), (iv) opening and managing permitted accounts, and (v) reporting.

ARTICLE 3.

DISBURSEMENT OF GRANT FUNDING

Section 3.1 Disbursement Process for MCC-Contracted Activities.

(a) MCC Service Provider Disbursements. Prior to any disbursement of the Grant for the MCC-Contracted Activities, the Government shall have entered into a tax exemption agreement or such other mechanism acceptable to MCC to establish or give effect to Section 4.2(k), and such mechanism shall be in full force and effect.

(b) Subject to Section 3.1(a) and except as otherwise agreed in writing by the Parties, MCC shall make disbursements of the Grant from time to time for the MCC-Contracted Activities, directly to each MCC Service Provider that has entered into an MCC Service Provider Contract with MCC (each, an “***MCC Service Provider Disbursement***”). The Government hereby consents to the MCC-Contracted Activities and any related MCC Service Provider Disbursement.

Section 3.2 Disbursement Process for Government-Contracted Activities.

(a) The Government, through the Permitted Designee, may request disbursements of the Grant (each, a “***Disbursement***”) for the Government-Contracted Activities by submitting a written request to MCC substantially in the form of the “Disbursement Request” provided by MCC or posted on the MCC Website (each, a “***Disbursement Request***”), duly completed, not later than 20 days (or such other period of time as may be agreed by MCC) prior to the commencement of each Disbursement Period. Unless otherwise agreed by MCC, the Government may submit only one Disbursement Request for each quarter (such quarter, or any other period of time as agreed by MCC, the “***Disbursement Period***”).

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

(i) Upon receipt of a Disbursement Request, MCC shall determine the appropriate aggregate amount of the Disbursement permitted for the applicable Disbursement Period based on, among other things, (A) progress achieved under the CDF Implementation Documents, (B) the amount of funds required to complete the Activities described in the Disbursement Request during such Disbursement Period, and (C) the satisfaction, waiver, or deferral of the conditions precedent applicable to the requested Disbursement.

(ii) MCC may, in its sole discretion, reject any Disbursement Request completely, or reject or reduce the amount of any Disbursement requested thereunder, based on among other things, (A) any modification made to the CDF Implementation Documents or (B) any of the conditions precedent in Sections 3.3 and 3.4 of this Agreement has not been satisfied, waived, or deferred.

(iii) Subject to MCC's approval of a Disbursement Request, the proceeds of the Disbursement approved thereunder may be transferred, at MCC's sole election, (A) to a Permitted Account, or (B) directly to a Government Service Provider as payment for goods, works or services in accordance with MCC's common payment system or any alternate payment system approved by MCC. Payments to Government Service Providers and other expenditures of Grant funding during the relevant Disbursement Period (including amounts transferred directly to a Service Provider) shall be made only as authorized by the Government and certified by the Fiscal Agent, or as otherwise agreed by the Parties, in accordance with the approved CDF Detailed Financial Plan and the standards and procedures set forth in the Interim Fiscal Accountability Plan approved by MCC.

(c) Permitted Accounts.

(i) From time to time as authorized or directed by MCC, MMD shall establish (or cause to be established) bank accounts, denominated in Malawian Kwacha or in U.S. Dollars, and on terms and at a financial institution acceptable to MCC, that are necessary or otherwise appropriate to fulfil the terms of this Agreement (any such account, a "**Permitted Account**"). Before any Grant funding is deposited into a Permitted Account, the Government shall enter, or ensure that the Permitted Designee enters, into a bank agreement, in form and substance satisfactory to MCC, with the financial institution approved by MCC to hold such Permitted Account (each a "**Bank**"), which sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to such Permitted Account (each a "**Bank Agreement**"). The terms and operation of the Permitted Accounts shall be set forth in the Interim Fiscal Accountability Plan and the Bank Agreement.

(ii) Unless otherwise authorized by MCC, no other funds shall be commingled in a Permitted Account other than the Grant funding and any accrued interest thereon. Any funding contribution from the Government (the "**Government Contribution**") shall be kept in a separate Permitted Account and no other funds shall be commingled in such Permitted Account other than the Government Contribution and any other interest accrued thereon. MCC shall have the right, among other things, to view any Permitted Account statements and activity directly on-line, and where such viewing is not feasible, the Government shall provide copies of such statements to MCC upon its request.

(iii) The Government shall ensure that any Grant funding held in a Permitted Account accrues interest or other earnings in accordance with the applicable Bank Agreement. On a quarterly basis and upon the termination or expiration of this Agreement or the relevant Bank Agreement, the Government shall ensure the transfer of all interest accrued on any Grant funding held in a Permitted Account to MCC.

(iv) The Government shall provide in writing to MCC and the Fiscal Agent the account name, designated account number and wire transfer instructions for transfers to Permitted Accounts (the "**Account and Wire Transfer Information**") no later than ten business days prior to the date on which the initial deposit is to be made to a Permitted Account. In the event that any Permitted Account or the related Account and Wire Transfer Information changes during the term of this Agreement, the Government shall provide to MCC and the Fiscal Agent

the new information as soon as practicable, but in no event later than ten business days prior to the requested date for the next Disbursement.

Section 3.3 Conditions Precedent to the Initial Disbursement for Government-Contracted Activities. MCC's approval of the initial Disbursement Request shall be subject to the satisfaction of each of the following conditions (except as such conditions may be waived or deferred by MCC in its sole discretion):

(a) Evidence of Tax Exemption Mechanism. MCC is satisfied that the Government has entered into a tax exemption agreement or such other mechanism acceptable to MCC to establish or give effect to Section 4.2(k), and such mechanisms are in full force and effect.

(b) Procurement Agent Services. Designation of an entity or individual to provide procurement agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of the Procurement Agent Agreement, duly executed and in full force and effect, and the Procurement Agent engaged thereby is mobilized;

(c) Fiscal Agent Services. Designation of an entity or individual to provide fiscal agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of the Fiscal Agent Agreement, duly executed and in full force and effect, and the Fiscal Agent engaged thereby is mobilized;

(d) Interim Fiscal Accountability Plan. Adoption of an Interim Fiscal Accountability Plan acceptable to MCC; and

(e) Satisfaction of each of the conditions set forth in Section 3.4.

(f) Initial Disbursements to a Permitted Account. Prior to an initial Disbursement of any Grant funding to a Permitted Account, a true and complete copy of each Bank Agreement, duly executed and in full force and effect as of the date of the related Disbursement Request.

Section 3.4 Conditions Precedent to each Disbursement of Government-Contracted Activities. MCC's approval of each Disbursement Request shall be subject to the satisfaction of each of the following conditions (except as such conditions may be waived or deferred by MCC in its sole discretion):

(a) Delivery of a completed Disbursement Request, together with the periodic reports required under Section 5.1 of this Agreement, in each case in form and substance satisfactory to MCC, covering the related Disbursement Period;

(b) Each of the Government's representations and warranties set forth in Section 4.1 of this Agreement are true and correct on and as of the date on which the Disbursement Request is submitted and as though made on and as of such date;

(c) No material breach of any responsibility, covenant or obligation under this Agreement or any other related agreement (including the Bank Agreement, the Fiscal Agent Agreement, the Procurement Agent Agreement and any Service Provider Contract) by any

Permitted Designee has occurred and is continuing on and as of the date of the Disbursement Request; and

(d) If requested by MCC, delivery of a certificate from each of the Government, the Permitted Designees, the Procurement Agent and/or the Fiscal Agent, in each case in form and substance satisfactory to MCC.

ARTICLE 4.

GOVERNMENT REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.1 Government Representations and Warranties. The Government hereby represents and warrants to MCC that:

(a) Power; Authorization. The Government has, and each Permitted Designee 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, as applicable, and none of such actions violate or will violate any other obligation of any Permitted Designee. The signatory of this Agreement is duly empowered to act on behalf of and bind the Government with respect to the obligations contained herein.

(b) No Conflict. This Agreement does not, and shall not, conflict with any international agreement or obligation binding on the Government or any of the laws of Malawi.

(c) Information. The information provided to MCC by or on behalf of the Government in connection with this Agreement, including, without limitation, information provided to MCC in the course of reaching this Agreement, is true, correct and complete in all material respects.

Section 4.2 Government Responsibilities and Covenants.

(a) Principal Responsibility. The Government is responsible for overseeing and managing the implementation of the Government-Contracted Activities.

(b) Permitted Designee.

(i) Subject to the prior written approval of MCC, the Government may designate one or more entities to implement and perform some or all of the Government's obligations or to exercise any rights of the Government under this Agreement (each such entity, a "***Permitted Designee***"), *provided that* such a designation shall not relieve the Government of any obligations and rights under this Agreement, for which the Government shall retain full responsibility.

(ii) The Government intends to establish a Permitted Designee in accordance with the "Guidelines for Accountable Entities and Implementation Structures" provided by MCC or posted on the MCC Website ("***MCA-Malawi***," or such other name as the Government may choose and MCC may approve). The Government hereby designates MMD to manage the

implementation of the Activities, including entering into and managing the Government Service Provider Contracts until such time as MCA-Malawi: (A) is formed, (B) is approved by MCC to perform the functions and responsibilities herein, and (C) executes a deed of novation replacing MMD in this Agreement. MCC hereby acknowledges and consents to the designation of MMD as contemplated by this Section 4.2(b)(ii). The Government hereby confirms to MCC that MMD has the authority to enter into obligations and act on behalf of the Government with regard to all Activities hereunder.

(c) No Violation of Law. The Government agrees that in the event that any law or regulation of Malawi makes unlawful or otherwise prevents or hinders the performance of any of its obligations under this Agreement, any Service Provider Contract, any other related agreement, or any transaction contemplated hereby, MCC may in its sole discretion immediately terminate this Agreement in accordance with Section 6.2.

(d) Liens. The Government shall ensure that neither the Grant nor any asset acquired with Grant funding shall be subject to any impoundment, rescission, sequestration, liquidation, lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a “*Lien*”), except with MCC’s prior written approval. In the event any Lien not so approved is imposed, the Government shall promptly seek the release of such Lien and, if such Lien is imposed by a final non-appealable court order, shall pay any amounts due in order to obtain such release; *provided that* the Government shall not apply any Grant funding or other funds received from MCC (or assets acquired with funds provided by MCC) to satisfy any such obligation.

(e) Insurance; Guaranties. The Government shall cause all assets acquired with Grant funding to be insured (including, without limitation, through self-insurance) and shall arrange such other appropriate insurance to cover against risks or liabilities associated with the Activities and the transactions contemplated thereby, including by requiring Service Providers to obtain adequate insurance and to post adequate bonds or other guaranties as relevant. In the event of loss or damage to any assets acquired with Grant funding, if the insurance acquired by the Government is insufficient to fully replace the asset, the Government shall be liable to cover any additional costs. With MCC’s prior consent, Grant funding may be used to pay the costs of obtaining such insurance. The Permitted Designee shall be named as the payee on any such insurance and the beneficiary of any such guaranty or bonds. If not already named as an insured party, the Government, any applicable Permitted Designee, and MCC (if it so requests) shall be named as additional insureds on any such insurance. The Government shall ensure that any proceeds from claims paid under such insurance or guaranty shall be used to replace or repair any lost, stolen or damaged assets acquired with Grant funding; *provided that* at MCC’s election, such proceeds shall be deposited in an account as designated by or as otherwise directed by MCC.

(f) Autonomy. The Government shall ensure that (i) no decision of any Permitted Designee is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision or as otherwise approved by MCC, and (ii) the authority of any Permitted Designee shall not be expanded, restricted, or otherwise modified, to the extent such decision or authority is related to this Agreement or the Compact, except in accordance with this Agreement or as approved by MCC.

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(g) Further Assurances. The Government shall promptly do and perform such other and further acts, and take all necessary and appropriate actions, including using its best efforts to obtain all necessary approvals and consents to otherwise effectively carry out the obligations of the Government set forth in this Agreement.

(h) Performance Liabilities. No Grant funding or any other funding received from MCC (or assets acquired with funds provided by MCC) shall be used to pay any damages, including without limitation any indemnification-related payments, incurred or owed by any Permitted Designee under any agreement between the Government or any Permitted Designee, on the one hand, and any Service Provider or other third party.

(i) Government Resources.

(i) The Government shall provide all funds and other resources, and shall take all actions, that are necessary to carry out the Government's responsibilities and obligations under this Agreement, and to ensure timely and efficient completion of the Compact development process.

(ii) The Government shall use its best efforts to ensure that the amount of Grant funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget.

(iii) Unless the Government discloses otherwise to MCC in writing, Grant funding shall be in addition to the resources that the Government would otherwise receive or budget for the Activities.

(j) Use of Funds.

(i) The Government shall ensure that the Grant and any assets or services funded by the Grant, in whole or in part, shall be used solely in furtherance of this Agreement and the Activities.

(ii) The Government also shall ensure that no Grant funding shall be used for any purpose that would violate United States law or policy, as specified in this Agreement or as further notified to the Government in writing by MCC or by posting at www.mcc.gov (the "*MCC Website*"), including but not limited to the following purposes:

(A) for assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(B) for any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(C) to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard as further described in MCC's environmental guidelines provided by MCC or posted on the MCC Website; or

(D) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

(k) Taxes.

(i) Unless the Parties specifically agree otherwise in writing, the Government shall ensure that all Grant funding is free from the payment or imposition of any existing or future taxes, duties, levies, contributions or other similar charges (but not fees or charges for services that are generally applicable in Malawi, reasonable in amount and imposed on a non-discriminatory basis) (“*Taxes*”) of or in Malawi (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Malawi). Specifically, and without limiting the generality of the foregoing, the Grant shall be free from the payment of (i) any tariffs, customs duties, import taxes, export taxes, and other similar charges on any goods, works or services introduced into Malawi in connection with the Activities; (ii) sales tax, value added tax, excise tax, property transfer tax, and other similar charges on any transactions involving goods, works or services in connection with the Activities, (iii) taxes and other similar charges on ownership, possession or use of any property in connection with the Activities, and (iv) taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Activities and related social security taxes and other similar charges on all natural or legal persons performing work in connection with the Activities except (1) natural persons who are citizens or permanent residents of Malawi and (2) legal persons formed under the laws of Malawi (but excluding MCA-Malawi and any other entity formed for the purpose of implementing the Government’s obligations hereunder).

(ii) MCC and the Government understand that, with respect to Taxes, customs duties, currency controls and other charges that may apply in Malawi on the Activities or on the Service Providers, the provisions contained in the “Economic, technical, and related assistance agreement,” which entered into force on January 8, 1987, shall be in effect.

(iii) The Government and MCC may, at MCC’s discretion, enter into one or more agreements setting forth the mechanism for implementing this Section 4.2(k), including one or more mechanisms to effect the exemption of Taxes required by Section 4.2(k)(i), which may include (i) exemptions from payment of such Taxes that have been granted in accordance with applicable law; (ii) refund or reimbursement of such Taxes by the Government to MCC, a Permitted Designee, or to the taxpayer, or (iii) payment by the Government to a Permitted Designee or MCC, for the benefit of the Activities, or of an agreed amount representing any collectible Taxes on the items described in Section 4.2(k)(i).

(iv) If a Tax has been levied and paid contrary to the requirements of this Section 4.2(k), then the Government shall refund to MCC (or to another party as designated by MCC) the amount of such Tax in U.S. Dollars within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the date on which the Government is notified in

writing, in accordance with procedures agreed by the Parties, of such Tax levy and payment; *provided, however*, the Government shall not apply any Grant funding or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by Grant funding in satisfaction of its obligations under this paragraph.

(l) Other Government Obligations. The Government shall cooperate with MCC and the MCC Service Providers in facilitating the implementation of all MCC Service Provider Contracts in accordance with this Agreement and shall comply with each of the obligations and responsibilities set forth in Annex III.

ARTICLE 5. REPORTS; RECORDS AND AUDITS

Section 5.1 Reports.

(a) Unless otherwise agreed by MCC, the Permitted Designee shall provide to MCC the periodic reports required by the “MCC Guidance on Quarterly MCA Disbursement Request and Reporting Package” provided by MCC or posted on the MCC Website (the “***MCC Reporting Guidelines***”), in each case timely delivered and in form and substance satisfactory to MCC.

(b) In addition to the reports required by Section 5.1(a), the Permitted Designee shall provide to MCC within 30 days of a written request by MCC, or as otherwise agreed by MCC and the Permitted Designee in writing, such other reports or documents as MCC may request from time to time as related to any component of the CDF Implementation Documents, the Interim Fiscal Accountability Plan, the Interim Procurement Operations Manual, or in connection with any Activity or Disbursement.

Section 5.2 Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that any Permitted Designee and Covered Providers maintain, accounting books, records, documents and other evidence relating to this Agreement adequate to show to MCC’s satisfaction the use of all Grant funding (collectively, the “***Records***”). Records must be maintained for at least five years after the end of the term of this Agreement or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements. The Government shall furnish or cause to be furnished to MCC upon MCC’s request all such Records.

Section 5.3 Accounting. The Government shall maintain, and shall use its best efforts to ensure that any Permitted Designee and Covered Providers maintain, Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government’s option and with MCC’s prior written approval, other accounting principles, such as those (a) prescribed by the International Accounting Standards Board or (b) then prevailing in Malawi.

Section 5.4 Access; Audits. Upon MCC’s request, the Government at all reasonable times shall permit, or cause to be permitted, authorized representatives of MCC, an authorized Inspector General of MCC (the “***Inspector General***”), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise

conducted in furtherance of this Agreement, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Activities, the opportunity to audit, review, evaluate or inspect facilities, assets, and activities funded in whole or in part by MCC. The Permitted Designee shall make provision for such audit, review, assessment, evaluation or inspection in each contract with a Provider. Any audit conducted in connection with this Agreement or any transaction contemplated hereby shall be prepared in accordance with the “Guidelines for Financial Audits Contracted by the Millennium Challenge Corporation’s Accountable Entities” (the “*MCC Audit Guidelines*”) provided by MCC or posted on the MCC Website.

ARTICLE 6.

TERM; TERMINATION AND SUSPENSION OF THE GRANT

Section 6.1 Term. Unless otherwise agreed in writing between the Parties, whether or not the entire amount of the Grant has been disbursed and fully expended, this Agreement shall terminate on the earlier of (a) the date on which all of the Activities have been fully performed and final payment has been made with respect to such performance in accordance with this Agreement, (b) the date on which either Party terminates this Agreement in accordance with Section 6.2, (c) the fifth anniversary of the date of this Agreement, or (d) the date of termination of the Compact.

Section 6.2 Termination and Suspension.

(a) Either Party may terminate this Agreement in its entirety by giving the other Party 30 days’ written notice; *provided that* the Government may not terminate this Agreement with respect to any activity for which a Disbursement has already been issued or approved by MCC or for which a period longer than 30 days may be required under the applicable Service Provider Contract, in which case this Agreement may be terminated by the Government upon the passage of such longer period as specified in such Service Provider Contract.

(b) MCC may, immediately, upon written notice to the Government, suspend or terminate this Agreement or the Grant, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Website) has occurred, which circumstances include but are not limited to the following:

(i) the Government fails to comply with its obligations under this Agreement or any other agreement or arrangement entered into by the Government in connection with this Agreement or the Activities;

(ii) an event or series of events has occurred that MCC determines makes it improbable that the Activities can be performed, that the Government shall be able to perform its obligations under this Agreement or that the Compact shall be entered into;

(iii) a use of the Grant or continued implementation of this Agreement would violate applicable law or United States Government policy, whether now or hereafter in effect;

COMPACT DEVELOPMENT FUNDING AGREEMENT

(iv) the Government or any other person or entity receiving Grant funding or using assets acquired in whole or in part with Grant funding is engaged in activities that are contrary to the national security interests of the United States of America;

(v) an act has been committed or an omission or an event has occurred that would render Malawi ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) the Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Malawi for assistance under the Millennium Challenge Act of 2003, as amended; and

(vii) a person or entity receiving Grant funding or using assets acquired in whole or in part with Grant funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements shall cease upon expiration, suspension, or termination of this Agreement; *provided that* Grant funding may be used, in compliance with this Agreement, to pay for (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of this Agreement before expiration, suspension, or termination of this Agreement, *provided that* the request for such expenditures is submitted within 90 days after such expiration, suspension or termination, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Activities within 120 days after the expiration, suspension or termination of this Agreement.

(d) Subject to Section 6.2(c), upon the expiration, suspension, or termination of this Agreement, (i) any amounts of the Grant not disbursed by MCC shall be automatically released from any obligation in connection with this Agreement without any action from the Government or MCC, and (ii) any amounts of the Grant disbursed by MCC to the Government but not expended before such expiration, suspension, or termination of this Agreement, plus accrued interest thereon shall be returned to MCC within 30 days after the Government receives MCC's request for such return, and the Government shall ensure that such amount shall be returned promptly to such account(s) designated by MCC.

(e) MCC may reinstate any suspended or terminated portion of the Grant under this Agreement if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which such portion of the Grant was suspended or terminated.

Section 6.3 Refunds.

(a) If any Grant funding, any interest or earnings thereon, or any asset acquired in whole or in part with Grant funding is used for any purpose in violation of the terms of this Agreement, then MCC may require the Government to repay to MCC in U.S. Dollars the value of the misused portion of the Grant, interest, earnings, or asset, plus interest within 30 days after the Government's receipt of MCC's request for repayment. The Government shall not use any

Grant funding, proceeds thereof, any other funds received from MCC, or any assets acquired with Grant funding or with any such other funds to make such payment.

(b) If the Government fails to pay any amount under this Agreement when due (including amounts under Section 4.2(k)(iii) and 6.3(a)), interest shall be paid on such unpaid amount. Interest shall accrue on such unpaid amount at a rate equal to the then current US Treasury Current Value of Funds Rate, calculated on a daily basis and a 360-day year from the due date of such payment until such amount is paid in full. Any such payment shall first be credited against interest due, and once the interest due amount is extinguished, then payments shall be credited against outstanding principal.

(c) Notwithstanding any other provision in this Agreement or any other agreement to the contrary, MCC's right under this Section 6.3 for a refund shall continue during the term of this Agreement and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

ARTICLE 7. GENERAL

Section 7.1 Governing Law; Consultations.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any conflict of law principles.

(b) Any dispute with regard to this Agreement shall be resolved between the Parties through consultations.

(c) In matters arising under or relating to this Agreement, neither Party shall be deemed to have submitted to the jurisdiction of the courts of or in the State of New York or any other court or judicial body.

Section 7.2 Representatives. For all purposes relevant to this Agreement, the Government shall be represented by the individual holding the position of, or acting as, the Secretary to the Treasury, and MCC shall be represented by the individual holding the position of, or acting as, the Vice President for Compact Operations (each of the foregoing, a "**Principal Representative**"). Each Party may, by written notice to the other Party, designate one or more additional representatives (each an "**Additional Representative**") for all purposes other than signing amendments to this Agreement. MCC hereby designates the Deputy Vice President for Compact Operations for Africa as an Additional Representative. The Government hereby designates the Director of Debt and Aid in the Ministry of Finance and Economic Development as an Additional Representative. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party.

Section 7.3 Communications. Any document or communication required or submitted by either Party to the other under this Agreement must be submitted in writing and, except as otherwise agreed with MCC, in English to such Party's Principal Representative, and, if

applicable, to such Party's Additional Representative(s), at such address as may be provided from time to time.

Section 7.4 Counterparts. Except as the Parties may otherwise agree in writing from time to time, this Agreement and any related notice, certificate, instrument, agreement, or other document may be executed using counterpart signatures and, each when so executed and delivered, shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature delivered by facsimile or electronic mail shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying related notice, certificate, instrument, agreement or other document on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 7.5 Relationship Between the Parties. Nothing in this Agreement shall be construed to constitute or create a partnership, agency relationship, joint venture or equity or similar interest between the Parties. Neither Party has the power or authority to act on behalf of the other Party, except as expressly authorized by the other Party in writing.

Section 7.6 MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Agreement and the Activities. MCC and the United States Government assume no liability for any claims or loss arising out of activities or omissions under this Agreement. The Government hereby waives any and all claims against MCC or the United States Government or any current or former officer or employee of MCC or the United States Government for all loss, damage, injury, or death arising out of activities or omissions under this Agreement, and agrees it shall not bring any claim or legal proceeding of any kind against any of the above entities or persons for any such loss, damage, injury, or death. The Government agrees that MCC and the United States Government or any current or former officer or employee of MCC or the United States Government shall be immune from the jurisdiction of all courts and tribunals of Malawi for any claim or loss arising out of activities or omissions under this Agreement.

Section 7.7 Publicity; Information and Marking. The Government shall give appropriate publicity to this Agreement as a program to which the United States of America, through MCC, has contributed, including by posting this Agreement, in English, as MCC may request, on an agreed website, identifying the Grant activity sites and marking assets acquired with the Grant, all in accordance with the MCC Standards for Global Marking, as applicable, of which MCC has informed the Government in writing or by posting on the MCC Website; *provided that* any press release or announcement regarding MCC or the fact that MCC is making the Grant or any other publicity materials referencing MCC shall be subject to MCC's prior written approval. MCC may post this Agreement on the MCC Website. MCC may freely use any information it receives in any report or document provided to it in connection with this Agreement.

Section 7.8 No Assurance of Future Assistance. Nothing contained in this Agreement shall be construed as creating an obligation on the part of MCC to provide any further funding or

assistance other than the Grant, including without limitation the provision of any funding for the Compact or any other project or program in Malawi.

Section 7.9 Amendment.

(a) This Agreement may be amended or modified by written agreement of the Principal Representatives.

(b) Notwithstanding Section 7.9(a), the Government hereby acknowledges and agrees that the Parties may, by written agreement of the Principal Representative or any Additional Representatives, (i) modify any Annex to this Agreement in order to modify any Activity described in Annex I, or (ii) modify the designation or allocation of funds among the Activities, as identified in the initial allocation of Grant funding as set forth in Annex II; *provided that* any such modification (A) is consistent in all material respects with the Objective of this Agreement, (B) does not cause the amount of the Grant to exceed the aggregate amount specified in Section 1.1, (C) does not cause the Government's responsibilities or contribution of resources to be less than specified in this Agreement, and (D) does not extend the term of this Agreement beyond the fifth anniversary of the date of this Agreement. Any such modification pursuant to this Section 7.9(b) shall not be deemed an amendment of this Agreement pursuant to Section 7.9(a).

Section 7.10 Severability. If one or more provisions of this Agreement is held to be unenforceable, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 7.11 Non-Waiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with this Agreement shall be construed as a waiver of such right or remedy.

Section 7.12 Survival. The Government's obligations under Sections 4.1, 4.2, 6.2, 6.3, 7.1, 7.2, 7.3 and 7.6, this Section 7.12 and Article 5 shall survive the expiration, suspension or termination of this Agreement.

Section 7.13 Language. This Agreement is prepared in English and in the event of any ambiguity or conflict between this English version and any other version translated into any language for the convenience of the Parties, this English version shall prevail.

Section 7.14 Interpretation. Any reference to the term "including" in this Agreement shall be deemed to mean "including, without limitation," except as expressly provided otherwise. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (c) all references herein to Articles, Sections, Exhibits and Annexes shall be construed to refer to Articles and Sections of, and Exhibits and Annexes to, this Agreement, and (d) any approval right granted to MCC herein shall only be satisfied upon the prior written approval of MCC. The section headings used

COMPACT DEVELOPMENT FUNDING AGREEMENT

in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 7.15 References to MCC Website. Each reference in this Agreement, or any other agreement entered into in connection with this Agreement, to a document or information available on, or notified by posting on, the MCC Website shall be deemed a reference to such document or information as updated or substituted on the MCC Website from time to time.

Section 7.16 References to Laws, Regulations, Policies and Guidelines. Each definition of or reference to in this Agreement, or any other agreement entered into in connection with this Agreement, a law, regulation, policy, guideline or similar document, unless otherwise expressly set forth herein, shall be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended, revised, replaced or extended and shall include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline or similar document.

Section 7.17 Grant Reference. In the event that the Permitted Designee undertakes the procurement or implementation of any Government-Contracted Activities, MCC shall send a Grant reference number to the Government and its Permitted Designee. The Grant reference number sent by MCC should appear on all subsequent notices, requests, reports or other correspondence in connection with the Grant funding.

Section 7.18 Entire Agreement. This Agreement shall constitute the entire agreement of the Parties with respect to the subject matter hereof and the transactions contemplated hereby, superseding and extinguishing all prior agreements, understandings, negotiations and representations and warranties, whether oral or written, relating to the subject matter hereof.

SIGNATURE PAGE FOLLOWS ON NEXT PAGE

COMPACT DEVELOPMENT FUNDING AGREEMENT

IN WITNESS WHEREOF, MCC and the Government, each acting through its duly authorized representative, have caused this Agreement to be executed in their names and delivered as of the date first written above.

MILLENNIUM CHALLENGE
CORPORATION

THE GOVERNMENT OF MALAWI,
ACTING THROUGH THE MINISTRY OF
FINANCE, ECONOMIC PLANNING, AND
DEVELOPMENT

By: _____/s_____
Name: Kyeh Kim
Title: Principal Deputy Vice President,
Department of Compact Operations

By: _____/s_____
Name: Cliff Chiunda
Title: Secretary to the Treasury

**SIGNATURE PAGE TO COMPACT DEVELOPMENT FUNDING GRANT AGREEMENT
BY AND BETWEEN THE MILLENNIUM CHALLENGE CORPORATION
AND THE GOVERNMENT OF MALAWI
ACTING THROUGH THE MINISTRY OF FINANCE, ECONOMIC PLANNING, AND DEVELOPMENT
FOR THE DEVELOPMENT AND FACILITATION OF IMPLEMENTATION OF A MILLENNIUM CHALLENGE COMPACT**

EXHIBIT A
INDEX OF DEFINITIONS

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Agreement, the definition elsewhere in this Agreement shall prevail over the definition in this Exhibit A.

***Account and Wire Transfer Information** has the meaning provided in Section 3.2(c)(iv).*

***Activity and Activities** has the meaning provided in Section 1.1 and include both Government-Contracted Activities and MCC-Contracted Activities.*

***Additional Representative** has the meaning provided in Section 7.2.*

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

***Bank** has the meaning provided in Section 3.2(c)(i).*

***Bank Agreement** has the meaning provided in Section 3.2(c)(i).*

***CDF** has the meaning provided in the Recitals.*

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

***CDF Implementation Documents** has the meaning provided in Section 2.1.*

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

***Compact** has the meaning provided in the Recitals.*

***Compact Development Funding** has the meaning provided in the Recitals.*

***Compensation** has the meaning provided in Annex IV.*

***Common Payment System** refers to a payment system using the U.S. Department of Treasury's International Treasury System, which allows Permitted Designees to make payments directly from the U.S. Treasury to vendors.*

***Concept Notes** has the meaning provided in the Recitals.*

***Cost Principles** has the meaning provided in Annex IV.*

***Covered Provider** has the meaning provided in the MCC Audit Guidelines.*

***Disbursement** has the meaning provided in Section 3.2(a).*

COMPACT DEVELOPMENT FUNDING AGREEMENT

Disbursement Period has the meaning provided in Section 3.2(a).

Disbursement Request has the meaning provided in Section 3.2(a).

Eligible Staff Costs has the meaning provided in Annex IV.

Fiscal Agent has the meaning provided in Section 2.3(a).

Fiscal Agent Agreement has the meaning provided in Section 2.3(a).

Government has the meaning provided in the Preamble.

Government-Contracted Activities has the meaning provided in Section 2.1.

Government Contribution has the meaning provided in Section 3.2(c)(ii).

Government Service Provider has the meaning provided in Section 2.1(c)(i).

Government Service Provider Contracts has the meaning provided in Section 2.1(c)(i).

Grant has the meaning provided in Section 1.1.

Inspector General has the meaning provided in Section 5.4.

Interim Fiscal Accountability Plan has the meaning provided in Section 2.3(b).

Interim Procurement Operations Manual has the meaning provided in Section 2.2(c).

Land Activity has the meaning provided in the Recitals.

Lien has the meaning provided in Section 4.2(d).

Malawi has the meaning provided in the Recitals.

MCA-Malawi has the meaning provided in the Recitals.

MCC has the meaning provided in the Preamble.

MCC Audit Guidelines has the meaning provided in Section 5.4.

MCC-Contracted Activities has the meaning provided in Section 2.1(b).

MCC Program Procurement Guidelines has the meaning provided in Section 2.2(a).

MCC Reporting Guidelines has the meaning provided in Section 5.1(a).

MCC Service Provider has the meaning provided in Section 2.1(c)(ii).

MCC Service Provider Contracts has the meaning provided in Section 2.1(c)(ii).

COMPACT DEVELOPMENT FUNDING AGREEMENT

MCC Service Provider Disbursement has the meaning provided in Section 3.1(b).

MCC Website has the meaning provided in Section 4.2(j)(ii).

Ministry has the meaning provided in the Preamble.

MMD has the meaning provided in the Recitals.

Objective has the meaning provided in the Recitals.

Party and Parties has the meaning provided in the Preamble.

Period has the meaning provided in Annex IV.

Permitted Account has the meaning provided in Section 3.2(c)(i).

Permitted Designee has the meaning provided in Section 4.2(b)(i).

Principal Representative has the meaning provided in Section 7.2.

Procurement Agent has the meaning provided in Section 2.2(b).

Procurement Agent Agreement has the meaning provided in Section 2.2(b).

Provider has the meaning provided in the MCC Audit Guidelines.

Records has the meaning provided in Section 5.2.

Reimbursement has the meaning provided in Annex IV.

Request has the meaning provided in Annex IV.

Service Provider has the meaning provided in Section 2.1(c)(iii).

Service Provider Contracts has the meaning provided in Section 2.1(c)(iii).

Taxes has the meaning provided in Section 4.2(k)(i).

TML means transport to market linkages.

TML Activity has the meaning provided in the Recitals.

U.S. Dollars or US\$ means the lawful currency of the United States of America from time to time.

ANNEX I

DESCRIPTION OF THE ASSISTANCE

The Grant will be utilized to assist Malawi in further developing a Compact focused on the areas set forth in the Concept Notes and will support project definition, project development (preliminary program design, feasibility studies), and administrative costs, including but not limited to the proposed activities below.

The Grant shall be utilized to support the following Activities:

1. TML Activity – this activity is expected to support improvements in road transport aimed at the provision of sustainable and less expensive road transport connectivity from farm to national and international markets; private sector-led strategies for the expansion of agriculture and agro-industry; and institutional and policy and/or regulatory reforms in the transport, agriculture, trade, or environmental sectors to improve planning, coordination, and effective public sector service delivery. To meet this objective, the Grant shall support:

- (a) Preliminary road design, feasibility studies, environmental and social impact assessment, resettlement action plan, and gender related studies for transport infrastructure and identification of the farm to market “corridors of excellence”;
- (b) TML project design and feasibility studies;
- (c) Design and feasibility study on women’s entrepreneurship interventions in the agriculture sector to support overall TML project design; and
- (d) Design of financial inclusion interventions to be integrated into overall TML project design and inclusive partnerships related activities as appropriate.

2. Land Activity – this activity is expected to support more efficient and transparent allocation of land for higher value commercial use; enhancing resource mobilization to fund stronger land administration; and institutional capacity building, where necessary. To meet this objective, the Grant shall support:

- (a) Comprehensive calculation of operating costs for institutions described in suite of 2016 laws;
- (b) Study of land authority implementation feasibility and approach;
- (c) Customary land mobilization preparatory work;
- (d) Estate lands mobilization preparatory work; and
- (e) Land based revenue preparations.

3. Cross Cutting Activities

- (a) Environmental reforms for data-based management of natural resources and decision-making; and
- (b) Data collection and analysis.

4. Administrative

- (a) Program Management – The Grant will support MMD’s effort to successfully manage the compact development process by purchasing a software application to track the flow of the joint MMD/MCC work, an online videoconferencing platform to support increase collaboration, and possible staff support to maximize the effectiveness of these enhanced project management efforts.
- (b) Program Administration – The Grant will support certain administrative costs related to the operations of MMD and the establishment and setting up of MCA-Malawi. The Grant will also support the reimbursement of compensation, for a limited period of time and amount, for the Chief Executive Officer and National Coordinator of MMD and up to 13 members of MMD with expertise in the areas of : (i) environmental and social protection, (ii) economic analysis, (iii) private sector investment, (iv) social and gender impact analysis, (v) stakeholder engagement and communications, (vi) monitoring and evaluation, (vii) agricultural sector, (viii) land sector, (ix) transportation sector, (x) finance, (xi) legal matters, (xii) procurement, and (xiii) information technology, in accordance with each respective contract between each MMD member and MMD. Despite the term set out in each individual contract between MMD and each MMD member, MCC will only reimburse compensation, to include any applicable payroll taxes, for each MMD member up until the time MCA-Malawi is formed, throughout the transition time until MCA-Malawi personnel have been hired in an open and competitive process, and subject to the availability of funds under this Agreement. All fees for MMD members will be paid by the Government, who will be responsible for withholding any applicable taxes. For the avoidance of doubt, Grant funding will not be available for any mandatory severance or termination indemnities or payments, or any similar end-of-term payments that may be owed to consultants or employees as a matter under the laws of Malawi.

After payment of compensation determined to be reasonable by the Government using funding provided by the Government, the Government may request reimbursement from funds under this Agreement for eligible members of MMD, including applicable taxes withheld from nationals or permanent residents of Malawi. MCC reserves the right to reject requests for reimbursement if it determines costs requested for reimbursement to be unreasonable or if insufficient funding exists under this Agreement. Reimbursement requests may be made according to the procedure specified in Annex IV.

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The allocation between the Government-Contracted Activities and the MCC-Contracted Activities shall be set forth in the CDF Procurement Plan, as such may be amended from time to time.

COMPACT DEVELOPMENT FUNDING AGREEMENT

ANNEX II

COMPACT DEVELOPMENT FUNDING GRANT FINANCIAL PLAN

Activity	Budget (US\$)
TML	\$3,050,000
Land	\$2,800,000
Cross-Cutting	\$900,000
Administrative	\$850,000
Total Estimated MCC Contribution	\$7,600,000

ANNEX III

**ROLES AND RESPONSIBILITIES OF THE GOVERNMENT FOR MCC-
CONTRACTED ACTIVITIES**

The Government shall participate in the following aspects of the implementation of the Activities and shall have the following obligations and responsibilities in respect of each MCC-Contracted Activity:

1. Review and comment on the terms of reference/scope of work for each MCC Service Provider procurement within an agreed timeframe.
2. Facilitate and cooperate in obtaining all permits, consents, and approvals necessary or advisable for the successful and timely performance of all aspects of each Activity as may be determined by MCC, and assist in the identification and contracting of appropriate office space by each MCC Service Provider at such MCC Service Provider's expense.
3. Verify the services performed by an MCC Service Provider and, to the extent available, provide such other documents, data or information as may be requested from time to time by MCC (including in connection with MCC's determination of the acceptability of an invoice) or any MCC Service Provider, and provide a prompt response to any such request for verification or information within five (5) business days.
4. If requested by MCC, ensure a qualified representative of the Government with the relevant technical expertise is available to assist any MCC Service Provider or any MCC technical expert in the performance of the services.
5. Coordinate, as requested, meetings with related agencies, in order to review relevant deliverables provided by any MCC Service Provider and the performance of such MCC Service Provider in connection with the fulfillment of the applicable Activities.
6. Inform each MCC Service Provider of, and as appropriate, facilitate access by each MCC Service Provider to, relevant donor, industry and technical meetings in such MCC Service Provider's field.
7. In connection with the mobilization of each MCC Service Provider:
 - (a) Perform an introduction and orientation for the MCC Service Provider at the commencement of each Activity start-up and perform weekly consultations with the MCC Service Provider in order to promote efficient information sharing and effective collaboration;
 - (b) Participate in the monitoring of the MCC Service Provider's performance and the progress of each Activity; prepare regular reviews of Activity progress, reports and deliverables of the MCC Service Provider; review and comment on work plans, reports and other major deliverables;

COMPACT DEVELOPMENT FUNDING AGREEMENT

(c) If requested by MCC, submit to MCC, within two weeks of receipt of such request, or such other time as MCC may specify, a memorandum reviewing and commenting on the MCC Service Provider's major deliverables;

(d) In a timely manner, respond to the MCC Service Provider's reasonable and appropriate requests for contact information and for organizing meetings with local private sector, civil society, and public agencies as needed to facilitate the tasks called for in the terms of reference/scope of work; and

(e) Participate in regular tripartite meetings (which may be conference calls) every 15 days or at such intervals as may be requested by either Party, with the MCC Service Provider and MCC, in order to review the progress and any issues associated with the fulfillment of the Activities (including review of major draft revisions and final work product).

8. Ensure that any applicable ministries, agencies, or other entities of the Government required for the successful implementation of the Grant enter into such further agreements or memoranda of understanding as may be requested by MCC to specify the responsibilities of such Government entities with respect to the Objective of this Grant.

ANNEX IV

REIMBURSEMENT PROCEDURES

Unless the Parties otherwise agree in writing, the following procedures shall apply when the Grant is used to reimburse the Government for Eligible Staff Costs.

The Parties agree that the Grant may be used to reimburse the Government for the payment of compensation in accordance with the terms of this Agreement. Such compensation is limited to salaries, holidays, and leave (“*Compensation*”).

Notwithstanding the foregoing, Eligible Staff Costs remain subject to MCC’s determination that such costs are reasonable, allowable and allocable, all as set forth in *MCC Cost Principles for Accountable Entity Operations*, as such may be posted on the MCC Website from time to time (the “*Cost Principles*”).

A. Process:

1. Reimbursement Requests. The Government may request a disbursement of the Grant for reimbursement of Eligible Staff Costs incurred and paid by the Government (each, a “*Reimbursement*”) by submitting a written request and certification to MCC substantially in the form of set forth in Exhibit 1 attached hereto (each, a “*Request*”), duly completed, at least ten (10) business days prior to the requested date of reimbursement (or such other period of time as may be agreed by MCC). Unless otherwise agreed by MCC, the Government may submit only one Request for each month (such month, or any other period of time as agreed by MCC, the “*Period*”). For purposes of this Section A.1, a “business day” means a day, other than a Saturday or Sunday or official holiday, when commercial banks in the United States are open

2. Approval of Request; Release of Grant Funding. Subject to MCC's approval of a Request, the proceeds of the Reimbursement approved thereunder may be transferred to the account designated by the Government to receive such funding.

3. Required Documentation for Each Request. Each Request must include the following

(a) For each member of MMD that is an employee of the Government, completed timesheets for each reimbursement period signed by such team member and approved by MMD’s National Coordinator.

(b) For each member of MMD that is a consultant to the Government, an invoice detailing the hours or days worked and the tasks completed or the milestones completed, as applicable, and consistent with the consultant’s contract.

(c) An invoice detailing the Eligible Staff Costs to be reimbursed that includes a detailed breakdown of all Eligible Staff Costs paid by the Government with reference to all supporting documentation, certified by the National Coordinator as true and correct.

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(d) Supporting documentation of the payments made by the Government for Eligible Staff Costs to be reimbursed, including a record from the Government’s financial system, corresponding bank transfer documentation, and, if applicable, documentation of exchange rates applied.

(e) The Government’s banking information for the reimbursement (Bank name, account number, routing information (IBAN/SWIFT, *etc.*), and currency for remittance, provided that MCC reserves the right to disburse funds in either United States dollars or local currency at its discretion.

(f) Grant Reference: MCC will provide the Grant reference number through an official communication at a later date.

B. Eligible Staff Costs

1. The Grant may be used to support Compensation for the following key staff of MMD, in each case consistent with the timeframes for eligibility set forth below (the “*Eligible Staff Costs*”).

MMD Staff	Timing for Eligibility for Reimbursement
CEO/National Coordinator	Upon signing of this Agreement until expenditure of available Grant funds, or the recruitment of the corresponding position(s) at MCA-Malawi.
Environmental and social protection specialist	
Senior economist	
Private sector investment specialist	
Social and gender impact specialist	
Stakeholder engagement/communications specialist	
Monitoring and evaluation specialist	
Agricultural sector specialist	
Land sector specialist	
Transportation sector specialist	
Financial Specialist	
Legal Specialist (Part time)	
Procurement Specialist (Part time)	
IT Specialist	

2. The Government will be responsible for withholding all applicable withholding taxes under the laws of Malawi for all members of MMD that are nationals or permanent residents of Malawi.

3. For the avoidance of doubt, Grant funding will not be available for any mandatory severance or termination indemnities or payments, or any similar end-of-term payments that may be owed to employees as a matter of Malawian law.

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4. Prior to the initial disbursement request for a particular MMD staff member's Compensation, the Government must have submitted to MCC: (i) such member's fully executed employment agreement or consultant contract, as applicable, including a clear indication of the team member's salary or fees, as applicable, and the start date of his/her service; and (ii) a curriculum vitae for such member. Each such member must be properly qualified to perform the tasks set forth in the applicable employment agreement or consultant contract, as applicable, and the salary or fees paid to such team member must be consistent with the Cost Principles. The determination regarding proper qualifications and compliance with the Cost Principles will be made in MCC's sole discretion.

5. MCC will pay the reimbursement request in United States Dollars (USD) or Malawian Kwacha at MCC's discretion. If payment is made in USD, the exchange rate, if applicable, will be determined from an official source that MCC specifies for the value date of each payment transaction. Regardless of the currency of disbursement, under no circumstances will the total United States Dollar value of Reimbursements under this Agreement, as recorded by MCC, exceed the Grant amount.

**Exhibit 1
Form of Request**

[Letterhead of MMD]

Reference is made to that certain Compact Development Funding Grant Agreement between the Millennium Challenge Corporation (“*MCC*”), and the Government of Malawi (the “*Government*”), acting through the Ministry of Finance, Economic Planning, and Development, signed on [insert date], (the “*Agreement*”). Each capitalized term used but not defined in this letter agreement has the meaning given to such term in the Agreement.

[I][We], the undersigned, as Government official(s), pursuant to the Agreement, hereby submit this Request and certif[ies][y] as follows:

(a) Below is a true and correct statement of the hours worked by the associated member of MMD, for which the Government of Malawi requests reimbursement:

Name	Title	Eligible Cost category (salary)	Date Paid	Gross Amount Paid (specify currency paid)	Ineligible Taxes included in Gross Amount*	Amount Requested for Reimbursement by MCC (specify currency)

*Applicable to non-Malawian payees

(b) Attached hereto is a true and correct copy of (i) a completed timesheet for each such MMD member that is an employee of the Government, and (ii) a completed invoice for each such MMD member that is a consultant to the Government;

(c) Attached hereto is evidence of payments made by the Government in connection with the Eligible Staff Costs included in this invoice and for which the Government is requesting Reimbursement.

(d) The MMD member’s timesheet or invoice, as applicable, reflects only that time dedicated to the compact development process;

(e) No material default or breach of any covenant, obligation or responsibility by the Government has occurred and is continuing under the Agreement;

(f) Eligible Staff Costs to be reimbursed under this Request will not violate any applicable law or regulation; and

(g) 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 Agreement.

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[Signature]
Printed/Typed Name:
Title:

Remit to:
Account Name:
Account Number:
Bank Name:
SWIFT Code:
For the Credit of:

COMPACT DEVELOPMENT FUNDING AGREEMENT

Attachment: Form of Timesheet

MONTHLY EMPLOYEE TIMESHEET																																																	
Staff member: _____								Month & Year: _____								Duty Station: _____																																	
Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total hours	Total days																
a) Present at work																																	0	0															
b) Official Holidays 1/																																																	
c) Annual Leave 2/																																																	
d) Sick Leave (Certified) 3/																																																	
e) Other Leave with Pay 4/																																																	
f) Special Leave Without Pay 4/																																																	
Special Notes: _____																																																	
I certify to the accuracy of my time/attendance and accruals.																Accrual Summary																																	
Employee _____ <i>Signature of employee</i>																<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Vacation</th> <th>Sick</th> </tr> </thead> <tbody> <tr> <td>Beginning Balance</td> <td></td> <td></td> </tr> <tr> <td>Used this period</td> <td></td> <td></td> </tr> <tr> <td>Subtotal</td> <td></td> <td></td> </tr> <tr> <td>Earned this period</td> <td></td> <td></td> </tr> <tr> <td>New Balance</td> <td></td> <td></td> </tr> </tbody> </table>							Vacation	Sick	Beginning Balance			Used this period			Subtotal			Earned this period			New Balance												
	Vacation	Sick																																															
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Earned this period																																																	
New Balance																																																	
Supervisor _____ <i>Signature of supervisor</i>																Date _____																																	
Required supporting documentation: 1/ As applicable to duty station 2/ Leave Authorization - to be attached 3/ Medical Certificate - to be attached (original) 4/ Supporting Authorization Form - to be attached																Note: The leave monitor should ensure that: (i) This form including all required information is duly completed and signed (ii) Top of form is clearly printed.																																	