

**PROGRAM IMPLEMENTATION AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND**  
**THE REPUBLIC OF MALAWI**

**PROGRAM IMPLEMENTATION AGREEMENT**  
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# PROGRAM IMPLEMENTATION AGREEMENT

## PREAMBLE

This PROGRAM IMPLEMENTATION AGREEMENT (this “*Agreement*”) is between the United States of America (the “*United States*”) and the Republic of Malawi (the “*Government*”) (individually, a “*Party*” and collectively, the “*Parties*”).

Recognizing that the Millennium Challenge Corporation (“*MCC*”) shall serve as an implementing agency for the United States under this Agreement;

Recalling that the Millennium Challenge Compact between the United States and the Government signed on September 28, 2022 (the “*Compact*”), sets forth the general terms on which MCC shall provide assistance of up to \$350,000,000 to the Government for a program to reduce poverty through economic growth in Malawi;

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

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

The Parties hereby agree as follows:

## ARTICLE 1.

### GENERAL RESPONSIBILITIES OF THE GOVERNMENT

#### Section 1.1 Definitions.

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

#### Section 1.2 Role of the Government.

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

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

(i) Impoundment; Liens or Encumbrances. The Government shall ensure that (A) no Program Assets are subject to any impoundment, rescission, sequestration, liquidation or to any provision of law now or hereafter in effect in Malawi that would have the effect of allowing any such impoundment, rescission, sequestration, or liquidation and (B) no Program Asset is subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each, a “*Lien*”), except with MCC’s prior written approval. In the event any Lien not so approved is imposed, the Government shall promptly seek the release of such Lien and, if such Lien is required by a final and non-appealable court order, shall pay any amounts due in order to obtain such release; *provided, however*, that the Government shall not use MCC Funding, the Government Contribution, or any Program Assets to satisfy any such obligation.

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

(iii) Environmental and Social Performance. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that all Projects and Activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding under the Compact comply with the Environmental Guidelines, including the environmental and social performance standards set forth in the IFC Performance Standards that have been incorporated by reference into the Environmental Guidelines. The Government also shall ensure that the Projects and Activities comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with the Compact. Where there is a difference between national environmental laws and regulations and the standards required by the Compact, the Government shall ensure that the stricter standard is followed. Unless MCC agrees otherwise in writing, the Government shall fund all costs of environmental and social mitigation measures necessary for the Program (including, without limitation, costs of resettlement) that are not specifically provided for in the Compact, or that exceed the amount of MCC Funding and/or Government Contribution specifically allocated for such costs in the Detailed Financial Plan for any Project or Activity.

(iv) Gender and Social Inclusion. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that all Projects and Activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the *Gender Policy, Counter-Trafficking in Persons Policy, and the Operational Requirements and Milestones for Social Inclusion and Gender Integration*.

Section 1.3 Role of MCA-Malawi II.

(a) Designation of MCA-Malawi II.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated MCA-Malawi II, a registered trust in accordance with the Trustees Incorporation Act, as the primary agent of the Government to implement the Program and to exercise and perform the Government's right and responsibility to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and Activities, allocating resources and managing procurements (the "***Designated Rights and Responsibilities***"). The Parties note that the Government remains ultimately responsible for the performance of the Government's obligations under or in relation to the Compact and this Agreement.

(ii) The Government shall ensure that MCA-Malawi II is and remains throughout the Compact Term (and during the Closure Period as provided in the Closure Plan), duly organized, sufficiently staffed, and empowered to exercise the Designated Rights and Responsibilities.

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

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

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

(ii) Government Responsibilities. MCA-Malawi II (A) shall carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Malawi II obligations in the Compact, this Agreement, the CDF Agreement, or any other Supplemental Agreement) with due care, efficiency and diligence in conformity with sound technical, financial and management practices, and in conformity with the Compact, this Agreement, the

CDF Agreement, any other Supplemental Agreement and the Program Guidelines, (B) except as provided in Section 2.6 or with respect to an Implementing Entity, shall not assign, delegate or otherwise transfer any of the Designated Rights and Responsibilities without the prior written consent of MCC, and (C) shall not undertake any activities, duties or responsibilities other than the Designated Rights and Responsibilities without the prior written consent of MCC.

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

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

(v) Governance of MCA-Malawi II. MCA-Malawi II shall adopt internal rules and regulations, a constitution, or bylaws (“*Bylaws*”) and a human resource manual (“*HR Manual*”), each in form and substance satisfactory to MCC, that shall provide the framework for MCA-Malawi II’s operations and administration and the general terms and conditions for employment of its staff. MCA-Malawi II shall conduct its operations and management in accordance with the Governing Documents (including the Bylaws) and the Governance Guidelines.

(vi) Funded Agreements; General Provisions Annex. MCA-Malawi II shall provide the Fiscal Agent (and MCC if it so requests) a copy of each agreement that is funded (directly or indirectly) with MCC Funding or the Government Contribution (each a, “*Funded Agreement*”), regardless of whether MCC has approval rights with respect to such agreement. Unless otherwise instructed by MCC, MCA-Malawi II shall include in each Funded Agreement (A) a covenant that the counterparty to such agreement (each a, “*Counterparty*”) shall comply with (i) the General Provisions Annex and (ii) any instruction received by such Counterparty from MCC regarding the performance by such Counterparty of the terms of the General Provisions Annex notwithstanding any other instruction given by MCA-Malawi II; and (B) a right for MCA-Malawi II to terminate such Funded Agreement if such Counterparty fails to comply with the General Provisions Annex or any such instruction of MCC.

(vii) Insurance; Performance Guaranties. MCA-Malawi II shall, to MCC’s satisfaction, cause all Program Assets 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 operations of the Program, including by requiring Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. With MCC’s prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Malawi II (or, as appropriate and with MCC’s prior approval, another entity)

shall be named as the payee on any such insurance and the beneficiary of any such guaranty or bonds. If not already named as the insured party, MCA-Malawi II (and MCC, if it so requests) shall be named as additional insureds on any such insurance. The Government shall promptly notify MCC of the payment of any proceeds from claims paid under such insurance or guaranty and shall ensure that such proceeds shall be used to replace or repair any lost or damaged Program Assets; **provided, however**, that, at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Malawi II or as otherwise directed by MCC.

(viii) MCA-Malawi II Indemnity. If MCA-Malawi II is held liable under any indemnification or other similar provision of any agreement, then the Government shall pay such indemnity in full on behalf of MCA-Malawi II and shall not use MCC Funding, the Government Contribution, or any Program Assets to satisfy such obligation. In addition, the Government shall indemnify and hold harmless each member of MCA-Malawi II's Board (including each observer), each member of any Stakeholders' Committee and each of MCA-Malawi II's Key Staff 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-Malawi II, **provided, however**, that the Government shall 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 shall not use MCC Funding, the Government Contribution, or any Program Assets to satisfy its obligations under this Section 1.3(b)(viii).

(ix) Additional Government Requirements. The Government shall:

(A) without limiting the generality of Section 2.6 of the Compact, fund any severance costs or other financial liabilities incurred by MCA-Malawi II arising from the termination or expiration of any MCA-Malawi II employment agreements, pursuant to the terms of such employment agreements;

(B) ensure that foreign personnel (including individual consultants or personnel of firms) providing goods, works, or services under the Compact obtain work permits or such other documents as shall be necessary to enable the foreign personnel to perform services and to remain in Malawi for the duration of the Compact; and

(C) in addition to the Government Contribution and any other contributions required under the Compact, provide such resources as are necessary to support the safety and security of the Program, Program Assets, MCC and MCA-Malawi II staff, consultants, contractors, or other personnel, and any other persons or entities engaged in Program-related activities.

## ARTICLE 2.

### IMPLEMENTATION FRAMEWORK

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

(a) Work Plan. MCA-Malawi II shall develop and implement a work plan, in form and substance satisfactory to MCC, for the overall administration of the Program and such other work plans relating to the Projects and/or Activities as MCC may request from time to time (collectively, the “**Work Plans**”).

(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 and the overall allocation of the Government Contribution to administer, monitor and evaluate the Program and to implement each Project (the “**Multi-Year Financial Plan**”). Except as MCC agrees otherwise in writing, MCA-Malawi II shall develop and implement for each quarter for the upcoming year and on an annual basis for each year of the remaining years of the Compact and the Closure Period, a detailed financial plan in accordance with the Reporting Guidelines, setting forth funding requirements for the Program (including administrative costs) and for each Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis (each a “**Detailed Financial Plan**”).

(c) Audit Plan. MCA-Malawi II shall develop and implement the Audit Plan for the audit of the expenditures of the entities that are subject to audit pursuant to the Audit Guidelines.

The Audit Plan shall be in form and substance satisfactory to MCC and shall be developed no later than 60 days before the end of the first period to be audited.

(d) Procurement Plan. MCA-Malawi II shall 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 shall be prepared and updated in accordance with the Program Procurement Guidelines. In addition, no later than six months after the Compact is signed, MCA-Malawi II shall develop and implement a bid challenge system (“**BCS**”) that provides suppliers, contractors and consultants that are interested parties the ability to seek review of procurement actions and decisions. The organization, rules, and procedures of such BCS shall be subject to MCC approval. Upon MCC’s approval of the BCS, MCA-Malawi II shall publish the BCS on the MCA-Malawi II website.

(e) Fiscal Accountability Plan. MCA-Malawi II shall develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms, and procedures (the “**Fiscal Accountability Plan**”) that MCA-Malawi II shall use to ensure appropriate fiscal accountability for the use of MCC Funding or Government Contribution. The Fiscal Accountability Plan shall also include, among other things, requirements with respect to (i) budgeting, (ii) accounting, (iii) cash management, (iv) financial transactions (receipts and payments), (v) opening and managing Permitted Accounts, (vi) personnel and payroll management, (vii) travel and vehicle use, (viii) asset and inventory control, (ix) audits and (x) reporting. The Fiscal Accountability Plan shall be revised periodically, subject to review and approval by MCC.

(f) M&E Plan. By the time specified in Annex II to this Agreement, MCA-Malawi II shall develop and implement an M&E Plan to serve as the primary governing document for monitoring and evaluation activities for the Program over the Compact Term. The M&E Plan shall be developed, implemented, and updated in accordance with the M&E Policy.

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

substance satisfactory to MCC; and (iii) implement to MCC's satisfaction appropriate environmental and social mitigation measures identified in such assessments or plans or developed to address environmental and social risks and impacts identified during Compact implementation.

(h) Social and Gender Integration Plan. To ensure social inclusion and gender integration across the Projects and Activities, address human trafficking, and ensure compliance with the *Gender Policy* and the *Operational Requirements and Milestones for Social Inclusion and Gender Integration*, MCA-Malawi II shall develop a comprehensive social and gender integration plan (the "***Social and Gender Integration Plan***") that, at a minimum, (i) identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable and/or underrepresented groups; (ii) sets forth strategies for consolidating the findings and recommendations of Project-specific social and gender analyses into final Project designs; and specifies actions to be taken during the Compact Term to meet the social inclusion and gender equality objectives for the Projects; and (iii) ensures, through monitoring and coordination during Compact implementation, that final Activity designs, construction, and consultant tender documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses and recommendations. MCA-Malawi II shall, on an annual basis, review and update the Social and Gender Integration Plan as needed to reflect lessons learned and Project-specific analysis.

(i) Anti-Fraud and Corruption Action Plan. MCA-Malawi II shall develop and adopt an anti-fraud and corruption action plan to articulate how MCA-Malawi II shall supplement MCC-mandated controls to prevent fraud and corruption specific to its operating environment (the "***AFC Action Plan***"). The AFC Action Plan shall be created after completion of, and based on the findings of, an anti-fraud and corruption risk assessment carried out in compliance with the *Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*. Such anti-fraud and corruption risk assessment shall occur at a time agreed upon between MCA-Malawi II and MCC. MCC shall approve the AFC Action Plan, monitor its implementation, and refine MCC's oversight strategy in relation to the AFC Action Plan, when necessary.

Section 2.2 Program Procurement Guidelines and Program Grant Guidelines. In accordance with Section 3.6 of the Compact:

(a) MCA-Malawi II shall comply with the 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 shall ensure that any bid challenges are conducted in accordance with the Program Procurement Guidelines and the BCS; and

(b) MCA-Malawi II shall comply with the Program Grant Guidelines in the solicitation, award, and administration of grants awarded to any non-Government entity in furtherance of the Program.

### Section 2.3 Notice to Providers; Incorporation.

MCA-Malawi II shall notify all Providers (and all other entities or individuals receiving MCC Funding in connection with the Program) of the requirements of Sections 2.7 and 3.7, and paragraphs (b), (c), and (d) of Section 3.8 of the Compact and shall include, or ensure the inclusion of, the requirements of such provisions in all agreements with a Provider.

### Section 2.4 Reports; Notices.

(a) Unless MCC agrees otherwise in writing, MCA-Malawi II shall periodically provide to MCC, in form and substance satisfactory to MCC, the reports and information required by the Reporting Guidelines (each, a “**Periodic Report**”). MCA-Malawi II shall provide the Periodic Reports to MCC on the schedule and in the manner specified in the Reporting Guidelines.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, or fails to timely distribute an allocation budgeted for the activities contemplated under the Compact or the Program, the Government, acting through MCA-Malawi II, must notify MCC in writing within 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.

(c) In addition to the Periodic Reports, MCA-Malawi II shall provide to MCC within 30 days of a written request by MCC, or as otherwise agreed by MCC and MCA-Malawi II in writing, such other reports, documents, or information as MCC may request from time to time related to the Program.

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

(e) MCA-Malawi II shall periodically provide to MCC, in form and substance satisfactory to MCC, the reports and information regarding the Government Contribution towards the objectives of the Program described in Section 2.6(a) of the Compact as required by the *Guidelines for Country Contributions* (each, a “**Country Contribution Report**”). MCA-Malawi II shall provide the Country Contribution Reports to MCC on the schedule and in the manner specified in the *Guidelines for Country Contributions*.

### Section 2.5 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) and any modification of any of the foregoing;

(c) agreements between the Government and MCA-Malawi II, and agreements in which any of the following are appointed, hired, or otherwise engaged (each, a “**Material Agreement**”):

(i) Auditor or Reviewer;

(ii) Fiscal Agent;

(iii) Procurement Agent;

(iv) Bank;

(v) Implementing Entity;

(vi) Outside Project Manager; and

(vii) a member of the Board (including any observer) or any Key Staff of MCA-Malawi II (including agreements regarding compensation for any such person);

(d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;

(e) any agreement or transaction of MCA-Malawi II that is not arm’s-length;

(f) any pledge of any MCC Funding, the Government Contribution, or any Program Assets, or any incurrence of material indebtedness, or any guarantee, directly or indirectly of any indebtedness;

(g) any decree, legislation, regulation, charter, contractual arrangement, or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization, or governance of, MCA-Malawi II (including the Bylaws, HR Manual, and any staffing plan) (each, a “**Governing Document**”);

(h) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Malawi II;

(i) any change in character or location of any Permitted Account;

(j) (A) any change of any member of the Board (including any observer), of the member serving as the chairperson or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any observer) and (B) any change of any Key Staff of MCA-Malawi II or in the composition or size of its Operations Unit, and the filling

of any vacant position of any Key Staff of MCA-Malawi II (including any process related to the recruitment and selection of any such Key Staff);

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

(l) any formation or acquisition of a subsidiary or other related entity of MCA-Malawi II;

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

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

#### Section 2.6 Role of Certain Entities in Implementation.

(a) Outside Project Manager. MCA-Malawi II may engage qualified persons or entities to serve as outside project managers (each, an “**Outside Project Manager**”) in the event that it is advisable to do so for the proper and efficient day-to-day management of a Project or Activity; **provided, however,** that, if so required by the Program Procurement Guidelines, the appointment or engagement of any Outside Project Manager shall be made using a competitive selection process and, if required by the Program Procurement Guidelines, shall be subject to approval by the Board and by MCC prior to such appointment or engagement. Upon such approval, MCA-Malawi II may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects or Activities; and **provided, further,** that MCA-Malawi II shall 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 shall be subject to the oversight of the Fiscal Agent and Procurement Agent. The Board may determine that it is advisable to engage one or more Outside Project Managers and instruct MCA-Malawi II and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(b) Fiscal Agent. MCA-Malawi II shall engage a Fiscal Agent, who shall 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 Disbursements be made directly to a provider as payment for goods, works or services in accordance with the Common Payment System or any alternate payment system approved by MCC, as the case may be, and in each case following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for

Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding or Government Contribution financial transactions, and (v) producing reports on Disbursements in accordance with established procedures set forth in the Fiscal Agent Agreement or the Bank Agreement. MCA-Malawi II shall 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 shall be a third party, independent of the Government.

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

(d) Procurement Agent. MCA-Malawi II shall engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Malawi II shall 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 shall be a third party, independent of the Government.

## Section 2.7 Publicity and Transparency.

(a) Subject to Section 2.8, MCA-Malawi II shall 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 *Standards for Global Marking*. Upon the termination or expiration of the Compact, the Government, upon MCC’s request, shall cause the removal of any such references and markings on the website operated by MCA-Malawi II (the “*MCA-Malawi II Website*”) or in any Government or MCA-Malawi II publicity materials.

(b) MCA-Malawi II shall make information concerning implementation of the Compact publicly available, by posting the following documents in English, on the MCA-Malawi II Website, all to the extent contemplated by and in accordance with the Governance

Guidelines: (i) the Compact, this Agreement, and the CDF Agreement (including amendments thereto); (ii) minutes of the meetings of the Board and minutes of the meetings of any Stakeholders' Committees; (iii) the M&E Plan, along with periodic reports and final evaluations on Program performance; (iv) all environmental and social impact assessments and supporting documents for the Projects; (v) all audit reports by an Auditor and any periodic reports or evaluations by a Reviewer; (vi) a summary of all Disbursement Requests; (vii) all procurement policies and procedures (including the BCS and all documents required to be made public by the Program Procurement Guidelines or Program Grant Guidelines); (viii) the AFC Action Plan and related implementation reports; (ix) the Governing Documents and any amendments thereto; and (x) 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 shall be subject to MCC's prior approval and must be consistent with any instructions provided by MCC in relevant Implementation Letters.

(c) Notwithstanding Section 2.7(b), confidential information, including information relating to procurements prior to the award of a contract and confidential information relating to MCA-Malawi II's agreements with employees, contractors and consultants shall be excluded from the information and documents made publicly available; **provided, however**, that MCC and MCA-Malawi II shall mutually determine whether any information to be excluded is confidential.

## Section 2.8 Branding and Enforcement.

(a) Subject to Section 4.2(g), MCC hereby grants MCA-Malawi II a revocable, royalty-free, fully paid, and non-exclusive right and license to use MCC's logo and the names "Millennium Challenge Corporation," "Millennium Challenge Account" and "MCC," in each case, solely in accordance with the Standards for Global Marking. Any such use of the logo and names shall be solely for the benefit of MCC, and not inure to the benefit of MCA-Malawi II. The use of MCC's logo and names shall not create any agency or legal representation, and MCA-Malawi II has no authority to bind MCC in any way.

(b) MCA-Malawi II shall create its own logo and use such logo as well as the names "Millennium Challenge Account-Malawi II" and "MCA-Malawi II," in each case, solely in accordance with the Standards for Global Marking. Subject to Section 4.2(g), MCA-Malawi II hereby grants MCC an irrevocable, royalty-free, fully paid, and non-exclusive right and license to use the names "Millennium Challenge Account-Malawi II" and "MCA-Malawi II," and MCA-Malawi II's logo.

(c) MCA-Malawi II shall take all reasonable steps to ensure that the names "Millennium Challenge Account-Malawi II" and "MCA-Malawi II," as well as its own logo, shall enjoy maximum protection under the laws now or hereafter in effect in Malawi throughout the term of this Agreement. This includes the registration of the names and the logo as a trademark, if appropriate, the monitoring of unauthorized use by third parties, and, in case of detection of unauthorized use, the enforcement of such rights. MCA-Malawi II shall inform MCC as soon as practicable if it becomes aware of any infringement, threat of infringement, or

any other use by a third party that has not been authorized by MCC of any of (i) the names “Millennium Challenge Account-Malawi II,” “MCA-Malawi II” and/or MCA-Malawi II’s logo; or (ii) the names “Millennium Challenge Corporation,” “MCC” and/or MCC’s logo. MCA-Malawi II shall provide MCC assistance to enforce MCC’s rights to the names “Millennium Challenge Corporation” and “MCC,” as well as to MCC’s logo.

#### Section 2.9 Government Contribution.

(a) In accordance with Section 2.6(a) of the Compact, the Government shall make a Government Contribution toward meeting the objectives of the Compact. Such contribution shall be in addition to the Government’s spending allocated toward such objectives in its budget for the year immediately preceding the year that the Compact is signed and shall comply with the provisions of the *Guidelines for Country Contributions*. Annex III to this Agreement sets forth the budget allocation of the Government Contribution to the Projects and program administration over the Compact Term.

(b) Unless otherwise agreed by the Parties in writing, contributions denominated in the local currency of Malawi or other foreign currency shall be recorded and converted to United States Dollars at the exchange rate on the date the contribution payment is made or using an average rate over the period of contribution, in each case, using the exchange rates published by the central bank of Malawi or such other source acceptable to MCC.

#### Section 2.10 Additional Government Undertakings.

(a) Services associated with completing property valuations, and any other mapping or information gathering funded under the Compact are expected to be procured following the Program Procurement Guidelines based on open competitive bidding and with pricing based on actual cost of the work subject to a cost reasonableness assessment performed by MCA-Malawi II.

(b) Any certification by a registered valuer that is determined to be required for any property valuation work funded under the Compact is expected to be subject to the Program Procurement Guidelines and the MCC Cost Principles for Government Affiliates, and exclusively based on the cost of the work and an analysis of cost reasonableness, and not on any prevailing fees or historical practice.

(c) The Government shall exercise best efforts to ensure that Institutional Review Board fees associated with monitoring and evaluation efforts associated with the Compact are waived.

(d) The Government shall commit to increase the annual road maintenance budget to 40 billion Malawi Kwacha over the Compact Term.

(e) The Government shall waive all Government fees associated with the surveying of land and registration of land titles associated with resettlement under the AGC Project.

(f) To achieve the objective of devolved road maintenance in the AGC districts, the following actions and commitments are expected from the Government and within the relevant District Councils, which can be further supported through Project activities:

(i) establishing a technical backstopping facility for the relevant AGC districts within the appropriate Government entity;

(ii) preparing a standard methodology for use by the District Councils for the preparation of an annual maintenance work plan and training the relevant District Councils in its use;

(iii) preparing a district-level road and bridge inventory, condition survey, and conducting traffic counts and asset valuation;

(iv) developing a district road asset management strategy, to be formally approved by the relevant District Council (including environmental and social safeguards);

(v) procuring contractors and/or in-house equipment and staff using personnel resident within the district where possible;

(vi) providing facilities at the district level that can ensure sufficient care and security for MCC funded road maintenance equipment;

(vii) implementing maintenance works by utilizing funding from the Roads Fund Administration; and

(viii) repeating the condition surveys and traffic counts and preparing a maintenance plan for the second year of operations.

(g) The Government shall exercise its best endeavors to gazette the suspension of the usage of the Export Mandate regulations under the Control of Goods Act for a two-year period with the goal of aligning the mandates with existing Government agricultural promotion practices, determining the viability of commodity exchanges (if deemed necessary) to carry out the mandate(s), and strengthening enforcement capabilities at border posts.

(h) The Government shall exercise its best endeavors to enact the Fertilizer Bill.

### **ARTICLE 3.**

#### **DISBURSEMENT OF MCC FUNDING**

##### **Section 3.1 Disbursement Process.**

(a) Disbursement Requests. MCA-Malawi II may request Disbursements to be made under the Compact by submitting a request in accordance with the Reporting Guidelines (each a “*Disbursement Request*”), duly completed, to MCC not later than 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 Facilitation Funding for any Disbursement Period shall be made by separate Disbursement Requests using the applicable form. Except as otherwise permitted by the Reporting Guidelines, MCA-Malawi II may submit only one Disbursement Request for Program Funding, and one Disbursement Request for Compact Facilitation 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 shall determine the appropriate amount of the Disbursement to be authorized 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 Disbursement Request during the corresponding Disbursement Period and (C) the satisfaction, waiver, or deferral of applicable conditions to such Disbursement. MCC may, in its discretion, disapprove any Disbursement completely or reduce the amount of any Disbursement below that proposed in a Disbursement Request based on its determination of any of the factors set forth in this Section 3.1(b)(i).

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

(c) Permitted Accounts.

(i) Any MCC Funding to be disbursed to a bank account must be deposited in one or more Permitted Accounts, which shall be established by MCA-Malawi II and must be held at a financial institution acceptable to MCC and interest-bearing to the extent practicable. MCA-Malawi II may designate one of the Permitted Accounts to hold funds denominated in the local currency of Malawi (the “**Local Account**”) and shall designate one of the Permitted Accounts solely for the deposit of the Government Contribution (“**Government Account**”). MCA-Malawi II shall notify MCC promptly if any account information for a Permitted Account changes during the Compact Term and provide MCC with the updated information.

(ii) Unless otherwise authorized by MCC in writing, no funds shall be commingled in any Permitted Account set up to receive MCC Funding other than MCC Funding and accrued interest and earnings thereon. Likewise, no funds other than the Government

Contribution and accrued interest and earnings thereon shall be commingled in the Government Account. 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, MCA-Malawi II shall provide copies of such statements to MCC upon its request. Before any MCC Funding or Government Contribution is deposited into a Permitted Account, MCA-Malawi II shall enter into an agreement, in form and substance satisfactory to MCC, with the financial institution approved by MCC to hold such Permitted Account (the “**Bank**”) that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to such Permitted Account (the “**Bank Agreement**”). The Fiscal Agent, and in certain specified cases in the Bank Agreement, designated representatives of MCC, shall be the sole signatories on each Permitted Account.

(iii) MCC Funding or Government Contribution proceeds held in the Permitted Accounts may accrue interest or other earnings in accordance with the applicable Bank Agreement. On a quarterly basis and upon the termination or expiration of the Compact or the applicable Bank Agreement, MCA-Malawi II shall ensure the transfer of all accrued interest on MCC Funding to MCC. Accrued interest on the Government Contribution held in a Permitted Account shall be retained in such account until the funds may be transferred to the Government according to instructions agreed upon between the Bank and the Government.

(iv) Unless MCC agrees otherwise in writing, if MCC Funding is held in any Permitted Account other than the Local Account, MCA-Malawi II shall ensure that such MCC Funding shall 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 United States Dollars must be converted into the currency of Malawi for any purpose, MCA-Malawi II shall 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 Facilitation Funding. The applicable conditions set forth in Annex IV to the Compact must be met to MCC’s satisfaction before the initial and each subsequent Disbursement of Compact Facilitation Funding.

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 be met to MCC’s satisfaction before the initial Disbursement of Program Funding:

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

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

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

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

(e) Governing Documents. MCA-Malawi II has been legally established and the Government has provided MCC with copies of all decrees, legislations, or other documents relating to the establishment of MCA-Malawi II and its operations (including the Bylaws and HR Manual). MCA-Malawi II has developed and adopted the HR Manual, and the manual has been approved by MCC.

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

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

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

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

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

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

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

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

(i) all applicable conditions precedent in Annex II 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-Malawi II, or any Government entity has occurred and is continuing under the Compact, this Agreement, or any other Supplemental Agreement;

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

(iv) the Implementation Plan Documents are current and updated and are in form and substance satisfactory to MCC, and there has been both progress on, and compliance

with, the components of the Implementation Plan for any relevant Projects or Activities related to such Disbursement (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period), in each case, satisfactory to MCC;

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

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

(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 Key Staff remains engaged, or if a position is vacant, MCA-Malawi II is actively engaged, to MCC's satisfaction, in recruiting a replacement;

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

(xiii) The Government has complied in all material respects with its obligations set forth in Section 2.9 with respect to the making of its contributions in accordance with the projected timeline set forth in Annex III.

Section 3.5 Authorized Expenditures. Except as MCC agrees otherwise in writing, a Disbursement, or financial commitment involving MCC Funding or the Government Contribution 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, OR EXPIRATION

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

Section 4.2 Consequences of Compact Termination, Suspension, or Expiration.

(a) Upon suspension, in whole or in part, of the Compact or any MCC Funding, all applicable Disbursements shall 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 termination, in whole or in part, of the Compact or any MCC Funding, all applicable Disbursements shall 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 the 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 shall cease; ***provided, however,*** MCC Funding may be used, in compliance with the Compact, this Agreement, and the Program Guidelines, 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 during the Closure Period.

(d) Subject to Sections 4.2(b) and (c), upon the expiration or termination of the Compact or MCC Funding, the Government shall return to MCC any amounts of MCC Funding on deposit in any Permitted Account but not expended before the expiration or termination, plus accrued interest thereon within 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 shall be subject to return.

(e) Upon the full or partial termination of the Compact or any MCC Funding, MCC may, at its expense, direct that title to any Program Assets be transferred to MCC if such Program Assets are in a deliverable state, and the Government shall 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, shall 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, MCA-Malawi II shall prepare a plan for administrative closure and sustainability of the Program in accordance with the *Program Closure Guidelines* (the "**Closure Plan**"). During the Closure Period, MCA-Malawi II shall take all steps necessary to close the Program in an orderly manner in accordance with the Closure Plan and the *Program Closure Guidelines*.

(g) No later than 120 days after the expiration or termination of the Compact, unless the *Standards for Global Marking* permit otherwise, (i) the licenses granted to MCA-Malawi II in Section 2.8(a) shall terminate with immediate effect; (ii) the Government shall ensure that MCA-Malawi II ceases to be named "Millennium Challenge Account-Malawi II" and/or "MCA-Malawi II;" and (iii) the Government shall take reasonable steps to ensure that such names and any associated logo, as well as the names "Millennium Challenge Corporation" and "MCC," as well as any logo associated therewith, are no longer used by MCA-Malawi II or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of the Compact, MCA-Malawi II shall assign and hereby assigns and transfers to MCC all rights, title, and interest to the names "Millennium Challenge Account-Malawi II," "MCA-Malawi II," "Millennium Challenge Corporation," "MCC," as well as MCA-Malawi II's logo and MCC's logo that it might have acquired during the term of this Agreement.

(h) MCC and the Government recognize that the effects of the Compact are long-ranging and its impact on reducing poverty may not be measurable for several years after the Compact ceases to be in force. Accordingly, MCC and the Government agree to cooperatively monitor the results and evaluate the impacts of the Compact on reducing poverty through economic growth in Malawi after the Compact ceases to be in force. To that end and as part of the orderly closure of the Program, the Parties shall develop a post-Compact monitoring and evaluation plan that describes the future monitoring and evaluation activities, the individuals and organizations that shall undertake these activities, and a budget framework for future monitoring and evaluation, provided, however, that nothing in this Section 4.2(h) shall be construed as committing MCC to provide any assistance to the Government after the Compact ceases to be in force. The Government shall provide all resources necessary (including both financial and personnel) to fulfill the tasks undertaken by the Government under the post-Compact monitoring and evaluation plan.

## ARTICLE 5.

### GENERAL PROVISIONS

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

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

Section 5.3 Assignments by the Government. The Government may not assign, delegate, or contract implementation of its rights or obligations under this Agreement without MCC's prior written consent. The Government agrees, upon request by MCC, to execute an assignment to MCC of any contractual right or cause of action which may accrue to the Government or MCA-Malawi II in connection with or arising out of the contractual performance or breach of performance by a party to a contract financed in whole or in part by MCC Funding.

Section 5.4 Amendment; Waivers. The Parties may amend this Agreement only by a written agreement signed by the Parties. Such agreement shall provide how it enters into force; ***provided, however,*** that the Government and MCC may by written agreement, signed by the Principal Representative or any Additional Representative of each Party and which shall enter into force upon signature, modify any annex hereto. The Parties understand that any modification of this Agreement may be entered into by the Government without the need for further action by the Government (including any parliamentary action), or satisfaction of any additional domestic requirements of Malawi. Any waiver of a right or obligation arising under this Agreement shall 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 shall prevail. In the event of any conflict or inconsistency between this Agreement and any other Supplemental Agreement or any Implementation Plan Document the terms of this Agreement shall prevail.

Section 5.7 Termination of this Agreement.

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

(b) MCC may immediately terminate this Agreement, in whole or in part, by written notice to MCA-Malawi II and the Government, if MCC determines that any event that would be

a basis for termination or suspension of the Compact or MCC Funding under Section 5.1(b) of the Compact has occurred.

(c) Unless terminated earlier in accordance with the terms hereof, this Agreement shall cease to be in force simultaneously with 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 shall apply until such date as such obligations are satisfied.

Section 5.8 Survival. Notwithstanding any expiration, suspension or termination of this Agreement, the following provisions of this Agreement shall survive: Sections 1.2(b)(i), 1.2(b)(ii), 2.7, 4.2, 5.1, 5.2, 5.3, 5.7(c), 5.8, 5.9 and 5.10.

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

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

Section 5.11 Signatures. Signatures to this Agreement and to any amendment to this Agreement shall be original signatures appearing on the same page or in an exchange of letters or diplomatic notes.

**Signature Page Follows on the Next Page**

**IN WITNESS WHEREOF**, the undersigned, duly authorized by their respective governments, have signed this Program Implementation Agreement.

Done at Washington, DC, this 28th day of September 2022.

FOR THE UNITED STATES OF AMERICA      FOR THE REPUBLIC OF MALAWI

/s/

/s/

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Name: Alice P. Albright  
Title: Chief Executive Officer  
Millennium Challenge Corporation

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Name: Hon. Sosten Alfred Gwengwe MP  
Title: Minister of Finance & Economic Affairs

## Annex I

### DEFINITIONS

***AFC Action Plan** has the meaning provided in Section 2.1(i).*

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

***Auditor** has the meaning provided in Section 2.6(c).*

***Auditor / Reviewer Agreement** has the meaning provided in Section 2.6(c).*

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

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

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

***Board** means the board of directors of MCA-Malawi II.*

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

***Closure Period** means the 120-day period beginning on the first day after the last day of the Compact Term (or, if the Compact is terminated earlier in accordance with its terms, the last day that the Compact was in effect) and ending 120 calendar days thereafter.*

***Closure Plan** has the meaning set forth in Section 4.2(f).*

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

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

***Compact Funding** has the meaning provided in Annex IV.*

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

***Country Contribution Report** has the meaning provided in Section 2.4(e).*

***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).*

***ESMP** has the meaning provided in Section 2.1(g).*

*Exempt Beneficiary* has the meaning provided in Annex IV.

*Exempt Employers* has the meaning provided in Annex IV.

*Exempt Entity* has the meaning provided in Annex IV.

*Exempt Individual* has the meaning provided in Annex IV.

*Exempt Personal Income* has the meaning provided in Annex IV.

*Fiscal Accountability Plan* has the meaning provided in Section 2.1(e).

*Fiscal Agent Agreement* has the meaning provided in Section 2.6(b).

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

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

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

*Governance Guidelines* means MCC's Policy on Accountable Entities and Implementation Structures.

*Governing Document* has the meaning provided in Section 2.5(g).

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

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

*HR Manual* has the meaning provided in Section 1.3(b)(v).

*IFC Performance Standards* means the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation, as in effect from time to time.

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

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

*Indirect Taxes* has the meaning provided in Annex IV.

*Key Staff* means the following positions in the Operations Unit: (1) chief executive officer (also referred to as the director general, national coordinator, or managing director), (2) each deputy chief executive officer (sometimes referred to as the chief operating officer), if applicable, (3) each project director of a Project, and (4) the highest ranking staff member in the following sectors: (a) finance, (b) legal, (c) procurement, (d) environmental and social performance, (e) gender and social inclusion, and (f) monitoring, evaluation, and economics.

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

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

***Material Agreement** has the meaning provided in Section 2.5(c).*

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

***MCA-Malawi II Website** has the meaning provided in Section 2.7(a).*

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

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

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

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

***Outside Project Manager** has the meaning provided in Section 2.6(a).*

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

***Periodic Report** has the meaning provided in Section 2.4(a).*

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

***Personal Income Taxes** has the meaning provided in Annex IV.*

***Procurement Agent Agreement** has the meaning provided in Section 2.6(d).*

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

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

***Reviewer** has the meaning provided in Section 2.6(c).*

***Social and Gender Integration Plan** has the meaning provided in Section 2.1(h).*

***Tax Agent** has the meaning provided in Annex IV.*

***United States** has the meaning provided in the preamble to this Agreement.*

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

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

## Annex II

### CONDITIONS PRECEDENT TO PROGRAM FUNDING<sup>1</sup>

#### **PART A. Conditions Precedent for Entire Disbursement Request (Applicable to All Projects)**

(i) Before the first Disbursement of Program Funding, MCA-Malawi II must develop and adopt a comprehensive Social and Gender Integration Plan, in form and substance satisfactory to MCC.

(ii) Before the first Disbursement of Program Funding, MCA-Malawi II must develop and adopt a comprehensive M&E Plan, in form and substance satisfactory to MCC.

(iii) Before the first Disbursement of Program Funding, MCA-Malawi II must develop and adopt a Fiscal Accountability Plan, in form and substance satisfactory to MCC.

(iv) Before the first Disbursement of Program Funding, MCA-Malawi II must develop and adopt an ESMS, including a stakeholder engagement plan, each in accordance with the Environmental Guidelines, in form and substance satisfactory to MCC.

(v) Before the first Disbursement of Program Funding for any activity to be carried out under an implementing entity arrangement, MCA-Malawi II must deliver to MCC a copy of a signed agreement between MCA-Malawi II and the relevant Implementing Entity that sets forth the roles and responsibilities of each party with respect to the Project or Activity, which agreement must be in form and substance satisfactory to MCC.

(vi) Before the first Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Malawi II must submit evidence, in form and substance satisfactory to MCC, that MCA-Malawi II or the appropriate Government entity has developed, as appropriate, an ESIA, ESMP, a health and safety management plan, a resettlement action plan, and/or livelihood restoration plan with respect to such Project or Activity, each of which must be in form and substance satisfactory to MCC.

(vii) Before each Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Malawi II must submit evidence, in form and substance satisfactory to MCC, that MCA-Malawi II or the appropriate Government entity is implementing the requirements of each ESIA, ESMP, health and safety management plan, resettlement action plan or livelihood restoration plan, as appropriate, for such Project or Activity in all material respects and consistent with the

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<sup>1</sup> In the case of the enactment of any law, regulation, or policy, or amendments or modifications to any of the foregoing that the Government commits to in this Annex II, the Government shall share a draft of the applicable document with MCC for its review before it is submitted to the final approving authority within the Government.

Environmental Guidelines (including the IFC Performance Standards that are incorporated by reference therein).

(viii) Before any Disbursement of Program Funding on or after the commencement of year five of the Compact Term, MCA-Malawi II must submit to MCC an initial draft Closure Plan in accordance with the *Program Closure Guidelines*.

**PART B. Conditions Precedent for Disbursement of Funds for the AGC Project**

Before initiating the procurement for the implementation (not preparatory works) of the civil road works in the Road Corridor Improvement Activity, the Government must have provided evidence satisfactory to MCC that:

(i) it has budgeted at least 25 billion Malawi Kwacha for road maintenance (routine and periodic) for the Malawian financial year preceding the initiation of procurements;

(ii) it has enacted the Roads Bill;

(iii) it has provided for at least one road engineer and at least one road maintenance supervisor within the department responsible for public works for each AGC district where there are MCC funded road works; and

(iv) the CFTC has established a Transport Unit.

**PART C. Conditions Precedent for Disbursement of Funds for the Increased Land Productivity Project**

(i) Before the initial Disbursement of Program Funding for the City Council Land-Based Revenue Modernization Activity:

(A) MCA-Malawi II must provide evidence that each City Council has affirmatively or negatively indicated their willingness to embark on the program of comprehensive real property tax reform and modernization set forth in Annex I of the Compact.

(ii) Before the initial Disbursement of Program Funding for the City Council Land-Based Revenue Modernization Activity, MCA-Malawi II must provide evidence that each City Council that indicated their willingness to embark on the program has fulfilled the following obligations to the satisfaction of MCC:

(A) publishing a policy statement announcing that the City Council will initiate a program of comprehensive real property tax reform and modernization;

(B) either establishing a real property tax reform committee comprised of a mixture of elected officials, technical personnel, and stakeholders,

including relevant civil society organizations, or designating this responsibility to the appropriate existing city council committee;

- (C) adopting a system where periodic results of the real property tax reform and modernization program, including amounts of real property tax revenue proceeds collected against their targets and details on the expenditure of these proceeds are published periodically; and
- (D) establishing a fund for the provision of public services, including land related services, and agreeing to allocate a percentage (to be mutually determined) of all revenue collected to this fund.

(iii) Before the initial Disbursement of Program Funding for the City Council Land-Based Revenue Modernization Activity, with respect to current contracts for the deployment and operation of automated revenue management systems at the City Councils of Lilongwe, Blantyre, and Mzuzu (to the extent that the City Council has indicated their willingness to embark on the program); a plan for exiting these contracts is expected to have been formulated and approved by MCC. To achieve this, these City Councils are expected to consult with Malawi's Attorney General on the most efficient, least disruptive, and pragmatic process of exiting from these contracts, or parts thereof, in particular those parts related to the development and use of system modules for managing real property tax revenues and clauses referring to the sharing of a percentage of real property tax revenue with the provider(s) of these systems.

(iv) Before initiating any procurement actions for the City Council Land-Based Revenue Modernization Activity, the City Councils of Lilongwe, Blantyre, and Mzuzu (to the extent that the City Council has indicated their willingness to embark on the program) must implement the agreed upon plan to exit existing contracts for the development and deployment of systems for real property tax management. Additionally, the City Councils of Lilongwe, Blantyre, Mzuzu, and Zomba (to the extent that the City Council has indicated their willingness to embark on the program) must use only the Compact funded system for the management of real property tax revenue once the Property Information Management System funded by the Compact is deployed and considered operational by mutual agreement of the City Councils and MCC and evidenced by compliance with the approved Property Information Management System Implementation Plan.

(v) Before the initial Disbursement of Program Funding for the Implementation of Reforms to Resourcing and Institutions Sub-Activity, the Government must adopt and gazette reform and any necessary implementing regulations to (i) permit the MoL to retain revenue it collects or, (ii) establish a land authority with authority to retain revenue.

(vi) Before the initial Disbursement of Program Funding for the Implementation of Reforms to Resourcing and Institutions Sub-Activity, the Government must adopt and gazette reform and any necessary implementing regulations establishing rent rates based on the market value of land to be levied on leasehold land and a framework and legal requirement for gradual, systematic, and periodic increases in rent rates.

(vii) Before the initial Disbursement of Program Funding for any funding related to land services devolution under the Implementation of Reforms to Resourcing and Institutions Sub-Activity, the Government must adopt reforms (to be identified by MCC funded study), acceptable to MCC, associated with ensuring affordability of long-term operational costs for land services devolution, potentially revising the current devolution planning.

(viii) Before the initial Disbursement of Program Funding for any funding related to establishment of a land authority under the Implementation of Reforms to Resourcing and Institutions Sub-Activity, the Government must adopt reforms (to be identified by MCC funded study), acceptable to MCC, establishing a land authority.

(ix) Before the initial Disbursement of Program Funding for any property valuation campaigns funded under the Increased Land Productivity Project, the Government must adopt reforms and gazette any necessary implementing regulations permitting flexibility in the property valuation, to enable the use of automated valuation methods and computer-assisted mass appraisal approaches to achieve sustainable efficiencies and equity from employing these methods.

(x) Before the initial Disbursement of Program Funding for individual property-level information gathering and land valuation work under the Increased Land Productivity Project, the relevant City Council must adopt bylaws or other orders necessary to ensure full legal compliance and technical validity of the cost-effective mass real property appraisal methods, as developed and implemented with Program Funding.

Annex III

GOVERNMENT CONTRIBUTION ALLOCATION

<b>Project</b>	<b>Pre-EIF</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total</b>
<b>AGC Project</b>	\$0	\$0	\$4,382,888	\$14,752,158	\$6,649,994	\$0	\$25,785,040
<b>Improved Land Productivity Project</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>ACFD Project</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Program Administration</b>	\$243,538	\$53,722	\$54,796	\$55,893	\$57,011	\$0	\$464,960
<b>Total</b>	\$243,538	\$53,722	\$4,437,684	\$14,808,051	\$6,707,005	\$0	\$26,250,000

## Annex IV

### TAX SCHEDULES

The Government agrees to ensure that MCA-Malawi II and all Providers, Covered Providers, Implementing Entities, contractors (prime contractors and subcontractors), consultants, and other entities and individuals that receive MCC Funding or the Government Contribution (both forms of funding hereinafter to be referred to as “**Compact Funding**”) directly or indirectly in are exempt from Taxes in accordance with Section 2.8 of the Compact.

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

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

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

As the direct beneficiary of the tax exemption under the Compact, MCA-Malawi II agrees to facilitate and assist all other indirect beneficiaries of the tax exemption, including Providers, Covered Providers, Implementing Entities, contractors (prime contractors and subcontractors), consultants, and other entities and individuals that receive Compact Funding directly or indirectly in furtherance of the Compact (an “**Exempt Entity**” in the case of a legal entity or an “**Exempt Individual**” in the case of a natural person, and in either case an “**Exempt Beneficiary**”), to ensure compliance with the exemption terms herein that apply to Taxes.

Consistent with Section 2.8 of the Compact, and notwithstanding the exemption methodologies described in these schedules, if a Tax has been paid by an Exempt Beneficiary in connection with the Compact, the Government agrees to refund the amount of Tax paid to that Exempt Beneficiary within 15 working days of the receipt of documentation providing evidence of Taxes paid. Exempt Beneficiaries of the tax relief should present this documentation to MCA-Malawi II to facilitate reimbursement pursuant to the Compact.

## SCHEDULE A VALUE ADDED TAX (“VAT”)

### **Legal Basis for Exemption or Reimbursement**

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

### **Beneficiaries of Exemption**

1. MCA-Malawi II.
2. Each Exempt Beneficiary.

### **Procedures**

MCA-Malawi II or each Exempt Beneficiary will procure goods, works and services exempted from VAT.

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

### **Specific Procedures**

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

- Pursuant to Regulation 43 under the Malawi VAT Act of 2005, vendors may exempt VAT for local purchases made in furtherance of the Compact for goods to which VAT has already been paid. To secure this exemption, the purchaser, either MCA-Malawi II, or the Exempt Beneficiary, must utilize the Form VAT 5 (commonly referred to as the ST14) to secure a VAT exemption for the purchase of such goods. The MRA will provide MCA-Malawi II with certified Forms VAT 5 for purchases to be made hereunder by MCA-Malawi II or Exempt Beneficiaries.
- MCA-Malawi II will use the Form VAT 5 as the direct beneficiary of the tax exemption under this Compact. Otherwise, MCA-Malawi II will engage Exempt Beneficiaries to implement the Compact on behalf of MCA-Malawi II. For purchases to be made by Exempt Beneficiaries in this capacity, MCA-Malawi II will provide to them an endorsed Form VAT 5 and a certificate issued by MCA-Malawi II to cover their specific purchases under the Compact. For each purchase, or combined purchase, MCA-Malawi II, or the Exempt Beneficiary will provide a copy of Form VAT 5 to the local vendor that is providing the goods as evidence that the goods should be sold net of VAT. The vendor’s invoice will reflect the tax exemption. The vendor will thereafter attach a copy of Form VAT 5 (and the MCA-Malawi II certificate if the purchase is made by an Exempt Beneficiary) and the tax-exempt invoice with its VAT filing as justification for not paying VAT to the Government on such sales. This exemption procedure will not apply to open-stock goods.

### Goods – Imported or Bonded

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

### Goods – Open Stock

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

### All Services – Sourced Locally and Imported

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

**SCHEDULE B**  
**IMPORT AND CUSTOMS DUTIES<sup>1</sup>**

**Legal Basis for Exemption**

1. Section 2.8 of the Compact.

**Beneficiaries of Exemption**

1. MCA-Malawi II.
2. Each Exempt Beneficiary.

**Procedures**

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

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<sup>1</sup> This schedule applies to import excise taxes.

## **SCHEDULE C CORPORATE INCOME TAX**

### **Legal Basis for Exemption**

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

### **Beneficiaries of Exemption**

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

### **Procedures**

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

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<sup>2</sup> This schedule applies to applicable withholding taxes, provisional taxes (advance corporate taxes payable quarterly), non-resident taxes, and dividend taxes.

**SCHEDULE D**  
**INDIVIDUAL INCOME TAX<sup>3</sup>**

**Legal Basis for Exemption**

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

**Beneficiaries of Exemption**

1. Exempt Individuals other than citizens or permanent residents of Malawi.<sup>4</sup> Persons who derive income hereunder who otherwise were not citizens or residents prior to receiving that income will also be deemed Exempt Individuals.

**Procedures**

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

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<sup>3</sup> This schedule applies to applicable “Pay As You Earn” taxes and dividend taxes.

<sup>4</sup> For the avoidance of doubt, any third-country nationals employed by MCC-Malawi II using MCC Funding shall be exempted from any Malawian income taxes including “Pay As You Earn” taxes.

**SCHEDULE E**  
**FRINGE BENEFIT TAX**

**Legal Basis for Exemption**

1. Section 2.8 of the Compact.

**Beneficiaries of Exemption**

1. All legal persons who would be required to pay fringe benefits tax on the taxable value of fringe benefits under the Taxation Act provided to their employees with respect to employment or services received in furtherance of the Compact for MCA-Malawi II or an Exempt Entity, other than with respect to fringe benefits provided to or on behalf of citizens or residents of Malawi.
2. Each Exempt Individual.

**Procedures**

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

**SCHEDULE F**  
**TAXATION OF PETROLEUM PRODUCTS**

**Legal Basis for Exemption or Reimbursement**

1. Section 2.8 of the Compact.

**Beneficiaries of Exemption**

1. MCA-Malawi II.
2. Each Exempt Beneficiary.

**Procedures**

1. Each beneficiary under this Schedule shall be exempted from paying any of the following taxes on wholesale or bulk purchases of petroleum products with respect to any purchases made in furtherance of the Compact:

- Excise Duties
- Custom Import Duty
- Road Maintenance Levy
- Safety Net Levy
- Electrification Levy

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

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

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

**Legal Basis for Exemption**

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

**Beneficiaries of Exemption**

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

**Procedures**

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

## SCHEDULE H INDIRECT TAXES

### Legal Basis for Exemption or Reimbursement

1. Section 2.8 of the Compact.

### Beneficiaries of Exemption

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

### Procedures

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

**SCHEDULE I**  
**NON-APPLICABLE TAXES**

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

**SCHEDULE J**  
**MALAWI BUREAU OF STANDARDS LEVY**

**Legal Basis for Exemption**

1. Section 2.8 of the Compact.

**Beneficiaries of Exemption**

1. MCA-Malawi II.
2. Each Exempt Beneficiary.

**Procedures**

1. Any beneficiary of an exemption will require an official letter from MCA-Malawi II certifying that the goods are indeed for the furtherance of the Compact.
2. The official letter from MCA-Malawi II shall be issued on official letterhead, bearing an official MCA-Malawi II stamp.

**SCHEDULE K**  
**NATIONAL CONSTRUCTION INDUSTRY COUNCIL LEVY**

**Legal Basis for Exemption**

1. Section 2.8 of the Compact.

**Beneficiaries of Exemption**

1. MCA-Malawi II.
2. Each Exempt Beneficiary.

**Procedures**

1. Prior to the commencement of any MCA-Malawi II works contracts, MCA-Malawi II shall submit a list of contract awardees and the contract price to the National Construction Industry Council (“*NCIC*”) and indicate that such contracts shall be exempt from any local taxes and levies in accordance with Section 2.8 of the Compact. Such exemption shall not be applicable to registration fees paid by individual contractors.
2. MCA-Malawi II shall not withhold the NCIC levy on payments made to contractors, and contractors shall not withhold the NCIC levy on payments made to their sub-contractors on works funded by MCA-Malawi II.