

**EXECUTION VERSION**

**PROGRAM IMPLEMENTATION AGREEMENT**

**BETWEEN**

**THE UNITED STATES OF AMERICA**

**AND**

**THE REPUBLIC OF ZAMBIA**

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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 Zambia (“*Zambia*”). The United States and Zambia are collectively referred to as the “*Parties*” and each individually as a “*Party*.”

Recalling that on October 17, 2024, the Parties signed a Millennium Challenge Compact (the “*Compact*”) that sets forth the general terms on which the United States shall provide assistance of up to US\$458,000,000 to Zambia for a program to reduce poverty through economic growth in Zambia;

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

Recognizing that the Millennium Challenge Corporation, a United States government corporation (“*MCC*”), shall serve as an implementing agency for the United States under the Compact; 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 ZAMBIA

#### Section 1.1 Definitions.

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

#### Section 1.2 Role of Zambia

(a) Country Responsibilities. Zambia 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-

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

(b) Country Undertakings. Zambia hereby affirms as follows:

(i) Impoundment; Liens or Encumbrances. Zambia 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 Zambia 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, Zambia 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 to obtain such release; *provided, however*, that Zambia shall not use MCC Funding, any portion of the Country Contribution, or any Program Assets to satisfy any such obligation.

(ii) Disposal of Program Assets Consisting of Real Property. Zambia 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-Zambia II after the expiration or termination of the Compact shall be subject, in accordance with the terms of the *Policy on Program Closure*, to a reversionary interest of MCC for a period of five (5) years commencing on the last day of the Closure Period; and if at any time during that five-year period, Zambia 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, Zambia 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 Zambia agree otherwise in writing, Zambia shall ensure that all Projects and Activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding or the Country Contribution 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. Zambia shall also ensure that the Projects and Activities comply with all national environmental laws, 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, Zambia shall ensure that the stricter standard is followed. Unless MCC approves otherwise in writing, Zambia 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 the Country Contribution specifically allocated for such costs for any Project or Activity.

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

### Section 1.3 Role of MCA-Zambia II.

#### (a) Designation of MCA-Zambia II.

(i) Pursuant to Section 3.2(b) of the Compact, Zambia has designated Millennium Challenge Account-Zambia II, an autonomous entity to be established in accordance with the Companies Act, No. 10 of 2017 (“*MCA-Zambia II*”), as the primary agent of Zambia to implement the Program and to exercise and perform Zambia’s right and responsibility to oversee, manage, and implement the Program, including without limitation, managing implementation of the Projects and Activities, allocating resources, managing procurements, and exercising its rights and responsibilities under the CDF Agreement (the “*Designated Rights and Responsibilities*”). The Parties note that Zambia remains ultimately responsible for the performance of Zambia’s obligations under or in relation to the Compact and this Agreement.

(ii) Zambia shall ensure that MCA-Zambia 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-Zambia II, and all obligations assigned to the “Accountable Entity” in the Program Guidelines shall be obligations of MCA-Zambia II.

(b) Additional Country Undertakings with Respect to MCA-Zambia II. Zambia hereby affirms to MCC as follows:

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

(ii) Country Responsibilities. MCA-Zambia II (A) shall carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Zambia II obligations in the Compact, this Agreement, or any other Supplemental Agreement) with due care, efficiency, and diligence in conformity with sound technical, financial, and management practices, and in conformity with the Compact, this Agreement, the CDF Agreement, any other Supplemental Agreement and the Program Guidelines, (B) except as provided in Section 2.5 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) Country Representations. MCA-Zambia II shall confirm each representation that it makes on behalf of Zambia in any agreement, certificate or instrument delivered by MCA-Zambia II with all necessary Permitted Designees prior to providing such representation to MCC.

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

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

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

(vii) Insurance; Performance Guaranties. MCA-Zambia 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. Subject to the terms of the *Cost Principles for Government Affiliates*, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Zambia 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-Zambia II (and MCC, if it so requests) shall be named as additional insureds on any such insurance. Zambia

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-Zambia II or as otherwise directed by MCC.

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

## ARTICLE 2.

### IMPLEMENTATION FRAMEWORK

Section 2.1 Basic Framework The Program shall be implemented in accordance with the Compact, this Agreement, any other Supplemental Agreement, the Program Guidelines, and the terms and provisions of various implementation plans adopted by MCA-Zambia II and approved by MCC, setting forth the strategies and processes that will guide management and implementation of the Program. Principal among these implementation plans are the following: (i) one or more Work Plans, (ii) a Detailed Financial Plan, (iii) an Audit Plan, (iv) a Procurement & Grants Plan Package, (v) a Fiscal Accountability Plan, (vi) an M&E Plan, (vii) an Environmental and Social Management System, (viii) a Social and Gender Integration Plan, and (ix) an AFC Action Plan (collectively, the "***Principal Implementation Plans***"). From time to time, MCC may request MCA-Zambia II to submit clarifications or adjustments to any implementation plan and MCA-Zambia II shall ensure that the program implementation is conducted in accordance with the approved implementation plans in addition to the terms of the Compact, this Agreement, any other Supplemental Agreement, and the Program Guidelines.

(a) Work Plans. MCA-Zambia 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 Country Contribution to administer, monitor and evaluate the Program and to implement each Project (the “**Multi-Year Financial Plan**”). Except as MCC approves otherwise in writing, MCA-Zambia II shall develop and implement a detailed financial plan in accordance with the QDRP Policy, 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-Zambia 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 sixty (60) days before the end of the first period to be audited.

(d) Procurement & Grants Plan Package. MCA-Zambia II shall prepare a procurement and grants plan package for both acquiring goods, works, and consultant and non-consultant services and providing financial or in-kind assistance to implement the Compact (the “**Procurement & Grants Plan Package**”). The Procurement & Grants Plan Package shall be prepared and updated in accordance with the *Accountable Entity Procurement Policy & Guidelines* and the *Program Grant Guidelines*. In addition, no later than six months after the Compact is signed, MCA-Zambia 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 the BCS shall be subject to MCC approval. Upon MCC’s approval of the BCS, MCA-Zambia II shall publish the BCS on the MCA-Zambia II website.

(e) Fiscal Accountability Plan. MCA-Zambia II shall develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms, and procedures (the “**Fiscal Accountability Plan**”) that MCA-Zambia II shall use to ensure appropriate fiscal accountability for the use of MCC Funding and the Country 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. MCA-Zambia 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 and evaluation activities post-Compact Term. The M&E Plan shall be developed, implemented, and updated in accordance with the *Policy for Monitoring and Evaluation of Compact and Threshold Programs*.

(g) Environmental and Social Management System. In accordance with Section 1.2(b)(iii), MCA-Zambia II shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding or the Country Contribution comply

with the Environmental Guidelines, including the IFC Performance Standards that are incorporated by reference therein. Specifically, MCA-Zambia II shall: (i) develop an Environmental and Social Management System, at the Compact and/or Project or Activity level, not limited to cooperating with or completing, 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 those related to environmental and social management plans, health and safety management plans, environmental and social audits, resettlement policy frameworks, stakeholder engagement plans, and resettlement action plans required under the laws of Zambia, 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) as integral elements of the Environmental and Social Management System, ensure that Project or Activity-specific environmental and social management plans are developed as appropriate, 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.

In addition, MCA-Zambia II may engage the services of an Environmental and Social Consultant (ESC) to enhance MCA-Zambia II's environmental and social performance and gender and social inclusion capacity. The ESC may (i) support MCA-Zambia II in complying with the Environmental Guidelines, *Gender and Inclusion Policy*, *Counter-Trafficking in Persons Policy*, MCA-Zambia II's Social and Gender Integration Plan, and Zambian environmental and social regulations and requirements through all phases of the Projects; (ii) provide training and oversee effective implementation of the ESMS and the complementary stakeholder engagement plan developed by MCA-Zambia II; and (iii) maintain sufficient technically qualified staff throughout the period of performance to ensure MCA-Zambia II's compliance with the policies, plans, and regulations and requirements described in clause (i) above to MCC's satisfaction.

(h) Social and Gender Integration Plan. To ensure gender and social inclusion across the Projects and Activities, and ensure compliance with the *Gender and Inclusion Policy*, *Counter-Trafficking in Persons Policy*, and the *Operational Requirements and Milestones for Social Inclusion and Gender Integration*, MCA-Zambia II shall: develop a comprehensive social and gender integration plan (the "***Social and Gender Integration Plan***") that, at a minimum, (i) documents and consolidates key design measures and approaches to ensure that each Project will benefit excluded groups, including poor people and women; (ii) specifies any other actions to be taken during the Compact Term to meet the social inclusion and gender equality objectives for the Projects and address gender and inclusion risks; (iii) identifies and describes resources required to ensure implementation of required measures; (iv) identifies approaches for regular, meaningful, and inclusive consultations with women and structurally excluded groups; (v) sets forth strategies for consolidating the findings and recommendations of Project-specific social and gender analyses into final activity plans, contracting, and implementation structures; and (vi)

ensures, through ongoing technical oversight and coordination during compact implementation, that project implementation is consistent with and incorporates the outcomes of the social and gender analyses and recommendations. MCA-Zambia 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-Zambia II shall develop and adopt an anti-fraud and corruption action plan to articulate how MCA-Zambia II will 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-Zambia II and MCC. MCC will 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 Notice to Providers; Incorporation.

MCA-Zambia II shall notify all Providers (and all other entities or individuals receiving MCC Funding or the Country Contribution in connection with the Program) of the requirements of Sections 2.7 and 3.7 of the Compact, 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 2.3 Reports; Notices.

(a) Unless MCC approves otherwise in writing, MCA-Zambia II shall provide to MCC the reports and information required by the QDRP Policy in such manner and form and at such times as specified in the QDRP Policy.

(b) If at any time during the Compact Term, Zambia materially reallocates or reduces the allocation in its national budget or any other governmental authority of Zambia at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation in its budget of the normal and expected resources that Zambia or such governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, or fails to timely distribute an allocation budgeted for the activities contemplated under the Compact and the Program, Zambia, acting through MCA-Zambia II, must notify MCC in writing within thirty (30) days of such reallocation, reduction, or failure to distribute, and such notification must contain information regarding the amount of the reallocation, reduction, or failure to distribute, the affected activities, and an explanation for the reallocation, reduction or failure to distribute.

(c) MCA-Zambia II shall provide to MCC in a timely manner and in any event no later than thirty (30) days after receipt of a written request by MCC, such other reports,

documents, or information related to the Program and in such manner and form as MCC may request from time to time.

(d) MCA-Zambia II shall periodically provide to MCC, in form and substance satisfactory to MCC, reports and information regarding the Country Contribution's application towards the objectives of the Program described in Section 2.6(a) of the Compact as required by the *Country Contributions Policy* (each, a "**Country Contribution Report**"). MCA-Zambia II shall provide the Country Contribution Reports to MCC on the schedule and in the manner specified in the *Country Contributions Policy*.

Section 2.4 Certain Transactions Subject to MCC Approval. Without limiting any MCC approvals provided for in any of the Program Guidelines, each of the following transactions, activities, agreements, and documents requires MCC's prior written approval:

- (a) Disbursements;
- (b) each of the Principal Implementation Plans and any modifications to any such plan;
- (c) agreements between Zambia and MCA-Zambia 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; and
  - (vi) a member of the Board of Directors (including any observer) or any Key Staff of MCA-Zambia 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-Zambia II that is not arm's-length;
- (f) any pledge of any MCC Funding, any portion of the Country 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-Zambia 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-Zambia II;

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

(j) (A) any change of any member of the Board of Directors (including any observer), of the member serving as the chairperson, or in the composition or size of the Board of Directors, and the filling of any vacant seat of any member of the Board of Directors (including any observer), and (B) any change of any Key Staff of MCA-Zambia II or in the composition or size of its operations unit, and the filling of any vacant position of any Key Staff of MCA-Zambia II (including any process related to the recruitment and selection of any such Key Staff);

(k) any decision by MCA-Zambia II to engage, accept, or manage any funds in addition to MCC Funding and the Country Contribution (including from Zambia 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-Zambia 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 2.5 Role of Certain Entities in Implementation.

(a) Fiscal Agent. MCA-Zambia 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 Disbursement be made directly to a provider as payment for goods, works, or services in accordance with the Common Payment System and following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding and Country 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-Zambia 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 approves otherwise in writing, the Fiscal Agent shall be a third party, independent of Zambia.

(b) Auditors and Reviewers. MCA-Zambia 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-Zambia 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-Zambia II shall select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MCA-Zambia 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*”).

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

## Section 2.6 Publicity and Transparency.

(a) Subject to Section 2.7, MCA-Zambia II shall give appropriate publicity to the Compact as a program to which the United States, through MCC, has contributed, including by identifying Project and Activity sites, and marking Program Assets, all in accordance with the *Standards for Global Marking*. Upon the termination or expiration of the Compact, Zambia, upon MCC’s request, shall cause the removal of any such references and markings on the website operated by MCA-Zambia II (the “*MCA-Zambia II Website*”) or in any publicity materials of the Zambian Government or MCA-Zambia II.

(b) MCA-Zambia II shall make information concerning implementation of the Compact publicly available, including by posting the following documents in English on the MCA-Zambia 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 of Directors, and minutes of the meetings of any Stakeholder 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 and grant policies and procedures (including the BCS and all documents required to be made public by the *Accountable Entity Procurement Policy & Guidelines* and the 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 2.6(b), information relating to procurements prior to the award of a contract and confidential information relating to MCA-Zambia 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-Zambia II shall mutually determine whether any information to be excluded is confidential.

## Section 2.7 Branding and Enforcement.

(a) Subject to Section 4.2(g), MCC hereby grants MCA-Zambia 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-Zambia II. The use of MCC's logo and names shall not create any agency or legal representation, and MCA-Zambia II has no authority to bind MCC in any way.

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

(c) MCA-Zambia II shall take all reasonable steps to ensure that the names "Millennium Challenge Account-Zambia II" and "MCA-Zambia II," as well as its own logo, shall enjoy maximum protection under the laws now or hereafter in effect in Zambia throughout the term of this Agreement. This includes registering the names and logo as a trademark, if appropriate, monitoring unauthorized use by third parties, and enforcing MCA-Zambia II's legal rights if unauthorized use is discovered. MCA-Zambia 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-Zambia II," "MCA-Zambia II" and/or MCA-Zambia II's logo; or (ii) the names "Millennium Challenge Corporation," "MCC" and/or MCC's logo. MCA-Zambia 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 2.8 Country Contribution.

(a) In accordance with Section 2.6(a) of the Compact, Zambia shall make a Country Contribution toward meeting the objectives of the Compact. Such contribution shall be in addition to Zambia'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 *Country Contributions Policy*. Annex III to this Agreement sets forth the notional schedule and budget allocation of the Country Contribution to the Projects and program administration over the period from the signing of the Compact to the end of the Compact Term. Annex V to this Agreement sets forth the principles governing the use of the Country Contribution.

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

Section 2.9 Tax Exemption Implementation. Annex IV sets forth the mechanisms that Zambia shall use to implement the tax exemption required by Section 2.8 of the Compact for certain principal Taxes. In addition, Zambia shall from time to time execute and deliver, or cause to be executed and delivered, such other instructions, instruments or documents, and take, or cause to be taken, such other actions as MCC determines may be necessary or appropriate to implement Section 2.8 of the Compact.

Section 2.10 Additional Country Undertakings. Zambia shall, without limiting the generality of Section 2.6 of the Compact, fund any severance costs, gratuity costs and other financial liabilities incurred by MCA-Zambia II arising from the termination or expiration of any MCA-Zambia II employment agreements, pursuant to the terms of such employment agreements, and in accordance with Annex III to this Agreement.

## ARTICLE 3.

### DISBURSEMENT OF MCC FUNDING

#### Section 3.1 Disbursement Process.

(a) Disbursement Requests. MCA-Zambia II may request Disbursements to be authorized under the Compact by submitting a request to MCC in accordance with the QDRP Policy. Requests may be made on a quarterly basis for the upcoming quarter, or such other period of time as approved by MCC (such quarter or other period of time, each a "***Disbursement Period***") and shall be accompanied by various reports and other information related to program implementation (each request together with such reports and other information, a "***Disbursement Request***"). Requests for Disbursement of Program Funding and Compact Facilitation Funding for any Disbursement Period shall be made by separate Disbursement Requests.



(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 on any Project or Activity for which funds are requested, (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 the amount 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 or (B) directly to a third party via the Common Payment System as payment for amounts owed by MCA-Zambia II for implementation of the Program; *provided, however*, that expenditures of such proceeds (including amounts transferred directly to a third party) are authorized by MCA-Zambia 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) Unless MCC approves otherwise in writing, MCA-Zambia II shall establish one or more accounts in the local currency of Zambia (each, a "**Local Account**") and one or more accounts in United States Dollars (each, a "**USD Account**") at a commercial financial institution acceptable to MCC. Each Local Account and USD Account is considered a Permitted Account and must be interest-bearing to the extent practicable. In addition, MCC and MCA-Zambia II shall mutually agree in writing to the establishment of one or more additional bank accounts for the deposit of the Country Contribution (the "**Country Account**"), which shall also be considered a Permitted Account. MCA-Zambia 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 MCC approves otherwise in writing, no funds shall be co-mingled 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 Country Contribution and accrued interest and earnings thereon shall be commingled in the Country 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-Zambia II shall provide copies of such statements to MCC upon its request. Before any MCC Funding or any portion of the Country Contribution is deposited into a Permitted Account, MCA-Zambia 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 cases specified in the Bank Agreement, designated representatives of MCC, shall be the sole signatories on each Permitted Account.

(iii) MCC Funding and the Country Contribution held in separate Permitted Accounts shall 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 relevant Bank Agreement, MCA-Zambia II shall ensure the transfer of all accrued interest on MCC Funding to MCC. Accrued interest on the Country Contribution held in a Permitted Account shall be retained in such account until the funds may be transferred to Zambia according to instructions agreed upon between the Bank and Zambia.

(iv) Unless MCC approves otherwise in writing, MCA-Zambia II shall ensure that any MCC Funding deposited in a Local Account can be converted and deposited into a USD Account. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of Zambia for any purpose as determined by MCC, MCA-Zambia 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 precedent 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-Zambia II and approved by MCC.

(c) Procurement & Grants Plan Package. MCA-Zambia II has developed the Procurement & Grants Plan Package, and the package has been approved by MCC.

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

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

MCA-Zambia II has developed and adopted the HR Manual, and the manual has been approved by MCC.

Section 3.4 Conditions Precedent to All Disbursements of Program Funding. Unless waived or deferred by MCC in writing, 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-Zambia II has delivered to MCC a completed Disbursement Request covering the related Disbursement Period in accordance with the QDRP Policy.

(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 of Zambia, MCA-Zambia II, or any other 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) MCA-Zambia II has made progress, satisfactory to MCC, on implementing the Projects or Activities for which funding is requested, including progress on each of the Principal Implementation Plans;

(v) the M&E Plan, once adopted, is current and updated and MCA-Zambia II is in substantial compliance with the requirements of the M&E Plan (including any applicable reporting requirements set forth therein for the related Disbursement Period);

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

(vii) there has been no material negative finding in any financial audit report delivered in accordance with the Compact and Audit Plan, for the prior two quarters (or such other period as the Audit Plan may require);

(viii) any Taxes paid with MCC Funding through the date ninety (90) days prior to the start of the related Disbursement Period have been reimbursed by Zambia in full in accordance with Section 2.8(c) of the Compact;

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

(x) MCC does not have grounds for concluding that any matter certified to it in any certificate provided as part of the Disbursement Request is not as certified;

(xi) no act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, the Compact or MCC Funding in accordance with Section 5.1 of the Compact;

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

(xiii) MCA-Zambia 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

(xiv) Zambia has complied in all material respects with its obligations set forth in Section 2.8 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 approves otherwise in writing, a Disbursement, or financial commitment involving MCC Funding may be made only if the related expense is provided for in the Disbursement Request.

#### **ARTICLE 4.**

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

Section 4.1 Entry into Force of this Agreement. This Agreement 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 Zambia 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 occurred; and (ii) reasonable costs incurred in connection with the suspension.

(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, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program (or any part thereof) during the Closure Period.

(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 the expiration, 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, Zambia 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 thirty (30) days after Zambia 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 Zambia 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, Zambia, 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-Zambia II shall prepare a plan for administrative closure and sustainability of the Program in accordance with the *Policy on Program Closure* (the "**Closure Plan**"). During the Closure Period, MCA-Zambia II shall take all steps necessary to close the Program in an orderly manner in accordance with the Closure Plan and the *Policy on Program Closure*.

(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-Zambia II in Section 2.7(a) shall terminate with immediate effect; (ii) Zambia shall ensure that MCA-Zambia II ceases to be named "Millennium Challenge Account-Zambia II" and/or "MCA-Zambia II;" and (iii) Zambia 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-Zambia II or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of the Compact, MCA-Zambia II shall assign and hereby assigns and transfers to MCC all rights, title,

and interest to the names “Millennium Challenge Account-Zambia II,” “MCA-Zambia II,” “Millennium Challenge Corporation,” “MCC,” as well as MCA-Zambia II’s logo and MCC’s logo that it might have acquired during the term of this Agreement.

(h) MCC and Zambia agree to cooperatively support independent evaluations to assess the achievement of the Project Objectives after the Compact Term. As part of this cooperation, prior to expiration, or upon termination, of the Compact and in addition to the actions described in the Closure Plan, Zambia shall notify MCC of the Zambian government entity or official that will provide post-compact support to complete the evaluations described in the M&E Plan, *provided, however*, that nothing in this Section 4.2(h) shall be construed as committing MCC to provide any assistance to Zambia after the Compact Term. Zambia agrees to provide all resources necessary (including both financial and personnel) to fulfill the tasks undertaken by Zambia under the M&E Plan related to any post-compact evaluations.

## ARTICLE 5.

### GENERAL PROVISIONS

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

Section 5.2 Communications. The provisions of Section 4.1 of the Compact are incorporated herein by reference as if fully set forth herein, *provided* that documents or communications submitted to MCA-Zambia II shall be submitted at the following address:

MCA-Zambia II  
Attention: Chief Executive Officer  
4<sup>th</sup> Floor, ZEPRE Building,  
Alick Nkhata Road, Mass Media Area  
P.O. Box 51290  
Lusaka, ZAMBIA  
Telephone: +260-211-256-449/+260-211-257-432

Section 5.3 Assignments by Zambia. Zambia may not assign, delegate, or contract implementation of its rights or obligations under this Agreement without MCC’s prior written consent. Zambia agrees, upon request by MCC, to execute an assignment to MCC of any contractual right or cause of action which may accrue to Zambia or MCA-Zambia 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 Parties 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 any annex may be entered into by the Parties without the need for further action by Zambia (including any parliamentary action), or satisfaction of any additional domestic requirements of Zambia. 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, 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, without cause, by giving Zambia thirty (30) days' written notice.

(b) MCC may immediately terminate this Agreement, in whole or in part, by written notice to Zambia, 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 terms of this Section 5.8 and the following sections of this Agreement shall survive: Section 1.2(b)(i) (Impoundment; Liens or Encumbrances), Section 1.2(b)(ii) (Disposal of Program Assets Consisting of Real Property), Section 4.2 (Consequences of Compact Termination, Suspension, or Expiration), Section 5.1 (Representatives), Section 5.2 (Communications), Section 5.3 (Assignments by Zambia), Section 5.7(c) (Termination of this Agreement), Section 5.9 (Information Provided to MCC), and Section 5.10 (Governing Law).

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 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 Lusaka, Zambia, this 17<sup>th</sup> day of October 2024, in the English language.

FOR THE UNITED STATES OF AMERICA    FOR THE REPUBLIC OF ZAMBIA

/s/

/s/

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

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Name: Situmbeko Musokotwane  
Title: Honorable Minister  
Ministry of Finance and National  
Planning

## **Annex I**

### **DEFINITIONS**

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

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

***Auditor** has the meaning provided in Section 2.5(b).*

***Auditor / Reviewer Agreement** has the meaning provided in Section 2.5(b).*

***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).*

***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.*

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

***Country Contribution Report** has the meaning provided in Section 2.3(d).*

***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).*

***Financial Contributions** has the meaning provided in the Country Contributions Policy.*

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

**Fiscal Agent Agreement** has the meaning provided in Section 2.5(a).

**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 Zambia.

**Governance Guidelines** means the Policy for Accountable Entities and Implementation Structures.

**Governing Document** has the meaning provided in Section 2.4(g).

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

**In-Kind Contributions** has the meaning provided in the Country Contributions Policy.

**Key Staff** means the following positions in the Operations Unit: (1) chief executive officer, (2) deputy chief executive officer-programs, (3) deputy chief executive officer-administration, (4) chief financial officer, (5) general counsel (sometimes referred to as the legal director), (6) director of procurement, (7) director of environmental and social performance, (8) director of gender and social inclusion, (9) director of monitoring and evaluation, (10) director of human resources, and (11) each project director of a Project.

**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 2.4(c).

**MCA-Zambia II** has the meaning provided in Section 1.3(a)(i).

**MCA-Zambia II Website** has the meaning provided in Section 2.6(a).

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

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

**Party and Parties** have the respective meanings provided in the Preamble.

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

**Principal Implementation Plans** has the meaning provided in Section 2.1.

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

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

**Reviewer** has the meaning provided in Section 2.5(b).

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

**Stakeholder Committee** means one or more bodies of representatives from the private sector, beneficiaries, civil society, and local and regional governments established by MCA-Zambia II as part of fulfilling the requirements of any stakeholder engagement plan to provide advice and input to MCA-Zambia II regarding implementation of the Program.

**United States** has the meaning provided in the Preamble.

**United States Dollars or USD or US\$** means the lawful currency of the United States of America.

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

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

**Zambian Kwacha** means the lawful currency of the Republic of Zambia.

## 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-Zambia II must develop and adopt an Environmental and Social Management System or ESMS.

(ii) Before the first Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Zambia II must submit evidence, in form and substance satisfactory to MCC, that MCA-Zambia II or the appropriate government entity has developed and adopted, as appropriate, an Environmental and Social Impact Assessment or ESIA, an Environmental and Social Management Plan or ESMP, a Stakeholder Engagement Plan or SEP, a Health and Safety Management Plan or HSMP, and/or a Resettlement Action Plan or RAP for such Project or Activity, each of which must be in form and substance satisfactory to MCC.

(iii) Before the first Disbursement of Program Funding that occurs 180 days after the Compact enters into force, MCA-Zambia II must develop and adopt a comprehensive M&E Plan, in form and substance satisfactory to MCC.

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

(v) Before each Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Zambia II must submit evidence, in form and substance satisfactory to MCC, that MCA-Zambia II or the appropriate government entity is implementing the requirements of each ESIA, ESMP, SEP, HSMP, or RAP, as appropriate, for such Project or Activity in all material respects and consistent with the Environmental Guidelines (including the IFC Performance Standards that are incorporated by reference therein).

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

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

(vii) Before any Disbursement of Program Funding on or after the commencement of year five (5) of the Compact Term, MCA-Zambia II must submit to MCC an initial draft Closure Plan in accordance with the *Policy on Program Closure*.

**PART B. Conditions Precedent for the Roads and Access Project**

(i) Prior to the first Disbursement of Program Funding under the Improving Roads Activity and each Disbursement following the second quarter of the Zambian fiscal year of each subsequent year of the Compact Term, Zambia, through the Ministry of Finance and National Planning, shall provide evidence, in form and substance satisfactory to MCC, that demonstrates: (i) the overall amount of financial debt owed by Zambia to road sector construction contractors and the amount of that debt paid by Zambia during the prior fiscal year; (ii) the amount of revenue collected in accordance with the Public Roads Act No. 12 of 2002, as amended, the Tolls Act No. 14 of 2011, as amended, and the Public Private Partnership Act No. 18 of 2023, as amended, for the prior Zambian fiscal year; and (iii) the allocated and disbursed budget for all road sector investments, including the specific funding amounts allocated for new road construction, rehabilitation, routine maintenance, periodic maintenance, and road infrastructure-related emergencies for the prior Zambian fiscal year.

(ii) Prior to the first Disbursement of Program Funding for the Improving Roads Activity, (i) Zambia, through the Ministry of Finance and National Planning, shall provide evidence, in form and substance satisfactory to MCC, demonstrating that it has allocated at least Five Billion Five Hundred Million (5,500,000,000) Zambian Kwacha, as evidenced by the National Budget, to the National Road Fund Agency (NRFA) and (ii) Zambia, through the Ministry of Finance and National Planning, shall provide evidence, in form and substance satisfactory to MCC, that, barring the occurrence of an exceptional circumstance as determined by MCC and Zambia, it has budgeted at least Seven Hundred and Seventy Million (770,000,000) Zambian Kwacha for routine maintenance for the Zambian fiscal year in progress.

(iii) Prior to the first Disbursement of Program Funding under the Improving Roads Activity and each Disbursement following the first quarter of the Zambian fiscal year of each subsequent year of the Compact Term, (i) Zambia, through the Ministry of Finance and National Planning, shall provide evidence, in form and substance satisfactory to MCC, that it has allocated at least seven (7) percent more than the amount budgeted for the prior Zambian fiscal year to NRFA, as evidenced by the National Budget; (ii) Zambia, through the Ministry of Finance and National Planning, shall provide evidence, in form and substance satisfactory to MCC, that it has disbursed at least twenty-five (25) percent more than the amount disbursed during the prior Zambian fiscal year for routine maintenance works, barring the occurrence of an exceptional circumstance as determined by MCC and Zambia; and (iii) Zambia, through the Ministry of Finance and National Planning, shall provide evidence, in form and substance satisfactory to MCC, that it has not increased its debt owed to contractors from the prior Zambian fiscal year.

(iv) Prior to the second Disbursement of Program Funding for the Roads and Access Project, the Project shall meet, to MCC's satisfaction, the Results Definition Standard as defined and described in MCC's *Monitoring and Evaluation Policy*.

**PART C. Conditions Precedent for the Agriculture Policy Reform and Institutional Strengthening Project (“AGPIR”)**

(i) Prior to the first Disbursement of Program Funding for the AGPIR Project, Zambia shall provide evidence, in form and substance satisfactory to MCC, demonstrating that it has reviewed and amended the Agricultural Credits Act, to align it with the current regulatory legal framework, including the Movable Property (Security Interest) Act No. 3 of 2015, the Securities Act No. 41 of 2016, and any other applicable legislation, in order to promote transparency and the credibility of warehouse receipts and to stimulate private sector financing for agriculture and agro-processing, and has amended the Food Reserve Act to focus on the FRA’s core functions of: 1) efficiently managing strategic grain reserves and limiting its marketing function to acquiring and managing the strategic grain reserves; 2) focusing smallholder purchases in areas where private sector trading is not viable pursuant to criteria proposed by Zambia and reviewed by MCC; 3) ensuring timely payments for smallholder purchases; and 4) exerting an appropriate price stabilization function as recommended by the public-private Agricultural Marketing Council.

(ii) Prior to the first Disbursement of Program Funding for the AGPIR Project, Zambia shall provide evidence, in form and substance satisfactory to MCC, that the Agricultural Marketing Bill: (1) has been enacted into law; (2) provides for the establishment of the Agricultural Marketing Council; (3) provides for the establishment of an independent market observatory; and, (4) includes provisions for mandatory and timely reporting on stock levels by public and private sector actors in accordance with the terms stipulated in the accompanying regulations.

(iii) Prior to the first Disbursement of Program Funding for the AGPIR Project, Zambia shall demonstrate that progress, as determined by MCC and Zambia, is being made on specifying and subsequently implementing the rules by which export restrictions on grains are introduced and managed.

(iv) Prior to the fourth Disbursement of Program Funding for the AGPIR Project, the Project shall meet, to MCC’s satisfaction, the Results Definition Standard as defined and described in MCC’s *Monitoring and Evaluation Policy*.

**PART D. Condition Precedent for the Asset Finance Project**

(i) Prior to the fourth Disbursement of Program Funding for the Asset Finance Project, the Project shall meet, to MCC’s satisfaction, the Results Definition Standard as defined and described in MCC’s *Monitoring and Evaluation Policy*.

## Annex III

### Notional Allocation of Country Contribution (USD)

(US\$)								
Project/Activity/Contribution Description	Type	Pre-EIF	Year 1	Year 2	Year 3	Year 4	Year 5	Government of Zambia Contribution
<b>Roads and Access Project</b>		<b>\$ 937,500</b>	<b>\$ 1,875,000</b>	<b>\$ 3,750,000</b>	<b>\$ 5,625,000</b>	<b>\$ 3,687,500</b>	<b>\$ 1,875,000</b>	<b>\$ 17,750,000</b>
Improving Roads Activity	Financial	\$ -	\$ 375,000	\$ 937,500	\$ 1,125,000	\$ 937,500	\$ 375,000	\$ 3,750,000
Improving Access Activity   Contribution: Non-road infrastructure in support of compact agricultural corridors.	Financial	\$ 937,500	\$ 937,500	\$ 1,406,250	\$ 2,812,500	\$ 2,343,750	\$ 937,500	\$ 9,375,000
Strengthening Zambian Road Management Activity	Financial	\$ -	\$ 562,500	\$ 1,406,250	\$ 1,687,500	\$ 406,250	\$ 562,500	\$ 4,625,000
<b>Asset Finance Project</b>		<b>\$ 100,000</b>	<b>\$ 5,200,000</b>	<b>\$ 200,000</b>	<b>\$ 200,000</b>	<b>\$ 150,000</b>	<b>\$ 150,000</b>	<b>\$ 6,000,000</b>
Agri-SME Asset Financing Activity   Contribution: Financial support to purchase of necessary financial guarantee(s).	Financial	\$ -	\$ 5,000,000	\$ -	\$ -	\$ -	\$ -	\$ 5,000,000
ZAMPPF Activity   Contribution: travel costs and associated participant support	Financial	\$ 100,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 150,000	\$ 150,000	\$ 1,000,000
<b>Program Administration and Control</b>		<b>\$ 1,750,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 4,250,000</b>	<b>\$ 10,000,000</b>
MCA-Zambia II Program Administration   Contribution: MCA-Zambia II office space	In-Kind	\$ 1,500,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 5,250,000
MCA-Zambia II Program Administration   Contribution: MCA-Zambia II severance obligations and miscellaneous administrative needs	Financial	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 3,500,000	\$ 4,750,000
<b>Sub-Total (In-Kind)</b>		<b>\$ 1,500,000</b>	<b>\$ 750,000</b>	<b>\$ 750,000</b>	<b>\$ 750,000</b>	<b>\$ 750,000</b>	<b>\$ 750,000</b>	<b>\$ 5,250,000</b>
<b>Sub-Total (Financial)</b>		<b>\$ 1,287,500</b>	<b>\$ 7,325,000</b>	<b>\$ 4,200,000</b>	<b>\$ 6,075,000</b>	<b>\$ 4,087,500</b>	<b>\$ 5,525,000</b>	<b>\$ 28,500,000</b>
<b>Government of Zambia Contribution</b>		<b>\$ 2,787,500</b>	<b>\$ 8,075,000</b>	<b>\$ 4,950,000</b>	<b>\$ 6,825,000</b>	<b>\$ 4,837,500</b>	<b>\$ 6,275,000</b>	<b>\$ 33,750,000</b>



## Annex IV

### TAX EXEMPTION MECHANISMS

#### **1. Introduction.**

In accordance with, and without limiting the generality of, Section 2.8 of the Compact, Zambia shall ensure that all MCC Funding is free from the payment or imposition of any existing or future Taxes in or of Zambia. This shall include any interest or earnings on MCC Funding, and any MCC Funding disbursed, directly or indirectly, to or for: (i) MCA-Zambia II; (ii) any goods, works, services, technology and other assets and activities under the Program or the Projects; (iii) any persons and entities, including without limitation any Implementing Entity, contractor (prime and subcontractors), consultant or grantees, that provide such goods, works, services, technology and assets, or perform such activities (each, a “Vendor”); and/or (iv) any income, profits, and payments with respect to the foregoing, except as otherwise allowed pursuant to Section 2.8 of the Compact.

This Annex IV sets out the mechanisms for exempting MCC Funding from the principal Taxes otherwise imposed by Zambia. Should any potential liability for Taxes on MCC Funding arise that is not contemplated by the mechanisms set out in this Annex IV, the Parties shall, in accordance with Section 2.8 of the Compact, agree to the means by which MCC Funding will be exempt from such Taxes.

For the purposes of this Annex IV, MCA-Zambia II and any Vendor are referred to variously as “Eligible Entities” or “Eligible Individuals,” as appropriate.

In addition, for the purposes of this Annex IV, any Compact-related contracts, agreements or grants with an Eligible Entity or Eligible Individual are referred to as a “Compact Contract.”

#### **2. General Background.**

For most Tax exemptions or Tax rebates, the applicable tax-related laws of Zambia (the “Applicable Acts”) have vested powers in the Minister of Finance and National Planning to grant such exemptions or rebates through the issuance of subsidiary legislation (each referred to as a “Statutory Instrument”) in accordance with the applicable procedures.

In general, MCC Funding shall be treated in accordance with the provisions of donor-funded projects, under which there is authority to exempt any goods, services or works that are purchased using such funds from taxation in Zambia.

#### **3. Miscellaneous Additional Requirements.**

For the purposes of determining if a natural person is a permanent resident of Zambia or if a legal person has been formed under the laws of Zambia under Section 2.8(a) of the Compact, the taxable status of such natural or legal person shall be based on its status at the time it is awarded or executes a Compact-related agreement, contract, or grant, and such initial determination shall

not change regardless of: (i) the type of agreement, contract or grant used to employ or engage such natural or legal person; (ii) any laws of Zambia that purport to change such status based on a period of contract or grant performance, or a period of time residing and/or working in Zambia; and/or (iii) any requirement under the laws of Zambia that a company or other legal person must establish a branch office in Zambia, or otherwise register or organize itself under the laws of Zambia, in order to provide goods, works or services in Zambia.

In addition, in complying with the tax exemption obligations set forth in the Compact, Zambia shall also exempt MCA-Zambia II, the Fiscal Agent, the Procurement Agent and/or any other Vendor from any obligation imposed by the laws of Zambia, including the Applicable Acts, to withhold any Taxes from any payments made to any Eligible Entities or Eligible Individuals.

#### **4. General Mechanism Exemption.**

The general mechanism that Zambia shall use to implement its tax exemption obligations under the Compact is as follows:

(a) Where applicable, the Minister of Finance and National Planning shall prepare and submit an explanatory memorandum to the Committee on Delegated Legislation of Parliament explaining the policy behind the issuance of the Statutory Instrument to exempt MCC Funding from the payment or imposition of any Taxes, and specifically the requirement to exempt Eligible Entities and/or Eligible Individuals from the following types of Taxes with respect to MCC Funding:

- (i) Corporate Income Tax;
- (ii) Personal Income Tax;
- (iii) Withholding Tax;
- (iv) Excise Tax on Fuel; and
- (v) Any other taxes that require a Statutory Instrument for exemption.

(b) The explanatory memorandum shall, at a minimum, specify:

- (i) The project or activity that shall benefit from the exemption;
- (ii) The expected timeframe of each project or activity;
- (iii) The expected cost of each project or activity; and
- (iv) A complete list of Taxes that shall be exempted.

(c) For tax exemptions not provided for by the means of a Statutory Instrument, the exemption shall be provided by the means set out in this Annex IV, or as otherwise agreed by the Parties.

**SCHEDULE A**  
**CORPORATE INCOME TAX**

**1. Procedures.**

(a) The Minister of Finance and National Planning shall issue a Statutory Instrument to exempt Eligible Entities receiving MCC Funding from payment of corporate income tax on any income derived from that MCC Funding, in accordance with the Income Tax Act.

(b) Any Eligible Entity earning income derived from MCC Funding in Zambia in any given tax year shall be exempt from the payment or imposition of any Zambian income (and other) taxes on such income, and as such shall not be required to have any taxes withheld on any income derived from MCC Funding during the tax year.

(c) At the end of a given tax year, any Eligible Entity earning only income derived from MCC Funding in Zambia in that tax year shall file a tax return indicating that such income is not subject to taxation in Zambia in accordance with the Compact, the Statutory Instrument issued by the Minister of Finance and National Planning and the Compact Contract. The Eligible Entity shall include a copy of the applicable Compact Contract and the Statutory Instrument with its tax return.

(d) Any Eligible Entity earning both income derived from MCC Funding and non-Compact-related income in Zambia in any given tax year shall:

(i) Maintain its books and records to segregate financial activity related to its Compact-funded activities from those financial activities that are not related to the Compact.

(ii) At the end of any such tax year, file its tax return on income that is not derived from MCC Funding, as applicable, providing the documentation required in paragraph (c) above.

**SCHEDULE B**  
**PERSONAL INCOME TAX**

**1. Procedures.**

(a) The Minister of Finance and National Planning shall issue a Statutory Instrument to exempt Eligible Individuals receiving MCC Funding from payment of personal income tax on any income earned from MCC Funding, in accordance with the Income Tax Act.

(b) MCA-Zambia II shall send a letter to the Minister of Finance and National Planning listing any exempt natural persons (as determined by Section 2.8(a) of the Compact and this Annex IV) working on Compact-related projects or activities, and shall attach a copy of the agreement or contract under which the exempt natural person shall be working. The letter should also include a request to exempt such natural person from any social security and other related benefits required under the laws of Zambia.

(c) Any Eligible Individual earning only income derived from MCC Funding in Zambia in any given tax year shall be exempt from the payment or imposition of any Zambian taxes on such income, and as such shall not be required to have taxes withheld on any such income earned during the tax year. At the end of the tax year, such Eligible Individual shall file a tax return indicating that such income is not subject to taxation in Zambia, in accordance with the Compact, the Statutory Instrument issued by the Minister of Finance and National Planning and the Compact Contract. The Eligible Individual shall include a copy of the applicable Compact Contract and the Statutory Instrument with its tax return.

(d) Any Eligible Individual earning both income derived from MCC Funding and non-Compact-related income in Zambia in any given tax year shall be permitted to exclude the gross amount of personal income derived from MCC Funding for the purposes of filing his/her year-end individual income taxes in Zambia for any such tax year. Such Eligible Individual shall include a copy of the applicable Compact Contract and the Statutory Instrument with its tax return.

**SCHEDULE C**  
**WITHHOLDING TAX**

**1. Description.**

The withholding tax is a flat, general tax at the rate of 15 percent withheld at the source of payment in connection with such things as interest, dividends, royalties, rents, management and consultancy fees, commissions and public entertainment fees.

**2. Procedure.**

The Minister of Finance and National Planning shall issue a Statutory Instrument to exempt Eligible Entities and Eligible Individuals receiving MCC Funding from the requirement to have withholding tax withheld at the source of payment for management and consultancy fees, as well as other payments that would otherwise be subject to the withholding tax that are paid with MCC Funding. For the avoidance of doubt, the Statutory Instrument shall also exempt MCA-Zambia II from the requirement to withhold and remit such tax.

**SCHEDULE D**  
**VALUE ADDED TAX**

**1. Description.**

The value added tax (“VAT”) is a consumption-based tax that is levied in the supply chain at each point where value is added to a good or service. VAT is incurred by the final person or entity in the chain of supply that is not registered for VAT. Persons registered for VAT shall claim back, through their respective tax return, the input VAT incurred in the course of their business, and remit to the Zambia Revenue Authority (“ZRA”) the output VAT collected in excess of their input VAT paid. Therefore, registered suppliers do not pay VAT.

**2. Procedure.**

(a) For the purposes of VAT, the tax exemption required under the Compact shall be provided via the zero rating of goods or services supplied or imported under a technical aid program or project which is:

(i) Paid for through donor funding, such as MCC Funding through the Compact; and

(ii) Provided by the donor, or by a contractor of the donor, under a written agreement with the Government of Zambia.

(b) Each applicable Compact Contract shall explicitly state that goods, works or services purchased using MCC Funding under the Compact are zero rated for the purposes of VAT. The zero rating shall then be implemented through the issuance of Local Purchase Orders (each, an “LPO”).

(c) MCA-Zambia II shall provide the following information, on MCA-Zambia II official letterhead, for each Compact Contract to the Permanent Secretary (Budget and Economic Affairs), Ministry of Finance and National Planning, P.O. Box 50062, Lusaka, Zambia:

(i) Name of Eligible Entity or Eligible Individual;

(ii) Name of the Project/Activity undertaken through Compact Contract;

(iii) Total contract value;

(iv) Location(s) where the goods, works or services shall be provided; and

(v) Name and address of the senior official of the Eligible Entity or Eligible Individual who shall be responsible and accountable for the issuance of the LPO.

(d) The Ministry of Finance and National Planning shall direct ZRA to issue an LPO booklet to the Eligible Entity or Eligible Individual in the amount of the total value of the Compact Contract.

(e) The Eligible Entity or Eligible Individual shall pay for Compact-funded purchases less VAT, complete the LPO certificate in the amount of the VAT for that particular purchase, and provide the LPO certificate to the vendor as proof for VAT zero rating of the purchase.

**SCHEDULE E**  
**EXCISE DUTY ON FUEL**

**1. Description.**

The excise duty is a tax on particular goods or products, whether imported or produced domestically, imposed at any stage of production or distribution. Excise duties are determined by reference to weight, strength or quantity of the goods or products, or by reference to their value. The excise duty is charged on the “Excisable Value” (*i.e.*, the customs value plus customs duty). Fuel is generally subject to an excise duty under the laws of Zambia, including the Applicable Acts.

**2. Procedure.**

Fuel purchased for official use under the Compact using MCC Funding shall be exempt from the payment or imposition of any Taxes, including excise duties.

Subject to the procedures below, ZRA shall advise MCA-Zambia II, and each Eligible Entity and Eligible Individual, of the designated fuel suppliers/filling stations where fuel is deemed to be supplied in bond (*i.e.*, from bonded premises or filling stations).

MCA-Zambia II shall be listed in the Third Schedule of the “Customs and Excise (General) Regulations, 2000” (the “Third Schedule”) as exempt from customs and excise taxes. Accordingly, MCA-Zambia II shall be entitled to purchase fuel free from taxation at the designated fuel suppliers/filling stations when such fuel is purchased using MCC Funding.

With regard to Eligible Entities and Eligible Individuals, a letter of rebate confirmation shall be issued by the Ministry of Finance and National Planning to ZRA. To facilitate issuance of this letter, MCA-Zambia II shall send a letter to the Ministry of Finance and National Planning confirming that those entities or individuals are eligible for the exemption, providing a copy of the applicable Compact Contract.

Upon issuance of the letter of rebate confirmation by the Ministry of Finance and National Planning, the Eligible Entity and/or Eligible Individual shall be entitled to purchase fuel free from taxation at the designated fuel suppliers/filling stations when such fuel is purchased using MCC Funding.



**SCHEDULE F**  
**CUSTOMS DUTY AND TARIFF TAXES**

**1. Description.**

Customs duty is charged on the “Customs Value” of imported capital equipment and raw materials (0 to 5 percent), intermediate goods (15 percent), and finished goods (25 percent).

**2. Procedure.**

(a) Goods imported by MCA-Zambia II.

The Minister of Finance and National Planning shall issue a Statutory Instrument to list MCA-Zambia II in the Third Schedule. The listing of MCA-Zambia II in the Third Schedule shall enable MCA-Zambia II to qualify for an exemption from the payment of customs duty and tariffs on all goods that shall be imported for the official use of MCA-Zambia II for Compact-related purposes.

Accordingly, all imports for official use by MCA-Zambia II shall be cleared free of customs duties and tariffs by ZRA on the basis of MCA-Zambia II being listed as exempt on the Third Schedule.

(b) Goods imported by Eligible Entities and Eligible Individuals.

With regard to goods imported by Eligible Entities and Eligible Individuals, a letter of rebate confirmation shall be issued by the Ministry of Finance and National Planning to ZRA. To facilitate issuance of this letter, MCA-Zambia II shall send a letter to the Ministry of Finance and National Planning confirming those entities or individuals eligible for the exemption, providing a copy of the applicable Compact Contract, including the approved bills of quantities.

Upon issuance of the letter of rebate confirmation by the Ministry of Finance and National Planning, the Eligible Entity and/or Eligible Individual shall be cleared free of customs duties and tariffs by ZRA to the extent of the Compact Contract, including the approved bill of quantities.

(c) Goods imported by staff to take up employment.

The “Customs and Excise (General) Regulations, 2000” provides for an exemption from the payment of custom duties and tariffs on household and personal effects, including one motor vehicle per household, for new residents in Zambia. The individual requiring the exemption shall need to inform ZRA on arrival in Zambia that they are new residents and show proof (normally passport and any other documentation that may be required). The Applicable Acts provide that such persons must import these items within six months of arrival to benefit from this rebate.

(d) Machinery and Equipment imported by Eligible Entities and Eligible Individuals for use on Compact-related projects or activities.

The “Customs and Excise (General) Regulations, 2000” provide for an exemption from payment of custom duties and tariffs on machinery and equipment imported for any Projects or Activities when such machinery and equipment shall remain on the Project or Activity, or shall be the property of either MCA-Zambia II or Zambia at the end of the Program.

Regarding machinery or equipment imported for use in connection with any Projects or Activities, the Applicable Acts separately provide for the temporary importation of machinery or equipment by Eligible Entities and Eligible Individuals using machinery or equipment that they already own, but which is located outside Zambia. Such machinery or equipment may be imported exempt from the payment of custom duties or tariffs.

Subject to the conditions indicated above, the procedure for the exemption of custom duties or tariffs on machinery and equipment imported by Eligible Entities or Eligible Individuals for use on Projects or Activities shall be as follows:

- Importation of equipment on short term projects (i.e., twelve months or less). In such cases, machinery or equipment can be imported into the country through a Temporal Import Permit. The applicable Eligible Entity or Eligible Individual shall apply to ZRA by providing proof (normally a copy of the Compact Contract, together with confirmation from MCA-Zambia II and any other documentation that may be required) that such entity or individual will be carrying out Projects or Activities, and that such machinery or equipment is being imported for twelve months or less for the purposes of implementing such Projects or Activities.
- Importation of equipment on long term projects (i.e., more than twelve months). In such cases, MCA-Zambia II shall send a letter to the Ministry of Finance and National Planning to request a temporal exemption from the payment of custom duties and tariffs on such machinery and equipment, and shall provide a copy of the applicable Compact Contract, including the bill of quantities.

In any case, the provisions of the “Customs and Excise (General) Regulations, 2000” shall apply to the disposal of all machinery and equipment imported by an Eligible Entity or an Eligible Individual in connection with a Project or Activity when such machinery and equipment will no longer be used to carry out a Project or Activity.

**SCHEDULE G**  
**IMPORT VALUE ADDED TAX**

**1. Description.**

Import VAT is collected on behalf of the VAT Division and is applied to imported goods that attract VAT. VAT is charged on the “Taxable Value” (*i.e.*, the customs value plus customs duty, plus excise duty, where applicable) at the rate of 16 percent.

For equipment imported from outside Zambia on a temporary basis (*i.e.*, for the duration of the Compact), the Eligible Entity or Eligible Individual must remove the equipment from Zambia within a reasonable period of time after the end of the Compact (or the applicable period of performance) or pay any residual taxes that had been exempted (see related provisions in Schedule F above).

**2. Procedure for MCA-Zambia II and any Eligible Entities or Eligible Individuals.**

(a) MCA-Zambia II shall send a letter to the Ministry of Finance and National Planning requesting exemption from import VAT, either for itself or on behalf of the Eligible Entity or the Eligible Individual. This letter must include a:

- (i) Copy of the Compact Contract; and
- (ii) Copy of the bill of quantities for goods to be imported by MCA-Zambia II, or the Eligible Entity or Eligible Individual (as the case may be).

(b) Ministry of Finance and National Planning shall direct ZRA to issue an exemption certificate to MCA-Zambia II, or the Eligible Entity or the Eligible Individual (as the case may be).

(c) MCA-Zambia II, or the Eligible Entity or Eligible Individual (as the case may be), shall present the following to the Bureau of Customs:

- (i) Bill of lading;
- (ii) Invoice for goods; and
- (iii) Certificate of exemption issued by ZRA.

(d) The Credibility and Controls Unit of the Bureau of Customs is responsible for clearance of the imported items. The Credibility and Controls Unit shall issue instructions to the Port Authority to allow the import VAT exemption and release the goods.

(e) Estimated time for this clearance is three (3) to four (4) days.

## Annex V

### PRINCIPLES FOR MANAGEMENT OF THE COUNTRY CONTRIBUTION

The Country Contribution must be made toward meeting the objectives of the Compact and must directly support the Projects and Activities identified in the Compact. Country investments or expenditures that further the objectives of the Compact but are merely complementary or tangentially related to the Projects and Activities identified in the Compact shall not count toward the amount of the Country Contribution.

The Country Contribution proposed by Zambia is a combination of Financial Contributions and In-Kind Contributions as defined in the *MCC Country Contributions Policy* and detailed in Annex III of this Agreement. Each of these two categories of Country Contribution are managed according to the principles included in the respective sections below.

#### **I. Financial Contribution**

##### **A. General Principles.**

1. Except as the Parties may otherwise agree in writing, the Financial Contribution shall conform to the requirements and provisions of the Compact and this Agreement, just as if it were MCC Funding. For the avoidance of doubt, any activities undertaken, in whole or in part, with the Financial Contribution shall adhere to, among other things, the Reporting Guidelines; the *Accountable Entity Procurement Policy & Guidelines*; the *MCC Program Grant Guidelines*; the *MCC Cost Principles for Government Affiliates*; the *MCC Country Contributions Policy*; the *MCC Environmental Guidelines*; the Tax Exemption Mechanisms in Annex IV; the *MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*; the Audit Guidelines; and the Social and Gender Integration Plan.

2. The Financial Contribution shall begin to be disbursed through the Program in accordance with the notional schedule in Annex III. The entire amount of the Financial Contribution must be disbursed and recorded prior to the expiration of the Compact.

##### **B. Disbursement Principles for the Financial Contribution.**

1. In order to properly manage and account for the Financial Contribution, prior to receiving the first disbursement of the Financial Contribution, the Permitted Designee shall open one or more separate, segregated Country Accounts and/or other Permitted Accounts under the Bank Agreement for disbursements of the Financial Contribution. No other accounts are authorized to receive or hold disbursements of the Financial Contribution.

2. Upon request by MCA-Zambia II, Zambia shall disburse the requested portion of the Financial Contribution to the Country Account according to the schedule included in Annex III. The first request(s) shall be for an amount of funding equal to the combined total of the pre-entry into force and Year 1 Financial Contributions as provided in Annex III, and

shall be submitted by MCA-Zambia II no later than 30 days after the Compact enters into force, and then annually thereafter for each of the four subsequent years' Financial Contributions. Zambia shall disburse the funding in the amount requested to the Country Account within thirty (30) days after receipt of MCA-Zambia II's request.

3. Any and all interest accrued on the Financial Contribution shall remain in the Country Account and, unless the Parties agree otherwise in writing, reduce the amount of MCA-Zambia II's subsequent Disbursement Requests.

### **C. Valuation and Oversight of the Financial Contribution.**

1. MCA-Zambia II shall ensure to MCC's satisfaction that the Financial Contribution is fully and timely incorporated in the Principal Implementation Plans.

2. MCA-Zambia II shall ensure to MCC's satisfaction that the Financial Contribution conforms to the requirements and provisions of the Fiscal Accountability Plan and Audit Plan, just as if it were MCC Funding.

## **II. In-Kind Contribution**

### **A. General Principles.**

The In-Kind Contribution is estimated in accordance with the notional estimates included in Annex III. The entire amount of the In-Kind Contribution must be disbursed, put in service, and recorded prior to the expiration of the Compact. In-Kind Contributions may consist of goods or services provided by Zambia to the Program, or cash expended by Zambia for specific Project or Activity costs agreed upon with MCC.

### **B. Disbursement Principles for the In-Kind Contribution.**

1. The Parties shall agree in writing on the government affiliate(s) to manage these In-Kind Contributions identified in Annex III. MCA-Zambia II shall manage reporting on the timing and amount of all contributions consolidated and reported to MCC.

2. MCA-Zambia II shall ensure that sufficient documentation is gathered and maintained to provide evidence that all In-Kind Contributions recorded meet all the requirements of MCC's *Country Contributions Policy*.

### **C. Valuation and Oversight of the In-Kind Contribution.**

1. MCA-Zambia II shall value and record a contribution when it is put in service of the Program. In the case of In-Kind Contributions, the valuation date shall typically be the date the goods, works or property are transferred, or the service is provided to MCA-Zambia II or to an Implementing Entity and put in service of the Program.

2. Contributions denominated in local or foreign currency shall be recorded and converted to United States Dollars using the prevailing exchange rate conversions detailed in the Fiscal Accountability Plan.

3. Values for contributions of services and property shall be established in accordance with MCC's *Cost Principles for Government Affiliates*. Unless otherwise approved by MCC, In-Kind Contributions shall be valued at fair market value.

4. The recorded value of contributed property and services shall be determined in accordance with the usual accounting policies of MCA-Zambia II or the Implementing Entity, with the following qualifications:

- i. Rates for in-kind services must be consistent with those paid for similar work by the entity making the contribution. In instances in which the required skills are not found in the entity making the contribution, rates must be consistent with those paid for similar work in the labor market in which the entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.
- ii. The recorded value of donated land and buildings must not exceed their fair market value at the time contributed to the Program. When cost effective, the recorded value should be established by an independent appraiser (*e.g.*, certified real property appraiser) and certified by a responsible official of MCA-Zambia II.
- iii. The recorded value of contributed equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation;
- iv. The recorded value of contributed space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality; and
- v. The recorded value of loaned equipment must not exceed its fair rental value.

5. For purposes of the disposal of Program Assets consisting of real property as set forth in Section 1.2(b)(ii) of this Agreement, MCC and MCA-Zambia II shall not consider In-Kind Contributions of real property to the Program to be Program Assets.

### **III. Country Contribution Reporting**

MCC and MCA-Zambia II shall monitor and track the Country Contribution (both Financial Contributions and In-Kind Contributions) over the life of the Compact, that is, from signing through the end of the Compact Term.

#### **A. Periodic Reporting to MCC from MCA-Zambia II.**

1. No later than thirty (30) days after each audit period, MCA-Zambia II shall be required to submit to MCC for no-objection an official narrative and financial report consistent with its audit schedule and requirements of the Audit Guidelines. In its review of the report, MCC may request supporting documentation to validate any amount reported.

2. The "Explanatory Notes" that MCA-Zambia II submits as part of the quarterly Disbursement Request must include an update on the status of the Country Contribution.

**B. On-site Monitoring.**

MCC reserves the right to conduct on-site monitoring and verification of the Country Contribution, including, without limitation, by physical inspection of source documents (e.g., timesheets, invoices, valuation reports, and bank statements), site visits and interviews.

**C. MCA-Zambia II External Audit Requirements.**

MCA-Zambia II audit reports shall include a “Schedule of Cost Sharing” to document the Country Contribution. The independent public auditor should perform a review of the Country Contribution as part of its normal audits. As part of its audit, the independent public auditor must ensure that the required matching percentages or amounts are being met per the agreed schedule of contributions.