

PROCUREMENT AGREEMENT

BY AND AMONG

THE MILLENNIUM CHALLENGE CORPORATION,

THE MINISTRY OF DEVELOPMENT, ECONOMY AND FINANCES,

on behalf of the

GOVERNMENT OF THE REPUBLIC OF BENIN

AND

MCA-BENIN

Dated as of October 6, 2006

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PROCUREMENT AGREEMENT

This **PROCUREMENT AGREEMENT** (the "**Agreement**") is entered into as of October 6, 2006 by and among the Millennium Challenge Corporation, a United States Government corporation ("**MCC**"), the Ministry of Development, Economy and Finances (the "**Ministry**") on behalf of the Government of the Republic of Benin ("**Government**"), and MCA-Benin, an entity to be established under the laws of Benin ("**MCA-Benin**"). MCC, the Ministry, and MCA-Benin (upon joining this Agreement) are sometimes referred to herein individually as a "**Party**" and together as the "**Parties**."

Schedule 3 sets forth a list of terms defined in this Agreement and the sections at which their respective definition appears. Except as otherwise expressly provided herein, capitalized terms that are used but not defined herein (including in any Schedule hereto) shall have the meanings given such terms in that certain Millennium Challenge Compact concluded by and between the United States of America, acting through MCC, and the Government on February 22, 2006 (the "**Compact**").

RECITALS

WHEREAS, the Compact sets forth the general terms and conditions on which the United States, through MCC, will provide MCC Funding to the Government to use to implement the Program in Benin ("**Benin**") and achieve the Compact Goal and Objectives contemplated by the Compact;

WHEREAS, it is a condition precedent to the Entry into Force that this Agreement is executed by the Parties; and

WHEREAS, the Parties wish to enter into this Agreement to further specify the terms and conditions for procurements of goods, services and works made utilizing MCC Funding in furtherance of the Compact.

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

ARTICLE I. PROCUREMENT PLAN

Section 1.1 Procurement Plan Development. MCA-Benin shall develop, or cause to be developed, and adopt a procurement plan on a semi-annual basis for acquiring the goods, works and services needed to implement the Compact (each, a "**Procurement Plan**"). Each Procurement Plan shall be subject to MCC approval and shall:

(a) Identify the purchasing needs for the goods, works, and services required to implement the Program and necessary in furtherance of the Compact for the six (6) month period immediately following the effective date of such Procurement Plan;

- (b) Identify the proposed method of procurement for each purchase in accordance with the procedures and requirements set out in Schedule 1 and in Schedule 2 of this Agreement;
- (c) Estimate the proposed budget for each procurement; and
- (d) Provide such other information as may be requested by MCC from time to time.

MCA- Benin shall submit each Procurement Plan to MCC for prior approval no less than five (5) business days prior to the date for publishing, in accordance with Section 1.2, the General Procurement Notice applicable for the period of the Procurement Plan.

Section 1.2 Publication of Procurement Plan Information. On at least a semi-annual basis, following receipt of MCC's approval of a Procurement Plan and following due adoption of the Procurement Plan by MCA-Benin in accordance with the applicable Governing Document or Supplemental Agreement, MCA-Benin shall publicize, as specified by MCC and in the form acceptable to MCC, in the General Procurement Notice the procurements planned for the upcoming period identified in such approved Procurement Plan, together with such information derived from the Procurement Plan. The General Procurement Notice shall provide reasonable advance notice of planned procurement. MCA-Benin shall post, or shall cause to be posted, the General Procurement Notice on the MCA-Benin Website, the Development Gateway Market website at www.dgmarket.com ("**dgMarket**") and the United Nations Development Business online website at www.devbusiness.com ("**UNDB Online**"). MCA-Benin also shall publish the General Procurement Notice in a newspaper of wide circulation in Benin, and in such other media outlets as appropriate or as requested from time to time by MCC. Each General Procurement Notice under this Section 1.2, including in the local media and on the MCA-Benin Website, shall be in English and in French.

Section 1.3 Procurement Plan Implementation. Other than as permitted pursuant to Section 1.4, MCA-Benin shall ensure that all goods, services and works shall be procured using the procurement method approved in each Procurement Plan and shall ensure that the Procurement Agent complies with the methods of procurement outlined in such Procurement Plan. As set forth in the Disbursement Agreement, compliance with the approved Procurement Plan in a manner satisfactory to MCC shall be a condition precedent to MCC Disbursements or Re-Disbursements, if applicable, for the related Program or Project expense.

Section 1.4 Deviations from Procurement Plan. MCA-Benin shall not initiate any procurement action that deviates from the applicable Procurement Plan without the prior approval of MCC. If MCA-Benin determines that deviations are necessary or appropriate, MCA-Benin shall submit a request to MCC for its approval. If approved by MCC, MCA-Benin shall comply with any instructions or qualifications contained in the MCC approval, including any publication requirements. Without limiting the foregoing, unless otherwise agreed by the Parties, any substantial deviation from a Procurement Plan previously duly adopted by MCA-Benin, including without limitation removal of an activity from the Procurement Plan or material modification in the amount of estimated funding for an activity, shall be submitted to the Board for approval in accordance with the applicable Governing Document or Supplemental Agreement.

ARTICLE II. OBLIGATIONS AND REPRESENTATIONS

Section 2.1 Procurement Principles. The Ministry and MCA-Benin shall ensure that all procurements of goods, services or works in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC Funding shall comply with the general principles set forth in Section 3.6 of the Compact (the “*Procurement Principles*”).

Section 2.2 Procurement Guidelines. The Ministry and MCA-Benin shall ensure that all procurements of goods, services or works in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC Funding shall comply with the Procurement Guidelines set forth in Schedule 1 attached hereto (the “*Procurement Guidelines*”), as such Procurement Guidelines may be amended (a) by MCC from time to time with prior notice to MCA-Benin, or (b) as the Parties may otherwise agree. MCA-Benin shall publish, or shall cause to be published, such Procurement Guidelines and any amendments thereto on the MCA-Benin Website. The Ministry and MCA-Benin shall ensure that (x) all Providers are notified of the terms of this Agreement, including the Procurement Guidelines and the Procurement Principles, and (y) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any such Providers.

Section 2.3 Bid Challenge. The Ministry and MCA-Benin shall ensure that any bid challenges are conducted under a bid challenge system that complies with the terms set forth in Schedule 1.

Section 2.4 Procurement Contracts. The terms and conditions of relevant contracts with Providers, including governing law and dispute resolution, shall be set out in the applicable Bidding Documents and Proposal Documents. Contracts with Providers or as the case may be with other third parties, as required under the Procurement Guidelines, shall contain provisions required by the Procurement Guidelines and other Compact Documents (as applicable to a contract or agreement of that nature) or any other terms and conditions that MCA-Benin, solely upon the written instructions of MCC, may require from time to time. Such required provisions shall include requirements, substantially in the form set forth on the MCC website at www.mcc.gov/compact/guidance/general_provisions.pdf, regarding: (A) MCC status and rights, (B) limitations on use or treatment of MCC Funding; (C) procurement; (D) records and information, access, audits and reviews, and reports; (E) compliance with rules on prohibited activities, restricted parties, and eligibility requirements of prohibited source provisions in accordance with then-applicable US law, regulations and policy; (F) publicity, information and marking; (G) insurance; (H) conflict of interest; and (I) inconsistencies. MCC shall have the right to review and approve the form of such relevant contracts and any material modifications to those forms. For purposes of this Agreement, the term “*Compact Documents*” shall mean this Agreement, the Compact, the Disbursement Agreement, any Governing Documents, the Fiscal Agent Agreement, the Fiscal Accountability Plan or other applicable component of the Implementation Plan, the Procurement Agent Agreement, the Bank Agreement, the Supplemental Agreement Term Sheets, any Implementing Entity Agreement, and any Supplemental Agreement to which MCC is a party or between the Government or any Government Affiliate or Permitted Designee and MCC or between two or more such parties.

Section 2.5 Reports. MCA-Benin shall deliver, or cause to be delivered, to MCC quarterly reports of all procurement actions in the most recently completed quarter, including explanations of any variance from the Procurement Plan for that period.

Section 2.6 Other Responsibilities. Each of the Ministry and MCA-Benin (and any Permitted Designee acting in its place during the initial operating period) shall comply with all applicable terms and conditions and fulfill all applicable Government Responsibilities designated to such Party in the other Compact Documents or any designation document, including any audit or reporting requirements.

Section 2.7 Ministry Representations. The Ministry hereby represents and warrants to MCC, as of the Effective Date, as follows: (a) the Ministry, its Principal Representative, and the Permitted Designee acting in place of MCA-Benin during the initial operating period, each have the power and authority to execute, deliver and perform (as applicable) its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated hereby on behalf of the Government, Ministry or such Permitted Designee; (b) the, execution, delivery and performance by the Ministry (and as applicable the Permitted Designee acting in place of MCA-Benin) of this Agreement (i) have been duly authorized by all necessary action on the part of the Government and the Ministry (and such Permitted Designee) and (ii) will not violate or conflict with and shall take precedent over (x) any applicable Beninese laws and regulations or (y) any obligation of the Government, the Ministry, any other Government Affiliate or any Permitted Designee; (c) no other action, consent, approval, registration or filing with or any other action by any governmental authority, the Government, the Ministry, Permitted Designee or any Government Affiliate is required in connection with the execution and effectiveness of this Agreement; and (d) this Agreement is a valid and binding agreement and a legally enforceable obligation of the Government, the Ministry and the Permitted Designee.

Section 2.8 MCA-Benin Representations. MCA-Benin hereby represents and warrants to MCC, as of the date MCA-Benin executes this Agreement, as follows: (a) MCA-Benin has the power and authority to execute, deliver and perform its obligations under this Agreement and under each other agreement, certificate, or instrument contemplated hereby; (b) the execution, delivery and performance by MCA-Benin of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action and (ii) will not violate (x) any applicable Beninese laws and regulations or (y) any obligation of MCA-Benin; (c) no other action, consent, approval, registration or filing with or any other action by any person, entity or governmental authority, the Government or any Government Affiliate is required in connection with the execution and effectiveness of this Agreement; and (d) this Agreement is a valid and binding agreement and a legally enforceable obligation of MCA-Benin.

ARTICLE III. APPROVALS

Section 3.1 Approvals. The Ministry and MCA-Benin shall ensure that, unless otherwise agreed by the Parties in writing, all procurement actions described in Schedule 2 for goods, services or works in furtherance of the Compact and funded in whole or in part by MCC Funding shall be subject to the prior approval of the authorized entity, officer(s) or bodies designated on Schedule 2 for the corresponding type of action or dollar amount threshold.

Section 3.2 MCC Approvals. Notwithstanding Section 3.1, nothing in this Agreement shall limit the right of MCC to approve Material Agreements, Material Re-Disbursements, Material Terms of Reference or any other action or document in accordance with Section 3(c) of Annex I of the Compact or otherwise limit any other MCC approval rights set forth therein or in the applicable Governing Document or any other Supplemental Agreement. With respect to any MCC approval rights under this Agreement, MCC shall exercise its right of approval within five (5) business days of MCC's receipt of request for approval or inform MCA-Benin prior to the expiration of such five (5) business day period of the extension (at MCC's sole discretion) of MCC's approval period for an additional five (5) business days.

ARTICLE IV. GENERAL PROVISIONS

Section 4.1 Ministry Responsibility; Further Assurances. Notwithstanding any other provision of this Agreement, (i) the Government, acting through the Ministry, shall retain overall responsibility for ensuring compliance with this Agreement by any Government Affiliate, MCA-Benin and any other Permitted Designee and (ii) the Ministry shall ensure that actions required to be taken by MCA-Benin (and any Permitted Designee acting in its place during the initial operating period) under this Agreement are taken and that all other obligations of MCA-Benin (and any Permitted Designee acting in its place during the initial operating period) are duly fulfilled. The Ministry promptly shall do and perform, or shall cause to be done or performed, such other and further acts, and shall take all necessary and appropriate actions to bring into effect this Agreement with respect to MCA-Benin.

Section 4.2 Initial Operating Period; Subsequent Formation.

(a) Notwithstanding any other provision of this Agreement, during the first 180 days following the Entry into Force, (i) any authorization, certification or other action required to be taken by, or obligation of, the Chair of the Board may be taken by, and shall become obligations of, the Principal Representative of the Ministry or the chair of the board of directors of the National Coordination Unit of the Benin Program of the Millennium Challenge Account ("***National Coordination Unit***"); (ii) any certificates or other action required to be taken by, or obligations of, the National Coordinator or any Officer of MCA-Benin may be taken by, and shall become obligations of, the authorized agent for, or national coordinator of, the National Coordination Unit, and (iii) any action required of MCA-Benin may be taken by, and shall become an obligation of, the National Coordination Unit.

(b) As of the Effective Date, MCA-Benin has not been established and the National Coordination Unit has been designated as a Permitted Designee by the Government to act in place of MCA-Benin during the initial operating period. Following the establishment of MCA-Benin and as of the date of the execution of this Agreement by MCA-Benin (such date the "***MCA Effective Date***"), as such is indicated below MCA-Benin's signature on the signature page, MCA-Benin shall become a party to this Agreement. From and including the Effective Date to but excluding the MCA Effective Date, all references herein to MCA-Benin shall be deemed references to the National Coordination Unit (or the Permitted Designee acting in place of MCA-Benin during the initial operating period). As of the MCA Effective Date, all obligations of the National Coordination Unit (or the Permitted Designee acting in place of

MCA-Benin during the initial operating period) shall become the obligations MCA-Benin under this Agreement and all references herein to National Coordination Unit shall have no further force and effect.

Section 4.3 Communications. Any notice, certificate, request, report, approval, document, consent or other communication required, permitted, or submitted by any Party to any other Party under this Agreement shall be (a) in writing, (b) in English, and (c) deemed duly given: (i) upon personal delivery to the Party or Parties to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day (with an original copy to follow by mail); or (iii) three (3) business days after deposit with an internationally recognized overnight courier, with written verification of receipt, to the Party or Parties to be notified at the address indicated below, or at such other address as such Party may designate by notice to the other Parties:

To MCC:

Millennium Challenge Corporation
875 Fifteenth Street, N.W.
Washington, D.C. 20005
United States of America

Attention: Vice President for Operations,
(with a copy to the Vice President and General Counsel)
Facsimile: (202) 521-3700
Email: VPOperations@mcc.gov (Vice President for Operations);
VPGeneralCounsel@mcc.gov (Vice President and General
Counsel)

To the National Coordination Unit:

National Coordination Unit of the Benin Program for Millennium Challenge
Account
6th Floor
Espace Dina
Boulevard Saint Michel
Cotonou, Republic of Benin

Attention: Agent for National Coordination Unit or national coordinator of
the National Coordination Unit
Facsimile: 229 21 32 83 22

To MCA-Benin (upon joining this Agreement):

MCA-Benin
6th Floor
Espace Dina
Boulevard Saint Michel
Cotonou, Benin

Attention: National Coordinator
Facsimile: 229 21 32 83 22

To the Ministry:

Ministry of Development, Economy and Finances
Route de l'Aéroport
P.O. Box 302
Cotonou, Benin
Attention: Minister of Development, Economy and Finances
Facsimile: 229 21 30 18 51

Whenever the time for giving a notice or performing an act under this Agreement falls on a day that is not a business day, such time shall be extended to the next day that is a business day.

Section 4.4 Amendment; Waivers. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representative of each Party; *provided, however*, prior to MCA-Benin joining this Agreement, this Agreement may be amended upon the written agreement of MCC and the Ministry. Any waiver, permit, consent or approval of any kind or character on any Party's part of any breach, default or noncompliance under this Agreement and any waiver on such Party's part of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 4.5 Publicity. In accordance with Section 5.17 of the Compact, MCA-Benin shall post, or shall cause to be posted, a copy of this Agreement and such other materials as MCC may request, in each case on the MCA-Benin Website in English and in French and otherwise give appropriate publicity to this Agreement.

Section 4.6 Nonwaiver of Remedies. No delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach, default or noncompliance by another Party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. All remedies, either under this Agreement, by law, or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 4.7 Attachments. Any exhibit, schedule or other attachment expressly attached hereto (together, the "**Attachments**") is incorporated herein and shall constitute an integral part of this Agreement.

Section 4.8 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 between the Parties or between this Agreement and any Procurement Plan, the terms of this Agreement shall prevail.

Section 4.9 Headings. The Section and Subsection headings used in this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 4.10 Severability. If one or more provisions of this Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 4.11 Written Consents, Approvals and Notices. Notices, permits, consents, licenses, approvals and authorizations, and any equivalent actions, to be provided or made hereunder shall only be effective if done in writing.

Section 4.12 Rules of Construction. The following rules of construction shall be followed when interpreting this Agreement:

- (a) Words importing the singular also include the plural and vice versa;
- (b) References to natural persons or parties include firms or any other entity having legal capacity;
- (c) Words importing one gender include the other gender;
- (d) The words “include,” “including,” and variants thereof mean “includes, but not limited to” and corresponding variant expressions;
- (e) Except as otherwise set forth herein, all references contained herein to the Compact, any Supplemental Agreements, contracts, or other documents shall be deemed to mean the Compact, such Supplemental Agreements, contracts, or documents, as the same may be modified, supplemented, or amended from time-to-time;
- (f) Each reference to any applicable law shall be construed as a reference to such applicable law as it may have been, or may from time to time be, amended, replaced, extended or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such applicable law and all protocols, codes, proclamations and ordinances issued or otherwise applicable under any such law;
- (g) Except as otherwise expressly specified herein, any reference to Section, clause, or Schedule shall mean a Section, clause or Schedule of this Agreement.
- (h) The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import refer to this entire Agreement and not any one particular Article, Section, Schedule, or other subdivision of this Agreement;
- (i) Any reference to “business days” shall mean any day other than a Saturday, Sunday, commercial banking holiday in Cotonou, Benin or Washington, D.C., United States, or a federal or national holiday in Benin or the United States; and any reference to “day” shall mean a calendar day;
- (j) All references to notices, permits, licenses, consents, approvals, and authorizations and any equivalent actions hereunder shall mean written notices, permits, licenses, consents, approvals, and authorizations in accordance with Section 4.11; and

(k) Any reference to “month,” “quarter” or “year” shall have the common meaning given such terms based on a calendar year beginning on January 1 and ending on December 31 and divided into four approximately equal quarters beginning on each January 1, April 1, July 1 and October 1 of each such respective calendar year.

Section 4.13 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures, and each counterpart when so executed and delivered shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature to this Agreement or any amendment to this Agreement pursuant to Section 4.4 shall be delivered only as an original signature. Except as provided in the foregoing sentence and except as the Parties may otherwise agree in writing from time to time, a signature delivered by facsimile or electronic mail in accordance with Section 4.3 shall be deemed an original signature and accepted as such by the receiving Party and shall be binding on the Party delivering such signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying agreement on the basis of the signature’s legal effect, validity or enforceability solely because it is in facsimile or electronic form; *provided*, that a signature on an audit report shall be followed by an original in overnight express mail.

Section 4.14 Assignment. MCC may assign, delegate or contract its rights and obligations, in whole or in part, under this Agreement to any Affiliate, agent, or representative of MCC to the full extent permitted by the laws of the United States, without the prior consent of the Ministry and MCA-Benin. MCC shall provide written notice to the Ministry and MCA-Benin upon the effectiveness of such assignment, delegation or contract. Neither the Ministry nor MCA-Benin may assign, delegate, revoke, rescind or contract its rights and obligations under this Agreement without the prior consent of MCC. Each of the Ministry, MCA-Benin and MCC acknowledges that the National Coordination Unit has been, and MCA-Benin will be, following its establishment, designated by the Government as a “Permitted Designee,” as described in Section 3.2(c) of the Compact, pursuant to the terms of the respective Designation and the Acceptance of Designation.

Section 4.15 Entire Agreement. Except as otherwise expressly provided herein, this Agreement, including all Attachments, and all certificates, documents or agreements executed and delivered in connection with and in furtherance of this Agreement, when executed and delivered, shall constitute the entire agreement of the Parties with respect to the subject matter hereof, superseding and extinguishing all prior agreements, understandings and representations and warranties relating to the subject matter hereof.

Section 4.16 Termination; Suspension.

(a) MCC may terminate this Agreement in its entirety by giving the other Parties thirty (30) days’ notice.

(b) Notwithstanding any other provision of this Agreement or any other Supplemental Agreement between MCC and the Government (or any Government Affiliate or Permitted Designee), MCC may suspend or terminate this Agreement, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Ministry and MCA-Benin notice, if MCC, in its sole discretion, determines that:

(i) The Compact has expired or has been suspended or terminated, in whole or in part, in accordance with Section 5.4 of the Compact; *provided, however*, this Agreement shall remain in effect for one hundred and twenty (120) days following the termination or expiration of the Compact, or such other period as may be determined by MCC in accordance with Section 4.23;

(ii) Any Supplemental Agreement has been suspended or terminated in whole or in part, and such termination or suspension will have a materially adverse effect on the purpose of this Agreement or the ability of the Ministry, MCA-Benin or Government to implement their respective obligations and responsibilities under the Compact Documents;

(iii) MCA-Benin, the Government, the Ministry, or any Government Affiliate or Permitted Designee has materially breached one or more of its representations or any other covenants, obligations or responsibilities under this Agreement or any of the Compact Documents;

(iv) Any event that would be a basis for termination or suspension of the Compact or MCC Funding under Section 5.4 of the Compact has occurred;

(v) There has occurred a failure to meet a condition precedent or series of conditions precedent to MCC Disbursement as set out in and in accordance with this Agreement or any other Supplemental Agreement between the Parties or any Supplemental Agreement between the Government and MCC; or

(vi) Any other event has occurred, or circumstance has arisen that constitutes a Material Adverse Change (as defined in the Disbursement Agreement).

Section 4.17 Effect of Termination. Notwithstanding any expiration, suspension or termination of this Agreement pursuant to this Article IV, the following provisions of this Agreement shall survive: Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.15, 4.16, this Section 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, and Schedule 3.

Section 4.18 MCC Status. Each of MCA-Benin and the Ministry recognizes and agrees that MCC is a United States government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Agreement, and is immune from any action or proceeding arising under or relating to this Agreement. In matters arising under or relating to this Agreement, MCC shall not be subject to the jurisdiction of the courts or other body of Benin or any other jurisdiction.

Section 4.19 Representatives. For all purposes relevant to this Agreement, the Government and the Ministry shall be represented by the individual holding the position of, or acting as, the Minister of the Ministry of Development, Economy and Finances (the “**Ministry Principal Representative**”), MCC shall be represented by the individual holding the position of, or acting as, Vice President for Operations (the “**MCC Principal Representative**”), and MCA-Benin shall be represented by the individual holding the position of, or acting as, National Coordinator (the “**MCA-Benin Principal Representative**” and, together with the Ministry Principal Representative, the MCC Principal Representative, the “**Principal Representatives**”). Each Party, by notice from its Principal Representative to each other Party, may designate one or more

additional authorized representatives (each, an “***Additional Representative***”) for all purposes other than signing amendments to this Agreement. The names of each Party’s Principal Representative and its respective Additional Representatives shall be provided, with specimen signatures, to the other Parties, and each Party may accept as duly authorized any instrument signed by such Principal Representative or Additional Representative relating to the implementation of this Agreement, until receipt of notice of revocation of their authority. A Party may replace its Principal Representative with a new representative of equivalent or higher rank upon notice to the other Parties, which notice shall include the specimen signature of the new Principal Representative and shall be effective upon the receipt thereof by the other Parties.

Section 4.20 Reports.

(a) Any reports required pursuant to this Agreement, including pursuant to Section 2.5, shall be provided to MCC (x) in a timely manner and in any event no later than 30 days following the end of the applicable reporting period and (y) in form, format, and substance acceptable to MCC to afford reasonable and appropriate review of such reports.

(b) MCA-Benin shall deliver to MCC in a timely manner any information or document that arising under or is related to this Agreement that may be required for the fulfillment of the Government’s obligations under the reporting and audit requirements set forth in Section 3.8 of the Compact and any reporting requirements set forth in Section 3.12 of the Compact or as may be otherwise reasonably requested by MCC from time to time.

(c) MCC shall have the right to use any information or data delivered to MCC under this Agreement for the purpose of satisfying MCC reporting requirements or in any other manner.

Section 4.21 Consultation. Any Party may request, at any time, consultations relating to the interpretation or implementation of this Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (20) days from the commencement of the consultations, then each Party shall refer the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than forty-five (45) days from date of commencement. If the matter is not resolved within such time period, MCC may terminate this Agreement upon written notice to the Ministry and MCA-Benin. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 4.22 Governing Law. This Agreement is entered into for the purpose of implementing the Compact and is deemed an implementing agreement of the Compact, and as such it shall be interpreted in a manner consistent with the Compact and shall be governed by the principles of international law.

Section 4.23 Effective Date; Term. This Agreement shall (a) become effective and enter into force as of the date hereof, upon the signature of duly authorized representatives of MCC and the

Ministry (the "*Effective Date*"), and effective as to MCA-Benin upon the MCA Effective Date, and (b) terminate one hundred twenty (120) days following the termination or expiration of the Compact (unless terminated earlier pursuant to the provisions of this Agreement); *provided, however*, no new procurement shall be made or obligations incurred after the termination or expiration of the Compact; and *provided, further*, that the term of this Agreement may be extended for a period that is longer than one hundred twenty (120) days following the termination or expiration of the Compact if MCC determines that obligations incurred prior to the expiration or termination of the Compact remain to be carried out.

Section 4.24 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship between the Parties.

Section 4.25 Language. This Agreement is prepared and executed in English and in the event of any ambiguity or conflict between this official English version and any other version translated into French for the convenience of the Parties, this official English version shall prevail.

Section 4.26 Information on Websites. Each of MCA-Benin and the Ministry hereby acknowledges that (i) certain requirements under this Agreement are based on information set forth on the MCC website and (ii) such Party (and any Permitted Designee) has access to such website. Upon written request from MCA-Benin or the Ministry, MCC shall provide a written copy of such requested website information to the requesting party. Notwithstanding any other provision of this Agreement, any information or requirements set forth on the MCC website may be updated or amended at any time by MCC, which updates or amendments, when posted to the MCC website, shall be binding upon the Parties; *provided, however*, that upon any such update or amendment, MCC shall notify MCA-Benin and the Ministry of such change within a reasonable period of time thereafter, which notification MCC shall endeavor to make within thirty (30) days of such change.

SIGNATURE PAGE BEGINS ON THE NEXT PAGE.

IN WITNESS WHEREOF, the following Parties have caused this Agreement to be executed by a duly authorized representative as of the date first written above.

MILLENNIUM CHALLENGE CORPORATION

By: _____ / s / _____
Name: John Hewko
Title: Vice President for Operations

**MINISTRY OF DEVELOPMENT, ECONOMY AND FINANCES,
on behalf of the GOVERNMENT OF THE REPUBLIC OF BENIN**

By: _____ / s / _____
Name: Pascal I. Koupaki
Title: Minister of Development, Economy and Finances

MCA-Benin, acting through its duly authorized representative, has joined this Agreement and shall be subject to its provisions as of the date first written below.

MCA-BENIN

By: _____
Name: _____
Title: _____
Date: _____

SCHEDULE 1 PROCUREMENT GUIDELINES

1. Conduct and Administration of Procurement.

The principles, rules and procedures set out herein shall govern the conduct and administration of the procurement of the goods, works and services that need to be acquired to implement the Projects and Program in furtherance of the Compact. These principles, rules and procedures are based upon The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004 and The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004 (together the “*World Bank Guidelines*”), which are incorporated herein by reference, but in both cases excluding any subsequent modification, supplement or amendment thereto, and subject to the following exceptions:

(a) **General Exceptions.**

(i) References to the “*Bank*” unless otherwise noted refer to the Millennium Challenge Corporation (MCC).

(ii) References to the “*Borrower*” unless otherwise noted refer to the Government of the Republic of Benin (the “*Government*”) as signatory to the Compact and the MCA-Benin, an entity to be established under the laws of Benin as the designated management and oversight entity for the Program (“*MCA-Benin*”).

(iii) References to the “*Loan Agreement*” unless otherwise noted refer to the Compact.

(iv) References to “*loan*” refer to grant made pursuant to the Compact.

(v) References to the “*Procurement Guidelines*” refer to these Procurement Guidelines.

(b) **Specific Exceptions. The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004.**¹

(i) **Introduction.**

(1) **Paragraph 1.1** is deleted and replaced by the following text: Readers are strongly urged to visit the following web-sites where further information concerning procurements, including the Procurement Agreement which includes the Procurement Guidelines may be examined at the MCA-Benin Website and as may be posted from time to time on the MCC website address <http://www.mcc.gov/>.

(2) **Paragraph 1.2** defining the purpose of the guidelines is deleted.

¹ Modifying instructions and text of modifications are set out in regular type. [*Explanatory text is set out in italics type within brackets.*]

(3) **Paragraph 1.3** is changed to: The term “consultants” includes a wide variety of entities, such as consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, investment and merchant banks, universities, research institutions, nongovernmental organizations (NGOs) and individuals. Consultants help in a wide range of activities such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; and social and environmental studies.

(4) **Paragraphs 1.4 and 1.5** describing the procurement principles underlying the guidelines are deleted.

(5) **Paragraph 1.6** is changed to: The particular methods to be followed for the selection of consultants in furtherance of the Compact shall be set out in the semi-annual Procurement Plans.

(6) **Paragraph 1.8** defining the applicability of the guidelines in certain circumstances is deleted.

(7) **Paragraph 1.11** defining eligibility requirements is modified to add the following paragraph: (f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Government or otherwise prohibited by applicable United States law or Executive Order or United States policies, including under any then-existing anti-terrorist policies and any restrictions on use of MCC Funding as may be specified in paragraphs F-G (or otherwise) of the general provisions annex as posted on MCC website from time to time at www.mcc.gov/guidance/compact/general_provisions.pdf (“**General Provisions Annex**”) (which restrictions shall be deemed to apply to Compact Implementation Funding as if such funding were MCC Funding) shall be excluded from procurements awarded in furtherance of the Compact. Without limiting the foregoing, this would remove from eligibility any consultant, sub-consultant or personnel who or which are nationals of any country that is subject to sanction or restriction by United States law or policy. As of the date hereof, this list includes Cuba, Iran, North Korea, Sudan and Syria.

(8) **Footnote 9** is deleted.

(9) **Paragraph 1.12** defining rules for advance contracting and retroactive funding is changed to the following text: In certain circumstances, such as to accelerate project implementation, MCA-Benin may, with MCC’s approval, wish to proceed with the selection of consultants before the Compact enters into force. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Procurement Guidelines, and MCC shall review the process used by MCA-Benin. MCA-Benin undertakes such advance contracting at its own risk, and any approval issued by MCC with regard to the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCA-Benin for any contract costs if the contract is signed prior to the Entry into Force.

(10) **Paragraph 1.14** providing for MCC review is modified by changing the last sentence to the following text: The thresholds for MCC review are described in Schedule 2 of this Procurement Agreement.

(11) **Paragraph 1.15** providing for Bank's assistance in identifying consultants is deleted.

(12) **Paragraph 1.18** defining how to reference The World Bank role in the procurement is changed to: MCA-Benin shall use the following language when referring to MCC in Proposal Documents and contract documents:

The Millennium Challenge Corporation ("**MCC**") and the Government of the Republic of Benin (the "**Government**") have entered into a Compact for Millennium Challenge Account ("**MCA**") assistance to help advance economic growth and eliminate poverty in Benin (the "**Compact**") in the amount of 307,298,040 USD. Benin intends to apply a portion of the proceeds of MCC Funding (as defined in the Compact) to eligible payments under this contract. Payment by MCC will be made only at the request of MCA-Benin and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Compact, including restrictions on the use of MCC Funding and conditions to the disbursements.

(13) **Paragraphs 1.20 and 1.21** defining rules for use of language are revised to a single paragraph that states: All advertisements and publications of awards for contracts at or above 30,000 USD, whether on the MCA-Benin Website, Development Gateway Market, or UN Development Business Online shall be published in English. Advertisements and publications of awards for contracts valued less than 30,000 USD shall be published in English or in French or both at the discretion of MCA-Benin provided that, in the event published in both languages, in the case of discrepancies the English version will control.

For all contracts valued at or above 100,000USD, the documents soliciting qualifications and proposals and the documents responding to the solicitations, including the technical and financial proposals, shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between MCA-Benin and the Provider. At the discretion of MCA-Benin, the invitations and solicitation documents also may be prepared in French. For contracts valued at less than 100,000USD, any invitation or solicitation document and any responding documents may be prepared in English or in French or both at the discretion of MCA-Benin provided that, in the event published in both languages, in the case of discrepancies the English version will control. However, consultants shall not be permitted or required to sign contracts in two languages.

(14) **Paragraph 1.22** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that the Government and MCA-Benin (including beneficiaries of the MCC Funding or Compact Implementation Funding), as well as consultants under MCC-funded contracts, observe the highest standard of ethics during the

selection and execution of such contracts. In accordance with this requirement, MCC: [The remaining text of this paragraph remains unchanged.]

(15) **Paragraph 1.24** defining the rules for providing a Procurement Plan is deleted.

(ii) **Quality-and-Cost Based Selection (“QCBS”)**.

(1) **Paragraph 2.2** setting out the steps of the procurement procedure is modified in the introductory sentence to: The steps of the selection process shall include the following steps unless MCC specifically approves a modification in the procedure that is justified under the circumstances of a particular procurement.

(2) **Paragraph 2.4** providing rules for developing cost estimates is changed in the second sentence to state: As may be requested in the solicitation documents, costs shall be divided [The remaining text of this paragraph remains unchanged]

(3) **Paragraph 2.5** providing rules for advertising procurements is changed to: Subject to exclusions stated at Paragraph 1.11 above, every procurement shall be open to foreign and national participants without restrictions or preferences. Notice of anticipated procurements for consultant service as set out in periodic procurement plans shall be published at least semi-annually as a General Procurement Notice (the “**General Procurement Notice**”). General Procurement Notices shall be posted in the English language at the MCA-Benin Website, the Development Gateway Market (*dgMarket*) website at www.dgmarket.com and at UN Development Business Online (*UNDB online*) at www.devbusiness.com. MCA-Benin shall also publish the General Procurement Notice in a newspaper of wide circulation in Benin and in such other national and international paper publications or electronic media as appropriate or as requested from time to time by MCC. The General Procurement Notice shall be posted and published in a format approved by MCC. Specific procurement notices of consultant contracts expected to cost more than 30,000USD shall be advertised at the MCA-Benin Website and at *dgMarket* website. In addition, contracts expected to cost 100,000USD or more shall be advertised in *UNDB Online* as well as at the MCA-Benin Website and at *dgMarket*. MCA-Benin may also advertise the procurements in national and international paper publications or electronic media. The text of any advertisement or notice may be subject to review by MCC.

(4) **Footnote 19** is retained unchanged.

(5) **Footnote 20** is deleted.

(6) **Paragraphs 2.6, 2.7 and 2.8** providing rules for preparing the short-list of consultants are revised to a single paragraph that states: MCA-Benin is responsible for preparation of the short-list which is expected to include six to ten firms or organizations unless a smaller number of firms is justified under the circumstances of the particular procurement. Consideration will be given to all firms or organizations— national and international—expressing interest and possessing the relevant qualifications. The method for developing a short-list shall be fair and objective according to pre-announced criteria.

(7) **Footnotes 21, 22 and 23** are deleted.

(8) **Paragraph 2.9** defining the contents of solicitation documents, including Proposal Documents is modified in the second sentence to: MCA-Benin shall use the applicable solicitation documents, including the standard Proposal Documents as approved by MCC pursuant to Section 3 of the Procurement Guidelines as may be modified to address project-specific conditions, subject to MCC approval when the change is material. The third sentence of Paragraph 2.9 is deleted.

(9) **Paragraph 2.12** defining rules for contracts is changed to: Subparagraph (iv) of this Section 1 (b) of these Procurement Guidelines briefly discusses the most common types of contracts. MCA-Benin shall use an appropriate form of contract, acceptable to MCC, as necessary to address specific country and project issues. Any such changes shall be introduced generally through the forms and procedures defined in the standard Proposal Documents. When the Proposal Documents are not appropriate, MCA-Benin shall use other contract forms acceptable to MCC.

(10) **Paragraph 2.15** defining the rules for evaluating quality is modified to delete all references to the use of “transfer of knowledge” and “participation of nationals” to evaluate the quality of the proposals.

(11) **Paragraph 2.21** providing rules for review of the financial proposals shall be changed to: MCA-Benin shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing financial proposals, the solicitation documents, including the Proposal Documents, shall require that all financial proposals be stated in the same currency (local currency, or USD or a combination of the two) as selected by MCA-Benin. If there is a need to make a conversion between the two allowable currencies, the solicitation documents, including Proposal Documents, shall specify the source of the exchange rate to be used and the date of that exchange rate, *provided that* the date shall not be earlier than four weeks prior to the deadline for submission of financial proposals, nor later than the original date of expiration of the period of validity of the financial proposal. Any financial proposal that deviates from the currency requirement as stated in the solicitation documents, including Proposal Documents, may be rejected as non-responsive.

(12) **Paragraph 2.22** provides rules for evaluating cost proposals. In the event of inconsistency between these rules and any related provisions of the Compact and Supplemental Agreements, the provisions of the Compact and the Supplemental Agreements shall prevail.

(13) **Paragraph 2.23** defining the procedures for developing the total score and determining the winning proposal is renumbered Paragraph 2.23.1 and a new paragraph is added that states: **Paragraph 2.23.2.** Before inviting the firm obtaining the highest total score for negotiations, MCA-Benin shall furnish to MCC for its review and approval a full description of the procurement process, including an account of all significant problems or defects during the process and a description of how these were resolved.

(14) **Paragraph 2.26** provides rules for financial negotiations. In the event of inconsistency between these rules and any related provisions of the Compact and Supplemental Agreements, the provisions of the Compact and Supplemental Agreements shall prevail. This paragraph 2.26 also is modified by adding the following sentence at the end of the paragraph: If the contract permits reimbursement of any costs, the reimbursement amounts shall be limited by applicable MCC cost principles which are posted at www.mcc.gov and can be found under *program procurement*.

(15) **Paragraph 2.28** defining requirements for publishing notice of award of the contract is modified to require that notice also shall be posted to the MCA-Benin Website. Paragraph 2.28 also is modified by adding the following sentence at the end of the paragraph: For contracts valued less than 100,000USD, the notice shall be posted in *UNDB online* and in *dgMarket* quarterly and in the MCA-Benin Website at least weekly and in a format of a summarized table covering the previous period.

(iii) **Other Methods of Selection.**

(1) **Paragraph 3.7, Footnote 32** is changed to: Dollar thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed 200,000USD, except in exceptional circumstances and as specifically approved by MCC.

(2) **Paragraph 3.8** defining the requirements for publishing notice of award when selection is based on the consultant’s qualifications is changed to: MCA-Benin shall publish in *UNDB online*, in the MCA-Benin Website and in *dgMarket*, the name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract. The publication in *UNDB online* and in *dgMarket* shall be done quarterly, and in the MCA-Benin Website shall be done at least weekly, and in the format of a summarized table covering the previous period.

(3) **Paragraph 3.13** concerning publication of award of contracts is changed by adding, after *dgMarket*, the following text: and on the MCA-Benin Website.

(iv) **Types of Contracts and Important Provisions.**

(1) **Paragraph 4.6** defining currency related rules shall be changed to: The solicitation documents, including the Proposal Documents, shall state clearly that firms must express the price for their services in the currency stated in the solicitation document which in every case must be either United States Dollars or the local currency of Benin. MCA-Benin may require consultants to state the portion of the price representing costs in the local currency of Benin. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

(2) **Paragraph 4.7** dealing with price adjustment is deleted.

(3) **Paragraphs 4.8 and 4.9** define payment provisions. In the event of inconsistency between these rules and any related provisions of the Compact and

Supplemental Agreements with MCC, the provisions set out in the Compact and Supplemental Agreements with MCC shall prevail.

(4) **Paragraph 4.9, subparagraph (a)** relating to payment provisions is changed to: (a) consultants will be paid directly by the Fiscal Agent.

(5) **Paragraph 4.11** relating to Borrower's contribution is deleted.

(6) **Paragraph 4.15** relating to applicable law and settlement of disputes shall be changed to: The contract shall include provisions dealing with the applicable law and the forum for settlement of disputes. Settlement of disputes shall take place in Benin, with the possibility for international arbitration in the case of foreign consultants and in other cases where the parties so agree.

(v) **Selection of Individual Consultants.**

(1) **Paragraph 5.2** defining procedures for selection of individual consultants shall be modified by changing the first three sentences to: Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement is required for contracts valued at 30,000USD and above unless there are circumstances to justify a limited competitive process. Consultants do not need to submit proposals but shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by MCA-Benin.

(vi) **Appendix 1: Review by MCC of the Selection of Consultants.**

(1) **Paragraph 1** is changed to: 1. MCC shall review the selection process for contracting consultant services that MCA-Benin proposes in its Procurement Plans in order to ensure that the proposed method of selection is appropriate and is consistent with the rules and procedures set out in these Procurement Guidelines.

(2) **Prior Review:** The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule 2 to the Procurement Agreement.

(3) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact, or such longer period if required to resolve any litigation, claims or audit findings or any statutory requirement.

(vii) **Appendix 2: Instructions to Consultants ("ITC").**

(1) **Paragraph 1** relating to use of The World Bank standard proposal documents is changed in the introductory sentences to: MCA-Benin shall use the applicable standard solicitation documents, including the standard Proposal Documents as approved by MCC pursuant to Section 3 of these Procurement Guidelines as may be modified to address Program or Project-specific conditions, subject to MCC approval when the change is material. The solicitation documents shall include instructions to consultants that includes adequate

information on the following aspects of the procurement procedures and the assignment:
[The remaining text of this Appendix remains unchanged.]

(2) **Paragraph 1, subparagraph (g)** referring to external financing is deleted.

(viii) **Appendix 3: Guidance to Consultants** providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. Consultants can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about MCA-Benin at the MCA-Benin Website.

(c) **Specific Exceptions. The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004.**

(i) **Introduction.**

(1) **Paragraph 1.1** defining the purpose of the guidelines is deleted.

(ii) **General Considerations.**

(1) **Paragraph 1.2** describing the procurement principles underlying the guidelines is deleted.

(2) **Paragraph 1.3** is changed to: Open competition is the basis for efficient public procurement. In most cases, therefore, MCC requires MCA-Benin to obtain goods, works and services through an international competitive bidding (ICB) process open to eligible suppliers and contractors.

(3) **Paragraph 1.4**, the third sentence is changed to: The particular methods that may be followed for procurements in furtherance of the Compact shall be set out in the semi-annual Procurement Plans. The fourth sentence is deleted.

(4) **Paragraph 1.5** defining application of the guidelines is changed to: The procedures outlined in these Procurement Guidelines apply to all contracts for goods, services and works funded by MCC in accordance with the Compact and the Procurement Agreement. References to “goods” and “works” in these Procurement Guidelines include related services such as transportation, insurance, installation, commissioning, training and initial maintenance. “Goods” includes commodities, raw material, machinery, equipment and industrial plant. These Procurement Guidelines also apply to services which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping and similar operations.

(5) **Footnote 10** is deleted.

(6) **Paragraph 1.8** defining eligibility requirements is modified to add the following paragraph: (f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Government or otherwise prohibited by

applicable United States law or executive order or United States policies including under any then-existing anti-terrorist policies or any restrictions on use of MCC Funding as may be specified in paragraphs F-G (or otherwise) of the General Provisions Annex (which restrictions shall be deemed to apply to Compact Implementation Funding as if such funding were MCC Funding) shall be excluded from procurements awarded in furtherance of the Compact. Without limiting the foregoing, this would remove from eligibility any procurement from a country or from a firm that is organized in or has its principle place of business or a significant portion of its operations in any country that is subject to sanction or restriction by United States law or policy. As of the date hereof, this list includes Cuba, Iran, North Korea, Sudan and Syria.

(7) **Paragraph 1.9** defining rules for advance contracting and retroactive funding is changed to: In certain circumstances, such as to accelerate Program or Project implementation, MCA-Benin may, with MCC's approval, wish to proceed with the selection of the contractor or supplier before the Compact enters into force. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Procurement Guidelines, and MCC shall review the process used by MCA-Benin. MCA-Benin undertakes such advance contracting at its own risk, and any approval by MCC with regard to the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCA-Benin for any contract costs if the contract is signed prior to the Entry into Force.

(8) **Paragraph 1.11** concerning review by MCC is changed by deleting the last two sentences and inserting the following text: The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule 2 to the Procurement Agreement.

(9) **Paragraph 1.13** defining how to reference The World Bank role in the procurement is changed to: MCA-Benin shall use the following language when referring to MCC in Bidding Documents and contract documents:

The Millennium Challenge Corporation ("**MCC**") and the Government of the Republic of Benin (the "**Government**") have entered into a Compact for Millennium Challenge Account ("**MCA**") assistance to advance economic growth and eliminate poverty in Benin (the "**Compact**") in the amount of 307,298,040 USD. Benin intends to apply a portion of the proceeds of MCC Funding (as defined in the Compact) to eligible payments under this contract. Payment by MCC will be made only at the request of MCA-Benin and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Compact, including restrictions on the use of MCC Funding and conditions to disbursements.

(10) **Paragraph 1.14** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that MCA-Benin (including beneficiaries of MCC grants), as well as bidders, suppliers, and contractors under MCC funded contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In

accordance with this requirement, MCC: [*The remaining text of this paragraph remains unchanged.*]

(11) **Paragraph 1.16** defining the rules for providing a Procurement Plan is deleted.

(iii) **International Competitive Bidding (“ICB”)**.

(1) **Paragraph 2.7** defining the requirements for publication of General Procurement Notice is changed to: Subject to the exclusions stated at Paragraph 1.8, every procurement shall be open to foreign and national participants without restrictions or preferences. Notice of anticipated procurements as set out in periodic procurement plans shall be published at least semi-annually as a General Procurement Notice (the “**General Procurement Notice**”). General Procurement Notices shall be posted in the English language at the MCA-Benin Website, the Development Gateway Market (*dgMarket*) website at www.dgmarket.com and at UN Development Business Online (*UNDB online*) at www.devbusiness.com. MCA-Benin shall also publish the General Procurement Notice in a newspaper of wide circulation in Benin and in such other national and international paper publications or electronic media as appropriate or as requested from time to time by MCC. The General Procurement Notice shall be posted and published in a format approved by MCC.

(2) **Footnote 27** is retained unchanged.

(3) **Paragraph 2.8** defining requirements for notification and advertising of specific procurement notices is changed to: Invitations to pre-qualify or to bid, as the case may be, in an ICB procurement (generally procurements valued at or above 100,000USD) shall be advertised as Specific Procurement Notices (the “**Specific Procurement Notice**”) in English at the MCA-Benin Website, at *dgMarket* website and at *UNDB online*. Publication in local print and broadcast and other national and international media is encouraged as long as the posting meets the same, concurrent, 30 day notice requirement.

(4) **Paragraph 2.12** prescribing use of the Standard Bidding Documents (as defined in the World Bank Guidelines) is changed to: MCA-Benin shall use the applicable solicitation documents, including the standard Bidding Documents as approved by MCC pursuant to Section 3 of these Procurement Guidelines as may be modified to address project-specific conditions, subject to MCC approval when the change is material.

(5) **Paragraph 2.15** defining the rules for use of language is changed to: All advertisements and publications of awards for contracts at or above 50,000 USD, whether on the MCA-Benin Website, *dgMarket*, or *UNDB online* shall be published in English. Advertisements and publications of awards for contracts valued at less than 50,000 USD shall be published in English or in French or both at the discretion of MCA-Benin provided that, in the event published in both languages, in the case of discrepancies the English version will control.

For all contracts valued at or above 100,000USD, the documents soliciting qualifications and the Bidding Documents as well as the documents responding to these solicitations, including the bids, shall be prepared in English. All contracts at or above 100,000USD shall be written in

English and this language shall govern contractual relations between MCA-Benin and the Provider. At the discretion of MCA-Benin, the invitations and solicitation documents also may be prepared in French. For contracts valued at less than 100,000USD, any invitation or solicitation document and any responding documents may be prepared in English or in French or both at the discretion of MCA-Benin provided that, in the event published in both languages, in the case of discrepancies the English version will control. However, contractors and suppliers shall not be permitted or required to sign contracts in two languages.

(6) **Paragraph 2.24** defining rules for use of price adjustments is changed in the second sentence to: Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but may be included in contracts which extend beyond eighteen months with the approval of MCC.

(7) **Paragraph 2.26** defining requirements for transportation and insurance is changed in the third sentence to: The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States Dollars or local currency depending upon the currency of the contract.

(8) **Paragraph 2.27** allowing reservation of transportation and insurance for imported goods to national companies is deleted.

(9) **Paragraph 2.28** setting out the currency provisions is changed to: Bidding Documents shall state currency or currencies in which bidders are to state their prices. All bids are to be denominated and paid only in United States dollars or the local currency of Benin as stated in the Bidding Documents. No other currency is permitted.

(10) **Paragraphs 2.29 and 2.30** defining rules for the currency of bids is changed to: The Bidding Documents shall caution bidders that the bid price must be expressed in the currency requested. Only one of two currencies may be requested, either United States dollars or the local currency of Benin. Bids may not be requested or expressed in any other currency.

(11) **Paragraph 2.31** defining rules for currency conversion for bid comparison is deleted.

(12) **Paragraph 2.33** defining rules for making payment in currency other than the currency of the bid price is deleted.

(13) **Paragraph 2.36** defining the rules for payment method and terms is changed to: Bidding documents shall specify the payment method.

(14) **Paragraph 2.43** relating to applicable law and settlement of disputes shall be modified to change the first four sentences with the following text: The conditions of contract shall include provisions dealing with the applicable law and forum for the settlement of disputes. Settlement of disputes shall take place in Benin, with the possibility for international arbitration in cases where foreign entities are parties to the contract and in other cases where the parties so agree.

(15) **Paragraph 2.52** defining rules for determining the lowest evaluated bid is modified to deleted the use of “payment schedule” from the list of permitted evaluation factors.

(16) **Paragraphs 2.55 and 2.56** defining requirements for use of Domestic Preferences are deleted.

(17) **Paragraph 2.60** defining the requirements for publication of the notices of contract award is modified to require publication at the MCA-Benin Website, in addition to *UNDB online* and *dgMarket*.

(18) **Paragraphs 2.66 and 2.67** defining modified ICB procedures for a program of imports are deleted.

(19) **Paragraph 2.68** defining the rules for procurement of commodities is modified to require that the bid prices must be denominated and paid in either United States Dollars or the local currency of Benin.

(iv) **Other Methods of Procurement.**

(1) **Paragraph 3.1** defining the general rules for choosing a procurement method is modified by deleting the second sentence related to domestic preferences.

(2) **Paragraph 3.3** defining the conditions for use of National Competitive Bidding (as defined in the World Bank Guidelines) is modified to limit the use of this method of procurement to procurements valued less than 100,000USD.

(3) **Paragraph 3.4** defining the rules for National Competitive Bidding (as defined in the World Bank Guidelines) is modified, the first two sentences are changed to: All procurements valued at 50,000USD or above shall be posted at the MCA-Benin Website, and at *dgMarket*. (As required under Paragraph 2.8 above, procurements valued at 100,000USD and above must also be posted at *UNDB Online*.) For procurements less than (100,000USD), solicitation documents may be in French only and the bids may be requested and paid only in local currency at the discretion of MCA-Benin.

(4) **Paragraph 3.5** defining the conditions for using Shopping is modified to limit use of Shopping to procurement valued less than 50,000USD.

(5) **Paragraph 3.7** defining the publication requirements for notice of Direct Contracting awards is changed to: After the contract signature, MCA-Benin shall publish in the MCA-Benin Website, in *UNDB online* and in *dgMarket* for all procurements valued above 2,000USD the name of the contractor, price, duration, and summary scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

(6) **Paragraph 3.16** defining rules for loans guaranteed by The World Bank is deleted.

(7) **Paragraph 3.17** defining the rules for community participation in procurement is deleted.

(v) **Appendix 1: Review by MCC of Procurement Decisions.**

(1) **Prior Review:** The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule 2 to the Procurement Agreement.

(2) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact, or such longer period if required to resolve any litigation, claims or audit findings or if required by any statutory requirements.

(vi) **Appendix 2: Domestic Preferences.**

(1) **Appendix 2** defining the requirements and rules for using domestic preferences is deleted.

(vii) **Appendix 3: Guidance to Bidders.**

(1) Providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. Bidders can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the MCA-Benin at the MCA-Benin Website.

2. Records.

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC and in accordance with Section 3.8 of the Compact.

3. Bidding and Proposal Documents.

Standard bidding documents (“*Bidding Documents*”) and standard proposal documents (“*Proposal Documents*”) (together, “*Bidding Documents and Proposal Documents*”) shall be developed and subject to review by MCC. The Bidding Documents and Proposal Documents must be available in the English language. Bidding Documents and Proposal Documents may also be available in the French language but the English language version will control. The instructions to bidders in the Bidding Documents and instructions to consultants in the Proposal Documents must set out or reference the rules and procedures governing the procurement. The data sheet accompanying instructions to bidders and instructions to consultants must also state the currency or currencies for the offers and shall require that payment be made in the same currency as the offer which must be in either United States Dollars or the local currency of Benin.

4. Review and Approval Requirements.

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCA-Benin or by MCC, as provided in Schedule 2 to the

Procurement Agreement. This system of review and approval requirements is intended to ensure adequate oversight over Compact-related procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities, and is subject to modification or exception at any time by MCC.

5. Bid Challenge System.

MCA-Benin shall establish a bid challenge system that provides suppliers and contractors, including consultants, the ability to seek review of procurement actions and decisions (“***Bid Challenge System***”). Such Bid Challenge System shall be subject to MCC approval. The review body must be impartial and independent and shall have no interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement and no involvement in or related to the procurement process. The review body must follow clear, written, and transparent procedures and shall issue a timely, written decision on any bid challenge that is timely and properly filed. The review body must have the authority to order a correction of a violation of the procurement principles and procedures and to order compensation for any loss or damage suffered by a successful challenger, at least to the extent of the cost of preparation of the bid and the challenge. The review body must also have the power to order suspension of a procurement that is under challenge in order to preserve the commercial opportunity pending the outcome of the review. MCC reserves the right to review and comment on the organization and operation of the Bid Challenge System.

6. Subcontracting.

(a) Every contract or subcontract for goods, services or works with any party that receives at least 50,000USD in the aggregate of MCC Funding shall require the contracting party to follow the Procurement Principles set out in Section 3.6 of the Compact to the maximum extent consistent with the objectives and requirements of the contract when subcontracting for goods, services or works.

(b) In every contract or subcontract valued in excess of 1,000,000USD, the contracting party shall be required to have written procurement procedures that may be subject to review by MCA-Benin, MCC, the Government and any of their respective agents or representatives.

(c) Any contractor or subcontractor planning to subcontract for a major item of supply, services, or works, (deemed major if valued in excess of 100,000USD) shall obtain MCA-Benin prior written approval of the subcontractor.

SCHEDULE 2 - APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		National Coordinator	Board	MCC
Pre-qualification (Part II, Paragraphs 2.9 and 2.10)	Pre-qualification documents and advertising procedures	All	None	Above 1,000,000
	Evaluation Report with proposed list of entities qualified	All	Above 500,000	Above 500,000
	Handling of Protest	All	All	All
Competitive Bidding (International and National) (Part II and Part III, Paragraphs 3.3 and 3.4)	Bidding Documents	All	None	Above 1,000,000 Goods Above 5,000,000 Works
	Extension of Bid Validity	All	None	Above 1,000,000
	Evaluation Report with proposed award	All	Above 500,000	Above 250,000
	Final Draft of Contract	All	None	Above 250,000
Limited Bidding (Part III, Paragraph 3.2)	Selection of limited bidding because only limited number of suppliers	All	None	Above 100,000
	Other justification	All	None	Above 50,000
	Shortlist	All	None	Above 100,000
	Bidding Documents	All	None	Above 500,000
	Extension of Bid Validity	All	None	Above 1,000,000
	Evaluation Report with proposed award	All	Above 500,000	Above 250,000
	Final Draft of Contract	All	None	Above 250,000
	Handling of Protest	All	All	All
Shopping (Part III, Paragraph 3.5)	Selection of Shopping because procurement is valued under 50,000	All	None	None
	Shortlist	Over 2,000	None	None

* Within each “Procurement Procedure or Method,” each separate “Decision” shown is an independent requirement, and all requisite approvals must be received for each such “Decision” before proceeding, sequentially from top to bottom, to the next “Decision” requirement.

SCHEDULE 2 - APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		National Coordinator	Board	MCC
	Record of Purchases	Weekly	Monthly	None
	Handling of Protest	All	All	Quarterly record of decisions
Direct Contracting (Part III, Paragraphs 3.6 and 3.7)	Selection of Direct Contracting to add to or extend existing contract	All	None	Above 100,000
	Selection of Direct Contracting to be compatible with existing equipment	All	None	Above 50,000
	Selection of Direct Contracting because obtainable only from one source	All	None	Above 100,000
	Selection of Direct Contracting because procurement is valued under 2,000	None	None	None
	Selection of Direct Contracting on any other grounds	All	None	Above 50,000
	Final Draft of Contract	Over 2,000 (Under 2,000 review weekly report)	Above 50,000 (Under 2,000 review monthly report)	Above 50,000
	Handling of Protest in respect of selection of Direct Contracting	All	All	All
Force Account (Part III, Paragraph 3.8)	Selection of using equipment owned by or employees of Government of Benin for performing works	All	All	All
	Final Draft of Contract	All	All	All
All Procurement Actions	Contract Amendments, Modifications and Change Orders	All	For contracts over 50,000: Material change or increases value of Contract by 10% or more	For contracts over 50,000: Material change or increases value of Contract by 10% or more

SCHEDULE 2 – APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Consultant Services

Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		National Coordinator	Board	MCC
Quality and Cost Based Selection (Part II)	Request for Expression of Interest	All	None	Above 500,000
	Shortlist (if used)	All	None	Above 100,000
	Proposal Documents	All	None	Above 500,000
	Technical Evaluation Report	All	None	Above 100,000
	Proposed Award	All	Above 500,000	Above 100,000
	Final Draft of Contract	All	None	Above 100,000
	Handling of Protest	All	All	All
Quality Based Selection and Selection under Fixed Budget (Part III, Paragraph 3.2 to 3.5)	Choice of this selection procedure	All	All	All
	Request for Expression of Interest	All	None	Above 500,000
	Shortlist (if used)	All	None	Above 100,000
	Proposal Documents	All	None	Above 500,000
	Technical Evaluation Report for QBS only	All	None	Above 100,000
	Proposed Award	All	Above 500,000	Above 100,000
	Final Draft of Contract	All	None	Above 100,000
Least-Cost Selection (Part III, Paragraph 3.6)	Choice of this selection procedure because procurement is valued under 200,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist (if used)	All	None	Above 100,000
	Proposal Documents	All	None	None
	Proposed Award	All	Above 100,000	Above 100,000

* Within each “Procurement Procedure or Method,” each separate “Decision” shown is an independent requirement, and all requisite approvals must be received for each such “Decision” before proceeding, sequentially from top to bottom, to the next “Decision” requirement.

SCHEDULE 2 – APPROVALS

REVIEW OF PROCUREMENT DECISIONS: Consultant Services				
Procurement Procedure or Method	Decision*	LEVEL OF REVIEW (Thresholds expressed in USD)		
		National Coordinator	Board	MCC
	Final Draft of Contract	All	None	Above 500,000
	Handling of Protest	All	All	All
Selection Based on Consultant’s Qualifications (Part III, Paragraph 3.7 and 3.8)	Choice of this selection procedure because procurement is valued under 100,000	All	None	None
	Shortlist	All	None	Above 50,000
	Technical Evaluation Report with Proposed Award	All	Above 50,000	Above 50,000
	Final Draft of Contract	All	None	None
	Handling of Protest	All	All	All
Single Source Selection	Choice of this selection procedure	All	None	Above 50,000
	Final Draft of Contract	All	Above 50,000	Above 50,000
	Handling of Protest in respect of choosing Single Source Selection Procedure	All	All	All
Selection of Individual Consultants	Choice of this selection procedure	All	None	Above 50,000
	Shortlist (if used)	All	None	Above 50,000
	Technical Evaluation Report with Proposed Award	All	Above 50,000	Above 50,000
	Final Draft of Contract	All	None	Above 50,000
	Handling of Protest	All	All	All
All Procurement Actions	Contract Amendments, Modifications and Change Orders	All	For contracts over 50,000: Material change or increases value of Contract by 10% or more	For contracts over 50,000: Material change or increases value of Contract by 10% or more

SCHEDULE 3 DEFINED TERMS

***Additional Representative** shall have the meaning set forth in Section 4.19.*

***Agreement** shall have the meaning set forth in the Preamble.*

***Attachments** shall have the meaning set forth in Section 4.7.*

***Bank** shall have the meaning set forth in Schedule 1.*

***Benin** shall have the meaning set forth in the Recitals.*

***Bid Challenge System** shall have the meaning set forth in Schedule 1.*

***Bidding Documents** shall have the meaning set forth in Schedule 1.*

***Bidding Documents and Proposal Documents** shall have the meaning set forth in Schedule 1.*

***Borrower** shall have the meaning set forth in Schedule 1.*

***Compact** shall have the meaning set forth in the Preamble (and Schedule 1).*

***Compact Documents** shall have the meaning set forth in Section 2.4*

***dgMarket** shall have the meaning set forth in Section 1.2 (and Schedule 1).*

***Effective Date** shall have the meaning set forth in Section 4.23.*

***General Procurement Notice** shall have the meaning set forth in Schedule 1.*

***General Provisions Annex** shall have the meaning set forth in Schedule 1.*

*“**goods**” shall have the meaning set forth in Schedule 1.*

***Government** shall have the meaning set forth in the Preamble (and Schedule 1).*

***ICB** shall have the meaning set forth in Schedule 1.*

***ITC** shall have the meaning set forth in Schedule 1.*

*“**loan**” shall have the meaning set forth in Schedule 1.*

***Loan Agreement** shall have the meaning set forth in Schedule 1.*

***MCA** shall have the meaning set forth in Schedule 1.*

***MCA-Benin** shall have the meaning set forth in the Preamble (and Schedule 1).*

MCA-Benin Principal Representative shall have the meaning set forth in Section 4.19.

MCA-Effective Date shall have the meaning set forth in Section 4.2(b).

MCC shall have the meaning set forth in the Preamble (and Schedule 1).

MCC Principal Representative shall have the meaning set forth in Section 4.19.

Ministry shall have the meaning set forth in the Preamble.

Ministry Principle Representative shall have the meaning set forth in Section 4.19.

National Competitive Bidding shall have the meaning set forth in Schedule 1.

National Coordination Unit shall have the meaning set forth in Section 4.2.

Party and Parties shall have meaning set forth in the Preamble.

Principal Representatives shall have the meaning set forth in Section 4.19.

Procurement Guidelines shall have the meaning set forth in Section 2.2 (and Schedule 1).

Procurement Plan shall have the meaning set forth in Section 1.1.

Procurement Principles shall have the meaning set forth in Section 2.1.

Proposal Documents shall have the meaning set forth in Schedule 1.

QCBS shall have the meaning set forth in Schedule 1.

Special Procurement Notice shall have the meaning set forth in Schedule 1.

Standard Bidding Documents shall have the meaning set forth in Schedule 1.

UNDB Online shall have the meaning set forth in Section 1.2 (and Schedule 1).

“**works**” shall have the meaning set forth in Schedule 1.

“**World Bank Guidelines**” shall have the meaning set forth in Schedule 1.