

GOVERNANCE AGREEMENT

BY AND AMONG

**MILLENNIUM CHALLENGE CORPORATION,
THE STAFF OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA,
ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA**

AND

MILLENNIUM CHALLENGE ACCOUNT – ARMENIA S.N.C.O.

DATED AS OF SEPTEMBER 26, 2006

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I GOVERNING COUNCIL OF MCA-ARMENIA.....	1
Section 1.1 Composition.....	1
Section 1.2 Appointment of Voting Members.....	1
Section 1.3 Appointment of the Chairman of the Governing Council.....	3
Section 1.4 Appointment of Observers.....	3
Section 1.5 Indemnification and Insurance.....	4
Section 1.6 Authority of the Governing Council.....	5
Section 1.7 Meetings of Governing Council.....	8
Section 1.8 Quorum; Voting.....	8
Section 1.9 Action by Written Consent.....	9
Section 1.10 Meetings by Means of Conference Telephone.....	9
Section 1.11 Reporting Requirements.....	9
Section 1.12 Remuneration.....	9
ARTICLE II MANAGEMENT UNIT OF MCA-Armenia.....	9
Section 2.1 Appointment.....	9
Section 2.2 Authority of Management Unit.....	10
Section 2.3 Role of CEO.....	12
Section 2.4 Reporting Requirements.....	14
Section 2.5 Restrictions on Use of MCC Funding.....	14
ARTICLE III STAKEHOLDERS' COMMITTEE.....	15
Section 3.1 Composition.....	15
Section 3.2 Role and Responsibilities.....	16
Section 3.3 Meetings; Decisions.....	17
Section 3.4 Accessibility; Transparency.....	18
ARTICLE IV MCC APPROVAL RIGHTS; OTHER OBLIGATIONS.....	18
Section 4.1 MCC Approval Rights.....	18
Section 4.2 No Liability on MCC.....	18
Section 4.3 MCC Information Rights.....	19
Section 4.4 Other Obligations.....	19
Section 4.5 MCA-Armenia Approvals.....	19
Section 4.6 Permitted Designee.....	19
Section 4.7 Audits.....	19
ARTICLE V TERM; SUSPENSION; TERMINATION.....	20
Section 5.1 Term.....	20

	<u>Page</u>
Section 5.2 Termination; Suspension	20
Section 5.3 Effect of Termination.....	21
ARTICLE VI MISCELLANEOUS	21
Section 6.1 Representations and Warranties.....	21
Section 6.2 Confidentiality	22
Section 6.3 Communications	22
Section 6.4 Assignment.....	23
Section 6.5 Representatives	23
Section 6.6 International Agreement	24
Section 6.7 Consultation.....	24
Section 6.8 MCC Status	24
Section 6.9 Relationship of the Parties	24
Section 6.10 Amendment; Waiver.....	24
Section 6.11 Non-waiver of Remedies	25
Section 6.12 Attachments	25
Section 6.13 Headings.....	25
Section 6.14 Entire Agreement	25
Section 6.15 Counterparts; Signatures.....	25
Section 6.16 Prohibited Actions.....	25
Section 6.17 English Language.....	26
Section 6.18 Interpretation.....	26

GOVERNANCE AGREEMENT

This **GOVERNANCE AGREEMENT** (this “**Agreement**”) is entered into as of September 26, 2006 by and among the Millennium Challenge Corporation, a United States Government corporation (“**MCC**”), the Staff of the Government of the Republic of Armenia, acting on behalf of the Government of the Republic of Armenia (the “**Ministry**”), and Millennium Challenge Account – Armenia S.N.C.O. established in accordance with Government Resolution No. 487-N dated April 13, 2006, as amended, by Government Resolution No. 1008-N dated July 6, 2006 (“**MCA-Armenia**” and, together with MCC and the Ministry, the “**Parties**” and, each individually, a “**Party**”).

Capitalized terms that are used but not defined herein (including in the attached Exhibit A) shall have the meanings given to such terms in that certain Millennium Challenge Compact by and between the United States of America, acting through MCC and the Government of the Republic of Armenia (the “**Government**”), signed in Washington, D.C., on March 27, 2006 (the “**Compact**”).

RECITALS

WHEREAS, the United States of America, acting through MCC, and Government executed the Compact that sets forth the general terms and conditions on which MCC will provide funding of up to USD \$235,650,000 to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in Armenia;

WHEREAS, as a condition precedent to the initial MCC Disbursement under the Compact, the Parties must execute and deliver a governance agreement that specifies the organizational structure of MCA-Armenia and the respective powers, rights and duties of its Governing Council and Management Unit, as well as the formation and role of the Stakeholders’ Committee (each as defined below).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree:

ARTICLE I

GOVERNING COUNCIL OF MCA-ARMENIA

Section 1.1 Composition. The Governing Council of MCA-Armenia (the “**Governing Council**”) shall consist of 11 voting members (the “**Voting Members**”) plus the Environmental Observer, if any, and the MCC Observer (the Voting Members, the Environmental Observer and the MCC Observer being collectively referred to in this Agreement as the “**Members**”). The number of Members may be expanded or reduced by a decision of the Governing Council with the prior written approval of MCC.

Section 1.2 Appointment of Voting Members.

(a) The following Voting Members (the “**Government Members**”) shall be appointed by the Prime Minister and may be replaced by another government official of

comparable rank from a ministry or other government body relevant to the Program activities, subject to approval by the Government and MCC (such replacement to be referred to hereinafter as a Government Member):

- (i) the Prime Minister;
- (ii) the Chief Economic Advisor to the President;
- (iii) the Minister of Finance and Economy;
- (iv) the Minister of Transport and Communication;
- (v) the Minister of Agriculture; and
- (vi) the Minister of Territorial Administration.

(b) Five (5) representatives of civil society shall be appointed as Voting Members (the “*Civil Society Members*”) by the Stakeholders’ Committee, as provided in Section 3.2(b).

(c) Each Government Member shall serve in his or her capacity as a Government official and not in his or her personal capacity. If a person serving as a Government Member resigns or is removed from such Government office, that person’s position on the Governing Council will be taken by such person’s successor in such Government office or, subject to approval by the Government and MCC, by another government official of comparable rank from a ministry or other government body relevant to the Program activities.

(d) Each Civil Society Member shall be appointed for a one (1) year term, and any individual so appointed may, with the consent of the Stakeholders’ Committee, be reappointed in accordance with Section 1.2 and 3.2(b) for one or more additional one (1) year terms. In the case of an appointment to fill a vacancy as described in Section 1.2(f), such new Civil Society Member shall be appointed for a one (1) year term.

(e) In the event that a Voting Member is unable to participate in a meeting of the Governing Council, such Voting Member may appoint in writing an alternate to participate for such Voting Member, *provided* that (i) in the case of a Government Member, such alternate shall be such member’s principal deputy or equivalent and (ii) in the case of a Civil Society Member, such alternate must be approved by majority vote of the other Civil Society members and such written appointment must specify its duration.

(f) In the event that a vacancy is created with respect to one or more Government Members at any time by death, disability, retirement, resignation, removal or any other reason, the Prime Minister shall nominate an individual to fill such vacancy and in the event that a vacancy is created with respect to one or more Civil Society Members at any time by death, disability, retirement, resignation, removal or any other reason, the Stakeholders’ Committee shall select a successor in accordance with Section 3.2(b), *provided* that:

- (i) in either case such nomination and subsequent appointment shall be subject to the prior written approval of MCC and otherwise be in accordance with the relevant provisions of Sections 1.1 and 1.2; and
- (ii) in the case of a Government Member so replaced, the term of such replacement Government Member shall end when the Government office held by the prior Government Member is filled by a successor, whereupon such successor shall become a Government Member, unless the Government and MCC agree otherwise.

Section 1.3 Appointment of the Chairman of the Governing Council.

(a) The activities of the Governing Council shall be managed by the chairman of the Governing Council (the ***Chairman***). The Prime Minister shall serve as the initial Chairman. Each subsequent Chairman shall be a Voting Member chosen by the Voting Members and shall be subject to the prior written approval of MCC. The initial Chairman and each subsequent Chairman so chosen shall serve for a term of one (1) year. The Chairman shall preside over all meetings of the Governing Council. In the case of the absence of the Chairman and of any alternate designated by the Chairman, the Voting Members shall elect one of the Voting Members present to act as chairman for the purposes of such meeting.

(b) All documents and reports submitted to MCC by the Governing Council in accordance with this Agreement or the Compact shall be certified by the Chairman as (i) having been approved by the Governing Council, and (ii) being true, accurate and complete.

Section 1.4 Appointment of Observers.

- (a) The Observers on the Governing Council shall be appointed as follows:
 - (i) one (1) representative selected (and from time to time replaced) by MCC (the ***MCC Observer***); *provided* that MCC may designate an alternate representative to attend one or more meetings of the Governing Council in the event the MCC Observer is unable to attend; and
 - (ii) one (1) representative of an environmentally-focused NGO appointed by the Stakeholders' Committee (the ***Environmental Observer***), *provided*, however, that, if one of the Civil Society Members on the Governing Council already represents an environmentally-focused NGO, then such Civil Society Member shall also act as the Environmental Observer. The initial Environmental Observer shall serve for a period of one (1) year from the date of the first Governing Council meeting after the Entry into Force, and on each anniversary thereof, the Stakeholders' Committee shall appoint another representative to serve as the Environmental Observer for the subsequent year. The

Environmental Observer or, absent such action by the Environmental Observer, the Stakeholders' Committee may nominate an environmentally-focused alternate to attend one or more meetings of the Governing Council in the event that the Environmental Observer is unable to attend.

(b) The Observers shall not have any voting rights with respect to any action to be taken by the Governing Council. Except as otherwise expressly provided in this Agreement, each Observer shall have the right to attend all meetings of the Governing Council, participate in discussions of the Governing Council, and receive all information and documents provided to the Governing Council, together with any other rights (other than voting rights) granted to a Voting Member of the Governing Council pursuant to this Agreement, including access to records, employees or facilities.

(c) Each of the Government and MCA-Armenia hereby waives and releases all claims related to any liability or action arising out of each Observer's role as a non-voting observer on the Governing Council. In all matters arising under or relating to the Compact, this Agreement, or the activities of MCA-Armenia, the MCC Observer shall not, in accordance with Section 3(d)(ii)(6) of Annex 1 of the Compact, be subject to the jurisdiction of the courts or any other body of Armenia, nor to any arbitral body, and nothing in such agreements or activities shall be construed as the consent by an MCC Observer to any such jurisdiction.

Section 1.5 Indemnification and Insurance.

(a) The Government shall indemnify and hold harmless each Member and each Officer and employee of the Management Unit from and against any and all claims, losses, actions, liabilities, costs, damages or expenses, including reasonable attorneys' fees and expenses, arising or incurred by such Member or such Management Unit Officer or employee by reason of such Member's activities as a Member of the Governing Council or such Officer's or employee's activities with the Management Unit, as applicable; *provided* that the Government shall have no obligation to indemnify any Voting Members or Officers or employees of the Management Unit under this Section 1.5 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 Voting Member or such Officer or employee of the Management Unit. The indemnification rights granted to each Member and each Officer or employee of the Management Unit pursuant to the preceding sentence are contractual rights that, notwithstanding anything to the contrary in this Agreement (including the amendment provisions of Section 6.10), cannot be diminished without the consent of the beneficiary of such rights.

(b) The Government shall ensure, at its sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and protections are provided, acceptable to MCC, to ensure that Members shall be fully indemnified against, and compensated for, any personal liability incurred for their actions or omissions as Members.

(c) The Government shall act in accordance with the relevant provisions of the Compact, including Section 3.9 and Section 3(d)(ii)(6) of Annex I of the Compact, in fulfilling its obligations under this Section 1.5.

Section 1.6 Authority of the Governing Council. Subject to MCC’s contractual rights of approval as set forth in the Compact (including Section 3(c) of Annex I of the Compact), in this Agreement, or in any relevant Supplemental Agreement, the Governing Council shall have the following responsibilities and authority (which may not be delegated further):

- (a) Oversight with respect to:
 - (i) the Management Unit;
 - (ii) the overall implementation of the Program in accordance with the Compact and the relevant Supplemental Agreements, including oversight of the Implementation Plan and any component plans thereto, as amended from time to time in accordance with the Compact and the relevant Supplemental Agreements; and
 - (iii) the performance by MCA-Armenia (or by such other mutually acceptable persons or entities as to which MCC has provided its written consent) of some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or the exercise by MCA-Armenia or any such entity of any rights of the Government under the Compact or any Supplemental Agreement, in each case, pursuant to the terms and conditions of Section 3.2(c) of the Compact (collectively, the “**Designated Rights and Responsibilities**”).

(b) Perform such other obligations and oversight functions in respect of MCA-Armenia activities as contemplated by the Compact, this Agreement, Armenian legislation and the Charter (the “**Charter**”).

(c) Without limiting the foregoing provisions of this Section 1.6, each of the following actions of MCA-Armenia are specifically subject to the prior approval of the Governing Council (each, a “**Board Action**”):

- (i) any transaction, activity, agreement or document that requires MCC approval pursuant to the Compact or pursuant to any Supplemental Agreement (including the transactions, activities, agreements and documents described in Paragraph 3(c) of Annex I of the Compact);
- (ii) re-Disbursements to any Provider to the extent that MCC, by written notice to MCA-Armenia and the Fiscal Agent, directs the Governing Council to review and approve such Re-Disbursement;
- (iii) except for activities or actions included in clause (iv) below, entering into any agreement that would obligate MCA-Armenia to a contractual obligation equal to or greater than USD \$100,000

(One Hundred Thousand United States Dollars), or such other amount as may be agreed by MCC and MCA-Armenia, including any amendments, modifications, termination or suspension of any such agreement;

- (iv) any activities or actions that require Governing Council approval pursuant to the Procurement Agreement;
- (v) submission of any MCC Disbursement Request by MCA-Armenia to MCC (which approval shall include the approval of all attachments to such MCC Disbursement Request and the approval of the management discussion and analysis portions of such MCC Disbursement Request);
- (vi) approval of (A) each component of the Implementation Plan (including the Financial Plan, the Procurement Plan, the M&E Plan, the Fiscal Accountability Plan and the Program and Project Work Plans), (B) the Audit Plans and any response to any finding in any audit identified in the Audit Plan, (C) staffing plans, and (D) any amendments, modifications, or supplements to any of the items described in Section 1.6(c)(vi)(A)-(C);
- (vii) entering into of any Supplemental Agreement, including any amendments, modifications, termination or suspension thereof, and any action that would have the effect of amending, replacing, terminating or suspending any Supplemental Agreement to which MCA-Armenia is a party;
- (viii) any proposal to (or any action that would) amend, replace, terminate, suspend or otherwise change any Board Action or other matter previously approved by the Governing Council;
- (ix) the terms of employment (including compensation) and the employment agreement for the CEO, and any amendments thereto;
- (x) the hiring and dismissal of the Officers of the Management Unit, and of any employee to be hired by MCA-Armenia whose gross monthly compensation is greater than USD \$2,000 (Two Thousand United States Dollars), and the applicable terms of employment (including compensation) and the employment agreement for such person, and any amendments thereto;
- (xi) review and approval of the reports, plans and other documents to be submitted to MCC or the Government as required by the Compact, this Agreement, or any Supplemental Agreement (such approval of the Governing Council to be received prior to

submission of such reports, plans and documents to MCC or the Government, as applicable);

- (xii) adjusting the allocation of funds between the various components of the Program, subject to the provisions of the Compact (including Paragraph 4 of Annex II of the Compact) and the prior written approval of MCC; *provided* that, MCA-Armenia may, without the approval of MCC, modify the Detailed Financial Plan so long as (A) all such modifications relating to the same line item described in the Multi-Year Financial Plan set forth in Annex II of the Compact do not exceed in the aggregate the lesser of (x) 10% of the relevant line item in the most currently approved Multi-Year Financial Plan and (y) USD \$500,000, (B) such modification is consistent with the Objectives and does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of the Compact and (C) MCA-Armenia promptly delivers to MCC any such modified Detailed Financial Plan, together with a modified Multi-Year Financial Plan to reflect the corresponding modifications;
- (xiii) any change in the number of members of the Governing Council (such change subject to the prior written approval of MCC);
- (xiv) any expansion and/or adjustment to the composition of Stakeholders' Committee as described in Section 3.1(e) (such change subject to the prior written approval of MCC);
- (xv) consideration of the Stakeholders' Committee views or recommendations made pursuant to Section 3.2(c), and, if the Governing Council deems it advisable, requiring the Management Unit to provide responsive information and documents to the Governing Council or, as applicable, the Stakeholders' Committee;
- (xvi) any amendment to the Charter (each such amendment subject to the prior written approval of MCC);
- (xvii) any decision to (A) reorganize MCA-Armenia, (B) dissolve, wind up or liquidate MCA-Armenia, or (C) to make any other change in the legal organization of MCA-Armenia; *provided* that each such decision (1) shall require approval of seventy-five percent (75%) of the Voting Members present at a meeting at which there is a Quorum (*provided, further,* that a change described in Section 1.6(c)(xvii)(C) that is an immaterial change in the organization of MCA-Armenia shall require approval of the Governing Council in the manner set forth in Section 1.8), (2) may not be made pursuant to Section 1.9, and (3) shall be subject to the prior written approval of MCC; and

- (xviii) any other activities, agreements, documents, or actions requiring Governing Council approval as may be set forth in the Compact, in this Agreement, or in any relevant Supplemental Agreement, or as may be required or requested from time to time by MCC.

The Governing Council shall deliver notice of any such Board Action, along with a copy of any applicable agreement or document, if appropriate, to MCC, which notice shall be certified by the Chairman, such certification also stating that such agreements and documents attached thereto are true, accurate and complete.

Section 1.7 Meetings of Governing Council. Regular meetings of the Governing Council shall be held at such time and at such place as may from time to time be determined by the Governing Council, but shall be held at least on a quarterly basis and more frequently as may be necessary. Special meetings of the Governing Council may be called if requested by the Chairman, by any two Members, or by the CEO. Notice stating the place, date, time and agenda of the meeting shall be given to each Member by the Secretary of MCA-Armenia (a) in respect of a regular quarterly meeting, either by hand, mail or facsimile at least seven (7) days prior to the date of the regular quarterly meeting, and (b) in respect of a special meeting, either by hand or mail not less than 48 hours before the date of the special meeting or by telephone not less than 24 hours before the date of such special meeting. Notwithstanding the foregoing, (x) any Member may waive, in writing, the requirement to receive notice in respect of any such meeting, and (y) a Member's presence at any such meeting shall constitute waiver by such Member of the requirement to receive notice of such meeting. A valid meeting of the Governing Council may not be held unless each Member receives notice (or waives or is deemed to waive notice) of such meeting. To the extent any meeting of the Governing Council is conducted in Armenian, a translator shall be provided for any Member who does not speak Armenian. All documents to be discussed at any Governing Council meeting shall be translated into English, and the English language version of all such documents shall be made available to all Members prior to the date of such Governing Council meeting.

Section 1.8 Quorum; Voting.

(a) At all meetings of the Governing Council a majority of the Voting Members shall constitute a quorum for the transaction of business (a ***‘Quorum’***); *provided* that such majority must include at least two of the Civil Society Members in order to constitute a Quorum. Notwithstanding the previous sentence, if at any meeting of the Governing Council a Quorum was not present and thereafter proper notice is sent to (or receipt thereof is waived by) each Member stating that the meeting would be reconvened with the same agenda no less than seven (7) calendar days following the original meeting, then a majority of Voting Members would constitute a Quorum for such second meeting.

(b) Except as set forth in Sections 1.6(c)(xvii) and 1.9, the decision of a majority of the Voting Members present at any meeting at which there is a Quorum shall be an act of the Governing Council, provided that no decision shall be deemed to be an act of the Governing Council unless at least four (4) Voting Members, including at least one Civil Society Member (if any are present) cast votes in favor of such decision. Each Voting Member shall have one (1) vote in respect of any vote on any decision of the Governing Council. If there is a

tie vote, the position taken by the Chairman in such vote shall prevail. If a Quorum is not present at any meeting of the Governing Council, the Members present may adjourn the meeting, without notice other than announcement at the meeting, until a Quorum shall be present. Except as set forth in Section 1.9, each decision, election, appointment or action by the Governing Council, whether specifically set forth in this Agreement or otherwise, shall be made in accordance with the procedures set forth in this Section 1.8.

Section 1.9 Action by Written Consent. Unless otherwise provided by this Agreement, any action required or permitted to be taken at any meeting of the Governing Council may be taken without a meeting if (a) written notice of such proposed action is sent (including by electronic means) to all Members, and (b) a majority of all the Voting Members (one (1) or more of which must be a Civil Society Member) consent in writing to such action. Any such action approved by written consent shall be filed with the minutes of proceedings of the Governing Council. Notwithstanding the foregoing, if two (2) or more Members so request, the Governing Council shall hold a meeting (by telephone or otherwise) prior to such action by written consent.

Section 1.10 Meetings by Means of Conference Telephone. Unless otherwise provided by this Agreement, the Members may participate in a meeting of the Governing Council by means of a conference telephone, videoconference or similar communications equipment that enables all persons participating in the meeting to hear and speak to each other. Participation in a meeting pursuant to this Section 1.10 shall constitute presence in person at such meeting.

Section 1.11 Reporting Requirements. The agenda of any meeting of the Governing Council, the name of all attendees at such meeting, the issues discussed at such meeting, and all resolutions approved at such meeting shall be reflected in the minutes of the meeting which will be recorded by the Secretary of MCA-Armenia, and such minutes shall be signed by the Chairman (or the person acting as such at a given meeting). The minutes of each Governing Council meeting shall be posted on the MCA-Armenia Website within two (2) weeks after each meeting.

Section 1.12 Remuneration. Members shall not receive any remuneration in connection with the performance of their duties as Members on (or, as applicable, as Chairman of) the Governing Council.

ARTICLE II
MANAGEMENT UNIT OF MCA-ARMENIA

Section 2.1 Appointment. The Governing Council shall appoint the CEO after an open and competitive recruitment and selection process, which appointment shall be subject to MCC approval. The management team of MCA-Armenia shall be selected and hired by the CEO after an open and competitive recruitment and selection process (together with the CEO and all support staff, the “*Management Unit*”). The appointment and dismissal of each Officer of the Management Unit shall be subject to the prior written approval of MCC and the Governing Council. The Management Unit shall be composed of qualified experts from the public or private sectors, including such officers and staff as may be necessary to carry out effectively its

responsibilities, including the following (each, an “*Officer*”): (a) the CEO, (b) a chief financial officer (“*CFO*”), (c) a general counsel (the “*General Counsel*”), (d) a monitoring and evaluation officer (the “*M&E Officer*”), (e) an environment and social impact officer (the “*ESI Officer*”), (f) a procurement officer (the “*Procurement Officer*”), (g) a rural roads project officer (the “*Rural Roads Project Officer*”), (h) an irrigation project officer (the “*Irrigation Project Officer*”), and (i) a water-to-market project officer (the “*Water-to-Market Project Officer*” and, together with each of the Rural Roads Project Officer and the Irrigation Project Officer, a “*Project Officer*”). The CEO shall designate the General Counsel or other Officer of the Management Unit to act as the secretary of MCA-Armenia (the “*Secretary*”). A brief description of the responsibilities of each Officer is attached to this Agreement as Exhibit B; *provided* that such responsibilities may be adjusted by the CEO from time to time with prior approval by MCC. The terms of employment for each Officer and for each employee designated by MCA-Armenia as a key employee shall be governed by an employment agreement to be entered into between MCA-Armenia and each such member or employee, as applicable. The Management Unit will be supported by an office manager and appropriate administrative and support personnel. Unless otherwise agreed in writing by the Parties, the Management Unit shall report, through the CEO, directly to the Governing Council. In the case of incapacity, resignation or other unavailability of the CEO, the General Counsel shall serve as the acting CEO and shall convene as soon as practicable a meeting of the Governing Council to appoint a new CEO; provided that such new CEO shall be subject to the approval of MCC.

Section 2.2 Authority of Management Unit. The Management Unit shall assist the Governing Council in overseeing the implementation of the Program and shall have the principal responsibility (subject to the direction and oversight of the Governing Council, and subject to MCC’s rights of approval as set forth in the Compact (including Section 3(c) of Annex I of the Compact), in this Agreement, and in any relevant Supplemental Agreement) for the overall management of the implementation of the Program, including:

(a) development and administration of (i) all components of the Implementation Plan (including the Financial Plan, Procurement Plan, M&E Plan, Fiscal Accountability Plan, and all Program and Project Work Plans), (ii) the Audit Plans and any response to any finding in any Audit, (iii) staffing plans and (iv) any amendments, modifications or supplements to any of the items in Section 2.2(a)(i) - (iii);

(b) oversight of the implementation of the Projects, including preparation of MCC Disbursement Requests for approval by the Governing Council;

(c) coordination of the overall Program, each Project, and the other activities contemplated under the Compact and any Supplemental Agreements, including in connection with the performance of any Designated Rights and Responsibilities;

(d) management, implementation and coordination of the monitoring and evaluation of the Program and the Projects (including collection and analysis of data);

(e) development, oversight, management, coordination and implementation of such policies and procedures as may be necessary to facilitate the effective implementation of the Compact and as may be advisable in connection with any Supplemental Agreement, and such

other policies, procedures, or activities as may be required or requested by the Governing Council in furtherance of the Compact;

(f) preparation and review of reports regarding the finances and accounting (including management reporting, accounts receivable, accounts payable, monthly, quarterly and annual financial statements, cash flow statements and projected cash flow requirements), performance, monitoring and evaluation, procurements, budgets, and audit reports of the Program, each Project and the other activities contemplated under, or carried out in furtherance of, the Compact and any other reports requested by the Governing Council;

(g) preparation and submission of all reports required by Armenian budgetary legislation;

(h) maintenance of accounting records for the Program, including for each Project;

(i) acquisition and maintenance of a management information system to allow the systematic tracking of programmatic and financial implementation of and performance under the Compact, including each Project;

(j) commission and supervision of baseline and ex-post studies for each Project as may be required by the M&E Plan; establishment of data collection, analysis, and reporting systems for the overall Program and for each Project;

(k) conduct and oversight of procurements, and other procurement actions (including approvals thereof) in accordance with the Procurement Agreement and the standards set forth in the Procurement Guidelines;

(l) administration of the MCA-Armenia Website to post current information about Compact-related activities, M&E Plan reporting, financial reporting, and Compact-related procurements (to the extent such procurement postings are required by the Procurement Agreement);

(m) provision of advice and written recommendations to the Governing Council on matters constituting Board Actions and in connection therewith, the Management Unit shall prepare and submit to the Governing Council the relevant agreements, documents or actions to be approved, along with a written recommendation to the Governing Council on how to proceed on such agreement, document or action and any other documents needed to support such recommendation;

(n) preparation of and submission to the Governing Council of any Compact Report or any other report, document, agreement or action as may be designated or requested by the Governing Council from time to time, along with a written recommendation to the Governing Council on how to proceed;

(o) provision of quarterly reports to the Governing Council which shall include a report on the Stakeholders' Committee meetings that occurred during the period

covered by such report, and how recommendations of the Stakeholders' Committee have informed the activities of MCA-Armenia;

(p) report to and meet with the Stakeholders' Committee on a quarterly basis in accordance with Section 3.3(d);

(q) preparation and submission of tax exemption certificates related to the Program; and

(r) any other responsibilities within the scope of its Program implementation management role that may be required or requested from time to time by the Governing Council.

Section 2.3 Role of CEO.

(a) Subject to the provisions of the Compact, this Agreement, or any Supplemental Agreement, the CEO shall:

- (i) pursuant to the Compact and applicable Armenian legislation, supervise the daily activities of MCA-Armenia, convene and chair the Management Unit meetings, manage MCA-Armenia personnel, and organize and manage MCA-Armenia activities; *provided* that the CEO may delegate any of its responsibilities under this Section 2.3(a)(i) to any Officer;
- (ii) develop the structure of the Management Unit and staff of MCA-Armenia; assign the functions and responsibilities of MCA-Armenia employees; approve internal policies and procedures and job descriptions of MCA-Armenia employees (or terms of reference in the case of consultants or temporary employees retained to supplement full-time MCA-Armenia staff);
- (iii) hire and dismiss all MCA-Armenia employees, and determine the applicable terms of employment (including compensation) and the employment agreement for each such employee, and any amendments thereto; *provided* that any such decisions with respect to (i) any Officer, (ii) and any other key employee, expert or consultant whose gross monthly compensation is greater than USD \$2,000 (Two Thousand United States Dollars), shall be subject to the prior written approval of the Governing Council and MCC;
- (iv) determine disciplinary actions and incentives for MCA-Armenia employees in accordance with Armenian legislation; and exercise supervision over staff performance;
- (v) represent MCA-Armenia in relations with third parties, and act as the official contact person on behalf of the Government in relations

with MCC; *provided that* the CEO may delegate any of its responsibilities under this Section 2.3(a)(v) to any Officer;

- (vi) submit each component of the Implementation Plan and any amendments thereto to the Governing Council for approval; present the Financial Plan and Audit Plan (and any amendments, modifications or supplements thereto) to the Governing Council; submit reports on financial management, performed activities, and project implementation; submit the results of any audit, detailed report of the previous fiscal year and the report on progress of all aspects of the Implementation Plan to the first meeting of the Governing Council called after the completion of the annual audit; and submit other reports as required by the Compact or as otherwise requested by the Governing Council;
 - (vii) organize the preparation of and distribution of agendas for the meetings of the Governing Council and the Stakeholders' Committee and organize and administer meetings of the Governing Council; *provided that* the CEO may delegate any of such responsibilities to any Officer;
 - (viii) approve actions, decisions, documents or agreements, including certain Re-Disbursements (to the extent such approval is required pursuant to Section 2.3(b)), Compact Reports, certain human resources decisions, and certain procurement actions, in respect of MCA-Armenia for which, pursuant to the provisions of the Compact or this Agreement, approval by the Governing Council is not required;
 - (ix) review and, if appropriate, approve any activities or actions that require CEO approval pursuant to the Procurement Agreement; *provided that* (unless otherwise notified by MCC) the CEO may delegate its responsibilities under this Section 2.3(a)(ix) to any Officer; and
 - (x) exercise other powers in accordance with the Compact, Armenian legislation, and the Charter on matters related to MCA-Armenia activities.
- (b) The CEO must approve in writing each of the following:
- (i) recommendations to the Governing Council on any matter submitted to the Governing Council for decision as a Board Action;
 - (ii) re-Disbursements to any Provider; *provided that*, with respect to any Re-Disbursement in respect of the Rural Roads Rehabilitation

Project or the Irrigation Infrastructure or Water-to-Market Project Activities, the CEO can delegate to the applicable Officer the CEO's authority to approve any such Re-Disbursement which (1) either by itself or when added to other Re-Disbursements made or expected to be made to the same Provider or to any Affiliate of such Provider, would be less than USD \$50,000 (Fifty Thousand United States Dollars), or (2) when added to other Re-Disbursements made or expected to be made to the same Provider or to any Affiliate of such Provider, would exceed USD \$50,000 (Fifty Thousand United States Dollars) but are being made pursuant to the same contract;

- (iii) execution of any agreement for the provision of goods or services to MCA-Armenia, or any amendments, modifications, termination or suspension of any such agreement (*provided* that, while the CEO must approve in writing any such agreement in which case execution shall indicate approval (or any modification, amendment, termination or suspension thereto), the CEO may delegate to any appropriate Officer the CEO's authority to sign any such agreement (or any modification, amendment, termination or suspension thereto) that has an aggregate contract value less than USD \$2,000 (Two Thousand United States Dollars));
- (iv) certification of other procurement activities as further set forth in the Procurement Agreement or other Supplemental Agreements; and
- (v) each Compact Report or such other reports as may be requested by the Governing Council from time to time.

(c) Except as otherwise provided herein, the CEO may not delegate the duties, powers and authorities set forth in Section 2.3.

Section 2.4 Reporting Requirements. The CEO, with the assistance of the Management Unit, shall promptly deliver and certify any reports, documents or other submissions requested by or required to be delivered to the Governing Council or MCC. Any documents delivered to the Governing Council shall be copied to MCC in English (unless otherwise notified from time to time by MCC to MCA-Armenia).

Section 2.5 Restrictions on Use of MCC Funding.

(a) MCA-Armenia shall ensure that the use of MCC Funding complies with and shall monitor the Permitted Accounts in accordance with, (i) Section 2.3 of the Compact, (ii) any United States laws, regulations and executive orders regarding money laundering, terrorist financing, restrictive trade practices or boycotts, United States sanctions laws and regulations, and all other economic sanctions or other restrictions promulgated from time to time by means of any statute, executive order, regulation or as administered by the Office of Foreign Assets

Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598, and (iii) any applicable Armenian laws regarding terrorist financing, money laundering, or similar activity.

(b) MCA-Armenia shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, such verification may include verifying if such name appears on applicable watch lists such as the lists maintained on www.epls.gov, www.treas.gov/offices/enforcement/ofac, or on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council.

(c) MCA-Armenia shall (A) conduct such verification in connection with Re-Disbursements or at such time as MCC may from time to time reasonably request, including a review of any verification report generated by each Bank pursuant to the respective Bank Agreement and (B) on at least a quarterly basis or such other reasonable period as MCC may request from time to time deliver a report of such monitoring and verification.

(d) MCA-Armenia represents and warrants that no payments have been or will be received by any Member, Officer or employee in connection with this Agreement and no payments have been made by MCA-Armenia or any of its Members, Officers or employees in connection with this Agreement, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) or in violation of any applicable Armenian laws or regulations regarding anti-bribery or corruption.

**ARTICLE III
STAKEHOLDERS’ COMMITTEE**

Section 3.1 Composition

(a) The Government shall ensure establishment of a stakeholders’ committee (the “*Stakeholders’ Committee*”) consisting initially of 11 members representative of the various beneficiaries of the Program. The members of the Stakeholders’ Committee, who shall be individuals selected in national or regional forums organized by, or including participants from, the NGO community (including NGOs focused on environmental issues, the Water User Associations and farmer groups), taking into consideration appropriate gender representation and specialized interests and expertise relevant to the implementation of the Program. The Government will provide, or cause the organizers of such forums to provide, notice thereof adequate to ensure widespread participation, such notice to include publication in the leading newspapers in Armenia and on the MCA-Armenia Website of announcements of the times and locations of such forums, inviting public participation and soliciting candidates to serve on the Stakeholders’ Committee. Such announcements shall be so published at least 20 days prior to the date of the related forum and shall include selection criteria for positions on the Stakeholders’ Committee.

(b) Each member of the Stakeholders' Committee may appoint up to two (2) alternates, approved by a majority vote of the other members, to serve when such member is unable to participate in a meeting of the Stakeholders' Committee.

(c) The Stakeholders' Committee may also, by majority vote, appoint a first and a second alternate member of the Stakeholders' Committee. In the event neither a member nor the member-nominated alternate attends a meeting of the Stakeholders' Committee, the first alternate member, or in their absence, the second alternate member, may participate as a voting member at such meeting.

(d) The members of the Stakeholders' Committee shall serve for a term of one (1) year, but may be re-elected.

(e) Upon the prior written consent of MCC and the Governing Council, (i) the composition of the Stakeholders' Committee may be adjusted from time to time to ensure, among other things, a cross-section that is representative of the intended beneficiaries, and (ii) the number of members of the Stakeholders' Committee may be increased, but in no event to more than 15 members, upon the majority vote of the then existing members. The vacancies created by such increase of members shall be filled by the procedure described in Sections 3.1(a), (b) and (c).

Section 3.2 Role and Responsibilities.

(a) The Stakeholders' Committee shall be used as a mechanism to give representatives of the private sector, civil society and local and regional governments the opportunity to provide advice and input to MCA-Armenia regarding the implementation of the Compact.

(b) The Stakeholders' Committee shall select the representatives of civil society to serve as Civil Society Members of the Governing Council, taking into consideration in such appointments appropriate gender representation and representation of the intended beneficiaries of the Program.

(c) The Stakeholders' Committee shall have an opportunity to regularly provide, on at least a quarterly basis, to the CEO and to the Governing Council its views and recommendations.

(d) The Stakeholders' Committee shall appoint a secretary for the purpose of, among other things, organizing the convening and conduct of the meetings and for taking the official minutes of the meetings of the Stakeholders' Committee.

(e) The members of the Stakeholders' Committee shall not receive any remuneration in connection with the performance of their duties on the Stakeholders' Committee.

Section 3.3 Meetings; Decisions.

(a) The full Stakeholders' Committee shall meet at least once per quarter, with such other periodic meetings as may be necessary or appropriate from time to time. A special Stakeholders' Committee meeting may also be convened at the request of two (2) members of the Stakeholders' Committee, the CEO, or the Chairman of the Governing Council. Notice stating the place, date, time and agenda of each Stakeholders' Committee meeting shall be given to each member of the Stakeholders' Committee by the secretary of the Stakeholders' Committee (a) in respect of a regular quarterly meeting, either by hand, mail or facsimile at least seven (7) days prior to the date of the regular quarterly meeting, and (b) in respect of a special meeting, either by mail not less than 48 hours before the date of the special meeting or by hand or telephone not less than 24 hours before the date of such special meeting. Notwithstanding the foregoing, (x) any member of the Stakeholders' Committee may waive, in writing, the requirement to receive notice in respect of any such meeting, and (y) a member's presence at any such Stakeholders' Committee meeting shall constitute waiver by such member of the requirement to receive notice of such meeting. A valid meeting of the Stakeholders' Committee may not be held unless each member of the Stakeholders' Committee receives notice (or waives or is deemed to waive notice) of such meeting.

(b) The quorum for any meeting of the Stakeholders' Committee shall not be less than a simple majority of the members of the Stakeholders' Committee. All decisions of the Stakeholders' Committee shall be taken by at least a simple majority of the members present at a meeting at which a quorum is present, each member having one (1) vote. Except as set forth in Section 3.3(e), each decision, election, appointment or action by the Stakeholders' Committee, whether specifically set forth in this Agreement or otherwise, shall be made in accordance with the procedures set forth in this Section 3.3(b).

(c) If any member of the Stakeholders' Committee (together with any alternate chosen by such member pursuant to Section 3.1(b)) shall fail to attend meetings of the Stakeholders' Committee twice in a row, such member shall be deemed to have resigned from the Stakeholders' Committee.

(d) The Management Unit shall present an update on the implementation of the Compact and progress towards achievement of the Objectives during each quarterly meeting of the Stakeholders' Committee and shall provide updated copies of the M&E Plan, the Implementation Plan, and reports on the Projects and Project Activities.

(e) Unless otherwise provided by this Agreement, any action required or permitted to be taken at any meeting of the Stakeholders' Committee may be taken without a meeting if (i) notice of such proposed action is sent to all members of the Stakeholders' Committee, and (ii) a majority of all the members of the Stakeholders' Committee consent in writing to such action. Any such action approved by written consent shall be filed with the minutes of proceedings of the Stakeholders' Committee. Notwithstanding the foregoing, if two (2) or more members of the Stakeholders' Committee so request, the Stakeholders' Committee shall hold a meeting (by telephone or otherwise) prior to such action by written consent.

(f) Unless otherwise provided by this Agreement, the members of the Stakeholders' Committee may participate in a meeting of the Stakeholders' Committee by means of a conference telephone, videoconference or similar communications equipment that enables all persons participating in the meeting to hear and speak to each other. Participation in a meeting pursuant to this Section 3.3(f) shall constitute presence in person at such meeting.

Section 3.4 Accessibility; Transparency. Stakeholders' Committee members shall make themselves accessible to the beneficiaries they represent for the purpose of receiving the beneficiaries' comments or suggestions regarding the Program. The minutes of all meetings of the Stakeholders' Committee shall be made public on the MCA-Armenia Website within five (5) business days after MCA-Armenia receives such minutes, as approved by the Stakeholders' Committee, from the secretary of the Stakeholders' Committee.

ARTICLE IV
MCC APPROVAL RIGHTS; OTHER OBLIGATIONS

Section 4.1 MCC Approval Rights. In addition to any other rights granted to MCC pursuant to the Compact, this Agreement and the Charter, MCC shall have the right to approve the following:

(a) A Re-Disbursement to any Provider to the extent that MCC has notified MCA-Armenia and the Fiscal Agent that MCC wishes to review and approve such Re-Disbursement;

(b) any activities or actions that require MCC approval pursuant to the Procurement Agreement;

(c) except as provided in paragraph (b) above, any contract for which the value of the contract is equal to or greater than USD \$100,000 (One Hundred Thousand United States Dollars), or such other amount as may be agreed to by MCC and MCA-Armenia, including any amendments, modifications, termination, or suspension thereof;

(d) any approval rights granted to MCC in the Compact, including in respect of any transaction, activity, agreement or document described in Paragraph 3(c) of Annex 1 to the Compact (each such approval to be procured prior to the execution or carrying out of such transaction, activity, agreement or document, and prior to any MCC Disbursement or Re-Disbursements in connection therewith);

(e) any approval rights granted to MCC in the Disbursement Agreement or Procurement Agreement; and

(f) the designation of the Armenian charities that are to receive any MCC funding repaid to MCA-Armenia under the rural financing portion of the Water-to-Market Activity.

Section 4.2 No Liability on MCC. Notwithstanding anything in this Agreement, the Compact or any Supplemental Agreement to the contrary, the review and/or

approval by MCC of any action, decision, agreement or document of MCA-Armenia and/or the Government (a) shall not impose or create any liability on MCC in respect of such action, decision, agreement or document, and (b) shall not preclude the exercise by MCC of any other rights or privileges that MCC may have pursuant to the Compact, this Agreement, or any Supplemental Agreement.

Section 4.3 MCC Information Rights. The Fiscal Agent (and MCC to the extent that MCC so notifies MCA-Armenia) shall be provided with a copy of each agreement that is funded (directly or indirectly) with MCC Funding, regardless of whether MCC has approval rights with respect to such agreement.

Section 4.4 Other Obligations. MCA-Armenia shall comply with (a) all applicable Armenian legislation and (b) this Agreement, all relevant provisions of the Compact (including Sections 2.3, 2.5, 3.2 and 3.8 of the Compact), the Disbursement Agreement and other relevant Supplemental Agreements, which provisions are hereby incorporated by reference herein, *mutatis mutandis*. MCA-Armenia shall not establish any Affiliates or subsidiaries without the prior written consent of the Government and MCC.

Section 4.5 MCA-Armenia Approvals. In exercising its approval rights under the Compact, this Agreement and the other Supplemental Agreements, MCA-Armenia (a) shall act in a reasonably commercial manner and shall not unreasonably withhold its approval, and (b) shall make each decision on a fair and objective basis using the criteria, if any, set forth in the relevant Supplemental Agreement.

Section 4.6 Permitted Designee. Each of the Ministry, on behalf of the Government, MCA-Armenia and MCC acknowledges that MCA-Armenia has been designated by the Government as a ***Permitted Designee***,” as described in Section 3.2(c) of the Compact and shall act as an agent of the Government for the purposes of the implementation of the Program. The operating costs of MCA-Armenia, which shall be funded by MCC Funding, shall be deemed to -be full and final payment of the agent’s fee and reimbursement of the agent’s expenses due to MCA-Armenia.

Section 4.7 Audits.

(a) The first financial year of MCA-Armenia shall begin on the date of Entry into Force of the Compact and shall end on December 31, 2006. Each succeeding financial year shall begin on January 1 of such year, and shall end on December 31 of such year.

(b) The financial statements of MCA-Armenia shall be audited annually by an independent auditor selected with the prior written consent of MCC. The Management Unit shall assist the auditor and provide all information requested by the auditor. Such annual audit report shall be submitted to MCC within 90 days after the end of each financial year. Upon the request of MCC, or in accordance with the requirements of the Compact or the Audit Plan, MCA-Armenia shall arrange for other periodic or special audits to performed from time-to-time.

(c) MCA-Armenia shall keep (i) accurate and systematic books, records, documents and other evidence of the performance by MCA-Armenia of the obligations to be

performed by MCA-Armenia under the Compact, and (ii) all Compact Records, in accordance with the requirements of Section 3.8 of the Compact. MCA-Armenia shall permit authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, the Government, the Ministry of Finance and Economy of Armenia, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of the Compact, and any agents or representatives engaged by any of the foregoing to conduct any assessment, review, audit or evaluation of the Program, at all reasonable times the opportunity to audit, review, evaluate, inspect or copy all records and documents in the control or possession of MCA-Armenia (each, an “*Audit*”). MCA-Armenia shall ensure access by MCC, the Inspector General, the United States Government Accountability Office, the Government, the Ministry of Finance and Economy of Armenia or relevant auditor, reviewer or evaluator or their respective representatives or agents to all of MCA-Armenia’s relevant Members, officers, employees, Affiliates, contractors, representatives and agents. MCA-Armenia shall keep and make available such books, records and documents for a period of at least five (5) years after the expiration or termination of this Agreement, or such longer period if required to resolve any litigation, claims, audit findings or any statutory requirements.

ARTICLE V
TERM; SUSPENSION; TERMINATION

Section 5.1 Term.

(a) This Agreement shall be effective on the date of receipt by MCC of notification of ratification of this Agreement under Armenian law (the “*Effective Date*”) and shall terminate (unless terminated earlier pursuant to the provisions of this Agreement) on the date that is 120 days following the expiration or termination of the Compact.

(b) Prior to the expiration or termination of the Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the treatment of MCA-Armenia following the expiration or termination of the Compact, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement nor otherwise committed in accordance with Section 5.4(e) of the Compact, and (iii) any other matter related to winding up of MCA-Armenia, the Program, this Agreement, and the Compact.

Section 5.2 Termination; Suspension.

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

(b) Notwithstanding any other provision of this Agreement or any other Supplemental Agreement between MCC and the Government (or any other Government Affiliate), MCC may suspend or terminate this Agreement, in whole or in part, and any obligation or sub-obligation related thereto, upon giving MCA-Armenia and the Ministry written notice, if MCC 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 120 days following the termination or expiration of the Compact or such other period as may be determined by MCC in accordance with Section 5.1;
- (ii) 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; or
- (iii) any other event has occurred, or circumstances arisen, which in the sole opinion of MCC, constitutes a Material Adverse Change (as defined in the Disbursement Agreement).

Section 5.3 Effect of Termination. Notwithstanding any expiration, suspension or termination of this Agreement pursuant to this Article V, the following provisions of this Agreement shall survive: Sections 1.5, 2.5, 4.2, 5.3, 6.2, 6.4, 6.6, 6.7, 6.8, 6.10 and 6.11.

**ARTICLE VI
MISCELLANEOUS**

Section 6.1 Representations and Warranties.

(a) MCA-Armenia hereby represents and warrants to MCC that, as of the Effective Date, MCA-Armenia has the power and authority to execute, deliver and perform its obligations under this Agreement and each other agreement, certificate, or instrument contemplated hereby. The execution, delivery and performance by MCA-Armenia of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action and (ii) will not violate (A) any applicable Armenian legislation, or (B) any obligation of MCA-Armenia. No other action, consent, approval, registration or filing with or any other action by any person, entity or governmental authority is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of MCA-Armenia.

(b) The Ministry hereby represents and warrants to MCC that, as of the Effective Date, the Ministry has the power and authority to execute, deliver and perform its obligations and each other agreement, certificate, or instrument contemplated hereby on behalf of the Government. The execution, delivery and performance by the Ministry of this Agreement (i) have been duly authorized by all necessary action on the part of the Government and (ii) will not violate (A) any applicable Armenian legislation, or (B) any obligation of the Ministry, the

Government, any Government Affiliate or any other Permitted Designee. No other action, consent, approval, registration or filing with or any other action by any governmental authority is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of the Ministry on behalf of the Government.

Section 6.2 Confidentiality. All documents, reports, cost estimates, technical data and information concerning the Program that is not otherwise publicly available shall be treated by the Ministry and MCA-Armenia confidentially in a reasonable and appropriate manner and in accordance with applicable professional standards, *provided, however*, that all such documents, reports, cost estimates, technical data and other information may be provided by MCC to any employees, contractors, agents, representatives of MCC, the Inspector General, the Government Accountability Office, or others designated by MCC; *provided, further*, that MCA-Armenia may post on the MCA-Armenia Website or otherwise make publicly available certain information, including quarterly financial reports. Each of the Ministry and MCA-Armenia shall ensure that only those with a need to know and under similar obligations of confidentiality shall have access to any and all information, documents, cost estimates data and information provided to such Party or otherwise generated in connection with this Agreement and the Program. MCA-Armenia shall ensure that each Member and each Officer and employee of the Management Unit complies with the confidentiality obligations set forth in this Section 6.2. MCA-Armenia shall include obligations of confidentiality similar to those set forth in this Section 6.2 in the employment agreements of each Officer and employee of the Management Unit.

Section 6.3 Communications. Any notice, certificate, request, report, approval, document or other communication required, permitted, or submitted by any Party to the other under this Agreement shall be (a) in writing, (b) in English, and (c) deemed duly given: (i) upon personal delivery to the Party 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) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, 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 the Ministry:

Staff of the Government of the Republic of Armenia
Attention: Mr. Manuk Topuzyan, Minister
Chief of Staff of the Government
Government Building 1
Republic Square
Yerevan, Armenia
Tel: + 374 10 520933
Fax: + 374 10 529443
E-mail: [_____]

To MCC:

Millennium Challenge Corporation
Attention: Vice President for Operations (with a copy to the Vice President
and General Counsel)
875 Fifteenth Street, N.W.
Washington, D.C. 20005
United States of America
Tel: (202) 521-3600
Fax: (202) 521-3700
E-mail: VPOperations@mcc.gov (Vice President for Operations
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

with a further copy to:

Millennium Challenge Corporation
Attention: Resident Country Director
Embassy of the United States of America
1 American Avenue
Yerevan, Armenia 375082
Tel: +374 (10) 46 47 00
Fax: +374 (10) 46 47 42
Email: RussinA@mcc.gov

To MCA-Armenia:

Millennium Challenge Account – Armenia S.N.C.O.
Attention: Mr. Ara Hovsepyan, Chief Executive Officer
1 Melik Adamyanyan Street
Yerevan, Armenia]
Tel: + 374 10 595328
Fax: + 374 10 543170
Email: hovsepyana@mca.am

Whenever under the terms hereof the time for giving a notice or performing an act 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 6.4 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 of America, without the prior consent of MCA-Armenia and/or the Ministry. MCC shall provide written notice to MCA-Armenia and the Ministry upon the effectiveness of such assignment, delegation or contract. Neither MCA-Armenia nor the Ministry may assign, delegate or contract its rights and obligations under this Agreement without the prior written consent of MCC.

Section 6.5 Representatives. For all purposes relevant to this Agreement, the Ministry shall be represented by the individual holding the position of, or acting as, Minister –

Chief of Staff of the Government of the Republic of Armenia (the “**Ministry Principal Representative**”), MCC shall be represented by the individual holding the position of, or acting as, its Vice President for Operations (the “**MCC Principal Representative**”), and MCA-Armenia shall be represented by the individual holding the position of, or acting as, its CEO (the “**MCA-Armenia Principal Representative**” and, together with the Ministry Principal Representative and the MCC Principal Representative, the “**Principal Representatives**”), each of whom, by written notice, may designate one or more additional 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 each other Party, 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 written notice of revocation of their authority. A Party may replace its Principal Representative with a new representative upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 6.6 International Agreement. The Parties agree and acknowledge that this Agreement is an international agreement entered into for the purposes of implementing the Compact.

Section 6.7 Consultation. Any Party may, at any time, request 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 20 days from the commencement of the consultations then each Party shall forward the consultation to its respective Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, MCC may terminate this Agreement by written notice to MCA-Armenia and the Ministry. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 6.8 MCC Status. Each of MCA-Armenia 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 is not subject to the jurisdiction of the courts or any other juridical or other body of Armenia or any other jurisdiction.

Section 6.9 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship between the Parties.

Section 6.10 Amendment; Waiver. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties. The Parties further agree that 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 or 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. All remedies, either under this Agreement, by law, or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 6.11 Non-waiver of Remedies. The Parties agree that 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 or in any similar breach, default or noncompliance thereafter occurring.

Section 6.12 Attachments. Any exhibit, schedule or other attachment expressly attached hereto (together, the "**Attachments**") is incorporated herein by reference and shall constitute an integral part of this Agreement.

Section 6.13 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 6.14 Entire Agreement. 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 6.15 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures, and each when so executed and delivered shall be an original instrument, but such counterparts together shall constitute a single agreement. Five original versions of this Agreement shall be executed. 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 6.3 shall be deemed an original 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. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 6.16 Prohibited Actions.

(a) The Ministry and MCA-Armenia hereby represent that no payments have been made to any third party in connection with the Program in violation of the conflict of interest and ethics regulations, and other related provisions, of Armenian legislation and shall ensure that no such payments will be made. The Ministry and MCA-Armenia represent that no payments have been received by any employee, agent or representative of either of the Ministry or MCA-Armenia in connection with the procurement of goods and services or works funded or

to be funded under the Compact and shall ensure no such payments will be received by any employee, agent or representative of either of the Ministry or MCA-Armenia. MCA-Armenia shall ensure that each Member and each Officer and employee of the Management Unit complies with the restrictions on payments to certain persons set forth in this Section 6.16(a). MCA-Armenia shall include prohibitions similar to those set forth in this Section 6.16(a) in the employment agreement of each Officer and employee of the Management Unit.

(b) The Ministry and MCA-Armenia shall ensure that no employee, agent, Member, Officer, or representative of the Ministry or MCA-Armenia (each, an “*Affiliate*”) shall participate in the selection, award, or administration of a contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by MCC Funding in which (i) such affiliate, members of such affiliate’s immediate family or household or his or her business partners, or organizations controlled by or substantially involving such affiliate, has or have a financial or other interest, or (ii) the affiliate is negotiating or has any arrangement concerning prospective employment, unless, in either case, such affiliate has first disclosed in writing to MCA-Armenia and MCC the conflict of interest and, following such disclosure, MCA-Armenia and MCC have agreed in writing to proceed notwithstanding such conflict. Each of the Ministry and MCA-Armenia agrees that it shall not, and shall ensure that none of its respective affiliates (and shall seek to ensure that no other person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding) (x) solicits or accepts from, or offers to, a third party or seeks or is promised directly or indirectly for itself or for another person or entity, any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time, or (y) engages in any activity which is, or gives the appearance of being, a conflict of interest. MCA-Armenia shall include conflict of interest provisions similar to those set forth in this Section 6.16(b) in the employment agreement of each Officer and employee of the Management Unit.

Section 6.17 English 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 Armenian for the convenience of the Parties, this official English version shall prevail.

Section 6.18 Interpretation. 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 contracts, agreements, or other documents shall be deemed to mean such contracts, agreements 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) 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;

(h) any reference to “business days” shall mean any day other than a Saturday, Sunday, commercial banking holiday in Yerevan, Armenia or Washington, D.C., United States, or a federal holiday in Armenia or the United States; and any reference to “day” shall mean a calendar day; and

(i) any reference to “month,” “quarter,” or “year” shall have the common meaning given such terms based on a Gregorian 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.

SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE

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

**MILLENNIUM CHALLENGE
CORPORATION**

_____/ s /_____
John Hewko
Vice President of Operations

**STAFF OF THE GOVERNMENT OF THE
REPUBLIC OF ARMENIA, on behalf of the
GOVERNMENT OF THE REPUBLIC OF
ARMENIA**

By: _____ / s /_____
Name: Manuk Topuzyan
Title: Minister – Chief of Government Staff

**MILLENNIUM CHALLENGE ACCOUNT -
ARMENIA S.N.C.O.**

By: _____ / s /_____
Name: Ara Hovsepyan
Title: CEO

EXHIBIT A DEFINITIONS

***Additional Representative** shall have the meaning set forth in Section 6.5.*

***Affiliate** shall have the meaning set forth in Section 6.16(b).*

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

***Attachments** shall have the meaning set forth in Section 6.12.*

***Audit** shall have the meaning set forth in Section 4.7(c).*

***Board Action** shall have the meaning set forth in Section 1.6(c).*

***CEO or Chief Executive Officer** means the chief executive officer of MCA-Armenia who shall have the responsibilities set forth in Section 2.3.*

***CFO or Chief Financial Officer** shall have the meaning set forth in Section 2.1.*

***Chairman** shall have the meaning set forth in Section 1.3(a).*

***Charter** means the charter of MCA-Armenia adopted by Government Resolution No. 487-N dated April 13, 2006, as amended by Government Resolution No. 1008-N dated July 6, 2006.*

***Civil Society Members** shall have the meaning set forth in Section 1.2(b).*

***Compact** shall have the meaning set forth in the Preamble to this Agreement.*

***Compact Goal** shall have the meaning set forth in Exhibit A of the Compact.*

***Compact Reports** shall have the meaning set forth in Exhibit A of the Compact.*

***Designated Rights and Responsibilities** shall have the meaning set forth in Section 1.6(a)(iii).*

***Disbursement Agreement** shall have the meaning set forth in Exhibit A of the Compact.*

***Effective Date** shall have the meaning set forth in Section 5.1(a).*

***Environmental Observer** shall have the meaning set forth in Section 1.4(a)(ii).*

***ESI Officer** shall have the meaning set forth in Section 2.1.*

***Fiscal Accountability Plan** shall have the meaning set forth in Exhibit A of the Compact.*

***Fiscal Agent** shall have the meaning set forth in Exhibit A of the Compact.*

***General Counsel** shall have the meaning set forth in Section 2.1.*

***Governing Council** shall have the meaning set forth in Section 1.1.*

Exhibit A-1

Government shall have the meaning set forth in the Recitals to this Agreement.

Government Members shall have the meaning set forth in Section 1.2(a).

Implementation Plan shall have the meaning set forth in Exhibit A of the Compact.

Implementing Entities shall have the meaning set forth in Exhibit A of the Compact.

Infrastructure Activity shall have the meaning set forth in Exhibit A of the Compact.

Irrigated Agriculture Project shall have the meaning set forth in Exhibit A of the Compact.

Irrigation PIU shall have the meaning set forth in Exhibit A of the Compact.

Irrigation Project Officer shall have the meaning set forth in Section 2.1.

M&E Plan shall have the meaning set forth in Exhibit A of the Compact.

M&E Officer shall have the meaning set forth in Section 2.1.

Management Unit shall have the meaning set forth in Section 2.1.

Material Adverse Change shall have the meaning set forth in the Disbursement Agreement.

MCA-Armenia shall have the meaning set forth in the Preamble of this Agreement.

MCA-Armenia Principal Representative shall have the meaning set forth in Section 6.5.

MCA-Armenia Website shall have the meaning set forth in Exhibit A of the Compact.

MCC shall have the meaning set forth in the Preamble of this Agreement.

MCC Disbursement shall have the meaning set forth in Exhibit A of the Compact.

MCC Disbursement Request shall have the meaning set forth in Exhibit A of the Compact.

MCC Funding shall have the meaning set forth in Exhibit A of the Compact.

MCC Observer shall have the meaning set forth in Section 1.4(a)(i).

MCC Principal Representative shall have the meaning set forth in Section 6.5.

Members shall have the meaning set forth in Section 1.1.

Ministry shall have the meaning set forth in the Preamble to this Agreement.

Ministry Principal Representative shall have the meaning set forth in Section 6.5.

Officer shall have the meaning set forth in Section 2.1.

Outside Project Manager shall have the meaning set forth in Exhibit A of the Compact.

Exhibit A-2

Parties shall have the meaning set forth in the Preamble to this Agreement.

Party shall have the meaning set forth in the Preamble to this Agreement.

Permitted Designee shall have the meaning set forth in Section 4.6.

Principal Representatives shall have the meaning set forth in Section 6.5.

Program shall have the meaning set forth in Exhibit A of the Compact.

Procurement Agreement shall have the meaning set forth in Exhibit A of the Compact.

Procurement Guidelines shall have the meaning set forth in Exhibit A of the Compact.

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

Project shall have the meaning set forth in Exhibit A of the Compact.

Project Officer shall have the meaning set forth in Section 2.1.

Provider shall have the meaning set forth in Exhibit A of the Compact.

Quorum shall have the meaning set forth in Section 1.8.

Re-Disbursement shall have the meaning set forth in Exhibit A of the Compact.

Rural Finance Facility shall have the meaning set forth in Exhibit B of this Agreement.

Rural Roads Project Officer shall have the meaning set forth in Section 2.1.

Secretary shall have the meaning set forth in Section 2.1.

Stakeholders' Committee shall have the meaning set forth in Section 3.1.

Supplemental Agreement shall have the meaning set forth in Exhibit A of the Compact.

Voting Members shall have the meaning set forth in Section 1.1.

Water-to-Market Activity shall have the meaning set forth in Exhibit A of the Compact.

Water-to-Market Project Officer shall have the meaning set forth in Section 2.1.

Exhibit A-3

EXHIBIT B
MANAGEMENT UNIT RESPONSIBILITIES

1. **Chief Executive Officer.** See Section 2.3.
2. **ESI Officer.** The ESI Officer assesses, evaluates and develops policy concerning the environmental and social impacts of MCA-Armenia activities. The ESI Officer will ensure that the environmental and social mitigation measures (including resettlement and gender issues) are followed for all activities of the Compact, in accordance with the provisions of the Compact and related documents, and will serve as the in-house expert on environmental and social impact issues.
3. **Chief Financial Officer.** The CFO works under the supervision of the CEO and is responsible for all financial aspects of the MCA-Armenia Program, ensuring that all financial management provisions of the Compact and related documents are being adhered to. The CFO serves as the primary liaison with the Fiscal Agent (who is responsible for ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures). The CFO assures proper accounting of all MCC Funding and other financial transactions.
4. **Procurement Officer.** The Procurement Officer is responsible for the overall MCA-Armenia Program procurement process compliance with the guidelines set forth in the Procurement Agreement and with national legislation and for managing (i) procurements of the Outside Implementing Entity for the Water-to-Market Activity, (ii) auditors, (iii) monitoring and evaluation expertise and (iv) procurements directly related to the operation of the Management Unit. The Procurement Officer contributes to management planning and reporting activities by working on the procurement side of such planning and reporting.
5. **M&E Officer.** The M&E Officer is responsible for developing and guiding overall monitoring and evaluation (“M&E”) strategy, plan and implementation, including related activities within the MCA-Armenia Program and through its implementing entities. The M&E Officer is responsible for providing timely and relevant information to MCA-Armenia stakeholders in the Government, civil society community and the private sector. This entails close communication with all involved in M&E design and implementation: the CEO; representatives from the Governing Council; representatives from the Stakeholders’ Committee; MCA-Armenia Project Officers and other support staff when appropriate; the M&E staff of Implementing Entities; MCC’s M&E staff in Washington; external consultants; and members of external M&E-related missions from MCC.
6. **Secretary of the Governing Council (General Counsel).** The Secretary (General Counsel) shall be responsible for maintaining MCA-Armenia corporate books and records at the offices of MCA-Armenia, giving notice of Governing Council meetings, attending and keeping minutes of Governing Council meetings, signing all documents on which the signature of the Secretary is necessary or appropriate, and attesting to the

Exhibit B-4

authenticity of any MCA-Armenia-generated documents. In addition, the Secretary shall perform such other duties and exercise such other powers as are commonly incidental to the office of a corporate secretary (general counsel), such as providing advice to the Governing Council, the CEO and Management Unit staff on all legal issues affecting the MCA-Armenia and its operations, identifying and analyzing legal issues, negotiating and drafting key documents, presenting recommendations and assuring legal compliance.

7. **Rural Roads Project Officer.** The Rural Roads Project Officer is responsible for coordinating and overseeing all project activities under the Rural Road Rehabilitation Project, including, but not limited to, the implementing activities carried out by the Armenian Road Directorate under the Ministry of Transport and Communication (which is responsible for procurement, construction and implementation relating to the Rural Road Rehabilitation Project).
8. **Irrigation Project Officer.** The Irrigation Project Officer is responsible for coordinating and overseeing all project activities under the Infrastructure Activity of the Irrigated Agriculture Project, including, but not limited to, the implementing activities carried out by the Irrigation PIU (which is responsible for procurement, construction and implementation relating to the Irrigated Agriculture Project).
9. **Water-to-Market Project Officer.** The Water-to-Market Project Officer is responsible for coordinating and overseeing all project activities under the Water-to-Market Activity of the Irrigated Agriculture Project, including, but not limited to, (i) implementation responsibilities to be carried out by an Outside Project Manager to be selected through a competitive international tender process and (ii) the activities to be carried out by the Rural Finance Facility to build capacity within credit organizations and to provide funding to such credit organizations that will on-lend to member farmers and related enterprises (the “*Rural Finance Facility*”). (The Rural Finance Facility was established by the Government for the purpose of channeling and managing the refinancing resources from development loans (from the World Bank and International Fund for Agricultural Development) for lending to rural areas through eligible financing institutions.)

EXHIBIT C
DESCRIPTION OF MCA-ARMENIA MANAGEMENT UNIT
FUNCTIONS AS A PROCUREMENT AGENT

As a Procurement Agent, MCA-Armenia Management Unit shall diligently oversee, discharge and perform all services necessary to achieve the optimum value for the monies expended within Program, while ensuring that all procurement transactions are conducted in strict compliance with the principles, rules and procedures set out in the MCC Compact, its Supplemental Agreements and Procurement Agreement, defining the Procurement Guidelines agreed between MCC and the Government.

As a Procurement Agent, the MCA-Armenia Management Unit has two main functions:

- Shall act as an **Operational Procurement Agent** to manage the acquisition of goods, works and services that are needed to implement the projects funded by the MCC Compact (the “*Program*”) which will not be procured by the Armenia Roads Directorate (ARD) or Irrigation PIU. It is anticipated that MCA-Armenia will serve as the Procurement Agent for the Water-to Market Project Manager, Audit Services, Monitoring and Evaluation Services, and such other goods and services as are required by MCA-Armenia itself (the “*MCA-Armenia Procurements*”).
- Shall **oversee the procurement functions** performed by the ARD and the Irrigation PIU that are defined in the Implementing Entity Agreements between the MCA-Armenia and respective Implementing Entity.

As an Operational Procurement Agent, the MCA-Armenia Management Unit shall:

- Manage and administer effectively the MCA-Armenia Procurements.
- Analyze market conditions in order to optimize the success of the procurement activity.
- Pursue economies in the procurement process that may be obtained through aggressive marketing of the procurement opportunity, improved specifications, and other sound purchasing practices.
- Ensure that no more than a commercially reasonable price shall be paid to procure the goods, works and services needed to implement the Program.
- Plan, schedule, and prioritize the procurement functions.
- Ensure that the documents describing the objects of the procurements, including the scopes of work, statements of requirements, specifications, terms of reference, bills of quantities, engineering designs and drawings, are adequately prepared and finalized in a reasonable and balanced manner without being overly restrictive.
- Conduct procurements in a manner to provide open competition to the maximum extent practical in order to assure advantageous prices for MCA-Armenia and equal and fair access for eligible suppliers and contractors.

Exhibit C-1

- Follow-up on orders placed to expedite performance of suppliers and contractors and take all necessary actions to ensure successful performance including actions to re-procure if necessary.
- Prepare contract documentation, including but not limited to, advertisements, solicitations, compilation of technical and cost evaluation documentation, requests for “no objections” from MCC and final contracts for signature.
- Review, analyze, and propose appropriate MCA-Armenia responses to change order requests (and other adjustments) as proposed by contractors.

While executing oversight functions, the MCA-Armenia Management Unit shall:

- Assure that all procurement activity is performed in a fully professional, transparent and ethical manner and that all suppliers and contractors are treated on a fair and equal basis.
- Provide guidance to Evaluation Panels in exercising their responsibilities.
- Ensure that all procurement-related approvals required under the Compact, Procurement Agreement and the Supplemental Agreements are obtained, including (i) all required approvals for each step of the procurement process, as set forth on Schedule 2 of the Procurement Agreement; and (ii) all approvals of the Procurement Operations Manual (defined below).
- Guard against conflicts of interest, real or in appearance, in the operation of the procurement activity.
- Maintain strict controls to ensure honesty and confidentiality throughout the procurement cycle.
- Protect the procurement activity from fraud, waste and abuse.
- Respond promptly and fairly to complaints about the procurement activity.
- Assume other operational, functional, and contractual obligations and responsibilities as is customary in performing the duties of a procurement agent.

Procurement Rules, Procedures, Requirements and Best Practices

In general, the Procurement Agent shall:

- Comply with the procurement principles (“*Procurement Principles*”) set forth in Section 3.6 of the Compact and with the Procurement Agreement, including the procurement guidelines (“*Procurement Guidelines*”) set forth in the Procurement Agreement, which include the rules and procedures designated to govern the acquisition of goods, works, and services in implementation of the Program.
- Use the methods of procurement set out in approved Procurement Plans unless exceptions have been granted, in writing, by MCC.

Exhibit C-2

- Ensure that the terms and conditions of procurement contracts include all provisions required by the Procurement Guidelines and other Compact documents, including (1) the limitations on use and treatment of MCC Funding set forth in Section 2.3 of the Compact, (2) the audit, access and records requirements set forth in Section 3.8 of the Compact, as applicable, (3) any applicable reporting requirements set forth in Section 3.12 of the Compact, (4) eligibility requirements related to prohibited source provisions in accordance with then applicable U.S. law, regulations and policy, and (5) such other terms and conditions as may be specified in the Compact, any other Supplemental Agreement or the term sheet, as applicable, to a contract or agreement of that nature.
- For all cost reimbursement type contracts, comply with the MCC Cost Principles (the “*MCC Cost Principles*”), when issued and as may be amended from time to time. The MCC Cost Principles, when issued and available, shall be delivered to the Implementing Entities by MCA-Armenia.
- Ensure strict compliance with the procedures and rules set out in solicitation documents, especially the criteria and methodology for evaluation of bids and proposals.
- In the performance of its duties, be mindful of “best practices” generally recognized by public procurement professionals.

Procurement Operations Manual and Bidding and Proposal Documents

The Procurement Agent shall:

- Develop and follow an operations manual describing applicable procedures for executing procurement functions including procedures for generating purchase requisitions, preparing procurement documents, conducting procurements, and administering contracts (the “Procurement Operations Manual”). The Procurement Operations Manual shall also include standard forms for procurement notices and record keeping. The Procurement Operations Manual shall be submitted to MCC for approval within sixty (60) days after execution of this Agreement.
- Develop and use bidding and proposal documents (the “Bidding and Proposal Documents”) in the acquisition of goods, works and services. These documents shall be submitted to MCC for approval as required by the Procurement Agreement. .
- Develop and conduct formal programs to introduce the Bidding and Proposal Documents and Procurement Operations Manual to the staff of MCA-Armenia, Implementing Entities and their service providers who need instruction in the operation of the MCA-Armenia procurement system.
- Develop the Bid Challenge System required by Section 5 of Schedule 1 of the Procurement Agreement.

Procurement Plans and Schedules

Exhibit C-3

The Procurement Agent shall:

- Prepare the Program Procurement Plan, ensure its update every six (6) months and submit to MCC for review and approval as required by the Procurement Agreement. The Procurement Plan shall include in the identification and brief description of each procurement, the estimated value and the procurement method to be used.
- Revise the Procurement Plan as may be required by MCC.
- Following MCC's approval of each Procurement Plan, prepare and advertise a notice (the "**General Procurement Notice**") indicating the procurement activity planned for the period. This notice shall briefly describe the nature of the goods, services and works planned to be procured and the range of the budget for these procurements and any other information that might encourage interest in the procurements and help potential suppliers and contractors prepare for the procurements. The Procurement Agent shall ensure that each General Procurement Notice is posted according to requirements of the Procurement Agreement.
- For procurements set out in the Procurement Plans, prepare a specific procurement implementation plan and schedule detailing the procedures and timelines for conducting the procurement. In addition to the information set out in the Procurement Plan, these implementation plans and schedules shall identify the steps of the procurement proceeding and provide timelines for key milestones in the process. As appropriate for the procurement, this implementation plan and schedule would define: (1) the procurement procedures, (2) the strategy for advertising the procurement and preparing the bidding or proposal documents or other solicitation documents as appropriate for the procurement method, (3) the plan for conducting pre-bid/proposal conferences and site visits, (4) the timelines for receipt of responses, (5) the plan for opening and evaluating bids, proposals, qualifications or quotes, and (6) the timelines for announcing the award, executing the contract, commencing performance and completing the contract. These plans and schedules should also identify points where approvals are required and take into account the time period needed for these actions.

Procurement Process

The Procurement Agent shall conduct procurement proceedings to select suppliers, consultants and contractors. Depending upon the procurement method, this duty may include performing the following tasks:

- Prepare the advertisements and letters of invitation that give notice of procurements. Post notices of procurement opportunities, as required in the Procurement Guidelines, and take additional reasonable and appropriate actions to advertise procurements to encourage participation and competition.
- Prior to the issuance of any solicitation, ensure that a systematically developed estimate of the contract amount has been prepared, utilizing prior experience, historical or statistical data, published indices as well as any other sources that provide a valid and reasonable basis for estimating contract costs.

Exhibit C-4

- Verify that the technical specifications, design drawings and/or terms of reference and other documents describing the objects of procurements are sufficient to meet the requirements for the Contractors to meet the Project Objectives (as defined in Compact) and accurately reflect the needs and wishes of MCA-Armenia and are generic, impartial and transparent. If not, the Procurement Agent shall take necessary measures to revise them.
- When a short-listing process precedes the invitation to participate, ensure that a qualified evaluation panel is appointed, instruct the panel in their duties and responsibilities, ensure that the short-listing process is conducted in a fair and objective manner following pre-announced procedures and methodology, and prepare the short-listing report.
- Prepare the required solicitation documents, including bidding or proposal documents, ensuring that appropriate deadlines for the timely preparation of bids or proposals, appropriate qualification requirements and effective evaluation criteria and methodology are specified.
- Arrange any necessary site visits or bidders' conferences as appropriate for the procurement.
- Answer promptly any written queries or requests for clarifications received from suppliers and contractors during the bid and proposal preparation period. If the reply or clarification results in a substantial change to the bidding or proposal documents, this change shall be formalized by creating an addendum to the bidding or proposal document, properly informing all potential suppliers and contractors in accordance with the procedures defined in the bidding or proposal documents.
- Receive all bids and proposals in the place, day and time specified in the bidding or proposal document, following recognized best practices.
- Review and advise upon the appointment of the evaluation panel, ensure that a qualified panel is appointed, instruct the panel in their duties and responsibilities, ensure that the evaluation process is conducted strictly in accordance with the pre-announced criteria and evaluation methodology, take decisions in the acceptance and rejection of defective bids or proposals, and prepare of the evaluation report.
- Receive the contract award recommendation from the evaluation panel and confirm that the supplier or contractor recommended for award is qualified to perform the contract and is eligible to participate in an MCC-funded contract.
- Prepare and sign the final contract with the winning supplier or contractor within the specified time frame and with the required securities or guarantees submitted by such supplier or contractor, as specified in the bidding or proposal documents.
- Inform the unsuccessful suppliers or contractors of the award decision, conduct debriefings as requested and appropriate, and arrange for return or release of their securities or guarantees.
- Post announcement of contract awards as required in the Procurement Guidelines.

Exhibit C-5

Contract Administration

The Procurement Agent shall:

- Manage post-award contract administration issues, such as changes in key personnel, requests for change orders.
- Establish a contract administration system to (i) ensure and track supplier and contractor compliance with the terms and conditions of the relevant contracts, (ii) address delays in delivery and performance, (iii) certify performance of services, completion of works and delivery of goods.
- Ensure that there is a proper system in place for testing and inspection before acceptance of goods.
- Ensure that there is a proper system for oversight and review to address the quality of the performance of services and acceptance of deliverables.
- Manage and administer the processes for rejection of goods, works or services, curing of defects, enforcing warranties and addressing delays in delivery and performance.
- Prepare, manage and administer change orders and modifications of procurement contracts.
- Manage and administer termination of procurement contracts.
- Manage and support resolution of contract disputes.

Protests

The Procurement Agent shall manage and support resolution of protests of the procurement process filed by potential suppliers and contractors, provided however, the system to be adopted for the handling of bid and contract administration protests and challenges will be defined in the Procurement Agreement, Bid Challenge System and supplemental procedures.

Reports and Access

The Procurement Agent shall:

- Prepare a monthly report detailing the principal activities executed by the Procurement Agent during the previous month.
- Prepare a report detailing the principal activities executed by the Procurement Agent during the previous quarter.

Exhibit C-6