

GOVERNANCE AGREEMENT

BY AND AMONG

MILLENNIUM CHALLENGE CORPORATION,

**THE MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT,
ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF VANUATU**

AND

MCA-VANUATU

DATED AS OF MAY 31, 2006

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GOVERNANCE AGREEMENT

This **GOVERNANCE AGREEMENT** (this “*Agreement*”) is entered into as of May 31, 2006 (the “*Effective Date*”), by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Ministry of Finance and Economic Management (the “*Ministry*”), acting on behalf of the Government of the Republic of Vanuatu (the “*Government*”), and MCA-Vanuatu, an independent unit established under the laws of Vanuatu within the Ministry (“*MCA-Vanuatu*” and, together with MCC and the Ministry, the “*Parties*” and, each individually, a “*Party*”).

Terms capitalized herein (for other than grammatical reasons) have the meanings provided in Exhibit A hereto. Capitalized terms that are used but not defined herein shall have the meaning given such terms in that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government, signed in Port Vila, Vanuatu on March 2, 2006 (the “*Compact*”).

RECITALS

WHEREAS, the United States of America, acting through MCC, and the Government executed the Compact that sets forth the general terms and conditions on which MCC will provide funding of up to US\$65,690,000 to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in Vanuatu;

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-Vanuatu and the respective powers, rights and duties of its Steering Committee and Management Unit (each as defined below);

WHEREAS, pursuant to Section 2.2(d) of the Compact, MCA-Vanuatu was established as an independent unit within the Ministry in accordance with those certain resolutions (the “*Resolutions*”) adopted by the Council of Ministers on February 26, 2006 and that certain charter of MCA-Vanuatu executed by the Minister of Finance and Economic Management on March 9, 2006 (the “*Charter*”) to oversee and manage the Program on behalf of the Government of the Republic of Vanuatu; and

WHEREAS, pursuant to Section 3.2(c) of the Compact, the Government wishes to designate MCA-Vanuatu to implement certain of the Government Responsibilities and other responsibilities, rights and obligations of the Government under, contemplated by and in furtherance of the Compact, subject to the terms and conditions set forth in the Compact, this Agreement and in other relevant Supplemental Agreements, and MCA-Vanuatu wishes to accept and assume such designation;

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

ARTICLE I.
DESIGNATION OF RIGHTS AND RESPONSIBILITIES

Section 1.1 Designation of Rights and Responsibilities; Government Obligations.

(a) In accordance with Section 3.2(c) of the Compact, the Government hereby designates MCA-Vanuatu to implement the Government Responsibilities and such other responsibilities, rights and obligations of the Government under, contemplated by, or in furtherance of the Compact and the Supplemental Agreements (the “***Designated Rights and Responsibilities***”).

(b) In accordance with Section 2.2(d) of the Compact, the Government shall (i) ensure the independent and proper administration of MCA-Vanuatu in accordance with the terms of the Compact.

(c) The Government shall ensure that MCA-Vanuatu (i) performs the Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities under the Compact and relevant Supplemental Agreements and (ii) does not assign, delegate or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any other person or entity without the prior written consent of MCC.

(d) Notwithstanding anything to the contrary herein, this Agreement shall in no event relieve the Government of any liability, obligation or responsibility under the Compact for the Designated Rights and Responsibilities and at all times the Government shall retain ultimate responsibility for all such Designated Rights and Responsibilities.

Section 1.2 Permitted Designee. Each of the Ministry, on behalf of the Government, MCA-Vanuatu and MCC acknowledges that MCA-Vanuatu has been designated by the Government as a Permitted Designee, as described in Section 3.2(c) of the Compact.

ARTICLE II.
STEERING COMMITTEE OF MCA-VANUATU

Section 2.1 Composition. The Steering Committee of MCA-Vanuatu (the “***Steering Committee***”) shall consist of thirteen (13) voting members (the “***Voting Members***”), three (3) non-voting observers (the “***Observers***”), each of whom must be acceptable to MCC, taking into consideration appropriate environmental and social representation, and the Director of the Management Unit (the “***Director***”), (the Voting Members, the Observers and the Director being collectively referred to in this Agreement as the “***Members***”). The number of Members may be expanded by a decision of the Steering Committee with the prior written approval of MCC.

Section 2.2 Voting Members.

(a) The Voting Members on the Steering Committee shall be comprised of the following government officials (the “**Government Members**”):

- (i) The Director-General of the Office of the Prime Minister;
 - (ii) The Director-General of the Ministry of Finance and Economic Management;
 - (iii) The Director-General of the Ministry of Foreign Affairs and External Trade;
 - (iv) The Director-General of the Ministry of Infrastructure & Public Utilities;
 - (v) The Director-General of the Ministry of Lands;
 - (vi) The Director of the Public Works Department;
 - (vii) The Director of Finance;
 - (viii) The Director of the Department of Economics and Sector Planning;¹
 - (ix) The Director of the Department of Strategic Management;
 - (x) The Head of Development Cooperation of the Ministry of Foreign Affairs;
- and
- (xi) The Principal Statistician of the National Statistics Office.

Any such Government Member 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 (whereupon such replacement shall become a Government Member).

(b) The following two (2) non-government representatives shall serve as Voting Members (the “**Non-Government Members**”):

- (i) The General Manager of the Chamber of Commerce; and
- (ii) The Secretary-General of the Vanuatu Non-Governmental Organizations.

(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 Steering

¹ The Department of Economic and Sector Planning was previously known as the Department of Economics and Social Development.

Committee 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 Program activities.

(d) Each Non-Government Member shall serve in his or her capacity as General Manager of the Chamber of Commerce or Secretary-General of the Vanuatu Non-Governmental Organizations, as applicable, and not in his or her personal capacity. If a person serving as a Non-Government Member resigns or is removed from such office, that person's position on the Steering Committee will be taken by such person's successor in such office or, subject to approval by the Government and MCC, by another official of comparable rank from a comparable entity or civil society organization relevant to Program activities.

(e) In the event that a Voting Member is unable to participate in a meeting of the Steering Committee, such Voting Member may appoint in writing an alternate to participate for such Voting Member, *provided* that such alternate shall be such Member's principal deputy or equivalent.

(f) In the event that a vacancy is created with respect to one or more Voting Members at any time by death, disability, retirement, resignation, removal or any other reason, the Chair shall nominate an individual to fill such vacancy, *provided* that:

(i) 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 2.1 and 2.2; and

(ii) The term of such replacement Member shall end when the office held by the prior Member is filled by a successor, whereupon such successor shall become a Member, unless the Government and MCC agree otherwise.

Section 2.3 Chair of the Steering Committee.

(a) The activities of the Steering Committee shall be managed by the chair of the Steering Committee (the "**Chair**"). The Director-General of the Office of the Prime Minister shall serve as the Chair. The Chair shall preside over all meetings of the Steering Committee. The Director-General of the Ministry of Finance and Economic Management shall be the vice-chair of the Steering Committee (the "**Vice-Chair**"). In the case of the absence of the Chair and of any alternate designated by the Chair, the Vice-Chair, or any alternate designated by the Vice-Chair, shall act as chair for the purposes of such meeting. In the case of absence of the Chair and the Vice-Chair, or any alternates designated by such Members, the Voting Members present shall elect one of such Voting Members to act as chair for the purposes of such meeting.

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

Section 2.4 Observers.

(a) The Observers on the Steering Committee shall be 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 Steering Committee at MCC's discretion;

(ii) The Director of the Environment Unit; and

(iii) The General Manager of the Vanuatu Tourism Office (together with the Director of the Environment Unit, “**Other Observers**”).

(b) Each of the Observers may designate an alternate representative to attend one or more meetings of the Steering Committee in the event that such Observer is unable to attend. Each Other Observer shall serve in his or her capacity as a Government official and not in his or her personal capacity. If a person serving as an Other Observer resigns or is removed from such Government office, that person's position as an Observer 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 Program activities.

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

(d) Each of the Government and MCA-Vanuatu 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 Steering Committee. In all matters arising under or relating to the Compact, this Agreement, or the activities of MCA-Vanuatu, the MCC Observer shall not, in accordance with Section 3(d)(ii)(5) of Annex 1 of the Compact, be subject to the jurisdiction of the courts or any other body of Vanuatu, 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 2.5 Service of Director of the Management Unit on Steering Committee. The Director of the Management Unit shall serve as an ex officio, non-voting member of the Steering Committee and shall make reports to the Steering Committee as required from time to time.

Section 2.6 Indemnification and Insurance.

(a) The Government shall indemnify and hold harmless each Member and each member 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 member by reason of such Member's activities as a Member, or such Management Unit member's activities as a member of the Management Unit, as applicable, *provided* that the Government shall have no obligation to indemnify any Voting Members or members of the Management Unit under this Section 2.6 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 member of the Management Unit. The indemnification rights granted to each Member and each member 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 7.11), 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)(5) of Annex I of the Compact, in fulfilling its obligations under this Section 2.6.

Section 2.7 Authority of the Steering Committee. 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 Steering Committee 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-Vanuatu (or such other mutually acceptable persons or entities as to which MCC has provided its written consent), of some or all of the Government Responsibilities (as such term is defined in the Compact) or any other responsibilities or obligations of the Government or the exercise by MCA-Vanuatu 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.

(b) Perform such other obligations and oversight functions in respect of MCA-Vanuatu activities as contemplated by the Compact, this Agreement, applicable Vanuatu laws, the Resolutions and the Charter.

(c) Without limiting the foregoing provisions of this Section 2.7, each of the following actions of MCA-Vanuatu are specifically subject to the prior approval of the Steering Committee (each such approval, 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 Section 3(c) of Annex I of the Compact);

(ii) Re-Disbursements to any Provider to the extent that MCC, by written notice to MCA-Vanuatu and the Fiscal Agent, directs the Steering Committee 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-Vanuatu to a contractual obligation equal to or greater than US \$50,000 (Fifty Thousand United States Dollars), or such other amount as may be agreed by MCC and MCA-Vanuatu, including any amendments, modifications, termination or suspension of any such agreement;

(iv) Any other activities or actions that require Steering Committee approval pursuant to the Procurement Agreement;

(v) Submission of any MCC Disbursement Request by MCA-Vanuatu 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 Work Plans), (B) the Audit Plans, (C) staffing plans (and any amendments, modifications, or supplements to any of the items described in Section 2.7(c)(vi)(A)-(C)), and (D) any response to any finding in any audit identified in the Audit Plan;

(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-Vanuatu 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 Steering Committee;

(ix) The terms of employment (including compensation) and the employment agreement for the Director, and any amendments thereto;

(x) The hiring and dismissal of the members of the Management Unit (other than the Director), and of any employee, consultant or expert to be hired by MCA-Vanuatu whose gross monthly compensation is greater than US \$3,000 (Three 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 Steering Committee 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-Vanuatu 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) US \$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-Vanuatu 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 Steering Committee (such change subject to the prior written approval of MCC);

(xiv) Any amendment to the Charter (each such amendment subject to the prior written approval of MCC);

(xv) Any decision to (A) reorganize MCA-Vanuatu, (B) dissolve, wind up or liquidate MCA-Vanuatu, or (C) to make any other change in the legal organization of MCA-Vanuatu; *provided* that each such decision (1) shall require approval of at least nine (9) Voting Members present at a meeting at which there is a Quorum (*provided further, however*, that a change described in Section 2.7(c)(xvi) that is an immaterial change in the organization of MCA-Vanuatu shall require approval of the Steering Committee in the manner set forth in Section 2.7), (2) may not be made pursuant to Section 2.10, and (3) shall be subject to the prior written approval of MCC; and

(xvi) Any other activities, agreements, documents, or actions requiring Steering Committee 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 Steering Committee 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 Chair, such certification also stating that such agreements and documents attached thereto are true, accurate and complete.

Section 2.8 Meetings of Steering Committee. Regular meetings of the Steering Committee shall be held at such time and at such place as may from time to time be determined by the Steering Committee, but shall be held at least on a monthly basis and more frequently as may be necessary. Special meetings of the Steering Committee may be called if requested by the Chair, by any two Members, or by the Director. Notice stating the place, date, time and agenda of the meeting shall be given to each Member by the Secretary of MCA-Vanuatu (a) in respect of a regular quarterly meeting, either by hand, mail, facsimile or e-mail 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 or e-mail 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 Steering Committee 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 Steering Committee is conducted in a language other than English, a translator shall be provided for any Member who does not speak such language. All documents to be discussed at any Steering Committee 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 Steering Committee meeting.

Section 2.9 Quorum; Voting.

(a) At all meetings of the Steering Committee 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 one (1) of the Non-Government Members in order to constitute a Quorum. Notwithstanding the previous sentence, if at any meeting of the Steering Committee a Quorum is not present and thereafter proper notice is sent to (or receipt thereof is waived or deemed 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 2.7(c)(xii) through (xv) which shall require an affirmative vote of at least nine (9) Voting Members, 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 Steering Committee, provided that no decision shall be deemed to be an act of the Steering Committee unless at least four (4) Voting Members, including at least one (1) Non-Government 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 Steering Committee. If there is a tie vote, the position taken by the Chair in such vote shall prevail. If a Quorum is not present at any meeting of the Steering Committee, 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 2.10, each decision, election, appointment or action by the Steering Committee, whether specifically set forth in this Agreement or otherwise, shall be made in accordance with the procedures set forth in this Section 2.9(b).

Section 2.10 Action by Written Consent. Unless otherwise provided by this Agreement, any action required or permitted to be taken at any meeting of the Steering Committee 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 Non-Government Member) consent in writing to such action. Any such action approved by written consent shall be filed with the minutes of proceedings of the Steering Committee. Notwithstanding the foregoing, if two (2) or more Members so request, the Steering Committee shall hold a meeting (by telephone or otherwise) prior to such action by written consent.

Section 2.11 Meetings by Means of Conference Telephone. Unless otherwise provided by this Agreement, the Members may participate in a meeting of the Steering 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 2.11 shall constitute presence in person at such meeting.

Section 2.12 Reporting Requirements.

(a) The agenda of any meeting of the Steering Committee, the names 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-Vanuatu, and such minutes shall be circulated for approval by a majority of the Voting Members in attendance at the meeting for which the minutes were prepared and then finalized and signed by the Chair (or the person acting as such at a given meeting). The minutes of each Steering Committee meeting, as finalized and signed by the Chair (or the person acting as such at a given meeting), shall be posted on the MCA-Vanuatu Website within two (2) weeks after each meeting.

(b) The Steering Committee shall periodically, but not less than monthly, provide to the Council of Ministers through the Minister of Finance and Economic Management, reports on the implementation of the Program and such other information that may be requested from time to time.

Section 2.13 Remuneration. Members shall not receive any remuneration in connection with the performance of their duties as Members on (or, as applicable, as Chair or Vice-Chair of) the Steering Committee, except for reimbursement for reasonable expenses for attendance at meetings of the Steering Committee.

ARTICLE III.

MANAGEMENT UNIT OF MCA-VANUATU

Section 3.1 Appointment. The Steering Committee shall appoint the Director after an open and competitive recruitment and selection process, which appointment shall be subject to MCC approval. A management team shall be selected and hired by the Director after an open and competitive recruitment and selection process (together with the Director, the “**Management Unit**”). The appointment and dismissal of each member of the Management Unit shall be subject to the prior written approval of MCC and (except with respect to the Director) the Steering Committee. 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, initially including (a) the Director, (b) two (2) analysts (“**Analysts**”) and (c) appropriate administrative and support personnel. The Director of the Management Unit, or in his absence such other member of the Management Unit designated by the Chair of the Steering Committee, shall serve as the secretary of MCA-Vanuatu (“**Secretary**”). A brief description of the responsibilities of each member of the Management Unit, including the Secretary, is attached to this Agreement as part of Exhibit B, *provided*, that such responsibilities may be adjusted by the Director from time to time. The terms of employment for each member of the Management Unit and for each employee designated by MCA-Vanuatu as a key employee shall be governed by an employment agreement to be entered into between MCA-Vanuatu and each such member or employee, as applicable. The Management Unit will be supported by appropriate

administrative and support personnel. Unless otherwise agreed in writing by the Parties, the Management Unit shall report, through the Director, directly to the Steering Committee.

Section 3.2 Authority of Management Unit. The Management Unit shall assist the Steering Committee in overseeing the implementation of the Program and shall have the principal responsibility (subject to the direction and oversight of the Steering Committee, 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 Work Plans), (ii) the Audit Plans, (iii) staffing plans (and any amendments, modifications or supplements to any of the items in Section 3.2(a)(i) - (iii)), and (iv) any response to any finding in any audit;

(b) Oversight of the implementation of the Transport Infrastructure Project, including preparation of MCC Disbursement Requests for approval by the Steering Committee;

(c) coordination of the overall Program, the Transport Infrastructure Project, each Project Activity 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 Transport Infrastructure Project (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 Steering Committee in furtherance of the Compact;

(f) Preparation and review of reports with the assistance of the Fiscal Agent 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, the Transport Infrastructure Project, each Project Activity and the other activities contemplated under, or carried out in furtherance of, the Compact and any other reports requested by the Steering Committee;

(g) Maintenance of accounting records for the Program, including for the Transport Infrastructure Project and each Project Activity;

(h) Development and maintenance of a management information system to allow the systematic tracking of programmatic and financial implementation of and performance under the Compact, including for the Transport Infrastructure Project and each Project Activity;

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

(j) Management 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;

(k) Administration of the MCA-Vanuatu Website in coordination with the Fiscal Agent 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);

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

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

(n) Any other responsibilities within the scope of its Program implementation management role that may be required or requested from time to time by the Steering Committee.

Section 3.3 Role of Director.

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

(i) Pursuant to the Compact and applicable Vanuatu laws, supervise the daily activities of MCA-Vanuatu, convene and chair the Management Unit meetings, manage MCA-Vanuatu personnel, and organize and manage MCA-Vanuatu activities; *provided* that the Director may delegate any of its responsibilities under this Section 3.3(a)(i) to any member of the Management Unit;

(ii) Develop the structure of the Management Unit and staff of MCA-Vanuatu; assign the functions and responsibilities of MCA-Vanuatu employees; approve internal policies and procedures and job descriptions of MCA-Vanuatu employees (or terms of reference in the case of consultants or temporary employees retained to supplement full-time MCA-Vanuatu staff);

(iii) Hire and dismiss all MCA-Vanuatu 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 member of the Management Unit, (ii) and any other key employee, expert or consultant whose gross monthly compensation is greater than US \$3,000 (Three Thousand United States Dollars), shall be subject to the prior written approval of the Steering Committee and MCC;

(iv) Determine disciplinary actions and (non-financial) incentives for MCA-Vanuatu employees in accordance with applicable Vanuatu laws (including the Public Service Commission manual and policies, as appropriate) and exercise supervision over staff performance with ongoing consultation with the Steering Committee;

(v) Represent MCA-Vanuatu in relations with third parties, and act as the official contact person on behalf of the Government in relations with MCC;

(vi) Submit each component of the Implementation Plan and any amendments thereto to the Steering Committee for approval; present the Financial Plan and Audit Plan (and any amendments, modifications or supplements thereto) to the Steering Committee; submit reports on financial management, performed activities, and project implementation; submit the results of any audit, detailed report of the previous economic year and the report on progress of all aspects of the Implementation Plan to the first meeting of the Steering Committee called after the completion of the annual audit; and submit other reports as required by the Compact or as otherwise requested by the Steering Committee;

(vii) Organize the preparation of and distribution of agendas for the meetings of the Steering Committee and organize and administer meetings of the Steering Committee;

(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-Vanuatu for which, pursuant to the provisions of the Compact or this Agreement, approval by the Steering Committee is not required;

(ix) Review and, if appropriate, approve any activities or actions that require Director approval pursuant to the Procurement Agreement;

(x) Exercise other powers in accordance with the Compact, applicable Vanuatu laws, the Resolutions and the Charter on matters related to MCA-Vanuatu activities; and

(xi) Manage and coordinate the monitoring and evaluation of the Transport Infrastructure Project and related Project Activities as detailed in the M&E Plan, including: setting up the data collection, analysis, and reporting system for the overall program; training and assisting implementing agencies in collecting timely and reliable data for each Project Activity, sub-Project Activity and the Program; collecting data or arranging for data to be collected as defined in the M&E Plan and preparing reports that analyze such data; monitoring performance of individual sub-projects directly through site visits, reviewing primary data and reports, and reviewing secondary data and analysis; engaging and responding to recommendations from the

data quality auditor; engaging consultants to perform independent evaluation of the Program and as required to provide technical expertise to MCA-Vanuatu or implementing agencies on Program monitoring and evaluation; reporting on project implementation progress to the Steering Committee, MCC and local stakeholders as defined in the M&E Plan.

(b) The Director must approve in writing each of the following:

(i) Recommendations to the Steering Committee on any matter submitted to the Steering Committee for decision as a Board Action;

(ii) Re-Disbursements to any Provider;

(iii) Execution of any agreement for the provision of goods, works or services to MCA-Vanuatu, or any amendments, modifications, termination or suspension of any such agreement;

(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 Steering Committee from time to time.

(c) Except as otherwise provided herein, the Director may not delegate the duties, powers and authorities set forth in Section 3.3.

Section 3.4 Reporting Requirements. The Director, 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 Steering Committee or MCC. Any documents delivered to the Steering Committee shall be copied to MCC in English (unless otherwise notified from time to time by MCC to MCA-Vanuatu).

Section 3.5 Monitoring of Permitted Accounts. MCA-Vanuatu shall ensure it (and the operation of the Permitted Accounts and the use of all MCC Funding) shall comply with all applicable United States Money Laundering and Terrorist Financing statutes and other U.S. sanctions laws and regulations, including (i) 18 U.S.C. Section 1956, (ii) 18 U.S.C. Section 1957, (iii) 18 U.S.C. Section 2339A, (iv) 18 U.S.C. Section 2339B, (v) 18 U.S.C. Section 2339C, (vi) 18 U.S.C. Section 981, (vii) 18 U.S.C. Section 982, and (viii) Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, (ix) all applicable U.S. laws and regulations regarding restrictive trade practices or boycotts, including 15 C.F.R. Part 760, and (x) all other economic sanctions promulgated from time to time by means of Statute, Executive Order, or Regulation and as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598. MCA-Vanuatu shall ensure that no payments have been, or have been caused to be, made by MCA-Vanuatu to any third party, including any Government official, 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.).

ARTICLE IV.
ESI OFFICER

Section 4.1 ESI Officer. In accordance with Section 5(c) of Schedule 1 to Annex I of the Compact, in agreement with MCC, MCA-Vanuatu shall select through an open and competitive process, subject to the approval of MCC, an Environmental and Social Impact Officer (the “*ESI Officer*”). The ESI Officer shall be located within the Environment Unit of the Ministry of Lands, but shall sign an employment agreement with, and shall be compensated by, MCA-Vanuatu. A brief description of the responsibilities of the ESI Officer is attached to this Agreement as part of Exhibit B.

ARTICLE V.
MCC APPROVAL RIGHTS; OTHER OBLIGATIONS

Section 5.1 MCC Approval Rights. In addition to any other rights granted to MCC pursuant to the Compact, this Agreement, the Resolutions, 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-Vanuatu 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 for the activities or actions included in clause (b) above, any contract for which the value of the contract is equal to or greater than US \$100,000 (One Hundred Thousand United States Dollars), or such other amount as may be agreed to by MCC and MCA-Vanuatu, 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); and
- (e) Any approval rights granted to MCC in the Disbursement Agreement or Procurement Agreement.

Section 5.2 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-Vanuatu 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 5.3 MCC Information Rights. The Fiscal Agent (and MCC to the extent that MCC so notifies MCA-Vanuatu) 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 5.4 Other Obligations. MCA-Vanuatu shall comply with (a) all applicable Vanuatu laws 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-Vanuatu shall not establish any Affiliates or subsidiaries without the prior written consent of the Government and MCC.

Section 5.5 MCA-Vanuatu Approvals. In exercising its approval rights under the Compact, this Agreement and the other Supplemental Agreements, MCA-Vanuatu (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 5.6 Audits.

(a) The first financial year of MCA-Vanuatu 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-Vanuatu 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 ninety (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-Vanuatu shall arrange for other periodic or special audits to be performed from time-to-time.

(c) MCA-Vanuatu shall keep (i) accurate and systematic books, records, documents and other evidence of the performance by MCA-Vanuatu of the obligations to be performed by MCA-Vanuatu under the Compact, and (ii) all Compact Records, in accordance with the requirements of Section 3.8 of the Compact. MCA-Vanuatu shall permit authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, the Government, 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-Vanuatu (each, an "*Audit*"). MCA-Vanuatu shall ensure access by MCC, the Inspector General, the United States Government Accountability Office, the Government, or relevant auditor, reviewer or evaluator or their respective representatives or agents to all of MCA-Vanuatu's relevant Members, officers, employees, Affiliates, contractors, representatives and agents. MCA-Vanuatu 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 VI.

TERM; SUSPENSION; TERMINATION

Section 6.1 Term.

(a) This Agreement shall be effective as of 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; *provided, however*, that the term of this Agreement may be extended for a period that is longer than such 120 day period up to an additional one year if MCC determines that obligations of MCA-Vanuatu incurred prior to such expiration or termination remain to be performed and so notifies the MCA-Vanuatu.

(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-Vanuatu 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-Vanuatu, the Program, this Agreement, and the Compact.

Section 6.2 Termination; Suspension.

(a) MCC may terminate this Agreement in its entirety by giving the other Parties 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-Vanuatu 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, suspension or expiration of the Compact or such other period as may be determined by MCC in accordance with Section 6.1;

(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 6.3 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 Sections 2.6, 3.5, 5.2, 5.3, 6.3, 7.2, 7.4, 7.6, 7.8, 7.9, 7.11 and 7.12.

ARTICLE VII. MISCELLANEOUS

Section 7.1 Representations and Warranties.

(a) MCA-Vanuatu hereby represents and warrants to MCC that, as of the Effective Date, MCA-Vanuatu 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-Vanuatu 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 Vanuatu laws, or (B) any obligation of MCA-Vanuatu. 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-Vanuatu.

(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 Vanuatu laws, 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 7.2 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-Vanuatu 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-Vanuatu may post on the MCA-Vanuatu Website or otherwise make publicly available certain information, including quarterly financial reports. Each of the Ministry and MCA-Vanuatu 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-Vanuatu shall ensure that each Member and each member of the Management Unit complies with the confidentiality obligations set forth in this Section 7.2. MCA-Vanuatu shall include

obligations of confidentiality similar to those set forth in this Section 7.2 in the employment agreements of each member of the Management Unit.

Section 7.3 Communications. Any notice, certificate, request, report, approval, document or other communication required, permitted, or submitted by any Party to another Party 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) three (3) 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, on behalf of the Government:

Ministry of Finance and Economic Management of the Republic of Vanuatu
Attention: Minister of Finance and Economic Management
PMB 9058
Port Vila, Republic of Vanuatu
Tel: (678) 23032
Fax: (678) 27937
E-mail:c/o Director-General of the Ministry of Finance and Economic Management:
smathy@vanuatu.gov.vu

To MCA-Vanuatu:

Attention: Director-General of the Office of the Prime Minister, as the Chair of the
MCA-Vanuatu Steering Committee
PMB 9053 Port Vila
Republic of Vanuatu
Tel: (678) 22413
Fax: (678) 26708
E-mail:mcachair@vanuatu.gov.vu

With a copy to:

Director-General of the Ministry of Finance and Economic Management
PMB 9058
Port Vila, Republic of Vanuatu
Tel: (678) 23032
Fax: (678) 27937
E-mail:smathy@vanuatu.gov.vu

Director-General of the Ministry of Foreign Affairs
PMB 9051
Port Vila, Republic of Vanuatu
Tel: (678) 22913

Fax: (678) 27045
E-mail: gmaniuri@vanuatu.gov.vu

Director of the Management Unit of MCA-Vanuatu
P.O. Box 192
Port Vila, Republic of Vanuatu
Tel: (678) 26918
Fax: (678) 23087
E-mail:lvuti@vanuatu.gov.vu

To MCC:

Millennium Challenge Corporation
Attention: Vice President of 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 of Operations);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

With a copy to:

Resident Country Director, Millennium Challenge Corporation
(At the Address to be Provided)

With a copy of all Audit reports prepared in accordance with Section 5.6 hereof to:
Department of Finance, Ministry of Finance and Economic Management, as Fiscal Agent
Attention: Director of Finance
PMB 031
Port Vila, Vanuatu
Tel: (678) 24543
Fax: (678) 25533
E-mail:bshing@vanuatu.gov.vu

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 7.4 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-Vanuatu and/or the Ministry. MCC shall provide written notice to MCA-Vanuatu and the Ministry upon the effectiveness of such assignment, delegation or contract. Neither MCA-Vanuatu nor the Ministry may assign, delegate or contract its rights and obligations under this Agreement without the prior written consent of MCC.

Section 7.5 Representatives. For all purposes relevant to this Agreement, the Ministry shall be represented by the individual holding the position of, or acting as, Minister of Finance and Economic Management, acting on behalf of the Government (the “**Ministry Principal Representative**”), MCC shall be represented by the individual holding the position of, or acting as, its Vice President of Operations (the “**MCC Principal Representative**”), and the MCA-Vanuatu shall be represented by the individual holding the position of the Director-General of the Office of the Prime Minister, who shall serve as Chair of the Steering Committee (the “**MCA-Vanuatu Principal Representative**,” and together with the Ministry Principal Representative and the MCC Principal Representative, the “**Principal Representative(s)**”), 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 7.6 Implementing Agreement. The Parties agree and acknowledge that this Agreement is an international agreement entered into for the purposes of implementing the Compact.

Section 7.7 Inconsistencies. In the event of any conflict or inconsistency among this Agreement, the Charter and the Compact, the terms of the Compact shall prevail. In the event of any conflict or inconsistency between this Agreement and the Charter, the terms of this Agreement shall prevail.

Section 7.8 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-Vanuatu 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 7.9 MCC Status. The Parties recognize and agree that MCC is a United States government corporation and an instrumentality of the United States Government acting on its behalf in the implementation of the Compact. As such and pursuant to Section 5.5 of the Compact, MCC has no liability under this Agreement and is immune from any action or proceeding arising under or relating to this Agreement. The Ministry and MCA-Vanuatu each hereby waive and release (i) all claims against MCC related to any such liability and (ii) any

rights to bring any proceeding against MCC in the courts or any other judicial or other body of Vanuatu or in any other jurisdiction. Nothing in this agreement shall be construed or interpreted as a waiver of any rights, privileges or immunities granted to MCC under the Compact.

Section 7.10 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship between the Parties.

Section 7.11 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 7.12 Nonwaiver 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 7.13 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 7.14 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 7.15 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 7.16 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. 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 7.3 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 7.17 Prohibited Actions. The Ministry and MCA-Vanuatu 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 applicable Vanuatu laws and shall ensure that no such payments will be made. The Ministry and MCA-Vanuatu represent that no payments have been received by any employee, agent or representative of either of the Ministry or MCA-Vanuatu 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-Vanuatu.

(a) MCA-Vanuatu shall ensure that each Member and each member of the Management Unit complies with the restrictions on payments to certain persons set forth in this Section 7.17(a). MCA-Vanuatu shall include prohibitions similar to those set forth in this Section 7.17(a) in the employment agreement of each member of the Management Unit.

(b) The Ministry and MCA-Vanuatu shall ensure that no employee, agent, Member, member of the Management Unit, or representative of the Ministry or MCA-Vanuatu (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-Vanuatu and MCC the conflict of interest and, following such disclosure, MCA-Vanuatu and MCC have agreed in writing to proceed notwithstanding such conflict. Each of the Ministry and MCA-Vanuatu 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-Vanuatu shall include conflict of interest provisions similar to those set forth in this Section 7.17(b) in the employment agreement of each member of the Management Unit.

Section 7.18 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 French for the convenience of the Parties, this official English version shall prevail.

Section 7.19 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 Port Vila, Vanuatu or Washington, D.C., United States, or a federal holiday in Vanuatu or United States of America; 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 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 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

By: _____ / s / _____

Name: John Hewko

Title: Vice President of Operations

MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT,
on behalf of the Government of Vanuatu

By: _____ / s / _____

Name: Honorable Willie J. Tapangararua

Title: Minister of Finance and Economic Management

MCA-VANUATU

By: _____ / s / _____

Name: Jean Sese

Title: Director-General of the Office of the Prime Minister,
as Chair of the Steering Committee

EXHIBIT A DEFINITIONS

Additional Representative shall have the meaning set forth in Section 7.5.

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

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

Analysts shall have the meaning set forth in Section 3.1.

Attachments shall have the meaning set forth in Section 7.13.

Audit shall have the meaning set forth in Section 5.6(c).

Board Action shall have the meaning set forth in Section 2.7(c).

Chair shall have the meaning set forth in Section 2.3(a).

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

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

Compact Goal shall have the meaning set forth in Section 1.1 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 1.1(a).

Director shall have the meaning set forth in Section 2.1.

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

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

ESI Officer shall have the meaning set forth in Section 4.1.

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.

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

Government Members shall have the meaning set forth in Section 2.2(a).

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

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

Management Unit shall have the meaning set forth in Section 3.1.

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

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

MCA-Vanuatu Principal Representative shall have the meaning set forth in Section 7.5.

MCA-Vanuatu 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 2.4(a)(i).

MCC Principal Representative shall have the meaning set forth in Section 7.5.

Members shall have the meaning set forth in Section 2.1.

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

Ministry Principal Representative shall have the meaning set forth in Section 7.5.

Non-Government Members shall have the meaning set forth in Section 2.2(b).

Observers shall have the meaning set forth in Section 2.1.

Other Observers shall have the meaning set forth in Section 2.4(a)(iii).

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.

Principal Representative(s) shall have the meaning set forth in Section 7.5.

Procurement Agent 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.

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

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

Quorum shall have the meaning set forth in Section 2.9(a).

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

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

Secretary shall have the meaning set forth in Section 3.1.

Steering Committee shall have the meaning set forth in Section 2.1.

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

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

Vice Chair shall have the meaning set forth in Section 2.3(a).

Voting Members shall have the meaning set forth in Section 2.1.

EXHIBIT B
MANAGEMENT UNIT AND ESI OFFICER RESPONSIBILITIES

- 1. Director:** See Section 3.3.
- 2. Analysts:** The Analysts will support the Director in carrying out the roles and responsibilities of MCA-Vanuatu, including but not limited to, managing and coordinating the monitoring and evaluation of the Transport Infrastructure Project as detailed in the M&E Plan and listed in Section 3.3(xi).
- 3. Secretary of the Steering Committee:** The Secretary shall be responsible for maintaining MCA-Vanuatu corporate books and records at the offices of MCA-Vanuatu, giving notice of Steering Committee meetings, attending and keeping minutes of Steering Committee meetings, signing all documents on which the signature of the Secretary is necessary or appropriate, and attesting to the authenticity of any MCA-Vanuatu 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.
- 4. ESI Officer:** The Environmental and Social Impact Officer (the ESI Officer) is responsible for ensuring that all Compact funded activities are undertaken in compliance with the MCC Environmental Guidelines. Overall environmental and social sustainability depend on proper implementation of project safeguards. The ESI Officer will provide the MCA-Vanuatu team with expertise on environmental and social and gender impact issues.

Responsibilities include, but are not limited to, the following:

- (a) To ensure that environmental and social mitigation measures (including occupational health and safety issues) and safeguard policies (e.g. Involuntary Resettlement and Indigenous Peoples Policies) are followed for all MCA-Vanuatu project activities;
- (b) To serve as the point of contact for comments and concerns of project affected parties regarding the implementation of all MCA-Vanuatu project activities and lead the effort to find feasible solutions to those problems;
- (c) To convene periodic public meetings to provide implementation updates and to identify and address public concerns;
- (d) To develop policy regarding the environmental and social review of project activities conducted under the terms of the Compact; and
- (e) To identify external resources and technical specialists that may be engaged as contractors to assist in the evaluation of projects.