

DISBURSEMENT AGREEMENT

BY AND AMONG

THE MILLENNIUM CHALLENGE CORPORATION

**THE TECHNICAL SECRETARIAT OF THE PRESIDENCY,
ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA**

AND

FUNDACIÓN RETO DEL MILENIO-NICARAGUA

DATED AS OF MAY 23, 2006

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DISBURSEMENT AGREEMENT

This **DISBURSEMENT AGREEMENT** (the “*Agreement*”) is entered into as of May 23, 2006 (the “*Effective Date*”) by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Technical Secretariat of the Presidency (the “*Technical Secretariat*”), on behalf of the Government of the Republic of Nicaragua (the “*Government*”), and *Fundación Reto del Milenio - Nicaragua*, a not-for-profit foundation established under Nicaraguan law through *Decreto Legislativo* No. 4452, published in the official gazette, *La Gaceta*, on January 4, 2006 (“*MCA-Nicaragua*”). *MCC*, the *Technical Secretariat* and *MCA-Nicaragua* are sometimes referred to herein individually as a “*Party*” and together as the “*Parties*.”

Capitalized terms used and defined in this Agreement shall have the meanings given to such terms herein. Schedule 2 to this Agreement lists the capitalized terms that are defined herein and the pages on which their respective definitions appear. 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 on July 14, 2005 (the “*Compact*”).

RECITALS

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

WHEREAS, pursuant to Section 3.2 of the Compact and the Grant Agreement dated May 26, 2006 by and among the Government, *MCA-Nicaragua* and *MCC*, the Government has designated *MCA-Nicaragua* to assume and carry out certain governmental rights, responsibilities and duties under the Compact, including the execution, delivery and performance of this Agreement;

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

WHEREAS, prior to the payment of any *MCC* Disbursement or Re-Disbursement, the *Technical Secretariat* and *MCA-Nicaragua*, on behalf of the Government, must satisfy, or cause or ensure the satisfaction of, the terms and conditions specified in this Agreement and certain other Supplemental Agreements;

WHEREAS, the Parties wish to enter into this Agreement to further specify the terms and conditions on which *MCC* Disbursements and Re-Disbursements will be made in furtherance of the Compact; and

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

ARTICLE I.
DISBURSEMENTS

Section 1.1 Disbursements.

(a) MCC Disbursements.

(i) MCA-Nicaragua shall submit MCC Disbursement Requests, in accordance with Section 3.2(a) and in the form attached hereto as Exhibit A, to MCC for MCC Disbursements under the Compact. MCA-Nicaragua shall ensure that any request for an MCC Disbursement shall be in accordance with the terms and conditions set forth in the Compact, this Agreement, and any other Supplemental Agreement between the Government or any Government Affiliate or Permitted Designee and MCC or between two or more of such parties (together, the “**Compact Documents**”). MCC Disbursement Requests may be made on a quarterly basis, or at such other interval as the Parties may otherwise agree from time to time, and shall be submitted to MCC no later than twenty (20) days (or such other period of time as agreed to by MCC and MCA-Nicaragua) prior to the commencement of the applicable Disbursement Period (defined below).

(ii) Upon receipt of an MCC Disbursement Request, MCC shall determine the appropriate amount of the MCC Disbursement for application during the subsequent quarter or such other period of time as agreed to by the Parties (the “**Disbursement Period**”), which amount shall be (1) determined on the basis of, among other things, the progress under the Implementation Plan and in the implementation of the Compact and (2) subject to the satisfaction, waiver or deferral of applicable terms of and conditions to such MCC Disbursement in this Agreement and in any other Compact Document. MCC reserves the right, in its sole discretion, to reduce the amount of any MCC Disbursement in accordance with Section 3.7(a) of this Agreement, Sections 2.1(a)(ii) and 2.2 (b) of the Compact or any other applicable provision of any Compact Document to which MCC is a party.

(iii) MCC shall make each MCC Disbursement in U.S. Dollars to the Special Account pursuant to and in accordance with the procedures and requirements set forth in the Bank Agreement (or such other documentation establishing the Special Account) and any other applicable Supplemental Agreement to which MCC is a party. MCA-Nicaragua shall provide, or shall cause the Bank to provide, in writing to MCC the designated account number and wire transfer instructions for the Permitted Accounts (the “**Permitted Account Information**”) no later than ten (10) business days prior to the initial MCC Disbursement. In the event that any Permitted Account changes during the Compact Term or the Permitted Account Information with respect to such Permitted Account otherwise changes, MCA-Nicaragua shall provide, or shall cause the Bank to provide, in writing to MCC any modifications to such Permitted Account Information then on file with MCC as soon as practicable, but in no event later than ten (10) business days prior to the immediately succeeding MCC Disbursement.

(b) Re-Disbursements.

(i) Requests for payment of Re-Disbursements shall be submitted to the Fiscal Agent in the form and substance required by the Fiscal Agent in the Fiscal Agent Agreement and the

Fiscal Accountability Plan and otherwise in accordance with the terms of this Agreement, the Governing Documents, the Procurement Agreement and any other Compact Document, if applicable.

(ii) MCA-Nicaragua shall ensure that the Fiscal Agent authorizes payment of, and the Bank pays from the applicable Permitted Account directly to the applicable party, any valid Re-Disbursement amount, in accordance with the procedures and requirements set forth in the Fiscal Agent Agreement, the Fiscal Accountability Plan, the Bank Agreement and any other relevant Compact Document.

(iii) Each Re-Disbursement shall be subject to the applicable terms and conditions for such Re-Disbursement set out in Sections 1.2 and 3.6 of this Agreement and in any other relevant Compact Document or Supplemental Agreement.

Section 1.2 Limitations on Use of MCC Funding.

(a) MCA-Nicaragua shall ensure that the use or treatment of MCC Funding shall comply with the limitations on the use or treatment of MCC Funding set out in the Compact, including Section 2.3 therein.

(b) Unless the Parties otherwise agree in writing, no financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no MCC Disbursement or Re-Disbursement shall be made or MCC Disbursement Request submitted, for an activity or expenditure, unless the expense is provided for in the Detailed Financial Plan and unless unencumbered funds exist in the balance of the Detailed Financial Plan for the relevant period.

Section 1.3 Working Capital. At the beginning of the initial Disbursement Period, the Permitted Accounts shall contain funds reserved for working capital for the Program (“*Working Capital*”) in an amount equal to five hundred thousand U.S. Dollars (USD\$500,000) (the “*Working Capital Deposit Amount*”). In the event that the Working Capital in the Permitted Accounts is below the Working Capital Deposit Amount, any subsequent MCC Disbursement Request may include a request for replenishment of the Working Capital equal to the difference between the Working Capital Deposit Amount and the aggregate amount of Working Capital then in the Permitted Accounts, which request shall include an accounting for the expenditures of Working Capital since the initial deposit of the Working Capital Deposit Amount or the most recent prior request for replenishment of the Working Capital, whichever is later.

ARTICLE II.

REPRESENTATIONS

Section 2.1 Technical Secretariat Representations. The Technical Secretariat hereby provides, on behalf of itself and the Government, the following representations to MCC as of the Effective Date.

(a) Powers. The Technical Secretariat has the power and authority to execute, deliver and perform its obligations and each other agreement, certificate, or instrument contemplated hereby.

(b) Authorization; No Conflicts; No Other Approvals. The execution, delivery and performance by the Technical Secretariat of this Agreement and the Grant Agreement and the transactions contemplated herein and therein (i) have been duly authorized by all necessary action on the part of the Government and (ii) will not violate (1) any applicable law or regulation or (2) any obligation of the Government, any Government Affiliate, including the Technical Secretariat, and MCA-Nicaragua. No other action, consent, approval, registration or filing with or any other action by any governmental authority is required in connection with the effectiveness of this Agreement or the Grant Agreement or execution and performance of this Agreement or the Grant Agreement by the Technical Secretariat. This Agreement, the Grant Agreement and the Compact are valid and binding agreements and legally enforceable obligations of the Government, including the Technical Secretariat.

Section 2.2 MCA-Nicaragua Representations. On behalf of itself and the Government, MCA-Nicaragua shall provide the following representations to MCC as of the Effective Date and as of the date of each MCC Disbursement (in such case, both immediately before and immediately after giving effect to the MCC Disbursement occurring on such date); *provided* that, with respect to each of the representations MCA-Nicaragua makes on behalf of the Government, MCA Nicaragua shall confirm such representations with the Technical Secretariat and all necessary Government Affiliates prior to MCA-Nicaragua providing such representations to MCC.

(a) Powers; Authorization. MCA-Nicaragua is a private foundation duly organized, validly existing and in good standing under the laws of Nicaragua. MCA-Nicaragua has the power and authority to execute, deliver and perform its obligations under this Agreement, the other Compact Documents and Supplemental Agreements to which it is or will be a party, and each other agreement, certificate, or instrument contemplated hereby and thereby. The execution, delivery and performance by MCA-Nicaragua of this Agreement, the Compact and the transactions contemplated herein and therein (i) have been duly authorized by all necessary action on the part of MCA-Nicaragua and the Government and (ii) will not violate (1) any applicable Nicaraguan law or legislation or (2) any obligation of the Government, any Government Affiliate, including the Technical Secretariat, MCA-Nicaragua, or any other Permitted Designee. No other ratification, consent, approval, registration or filing with or any other action by any governmental authority is required in connection with the effectiveness of this Agreement or the Compact or the execution and performance by MCA-Nicaragua of this Agreement, the Compact or the transactions contemplated herein or therein. This Agreement and the Compact are valid and binding agreements and legally enforceable obligations of the Government and MCA-Nicaragua.

(b) Government Assurances. The assurances in paragraphs (a) through (d) of Section 3.4 of the Compact are true, correct and complete in all material respects as if made by the Government herein.

(c) Government Contributions. The Government has contributed such cash or other resources or made such payments as required by Section 2.2, Section 2.3(e), Section 2.5, Section 3.9 and Section 5.8 of the Compact, Section 3(b) of Annex I of the Compact, Annex II of the Compact, or by any other relevant provision of any Compact Document.

(d) No Liens. To the knowledge of MCA-Nicaragua, there are no liens or encumbrances of any kind on any Program Asset or Permitted Account.

(e) No Material Adverse Change. Since the date of the execution of the Compact, there has been no Material Adverse Change. For the purposes of this Agreement, “**Material Adverse Change**” shall mean: (i) a material breach or default of any assurance, representation, covenant or other obligation of the Government, any Government Affiliate, MCA-Nicaragua, or any other Permitted Designee under any Compact Document or Supplemental Agreement; (ii) failure by the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee and, to the knowledge of the MCA-Nicaragua, any Provider, to substantially comply with any term or condition set forth in the Compact Documents applicable to such party, including Section 2.3 of the Compact; (iii) a material adverse change in the constitutive documents, status or existence of MCA-Nicaragua; (iv) a material modification, amendment, alteration, rescission, termination or suspension of any Supplemental Agreement other than as disclosed in writing to, and approved where necessary by, MCC; and (v) an act, event, circumstance or omission that has occurred or is pending or threatened that has or reasonably could be expected to have a material adverse change in or material adverse effect on: (1) the business, ministries, departments, property, operations, management, or condition, financial or otherwise, of the Government or any Government Affiliate, MCA-Nicaragua or, to the knowledge of MCA-Nicaragua, any other Permitted Designee, insofar as it is relevant to all or any part of the Program or Compact, (2) the ability of the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee or, to the knowledge of MCA-Nicaragua, any Provider, to perform any of its obligations in furtherance of the Compact or under any Supplemental Agreement or to exercise any of its rights under the Compact or any Supplemental Agreement, (3) the validity or enforceability of the Compact or any Supplemental Agreement, (4) the Program, any MCC Funding, Accrued Interest, Program Asset or any Permitted Account; or (5) the likelihood of successful implementation of the Compact consistent with the terms of the Compact Documents.

(f) No Untrue Statements or Material Omissions. None of the representations and warranties made to MCC by the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee (and to the knowledge of MCA-Nicaragua, any other Provider), none of the assurances by the Government made to MCC in any Compact Document, and none of the statements contained in any agreement, report, financial statement, communication or other document furnished by or on behalf of the Government, any Government Affiliate, MCA-Nicaragua, any other Permitted Designee or, to the knowledge of MCA-Nicaragua, any other Provider, to MCC in connection with any Compact Document (i) contains any untrue statement of material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading as of the time when made or delivered or (ii) omits any fact known to the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee, that if disclosed would (1) alter in any material respect the information delivered or (2) likely have a material adverse effect on the ability of the Government, any Government Affiliate, MCA-Nicaragua, any other Permitted Designee or other Provider to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement. For the purpose of making this representation, MCC shall notify MCA-Nicaragua of any such statements, representations, warranties or assurances made by the Government or any Government Affiliate to MCC (other than those to which MCA-Nicaragua has or should have knowledge) in order to permit MCA-Nicaragua to confirm such representations with the Government or Government Affiliate prior to MCA-Nicaragua providing such representation to MCC.

(g) No Programmatic or Other Variance. MCA-Nicaragua is not aware of any fact or other information indicating that achievement of the Compact Goal and Objectives within the Compact Term, or satisfaction in a timely manner of the requirements of any component of the

Implementation Plan or any Supplemental Agreement (including with respect to any conditions precedent for future MCC Disbursements) critical to the achievement of the Compact Goal and Objectives within such period of time, is unlikely.

ARTICLE III. CONDITIONS PRECEDENT

Section 3.1 Conditions Prior to Initial MCC Disbursement. Prior to, and as a condition precedent to, the initial MCC Disbursement, MCA-Nicaragua shall satisfy, or cause to be satisfied, the following conditions:

(a) Delivery of an official certificate, satisfactory to MCC, issued by the Ministry of Finance evidencing (i) the tax exempt status of MCA-Nicaragua and MCC Funding, naming MCA Nicaragua as permitted holder, and certifying it has taken such other actions as may be necessary for the implementation and administration of the Government's compliance with Section 2.3(e) of the Compact, and (iii) the designation of a Ministry of Finance representative to serve as the liaison with other Government agencies in the administration of such tax exemptions and reimbursements and any other matters as may be necessary for the effective implementation of the Compact;

(b) Each consent, license, approval, registration, permit, sanction, filing, registration, ratification, disclosure, consultation and any other authorization or other action of any nature that is required to be granted or taken by or with, any governmental authority (collectively, the "**Permits**") necessary or appropriate in connection with the due execution and delivery of, and performance by, MCA-Nicaragua of its obligations hereunder and under any Supplemental Agreement has been obtained and is on file in the offices of MCA-Nicaragua, is validly issued and is in full force and effect as of the date of the initial MCC Disbursement;

(c) The Permitted Accounts have been duly established at the Bank in accordance with the Bank Agreement, the Fiscal Agent Agreement, the Fiscal Accountability Plan and the Compact Documents;

(d) Each of the conditions precedent to Entry into Force as set forth in Section 4.1 of the Compact have been satisfied;

(e) Delivery of a certificate, in form and substance satisfactory to MCC, signed by the Chairman of the Board of Directors and the General Director of MCA-Nicaragua (an "**MCA-Nicaragua Certificate**"), certifying that attached thereto are true, accurate and complete copies of the following documents, in form and substance satisfactory to MCC, which MCC may post on its website or otherwise make publicly available, together with the following certifications as to such documents made by the Chairman of the Board of Directors and the General Director of MCA-Nicaragua:

(i) The Fiscal Agent Agreement, duly executed and delivered and in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind;

(ii) The Bank Agreement, duly executed and delivered and in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind;

(iii) The Procurement Agent Agreement, duly executed and delivered and in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind;

(iv) The Governing Documents and the Grant Agreement, each duly executed and delivered and in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind, and such other executed and delivered documents in full force and effect, and any amendments of any thereto, evidencing that MCA-Nicaragua is duly formed, organized and in good standing under the laws of Nicaragua and in accordance with the Compact and is authorized to perform those Government Responsibilities and any rights and other obligations and responsibilities of the Government as may be designated to be carried out by MCA-Nicaragua in the Compact Documents or in any other Supplemental Agreements;

(v) An employment agreement between the General Director and MCA-Nicaragua, duly approved by the Board of Directors of MCA-Nicaragua and MCC (attaching evidence thereof), executed and delivered and in full force and effect as of the date of the initial MCC Disbursement;

(vi) The Financial Plan for the Program and each Project, which (i) includes the Multi-Year Financial Plan, the annual Detailed Financial Plan for Year 1, and the quarterly Detailed Financial Plan for the first quarter of Year 1, (ii) is approved by MCC and is duly adopted by MCA-Nicaragua (attaching evidence thereof), and (iii) is in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind;

(vii) An interim Fiscal Accountability Plan, which is approved by MCC and is duly adopted by MCA-Nicaragua (attaching evidence thereof), and is in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind;

(viii) An interim Procurement Plan, which is approved by MCC and is duly adopted by MCA-Nicaragua (attaching evidence thereof), and is in full force and effect as of the date of the initial MCC Disbursement, without any alteration or suspension of any kind;

(ix) A report of the most recent execution of actual national budget expenditures of all resources, including the annual budget, extra-budgetary or off-budget funds, and state-owned enterprises that conduct activities for a public purpose, to ensure the establishment of a baseline for allocation of domestic resources;

(x) The incumbency and specimen signatures of the Chairman of the Board of Directors and the General Director of MCA-Nicaragua, as of the date of the initial MCC Disbursement; and

(xi) Such other documents regarding the formation, organization and staffing of MCA-Nicaragua as MCC requests;

(f) An opinion of counsel to MCA-Nicaragua (acceptable to MCC) dated as of the date of the initial MCC Disbursement, in form and substance acceptable to MCC; and

(g) A certificate satisfactory to MCC in form and substance, signed by a duly authorized representative of the Fiscal Agent (the “*Fiscal Agent Certificate*”), certifying that: (i) the execution, delivery and performance by the Fiscal Agent under the Fiscal Agent Agreement, the Bank Agreement and any other agreement entered into or to be entered into by the Fiscal Agent in furtherance of the Compact has been duly authorized by the Fiscal Agent and is a legal, valid and binding obligation of the Fiscal Agent, (ii) the Special Account and the Local Account are each duly established in accordance with the Compact and two senior authorized representatives of the Fiscal Agent have been given sole signatory authority on such Accounts and (iii) as of the date of the Fiscal Agent Certificate, the Fiscal Agent has engaged and has in place in Nicaragua the relevant staff designated to perform the services required under the Fiscal Agent Agreement, the Bank Agreement and any other agreement entered into or to be entered into by the Fiscal Agent in furtherance of the Compact.

Section 3.2 Deliveries Prior to Each MCC Disbursement. Prior to, and as condition precedent to, each MCC Disbursement, MCA-Nicaragua shall deliver the following documents to MCC (and shall provide a copy thereof to the Principal Representative of the Government), in form and substance satisfactory to MCC:

(a) MCC Disbursement Request. A completed MCC Disbursement Request, in the form attached hereto as Exhibit A and otherwise satisfactory to MCC in content, signed by the General Director of MCA-Nicaragua, the Principal Technical Secretariat Representative and, with respect to certain sections, the Fiscal Agent, and certified by the Chairman of the Board of Directors, and including the information required therein and the following supporting documentation, each of which shall be in form and substance satisfactory to MCC:

(i) Implementation Plan. Each of the following component documents of the Implementation Plan, to the extent that MCA-Nicaragua has not previously provided such documents in their most current form to MCC:

(1) A Detailed Financial Plan set forth on a rolling quarterly basis for the upcoming twelve (12) months and on an annual basis for each year of the Compact Term thereafter, with a description and justification, by each activity, of what will be accomplished with MCC Funding being requested during such Disbursement Period;

(2) The Work Plan(s) for each activity to be funded during the Disbursement Period with the MCC Disbursement to be covered by such MCC Disbursement Request;

(3) Any other component documents of the Implementation Plan for the Disbursement Period to be covered by such MCC Disbursement Request;

(4) Any proposed modification (together with a justification) to the Multi-Year Financial Plan, Detailed Financial Plan, Program and Project Work Plans, M&E Plan or other component documents of the Implementation Plan that is necessary or appropriate to accurately reflect the proposed implementation of the Program or satisfy in a timely manner the requirements of any component of the Implementation Plan or any Compact Document (and if MCC approves such modification, the applicable component of the Implementation Plan shall be modified in writing to reflect the approved modification); and

(5) Any proposed waiver or deferral (together with a justification) of any condition precedent to the MCC Disbursement and Re-Disbursements in the Disbursement Period to which such MCC Disbursement Request applies (whether such conditions precedent are set forth in this Agreement or another document) (and if MCC approves such waiver or deferral, the document where such condition precedent is specified shall be modified in writing to reflect the approved waiver or deferral, if applicable); and

(ii) Management Discussion and Analysis. Other than with respect to the first two quarterly MCC Disbursements following the Entry into Force, one or more reports approved by the Board of Directors of MCA-Nicaragua that (1) compares the actual results or outputs of any Re-Disbursements made in the second most recent Disbursement Period to the Work Plans, M&E Plan, and any other component of the Implementation Plan relevant to such Disbursement Period and for the year to date, (2) describes the procurement activity during the second most recent Disbursement Period and how such procurement activity compares to the Procurement Plan for such Disbursement Period, and (3) satisfies any other reporting requirements related to MCC Disbursements or otherwise required under any Compact Document.

(b) MCA-Nicaragua Certificate. An MCA-Nicaragua Certificate, dated as of the date of such MCC Disbursement Request, and satisfactory to MCC in form and substance, certifying that, other than as specifically provided therein:

(i) Attached thereto is a true, correct and complete copy of the resolution duly adopted by the Board of Directors of MCA-Nicaragua authorizing the execution and delivery of the MCC Disbursement Request to MCC;

(ii) Immediately before and after giving effect to such MCC Disbursement, (1) all of the representations made by MCA-Nicaragua in Section 2.2 are true, correct and complete in all material respects as though made on the date of such MCC Disbursement Request and on the date of such MCC Disbursement and (2) no default or breach of any representation or assurance, covenant, obligation or responsibility has occurred and is continuing under (A) this Agreement, (B) the other Compact Documents, (C) the Supplemental Agreements to which it is a party or (D) to the knowledge of MCA-Nicaragua, under any other Supplemental Agreement;

(iii) The expenditure for each of the items included in the MCC Disbursement Request is provided for in the Financial Plan (as modified from time to time pursuant to the Compact and the Governing Documents and delivered to MCC) and unencumbered funds exist in the balance of the Financial Plan for each such expenditure;

(iv) Attached thereto is a true, correct and complete copy of each Supplemental Agreement, including all amendments thereto, to which the Government, any Government Affiliate, MCA-Nicaragua, or any other Permitted Designee has become a party since the Entry into Force or since the previous MCC Disbursement Request, whichever is later, and which has not been previously provided to MCC;

(v) The documents attached to such MCA- Nicaragua Certificate, and all Supplemental Agreements, documents and Permits previously provided to MCC, have not been modified, rescinded or amended and are in full force and effect;

(vi) Attached thereto is a true, correct and complete list of all Permits that are necessary or appropriate in connection with the performance by MCA-Nicaragua of its obligations under any Compact Document or Supplemental Agreement during the Disbursement Period covered by such MCC Disbursement Request, and MCA-Nicaragua shall certify that it has obtained, or caused to be obtained, each Permit on that list and that each such Permit is on file in the offices of MCA-Nicaragua, is validly issued and is in full force and effect;

(vii) Activities to be funded with the MCC Funding being requested by such MCC Disbursement Request will not violate any applicable Nicaraguan laws or any obligation of MCA-Nicaragua, including Section 2.3 of the Compact, and on the date of such MCC Disbursement Request and immediately before and after giving effect to such MCC Disbursement, the MCC Funding, Accrued Interest, or Program Assets have been or will be strictly used or applied in accordance with this Agreement, the Compact and all Supplemental Agreements;

(viii) As of the date of such MCC Disbursement Request, and immediately before and after giving effect to such MCC Disbursement, there are no liens or encumbrances of any kind on any Program Asset or on any Permitted Account (including any amounts held therein);

(ix) MCA-Nicaragua has maintained since the last MCC Disbursement a standard of thirty (30) days to pay valid invoices and has delivered or caused to be delivered to MCC satisfactory evidence of such prompt payment (*provided*, that this condition shall not apply to the initial MCC Disbursement);

(x) MCA-Nicaragua is in compliance with its obligation to post on the MCA-Nicaragua Website an updated Procurement Plan, as approved by MCC, that forecasts the procurement activities under the Program for the upcoming six-month period;

(xi) Notices of procurement actions have been posted on the MCA-Nicaragua Website in accordance with the Procurement Guidelines;

(xii) All reports (including financial reports) and other documents have been posted on the MCA-Nicaragua Website as required by Annex I of the Compact;

(xiii) the Government has obtained, or has caused to be obtained, to MCC's satisfaction, the insurance required (both in form and substance) under Section 3.9 of the Compact and Section 3(d)(ii)(4) of Annex I of the Compact in connection with the Disbursement Period or the activities to be performed or funded during the Disbursement Period covered by such MCC Disbursement Request (and attaching evidence thereof, if applicable); and

(xiv) All the conditions set forth in clauses (i), (j), (k), (l) and (m) of Section 3.5 are true, complete and correct as of the date of such MCC Disbursement.

(c) Fiscal Agent Certificate. A Fiscal Agent Certificate, signed by a duly authorized representative of the Fiscal Agent, satisfactory to MCC in form and substance, dated as of the date of such MCC Disbursement Request, certifying that: (i) all of the representations made by the Fiscal Agent in Section 4.1 of the Fiscal Agent Agreement are true, correct and complete in all material respects as though made on the date of such MCC Disbursement Request and on the date of such MCC Disbursement, (ii) the financial information regarding the Permitted Account(s) and statements of cash expenditures contained in the MCC Disbursement Request are true, correct and complete;

(iii) all Taxes paid in the immediately previous Disbursement Period have been reimbursed by the Government in accordance with the Compact and as specified in any Supplemental Agreement; (iv) all Accrued Interest in the Permitted Accounts as of the end of the preceding quarter has been returned to the account designated by MCC; and (v) as to such other matters or other certifications as may be required by the Fiscal Agent Agreement or other relevant Supplemental Agreement.

(d) Audit Report. An audit report, in accordance with the Compact and the Audit Plan, if so required by the Audit Plan in respect of such Disbursement Period.

(e) Other Documents. Such other documents as MCC may reasonably require or request from time to time.

Section 3.3 Deliveries on a Semi-Annual Basis. MCA-Nicaragua shall deliver, or cause the delivery of, the following documents to MCC on a semi-annual basis, in form and substance satisfactory to MCC, attached to an MCA-Nicaragua Certificate certifying that such documents are true, correct and complete in all material respects, the timely delivery of which shall be a condition precedent to any MCC Disbursement for the quarter indicated:

(a) A performance review report on compliance with the Environmental Guidelines (as amended from time to time) and environmental and social safeguards described in the Compact and related documents (Quarter 4, Years 1-5; Quarter 2, Years 2-5);

(b) An audit report (financial audit) in accordance with the Compact and Audit Plan for the prior six (6) month period, to the extent that the Audit Plan requires semi-annual financial audits (which shall be delivered as a condition precedent for the quarter immediately following the applicable date of delivery of such report, as set forth in the current Audit Plan). Upon MCC's request, MCA-Nicaragua shall ensure simultaneous delivery by the Auditor of the audit report to MCA-Nicaragua, MCC and the Inspector General;

(c) A performance review report on compliance with the Fiscal Accountability Plan for the prior six (6) month period (which shall be delivered as a condition precedent for the quarter immediately following the applicable date of delivery of such report, as set forth in the current Audit Plan); and

(d) A performance review report on compliance with the Procurement Guidelines for the prior six (6) month period (to be delivered as a condition precedent for the quarter immediately following the applicable date of delivery of such report, as set forth in the current Audit Plan).

Section 3.4 Deliveries on an Annual Basis. MCA-Nicaragua shall deliver, or cause the delivery of, the following documents to MCC on an annual basis, in form and substance satisfactory to MCC, attached to an MCA-Nicaragua Certificate certifying that such documents are true, correct and complete in all material respects, the timely delivery of which shall be a condition precedent to any MCC Disbursement for the quarter indicated:

(a) (i) Certified copies of Board of Directors minutes and resolutions and other charter documents adopted in the prior year, (ii) evidence MCA-Nicaragua is in good standing in Nicaragua and (iii) certified copies evidencing the adoption of any modifications to the Governing Documents, as mutually agreed upon by the Parties (Quarter 1, Years 2-5);

(b) A report of the execution of the national budget expenditures of all resources, including the annual budget, extra-budgetary or off-budget funds, and state-owned enterprises that conduct activities of a public purpose (submitted within ten (10) days after the final accounts for the previous year are completed);

(c) Evidence that the Government has reflected the financial activity of the Program in the budget documents of Nicaragua on a multi-year basis (to be delivered as a condition precedent for the quarter in years 1-5 that includes the month of January);

(d) Evidence of the fulfillment of all applicable requirements under the M&E Plan (Quarter 1, Years 2-5);

(e) Certification of review and approval of the M&E Plan by the Board of Directors (Quarter 3, Years 2 and 4);

(f) An environmental audit report performed and prepared, or caused to be performed and prepared, by MCA-Nicaragua, in respect of all Project Activities (Quarter 4, Years 2 and 4); and

(g) The detailed quarterly break-out of the conditions precedent and any other modifications or adjustments to the conditions precedent as referred to in Section 3.8.

Section 3.5 Other Conditions Precedent to MCC Disbursements. Prior to, and as a condition precedent to, any MCC Disbursement, MCA-Nicaragua shall satisfy, as MCC determines in its sole discretion, any conditions relevant to such MCC Disbursement as set forth in: (a) Schedule 1 (Conditions Precedent) attached hereto; (b) any component document of the Implementation Plan; and (c) each of the following conditions; *provided* that paragraphs (c) through (h) and (k) of this Section 3.5 shall not apply to the initial MCC Disbursement:

(a) There has been no material negative finding in any Audit reports delivered under Section 3.3;

(b) The conditions to which MCA-Nicaragua has certified in the MCA-Nicaragua Certificate under Section 3.2(b) have been satisfied and are true and correct as of the date of such MCC Disbursement;

(c) There has been satisfactory progress on the Work Plans for any relevant Projects or Project Activities related to such MCC Disbursement, including strict compliance with any additional conditions precedent to such disbursement set forth therein and substantial compliance with the other requirements of such Work Plans, including any applicable reporting requirements for the relevant Disbursement Period;

(d) (i) There has been satisfactory progress on the M&E Plan for the Program, relevant Project or Project Activity and (ii) substantial compliance with the requirements of such M&E Plan (including the targets (except for the targets specified in Schedule 1 to this Agreement, which shall require strict compliance) and any applicable reporting requirements set forth therein for the relevant Disbursement Period);

(e) There has been satisfactory compliance with the Procurement Plan, including any applicable reporting requirements under the Procurement Agreement for the relevant Disbursement Period;

(f) There has been satisfactory compliance with the Audit Plan, including any applicable reporting and auditing requirements under any Auditor Agreement for the relevant Disbursement Period;

(g) MCA-Nicaragua has provided a satisfactory written response to any audit findings that have been issued prior to thirty (30) days before the date of the MCC Disbursement Request;

(h) Any necessary preceding steps in the sequence for any Project Activity as provided in Schedule 1 have been satisfactorily completed for each such activity for which funding is requested and no material adverse change in any of the preceding steps or activities has occurred, each in MCC's sole determination;

(i) MCA-Nicaragua has delivered to MCC any reports required under the Compact Documents, including Section 3.12 of the Compact, and any other reports specified under any other Supplemental Agreement;

(j) Since the date of the immediately preceding MCC Disbursement (or in the case of the initial MCC Disbursement, since the Effective Date), no event, circumstance or condition shall have occurred which constitutes a Material Adverse Change;

(k) (i) All Taxes paid in connection with the Program during the immediately preceding quarter have been reimbursed by the Government in full in accordance with Section 2.3(e) of the Compact and (ii) all Accrued Interest in the Permitted Accounts as of the end of the preceding quarter has been returned to the account designated by MCC;

(l) The Government has satisfied in full all of its payment obligations, including any insurance, indemnification or other obligations, and has made all contributions of resources owed by the Government under the Compact Documents;

(m) MCA-Nicaragua has notified MCC of any modification, rescission, termination or suspension of any document and of any modification to any statement contained in any certificate delivered with or at the time of such MCC Disbursement Request such that if any such certification as to such document or statement were delivered as of the date of such MCC Disbursement, it would be true, complete and correct; and

(n) MCC has not determined, in its sole discretion, that an act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, MCC Funding in accordance with Section 5.4 (b) of the Compact.

Section 3.6 Conditions Precedent to Re-Disbursements. Prior to, and as condition precedent to, any Re-Disbursement: (a) the Fiscal Agent shall have received adequate documentary evidence of, any necessary approvals for such Re-Disbursement as provided in the Compact, the Governing Documents, the Procurement Agreement, the Fiscal Accountability Plan and in any other applicable Supplemental Agreement; (b) all relevant conditions for such Re-Disbursement as provided in this Agreement, including in Section 1.2 and Schedule 1, any other Compact Document, the

Implementation Plan or in any applicable Supplemental Agreement, shall have been satisfied; and (c) the Fiscal Agent shall have received all documents required in connection with such Re-Disbursement under the Fiscal Agent Agreement, the Fiscal Accountability Plan and any other Supplemental Agreement.

Section 3.7 Failure to Satisfy Conditions Precedent; Deferral.

(a) MCC may reduce the amount of any MCC Disbursement by an amount equal to the amount requested for any program activity (including program administration and control or monitoring and evaluation), Project, Project Activity, or sub-activity for which the relevant condition precedent(s) has not been satisfied, waived or deferred.

(b) In the event of failure to meet a condition precedent, MCC shall not have an obligation to make an MCC Disbursement unless such condition is waived by MCC or such failure is cured to the satisfaction of MCC. Any such waiver or acceptance of a cure shall be at MCC's sole discretion.

(c) Notwithstanding Section 3.7(b), MCC may defer all or part of a condition precedent rather than waive it, in which case the condition must be met by the expiration of the deferral period stated in the notice delivered by MCC to MCA-Nicaragua as a condition precedent to the next stated applicable MCC Disbursement and in no event shall the condition be deemed waived.

Section 3.8 Annual Supplement to this Agreement. Prior to each anniversary of the Entry into Force, the Parties shall agree in writing to a detailed quarterly breakdown of the conditions precedent and any other modifications or adjustments to the conditions precedent for the next four quarters and this Agreement shall be amended to add such quarterly schedules or any other modifications or adjustments as a supplement to Schedule 1.

Section 3.9 Reports. Any report required as a condition precedent to an MCC Disbursement shall be provided to MCC in (a) form and substance acceptable to MCC and otherwise meeting the reporting specifications for such report and (b) a timely manner to afford reasonable and appropriate review of such reports, but in any event no later than thirty (30) days (or such other time as otherwise expressly agreed by the Parties) after the end of the time period covered by such report.

**ARTICLE IV.
GENERAL PROVISIONS**

Section 4.1 Communications. Any notice, request, document or other communication required, permitted or submitted by a 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 or Parties to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party or Parties, 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:

To MCC:

Millennium Challenge Corporation
Attention: Vice President for Operations, with a copy to the General Counsel
875 Fifteenth Street, NW
Washington, DC 20005
United States of America
Facsimile: (202) 521-3701
Email: VPOperations@mcc.gov (Vice President for Country Programs);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To the Technical Secretariat, on behalf of the Government:

Technical Secretariat of the Presidency (SETEC)
Attention: Secretary (Principal Representative)
Casa Presidencial
Costado Norte Antigua Catedral
Managua, NICARAGUA
Tel: 011 505 228 9258
Fax: 011 505 228 9250

To MCA-Nicaragua:

MCA-Nicaragua
c/o: Technical Secretariat of the Presidency (SETEC)
Attention: Technical Secretary (Principal Representative)
Casa Presidencial
Costado Norte Antigua Catedral
Managua, NICARAGUA
Tel: 011 (505) 228-9258
Fax: 011 (505) 228-9250

Section 4.2 Amendments. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties.

Section 4.3 Publicity. In accordance with Section 5.17 of the Compact, MCA-Nicaragua shall post, or cause to be posted, a copy of this Agreement and each MCC Disbursement Request on the MCA-Nicaragua Website and provide such other appropriate publicity to this Agreement that MCC requests.

Section 4.4 Nonwaiver of Remedies.

(a) 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 or any other Compact Document, 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.

(b) 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 other Compact Document or any waiver or deferral on such Party's part of any provisions or conditions of this Agreement or any other Compact Document must be in writing and shall be effective only to the extent specifically set forth in such writing.

(c) All remedies, either under this Agreement or any other Compact Document, by law or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 4.5 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 4.6 Inconsistencies. In the event of any conflict or inconsistency between this Agreement and the Compact, the terms of the Compact shall prevail. In the event of any conflict or inconsistency between this Agreement and any other Supplemental Agreement, the terms of this Agreement shall prevail.

Section 4.7 Headings. The Section and Subsection headings used in this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 4.8 Severability. If one or more provisions of this Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 4.9 Interpretation; Definitions. 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) Except as otherwise expressly specified herein, any reference to a Section, clause, Exhibit or Schedule shall mean a Section, clause, Exhibit or Schedule of this Agreement.

(i) All references to notices, permits, licenses, consents, approvals, and authorizations and any equivalent actions hereunder shall mean written notices, permits, licenses, consents, approvals, and authorizations in accordance with Section 4.22.

(j) Any reference to “business days” shall mean any day other than a Saturday, Sunday, commercial banking holiday in Managua, Nicaragua or Washington, D.C., United States, or a federal holiday in Nicaragua or United States of America; and any reference to “day” shall mean a calendar day;

(k) (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; and

(l) (j) Phrases such as “acceptable to,” “to the satisfaction of,” “at the discretion of” and phrases of similar import authorize and permit the relevant Party to approve, disapprove, act, or decline to act at such Party’s sole discretion.

Section 4.10 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures and, each counterpart when so executed and delivered, shall be effective for the purposes of binding the Parties hereto, but all such counterparts shall together constitute one and the same instrument. A signature to this Agreement or any amendment to this Agreement pursuant to Section 4.2 shall be delivered only as an original signature. With respect to all other signatures, except as the Parties may otherwise agree in writing from time to time, a signature delivered by facsimile or electronic mail in accordance with Section 4.2 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying agreement, instrument or document on the basis of the signature’s legal effect, validity or enforceability solely because it is in facsimile or electronic form; *provided* that a signature on an audit report shall be followed by an original in overnight express mail. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 4.11 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 the Technical Secretariat or MCA-Nicaragua. MCC shall provide notice to the other Parties upon the effectiveness of such assignment, delegation or contract. Neither the Technical Secretariat nor MCA-Nicaragua may assign, delegate or contract its rights and obligations under this Agreement without the prior consent of MCC. In accordance with Section 3.2(c) of the Compact, MCC hereby consents to the designation of the Technical Secretariat and MCA-Nicaragua to act on behalf of the Government in connection with this Agreement consistent with the Designated Rights and

Responsibilities designated by the Government to MCA-Nicaragua, respectively, on or before the date hereof, so long as such designation is not modified or revoked.

Section 4.12 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 4.13 Termination; Suspension; Other Consequences; Survival.

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

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

(i) The Compact has been suspended in whole or in part in accordance with Section 5.4 of the Compact;

(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 circumstance has arisen, which in the sole opinion of MCC, constitutes a Material Adverse Change.

(c) If MCC determines that any activity or failure to act violates, or may violate, Article II of the Compact, any provision of this Agreement or any other Compact Document, MCC may refuse to make any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

(d) Notwithstanding any expiration or termination of this Agreement, the following provisions shall survive: Article II (including any representations made pursuant to a Disbursement Request or MCC Disbursement), Sections 4.1, 4.4, 4.6, 4.9, 4.11, 4.13(d), 4.14, 4.18 and 4.20.

Section 4.14 MCC Status. The Parties recognize and agree 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, is immune from any action or proceeding arising under or relating to this Agreement and the Technical Secretariat and MCA-Nicaragua each hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Agreement, MCC is not subject to the jurisdiction of the courts or any other judicial or other body of Nicaragua or any other jurisdiction.

Section 4.15 Representatives. For all purposes relevant to this Agreement, the Technical Secretariat shall be represented by the individual holding the position of, or acting as, Secretary of the Technical Secretariat of the Presidency (the "**Principal Technical Secretariat Representative**"),

MCC shall be represented by the individual holding the position of, or acting as, Vice President for Operations (the “**MCC Principal Representative**”) and MCA-Nicaragua shall be represented by the individual holding the position of, or acting as, General Director of MCA-Nicaragua (the “**MCA-Nicaragua Principal Representative**,” and together with the Principal Technical Secretariat Representative and the MCC Principal Representative, the “**Principal Representatives**”), each of whom, by 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 the Principal Technical Secretariat Representative, the MCC Representative and the MCA-Nicaragua Principal Representative and any Additional Representatives of each shall be provided, with specimen signatures, to each of the other Parties pursuant to Section 4.2 and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Agreement, until receipt of notice of revocation of their authority. MCC or the Government may change its Principal Representative under this Agreement to a new representative of equivalent or higher rank and seniority upon notice to the other Parties, which notice shall include the specimen signature of such new Principal Representative.

Section 4.16 Information. MCC shall have the right to use any information or data provided in any MCC Disbursement Request or report provided to MCC for the purpose of satisfying MCC reporting requirements or in any other manner.

Section 4.17 Other Compact Document Requirements. The Technical Secretariat and MCA-Nicaragua shall comply with all applicable terms and conditions and fulfill all applicable Government Responsibilities in the other Compact Documents, including paragraphs (a), (b), (c), (d) and (f) of Section 3.8 of the Compact (which paragraphs are hereby incorporated by reference herein), and any other audit or reporting requirements.

Section 4.18 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 twenty (20) days from the commencement of the consultations then each Party shall refer the consultation to its respective Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than forty-five (45) days from date of commencement. If the matter is not resolved within such time period, MCC may terminate this Agreement pursuant to Section 4.13(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 4.19 Effective Date; Term. This Agreement shall (a) become effective and enter into force as of the date hereof upon the signature of duly authorized representatives of the Parties and (b) end one hundred and twenty (120) days following the termination or expiration of the Compact; *provided, however*, that the term of this Agreement may be extended for a period that is longer than one hundred and twenty (120) days following the termination or expiration of the Compact if MCC determines that Re-Disbursements related to obligations incurred prior to the expiration or termination of the Compact remain to be paid.

Section 4.20 Governing Law. The Parties agree and acknowledge that this Agreement is entered into for the purpose of implementing the Compact, and as such, it shall be interpreted in a manner consistent with the Compact and shall be governed by the principles of international law.

Section 4.21 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 the Spanish language for the convenience of the Parties, this official English language version shall prevail.

Section 4.22 Written Consents, Approvals and Notices. Notices, permits, consents, licenses, approvals and authorizations, and any equivalent actions, to be provided or made hereunder shall only be effective if done in writing.

SIGNATURE PAGE BEGINS ON THE NEXT PAGE.

IN WITNESS WHEREOF, the Government acting through the Technical Secretariat, MCA-Nicaragua and MCC, each acting through its duly authorized representative, have caused this Agreement to be executed in their names and delivered as of the date first written above.

TECHNICAL SECRETARIAT OF THE
PRESIDENCY, ON BEHALF OF THE
GOVERNMENT OF THE REPUBLIC OF
NICARAGUA

MILLENNIUM CHALLENGE
CORPORATION

By: _____ / s / _____
Name: Mr. Alvaro Montalvan Pallais
Title: Secretary

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

FUNDACIÓN RETO DEL MILENIO-
NICARAGUA

By: _____ / s / _____
Name: Mr. Julio C. Montealegre
Title: Board Member

Technical Secretariat of the Presidency, on behalf of the Government of the Republic of Nicaragua

By: _____

Name: _____

Title: _____

Date: _____

MCA-Nicaragua

By: _____

Name: _____

Title: _____

As Authorized Principal Representative of MCA-Nicaragua

Date: _____

Certified by the Chairman of the Board of Directors of MCA-Nicaragua

By: _____

Name: _____

Date: _____

The Louis Berger Group, Inc., as the Fiscal Agent

By: _____

Name: _____

Date: _____

Signing only for the purposes of Sections 2(B) through 2(F) and Sections 3-5 of this Request.

Wiring Instructions:

Section 2. Programmatic and Financial Progress Update

A. Program and Project Progress Reports required in the M&E Plan, Work Plans and other Components of the Implementation Plan

B. Total Program Financial Plan Adjustment Request Form

Project Project Activity	Original Program Multi-Year Financial Plan in Compact 1	Current Approved Multi-Year Financial Plan (From Sch. C) 2	Proposed Adjustments		Proposed Adjusted Multi-Year Financial Plan 2+3-4 5
			Increase 3	Decrease 4	
	1	2	3	4	5
		-	-	-	-
					-
					-
		-	-	-	-
					-
		-	-	-	-
					-
					-
		-	-	-	-
					-
					-
		-	-	-	-
					-
					-
		-	-	-	-
					-
					-
		-	-	-	-
					-
Grand Total	-	-	-	-	-

C. Summary of Financial Plan Adjustments to Date

Project Project Activity	Original Program Multi-Year Financial Plan in Compact	(Date) Adjustment Reported/ Approved	(Date) Adjustment Reported/ Approved	(Date) Adjustment Reported/ Approved	Current Approved Multi-Year Financial Plan 1 +/- Adjustments
	1	2	3	4, etc.	5
		-	-	-	-
		-	-	-	-
		-	-	-	-
Grand Total	-	-	-	-	-

D. Quarterly Financial Plan Adjustment Request Form

Project Project Activity	Current Approved Cumulative Quarterly Financial Plan Through Current Period	Proposed Adjustments to Cumulative Quarterly Financial Plan Through Next Period		Proposed Cumulative Quarterly Financial Plan Through Next Period
		Increase	Decrease	1+2-3
	1	2	3	4
	-	-	-	-
	-	-	-	-
	-	-	-	-
Grand Total	-	-	-	-

E. Commitment and Expenditure Report

Project Project Activity	Cumulative Actual Re- disbursements as of the Beginning of the Current Period	Projected Re- disbursements for the Current Period	Projected Cumulative Re- disbursement Through the Current Period (1+2)	Projected Unliquidated Commitments as of the End of the Current Period	Projected Cum. Commitments and Re-disburse-ments End of Current Period	Current Proposed Multi- year Financial Plan	Projected Balance Multi- year Financial Plan-End of Current Period (6-5)
	1	2	3	4	5	6	7
	-	-	-	-	-	-	-
	-	-	-	-	-	-	-
	-	-	-	-	-	-	-
Grand Total	-	-	-	-	-	-	-

F. Projected Program Cash Requirements for Next Disbursement Period

Main Activity Sub-activity	Projected Cumulative Re-disbursement Through the Current Period (Sch. E, Col 3)	Projected Cash Requirements for the Next Disbursement Period	Projected Re- disbursement Through the Next Disbursement Period (1+2)
	1	2	3
	-	-	-
	-	-	-
	-	-	-
Grand Total	-	-	-

Section 3. Cash Reconciliation

Date _____

1. Cash Balance From Beginning of Current Period	
2. a. Add: MCC Disbursement Received and Date Received	
2. b. Interest Earned and Received	
2. c. Amount and Source of Other Cash Received	
3. Total Sources of Cash This Period, Lines 2.a + 2.b + 2.c	-
4. Total Cash Available, Lines 1 + 3	\$ -
5. a. Less: Total Program Re-Disbursements	
5. b. Interest Returned to the US Government	
6. Total Uses of Cash This Period, Lines 5.a + 5.b	-
7. Cash Balance at End of Disbursement Period, Lines 4 - 6	\$ -

Section 4. Disbursement Request

1. Total Forecasted Program Cash Requirements - Sch F, Col 2	
2. Interest to be Returned to the US Government Next Period	
3. Working Capital Balance	500,000.00
4. Total, Lines 1 + 2 + 3	\$ 500,000.00
5. Cash Balance at End of Current Period - Section 3, Line 7	-
6. Disbursement Request From MCC 4 - 5	\$ 500,000.00

Section 5. Interest Summary

1. Cumulative Interest Earned and Received as of Beginning of Current Period	
2. Interest Earned and Received During the Current Period	
3. Total Interest and Earned as of End of This Period, Lines 1 + 2	\$ -
4. Cumulative Interest Returned as of Beginning of Current Period	
5. Interest Returned The Current Period	
6. Total Cumulative Interest Returned During the Current Peirod, Lines 4 + 5	-
7. Interest Due to Be Returned, Line 3 - 6	\$ -

Section 6. Conditions Precedent (Including Expected Performance Milestones)	
Country	
Projects	
Compact Date/Entry of Force	
Compact Number (noted on exchange of letters for entry into force of the Compact)	
Accountable Entity	MCA-Nicaragua
Fiscal Agent	
Request Date	
Disbursement Period Beginning Date	
Disbursement Period End Date	
Disbursement Request Number	
Currency	US Dollars
Conditions Precedent and Key Milestones	

SCHEDULE 1
ADDITIONAL CONDITIONS PRECEDENT

MCA-Nicaragua Disbursement Agreement Schedule 1 - Conditions Precedent

Final version 5-23-06

In addition to any other conditions precedent set forth in the Compact Documents, the Implementation Plan or any other Supplemental Agreement, as a condition precedent to each disbursement for the Program or a Project or any Project Activity identified below, the Government (GoN), MCA-Nicaragua (MCA-N) and other Permitted Assignees, as appropriate, shall satisfy, as MCC determines in its sole discretion, each condition specified below prior to each quarter shaded (or event specified) for such condition. Where the relevant condition precedent must be satisfied prior to a specified event or in a specified sequence as noted in the "Notes" column, the shaded quarter represents an estimate as to when that event or sequencing of events is forecasted to occur.

Except as expressly specified below, each document required as a condition precedent herein shall be in form and substance acceptable to MCC. References in this Schedule to "disbursements" and "re-disbursements" shall mean "MCC Disbursements" and "Re-Disbursements", respectively, as defined in the Compact. Disbursements in Years 2-5 shall be subject to conditions precedent set forth in the Implementation Plan, Compact Documents, any other Supplemental Agreement and any amendments to the Disbursement Agreement, including in the annual supplement to this Schedule 1, as provided in Section 3.8.

For purposes of the Disbursement Agreement, each quarter shall begin on the first day of January, April, July and October, provided that, the first quarter of Year 1 under the Program shall begin on the date of Entry into Force and shall end on September 30, 2006.

Program or Project Activity	Condition Precedent	Notes (including sequencing of condition precedent)	Implementation Period									
			Year 1				Year 2	Year 3	Year 4	Year 5		
			q1	q2	q3	q4						
Program Administration and all Project Activities												
Program Administration and all Project Activities	Conditions precedent set forth in §3.1 of the Disbursement Agreement have been satisfied.	Prior to the initial disbursement										
	Conditions precedent set forth in §3.2 of the Disbursement Agreement have been satisfied.	Prior to any disbursement										
	Conditions precedent set forth in §3.5 of the Disbursement Agreement have been satisfied.	Prior to any disbursement										
	Conditions precedent set forth in §3.3 of the Disbursement Agreement have been satisfied, as applicable to the relevant Disbursement Period.	Semi-Annual deliveries, as described in the Disbursement Agreement										
	Conditions precedent set forth in §3.4 of the Disbursement Agreement have been satisfied, as applicable to the relevant Disbursement Period.	Annual deliveries, as described in the Disbursement Agreement										
	MCA-N has duly adopted, and MCC has duly approved, a Procurement Plan, and the Procurement Plan is current and updated.	Prior to disbursement in Year 1 Q2										
	MCA-N has duly adopted, and MCC has duly approved, a Fiscal Accountability Plan that is current and updated.	Prior to disbursement in Year 1 Q2										
	MCA-N has duly adopted, and MCC has duly approved, an Audit Plan, and the Audit Plan is current and updated.	Prior to disbursement in Year 1 Q2										
	MCA-N has duly adopted, and MCC has duly approved, an M&E Plan, and the M&E Plan is current and updated.	Prior to disbursement in Year 1 Q2										
All Project Activities												
All Project Activities	Monitoring & Evaluation Director for MCA-N is selected and approved by MCC and remains engaged, or in the event the position is vacant, MCA-N is actively recruiting for the position, to the satisfaction of MCC.	Prior to disbursement for any Project Activity other than the initial disbursement for Activity (b) in Schedule 1 to Annex 1 of the Compact (cadastral mapping)										
	Administrative and Finance Director for MCA-N is selected and approved by MCC and remains engaged, or in the event the position is vacant, MCA-N is actively recruiting for the position, to the satisfaction of MCC.	Prior to disbursement for any Project Activity other than the initial disbursement for Activity (b) in Schedule 1 to Annex 1 of the Compact (cadastral mapping)										
	Procurement Director for MCA-N is selected and approved by MCC and remains engaged, or in the event the position is vacant, MCA-N is actively recruiting for the position, to the satisfaction of MCC.	Prior to disbursement for any Project Activity other than the initial disbursement for Activity (b) in Schedule 1 to Annex 1 of the Compact (cadastral mapping)										
	MCA-N has duly approved a bid challenge system acceptable to MCC.	Prior to disbursement in Year 1 Q2										
	A consultant acceptable to MCC has been engaged to complete the annual data quality reviews.	Prior to disbursement in Year 1 Q3										

* Condition will be deemed to have been satisfied if results are within 10% of stated numeric target.

	Data Quality Review report has been completed and submitted to MCC, in accordance with M&E Plan.	Prior to disbursement in Year 2 Q1 and Year 4 Q1																
	A firm(s) acceptable to MCC has been engaged to complete data gathering related to the interim and final evaluation, in accordance with M&E Plan.	Prior to disbursement in Year 1 Q3																
	An Interim Evaluation in form and substance acceptable to MCC has been completed and submitted, in accordance with the M&E Plan.	Prior to disbursement in Year 3 Q3																
	MCA-N performs, satisfactory to MCC, an environmental audit of all Project Activities.	Prior to disbursement for any Project Activity																
Property Regularization (PR) Project																		
All PR Activities																		
All PR Activities	The GoN submits legislation that modernizes tenure regularization and clarifies the legal basis for solving irregularities in tenure regularization.	Prior to any disbursement in Year 1 Q4																
	The GoN enacts legislation that modernizes tenure regularization and clarifies the legal basis for solving irregularities in tenure regularization.	Prior to any disbursement in Year 3 Q1																
	An Implementing Entity remains engaged pursuant to an agreement that the MCA-N Board and MCC have duly approved and that is in full force and effect.	Prior to any disbursement beginning in Year 1 Q3																
	PRODEP submits a report to MCA-N, with the endorsement of the Ministry of Finance and Public Credit, to the satisfaction of MCC, demonstrating that the GON has pursued measures to safeguard the Project from any laws, regulations or policies that may undermine the results of the Project, including those that (i) undermine private land ownership or impede transparent, clear transfer of land title, (ii) result in inappropriate taxation of regularized property rights, (iii) constitute political manipulation during the tenure regularization process, and (iv) result from the inappropriate or illegitimate use of supplementary titles (titulo supletorio).	Must be delivered quarterly prior to disbursements, beginning Year 1 Q3																
	PRODEP submits to MCA-N an environmental study for Leon, including recommendations for the Protected Area Management Plans, satisfactory to MCC.	Prior to disbursement in Year 1 Q4																
	PRODEP submits to MCA-N, to the satisfaction of MCC, a gender strategy .	Prior to disbursement in Year 1 Q4																
	30 % decrease in time to conduct a land transaction (from baseline).*	Prior to disbursement in Year 4, Quarter to be determined																
	40 % decrease in time to conduct a land transaction (from baseline).*	Prior to disbursement in Year 5, Quarter to be determined																
	25% decrease in cost to conduct a land transaction (from baseline).*	Prior to disbursement in Year 4, Quarter to be determined																
Land Tenure Regularization (LTR) Activity																		
Land Tenure Regularization Activity	1,000 rural parcels which have been regularized.* ^	Prior to disbursement in Year 2, Quarter to be determined																
	8,754 additional rural parcels which have been regularized.* ^	Prior to disbursement in Year 3, Quarter to be determined																
	7,400 additional rural parcels which have been regularized.* ^	Prior to disbursement in Year 4, Quarter to be determined																
	3,846 additional rural parcels which have been regularized.* ^	Prior to disbursement in Year 5, Quarter to be determined																
	978 urban parcels which have been regularized.* ^	Prior to disbursement in Year 2, Quarter to be determined																
	8,250 additional urban parcels which have been regularized.* ^	Prior to disbursement in Year 3, Quarter to be determined																
	7,272 additional urban parcels which have been regularized.* ^	Prior to disbursement in Year 4, Quarter to be determined																
	5,500 additional urban parcels which have been regularized.* ^	Prior to disbursement in Year 5, Quarter to be determined																
Protected Area Demarcation (PAD) Activity																		
Protected Area Demarcation Activity	PRODEP submits to MCA-N area-specific Environmental Management Plans, satisfactory to MCC.	Prior to disbursement in Year 3 Q1																
	Legislation is enacted that maintains the integrity of the four (4) environmentally-sensitive protected areas in León demarcated under the Project.	Prior to disbursement in Year 3 Q1																
	MCA-N submits a report evidencing continued implementation, to the satisfaction of MCC, of 2 Protected Area Management Plans.	Prior to disbursement in Year 3 Q1																

* Condition will be deemed to have been satisfied if results are within 10% of stated numeric target.

	MCA-N submits a report evidencing continued implementation, to the satisfaction of MCC, of 1 additional Protected Area Management Plan.	Prior to disbursement in Year 4 Q1																		
	MCA-N submits a report evidencing continued implementation, to the satisfaction of MCC, of 1 additional Protected Area Management Plan.	Prior to disbursement in Year 5 Q1																		
Transportation Project																				
All Transportation Project Activities																				
All Transportation Project Activities	An Infrastructure Specialist for MCA-N is selected and approved by MCC and remains engaged, or in the event the position is vacant, MCA-N is actively recruiting for the position to the satisfaction of MCC.	Prior to disbursement for any Project Activity under the Transportation Project																		
	Environment and Social Impact Specialist for MCA-N is selected and approved by MCC and remains engaged, or in the event the position is vacant, MCA-N is actively recruiting for the position to the satisfaction of MCC.	Prior to disbursement for any Project Activity under the Transportation Project																		
	A Transportation Project Manager remains engaged pursuant to an agreement that the Board and MCC have duly approved and that is in full force and effect, or in the event the position is vacant, MCA-N is actively recruiting for the position to the satisfaction of MCC.	Prior to disbursement or re-disbursement for any Project Activity under the Transportation Project																		
	An Implementing Entity Agreement between MCA-N and MTI laying out the respective roles and responsibilities of the parties as they relate to the Transportation Project (e.g., grant of access to rehabilitate, agreement to accept, etc.) has been duly approved by MCC and is in full force and effect.	Prior to disbursement for any Project Activity under the Transportation Project																		
	MCA-N provides evidence of GoN implementation, satisfactory to MCC, of the enactment of FOMAV legislation to ensure sustainable maintenance of the national road network. The legislation shall remain in full force and effect.	Prior to each disbursement for construction on any road segment																		
	MCA-N provides evidence that MTI has conducted a survey and assessment of the condition of all roads in the system, dividing them between maintainable and non-maintainable roads, and has developed service condition ratings for those considered maintainable.	Prior to initial disbursement for construction for any Project Activity under the Transportation Project																		
	MCA-N provides evidence that MTI has put into place a road condition monitoring plan to gather road condition data in 2-3 year intervals for all roads.	Prior to initial disbursement for construction for any Project Activity under the Transportation Project																		
	As investments are made on non-maintainable roads, MTI reclassifies them to maintainable condition.	Prior to initial disbursement for construction on any Project Activity under the Transportation Project																		
	MCA-N provides evidence that FOMAV has developed a 10-year routine and periodic maintenance plan and a 10-year maintenance budget estimating annual and total costs.	Prior to initial disbursement for construction on any Project Activity under the Transportation Project																		
	MCA-N provides evidence that the FOMAV budget for routine and periodic maintenance for the maintainable road network has been approved for the forthcoming fiscal year at the levels stipulated in Annex I Schedule 2 §5 to the Compact.	Prior to initial disbursement in each Fiscal Year for construction for the Transportation Project																		
	MCA-N provides evidence that (i) the amounts budgeted by FOMAV for routine and periodic maintenance in the prior fiscal year have been expended according to program and (ii) that any shortfall in the road maintenance budget from the prior fiscal year has been made up in the budget of the current fiscal year.	Prior to disbursement in second quarter of each Nicaraguan fiscal year beginning in 2007																		
	MCA-N provides evidence of GoN enactment of legislation acceptable to MCC on national road safety.	Prior to initial disbursement for construction for any Project Activity under the Transportation Project																		
	MCA-N provides evidence of GoN implementation and continued enforcement of legislation on national road safety.	Prior to any disbursement for construction for any Project Activity under the Transportation Project																		
N-I Road Project Activity																				
N-I Road Project Activity	Written commitment of funding by GoN or other satisfactory funding source (e.g., regional development bank) for amount in excess of budgeted amount in Annex II of the Compact.	Prior to initial disbursement for construction for the Project Activity																		
	MCA-N and MCC have made a determination to proceed with rehabilitation of the N-I Road, based on satisfactory review by MCC of a completed final feasibility and design study and an Environmental Impact Assessment (EIA) (including Environmental Management Plan (EMP) and, as needed, a Resettlement Action Plan (RAP)).	Prior to initial disbursement for construction for the Project Activity																		
	MCA-N provides certification or written commitment by the GoN indicating that the GoN will fund necessary mitigation and remediation costs identified in the EIA above and beyond those provided for in the project budget.	Prior to initial disbursement for construction for the Project Activity																		

* Condition will be deemed to have been satisfied if results are within 10% of stated numeric target.

	MCA-N submits to MCC a copy of a report on file with MCA-N, acceptable to MCC, verifying that all M&E baseline data has been gathered for the N-I Road.	Prior to initial disbursement for construction for the Project Activity																			
	MCA-N provides evidence of continued compliance, satisfactory to MCC, with the EMP.	Prior to each disbursement for construction in Years 2, 3, 4 and 5, Quarter to be determined																			
	MCA-N provides evidence that any required RAP, including full payment of resettlement costs, has been implemented in accordance with World Bank operational policy on involuntary resettlement and in a manner acceptable to MCC.	Prior to any disbursement for construction for the Project Activity																			
	MCA-N provides a list of all permits necessary for the N-I Road Project Activity, including any required environmental permits and related public disclosure and consultation, and certifies that such permits are on file and have been validly issued, are in full force and effect.	Prior to any disbursement for construction for the Project Activity																			
	MCA-N certifies that all utility relocations necessary to accommodate the rehabilitation of the N-I Road are completed.	Prior to any disbursement for construction for the Project Activity																			
	A Construction Supervisor remains engaged, pursuant to an agreement that the Board and MCC have duly approved and that is in full force and effect.	Prior to each disbursement for construction																			
	The International Roughness Index is 2.0 m/km on the completed portions of the N-I Road improved by MCC funding.*	Prior to any disbursement for construction of the Project Activity beginning in Year 3																			
Secondary Road Project Activity																					
Secondary Road Project Activity	MCA-N and MCC have made a determination to proceed with construction and or/rehabilitation based on satisfactory review by MCC of a completed final feasibility and design study and any requisite environmental assessment work, to include an Environmental Management Plan (EMP) and, as needed, a Resettlement Action Plan (RAP)).	Prior to initial disbursement for construction for each road segment																			
	MCA-N provides certification or written commitment by the GoN indicating that the GoN will fund necessary mitigation and remediation costs identified in the road-specific EMPs above and beyond those provided for in the project budget.	Prior to initial disbursement for construction for each road segment																			
	MCA-N submits to MCC a copy of a report on file with MCA-N, acceptable to MCC, verifying that all M&E baseline data has been gathered for each segment of secondary road.	Prior to initial disbursement for construction for each road segment																			
	MCA-N provides evidence, satisfactory to MCC, that it has completed the acquisition of rights of way for secondary roads to be constructed.	Prior to the initial disbursement for construction on each road segment																			
	MCA-N provides evidence of continued compliance, satisfactory to MCC, with the road-specific EMP.	Prior to each disbursement for construction																			
	MCA-N provides evidence that any required RAP, including full payment of resettlement costs, has been implemented in accordance with World Bank operational policy on involuntary resettlement and in a manner acceptable to MCC.	Prior to initial disbursement for construction of each road segment																			
	MCA-N provides a list of all permits necessary for each secondary road, including any required environmental permits and related public disclosure and consultation, and certifies that such permits are on file and have been validly issued, are in full force and effect.	Prior to any disbursement for construction of each road segment																			
	MCA-N certifies that all utility relocations necessary to accommodate the rehabilitation of the secondary roads are completed.	Prior to initial disbursement for construction of each road segment																			
	One or more Construction Supervisors remain(s) engaged, pursuant to an agreement(s) that the Board and MCC have duly approved and that is (are) in full force and effect.	Prior to each disbursement for construction																			
	The International Roughness Index is 2.0 m/km or less on the completed portions of roads upgraded to pavement and 4.5 m/km or less on the completed portion of roads upgraded to adquin by MCC funding.*	When paved, they must be smooth as laid out in the CP section otherwise will affect disbursements on future construction, Prior to any disbursement for construction of the Project Activity beginning in Year 2																			
Transportation Technical Assistance Project Activity																					
Transportation Technical Assistance Project Activity	MCA-N submits to MCC, and MCC approves, a completed needs assessment of TA requirements of MTI and FOMAV to fully define the project activity.	Prior to disbursement in Year 1 Q4																			
	One or more firms remain(s) engaged to implement TA for MTI, pursuant to an agreement(s) that the Board and MCC have duly approved and that is (are) in full force and effect.	Prior to each disbursement for Technical Assistance beginning in Year 2																			
	One or more firms remain(s) engaged to implement TA for FOMAV, pursuant to an agreement(s) that the Board and MCC have duly approved and that is (are) in full force and effect.	Prior to each disbursement for Technical Assistance beginning in Year 2																			
Rural Business Development (RBD) Project																					
All RBD Project Activities																					

* Condition will be deemed to have been satisfied if results are within 10% of stated numeric target.

SCHEDULE 2

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