

PROGRAM IMPLEMENTATION AGREEMENT

BETWEEN

THE FEDERAL DEMOCRATIC REPUBLIC OF NEPAL

ACTING THROUGH

THE MINISTRY OF FINANCE

AND

THE UNITED STATES OF AMERICA

ACTING THROUGH

THE MILLENNIUM CHALLENGE CORPORATION

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PROGRAM IMPLEMENTATION AGREEMENT

PREAMBLE

This PROGRAM IMPLEMENTATION AGREEMENT (this “*Agreement*”) is between the Federal Democratic Republic of Nepal, acting through its Ministry of Finance (the “*Government*”), and the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (“*MCC*”) (individually, a “*Party*” and collectively, the “*Parties*”).

Recalling that the Millennium Challenge Compact between the United States of America, acting through MCC, and the Government signed on September 14, 2017 (the “*Compact*”), sets forth the general terms on which MCC will provide assistance of up to US\$500,000,000 to the Government, and to which the Government will contribute up to US\$130,000,000 for a program to reduce poverty through economic growth in Nepal;

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

Recognizing that the Parties wish to specify further the terms for implementing the Compact and the Program;

The Parties hereby agree as follows:

ARTICLE 1.

GENERAL RESPONSIBILITIES OF THE PARTIES

Section 1.1 Definitions.

Capitalized terms used in this Agreement and not defined in this Agreement have the meanings provided in the Compact. All other capitalized terms have the meanings provided in Schedule 1.

Section 1.2 Role of the Government.

(a) Government Responsibilities. The Government will promptly take all necessary or appropriate actions to carry out all of its obligations under the Compact, this Agreement, and any other Supplemental Agreement (including any post-Compact Term activities, audits or other responsibilities), and to delegate its rights and responsibilities to entities, including MCA-Nepal,

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

(b) Government Undertakings.

(i) Impoundment; Liens or Encumbrances. The Government will ensure that (A) no Program Assets are subject to any impoundment, rescission, sequestration, liquidation, or to any provision of law now or hereafter in effect in Nepal that would have the effect of allowing any such impoundment, rescission or sequestration; and (B) no Program Asset is subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each, a “**Lien**”), except with MCC’s prior written approval. In the event any Lien not so approved is imposed, the Government will promptly seek the release of such Lien and, if such Lien is required by a final and non-appealable court order, will pay any amounts due in order to obtain such release; **provided, however**, that the Government will not use MCC Funding or any Program Assets to satisfy any such obligation.

(ii) Disposal of Program Assets Consisting of Real Property. The Government will ensure that no Program Asset consisting of real property is (A) subject to any lease or sub-lease arrangement, in whole or in part, or (B) sold, donated or otherwise disposed of, in whole or in part; except, in each of the foregoing cases, with MCC’s prior written approval. In addition, any Program Asset consisting of real property that is retained by MCA-Nepal, subject to the terms of the MCC Program Closure Guidelines, after the expiration or termination of the Compact will be subject to a reversionary interest of MCC for a period of five (5) years commencing on the last day of the closure period; and if at any time during that five-year period, the Government wishes to sell the real property or use it for a purpose that is not related to the Program or does not continue to further the Project Objectives, the Government will compensate MCC for its interest in the real property by paying to MCC an amount equal to the fair market value of MCC’s reversionary interest in the real property determined at such time.

(iii) Environmental and Social Performance. Unless MCC and the Government agree otherwise in writing, the Government will ensure that all Projects and Activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding under the Compact comply with the MCC Environmental Guidelines, including the environmental and social performance standards set forth in the *Performance Standards on Environmental and Social Sustainability of the International Finance Corporation* (as in effect from time to time, the “**IFC Performance Standards**”) that have been incorporated by reference into the MCC Environmental Guidelines. The Government also will ensure that the Projects and Activities comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with the Compact. Unless MCC agrees otherwise in writing, the Government will fund all necessary costs of environmental and social mitigation measures (including, without limitation, costs of resettlement) not specifically provided for, or that exceed the MCC Funding specifically allocated for such costs, in the Detailed Financial Plan for any Project or Activity.

(iv) Gender and Social Inclusion. Unless MCC and the Government agree otherwise in writing, the Government will ensure that all Projects and Activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Gender Policy and the MCC Gender Integration Guidelines.

(v) Strategic Road Network. With regard to maintenance works under the Strategic Road Maintenance Works Activity, the Government commits to:

(A) provide to MCC and annually update through the Compact Term, by no later than October 31 each year after this Agreement has been signed, the Government's highway management information system with (1) deflection measurements on the entire strategic road network per a schedule agreed upon with MCC, (2) the international roughness index of the strategic road network, and (3) the surface distress index (SDI) of the strategic road network; and

(B) continue to perform sufficient maintenance to prevent further deterioration on the selected 305 km of the strategic road network, until the beginning of maintenance works under the Strategic Road Maintenance Works Activity.

Section 1.3 Role of MCA-Nepal.

(a) Designation of MCA-Nepal.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated MCA-Nepal, a development board, as the primary agent of the Government to implement the Program and to exercise and perform the Government's right and responsibility to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and Activities allocating resources, and managing procurements (the "***Designated Rights and Responsibilities***"). The Parties note that the Government remains ultimately responsible for the performance of the Government's obligations under or in relation to the Compact and this Agreement.

(ii) The Government will ensure that MCA-Nepal is and remains throughout the Compact Term duly organized, sufficiently staffed and empowered to exercise the Designated Rights and Responsibilities.

(iii) The "Accountable Entity" referenced in the Program Guidelines will be deemed to refer to MCA-Nepal, and all obligations assigned to the "Accountable Entity" in the Program Guidelines will be obligations of MCA-Nepal.

(b) Additional Government Undertakings with Respect to MCA-Nepal. The Government hereby affirms to MCC as follows:

(i) Power and Authorization. MCA-Nepal has the power and authority to (A) bind the Government to the full extent of the Designated Rights and Responsibilities, (B)

execute and deliver each agreement, certificate, or instrument contemplated by this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines, and (C) perform its obligations under this and each such other agreement, certificate, or instrument contemplated by this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines.

(ii) Government Responsibilities. MCA-Nepal (A) will carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Nepal obligations in the Compact, this Agreement, and the Amended and Restated Initial Engagement Technical Assistance Grant Agreement between MCC and the Government signed on July 20, 2016 (the “*CDF Agreement*”) or any other Supplemental Agreement) with due care, efficiency and diligence in conformity with sound technical, financial and management practices, and in conformity with the Compact, this Agreement, the CDF Agreement, each other Supplemental Agreement and the Program Guidelines, (B) except as provided in Section 2.10 or with respect to a Project Partner, will not assign, delegate or otherwise transfer any of the Designated Rights and Responsibilities without the prior written consent of MCC, and (C) will not undertake any activities, duties or responsibilities other than the Designated Rights and Responsibilities without the prior written consent of MCC.

(iii) Government Representations. MCA-Nepal will confirm each representation that it makes on behalf of the Government in any agreement, certificate or instrument delivered by MCA-Nepal with all necessary Permitted Designees prior to providing such representation to MCC.

(iv) Autonomy. The Government will ensure that (A) no decision of MCA-Nepal is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a final and non-appealable judicial decision, and (B) the authority of MCA-Nepal will not be expanded, restricted or otherwise modified, except in accordance with this Agreement and the Compact.

(v) Governance of MCA-Nepal. MCA-Nepal will adopt internal rules and regulations or bylaws, in form and substance satisfactory to MCC (the “*Bylaws*”). MCA-Nepal will conduct its operations and management in accordance with the Governing Documents (including the Bylaws) and the Governance Guidelines.

(vi) Funded Agreements; General Provisions Annex. MCA-Nepal will provide the Fiscal Agent (and MCC if MCC so requests) a copy of each agreement that is funded (directly or indirectly) with MCC Funding (each, a “*Funded Agreement*”), regardless of whether MCC has approval rights with respect to such agreement. Unless otherwise instructed by MCC, MCA-Nepal will include in each Funded Agreement: (A) a covenant that the counterparty to such agreement (each, a “*Counterparty*”) will comply with (i) the General Provisions Annex and (ii) any instruction received by such Counterparty from MCC regarding the performance by such Counterparty of the terms of the General Provisions Annex notwithstanding any other instructions given by MCA-Nepal; and (B) a right for MCA-Nepal to terminate such Funded Agreement if such Counterparty fails to comply with the General Provisions Annex or any such instruction of MCC.

(vii) Insurance; Performance Guaranties. MCA-Nepal will, to MCC's satisfaction, cause all Program Assets to be insured (including, without limitation, through self-insurance) and will arrange such other appropriate insurance to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. With MCC's prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Nepal (or, as appropriate and with MCC's prior approval, another entity) will be named as the payee on any such insurance and the beneficiary of any such guaranty or bonds. If not already named as the insured party, MCA-Nepal (and MCC, if it so requests) will be named as additional insureds on any such insurance. The Government will promptly notify MCC of the payment of any proceeds from claims paid under such insurance or guaranty, and will ensure that such proceeds will be used to replace or repair any lost or damaged Program Assets; ***provided, however,*** that, at MCC's election, such proceeds will be deposited in a Permitted Account as designated by MCA-Nepal or as otherwise directed by MCC.

(viii) MCA-Nepal Indemnity. If MCA-Nepal is held liable under any indemnification or other similar provision of any agreement, then the Government will pay such indemnity in full on behalf of MCA-Nepal and will not use MCC Funding or any Program Assets to satisfy such obligation. In addition, the Government will indemnify and hold harmless each member of MCA-Nepal's Board of Directors (including each Observer), each member of any Stakeholders' Committee and each of MCA-Nepal's Officers and employees from any claim, loss, action, liability, cost, damage or expenses incurred by such person in the performance of its duties on behalf of MCA-Nepal, ***provided, however,*** that the Government will have no obligation to indemnify any such person if and to the extent that any such claims, losses, actions, liabilities, costs, damages or expenses are attributable to the fraud, gross negligence or willful misconduct of such person; and ***provided further,*** that the Government will not use MCC Funding or any Program Assets to satisfy its obligations under this Section 1.3(b)(viii).

(ix) MCA-Nepal Hiring Practices. MCA-Nepal will hire all Officers and employees through fair, competitive, and non-discriminatory procedures. Officers and employees will be hired without regard to nationality or citizenship.

(x) Foreign Personnel. The Government agrees to: (A) arrange for any foreign personnel (either individual consultants or personnel of firms) providing goods, works or services under the Compact to be provided promptly with any necessary work visas and to arrange for such foreign personnel and their family to be provided promptly with entry visas; and (B) provide the foreign personnel (either individual consultants or personnel of firms) providing goods, works or services under the Compact with work permits and such other documents as shall be necessary to enable the foreign personnel to perform services and to remain in Nepal for the duration of the Compact, without the need to exit the country for any period in the interim.

ARTICLE 2.

IMPLEMENTATION FRAMEWORK

Section 2.1 Implementation Plan.

The framework for implementation of the Program will be further elaborated in a set of documents, in form and substance approved by MCC, consisting of (i) a Work Plan, (ii) a Detailed Financial Plan, (iii) an Audit Plan, and (iv) a Procurement Plan (each, an ***“Implementation Plan Document”*** and collectively the ***“Implementation Plan”***). MCA-Nepal will submit its proposed Implementation Plan for review and approval by MCC before the initial Disbursement of Program Funding and at least on an annual basis thereafter (or in such other interval as may be required by the Program Guidelines). MCC will review the proposed Implementation Plan and as necessary may request MCA-Nepal to submit clarifications or adjustments. MCA-Nepal will submit an updated Implementation Plan or updated Implementation Plan Document during any quarter in which significant changes or modifications are made to a Project or to the Program, or when MCA-Nepal determines that the expected results, targets and milestones for the specified year are not likely to be achieved; ***provided, however,*** that an updated Detailed Financial Plan will be submitted each quarter. In such instances, MCA-Nepal will submit to MCC for approval a proposed revised Implementation Plan or updated Implementation Plan Document (as applicable) on the same date as the next Periodic Report is due. MCA-Nepal will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Work Plan. MCA-Nepal will develop and implement a work plan, in form and substance satisfactory to MCC, for the overall administration of the Program (the ***“Work Plan”***).

(b) Detailed Financial Plan. The Multi-Year Financial Plan Summary for the Program, which is set forth in Annex II to the Compact, shows the estimated annual contribution of MCC Funding to administer, monitor and evaluate the Program and to implement each Project (the ***“Multi-Year Financial Plan”***). Except as MCC agrees otherwise in writing, MCA-Nepal will develop and implement for each quarter for the upcoming year and on an annual basis for each year of the remaining years of the Compact Term, a detailed financial plan consistent with the U.S. fiscal year and in accordance with the Reporting Guidelines, setting forth funding requirements for the Program (including administrative costs) and for each Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis (each, a ***“Detailed Financial Plan”***).

(c) Audit Plan. MCA-Nepal will develop and implement a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of the entities that are subject to audit pursuant to the Audit Guidelines (the ***“Audit Plan”***). The Audit Plan will be in form and substance satisfactory to MCC and will be developed no later than sixty (60) days before the end of the first period to be audited.

(d) Procurement Plan. MCA-Nepal will prepare periodic procurement plans for acquiring the goods, works, and consultant and non-consultant services needed to implement the Compact (each, a “**Procurement Plan**”). Each Procurement Plan will be prepared and updated in accordance with the MCC Program Procurement Guidelines. In addition, no later than six months after the Compact enters into force as provided in Article 7 of the Compact, MCA-Nepal will develop and implement a bid challenge system (“**BCS**”) that provides suppliers, contractors and consultants that are interested parties the ability to seek review of procurement actions and decisions. The organization, rules and procedures of such BCS will be subject to MCC approval. Upon MCC’s approval of the BCS, MCA-Nepal will publish the BCS on the MCA-Nepal website.

Section 2.2 Fiscal Accountability Plan.

Except as MCC agrees otherwise in writing, MCA-Nepal will develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that MCA-Nepal will use to ensure appropriate fiscal accountability for the use of MCC Funding, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and in the procurement of goods, works and services. The Fiscal Accountability Plan will also include, but not be limited to, requirements with respect to (a) budgeting, (b) accounting, (c) cash management, (d) financial transactions (receipts and payments), (e) opening and managing Permitted Accounts, (f) personnel and payroll, (g) travel and vehicle use, (h) asset and inventory control, (i) audits, and (j) reporting. The Fiscal Accountability Plan will be revised periodically, subject to review and approval by MCC.

Section 2.3 M&E Plan.

Unless MCC agrees otherwise in writing, no later than ninety (90) days after the Compact enters into force as provided in Article 7 of the Compact, MCA-Nepal will develop and implement an M&E Plan that will serve as the primary governing document for monitoring and evaluation activities for the Program over the Compact Term. The M&E Plan will be developed, implemented and updated in accordance with the MCC M&E Policy.

Section 2.4 Environmental and Social Performance Plans.

In accordance with Section 1.2(b)(iii), MCA-Nepal will ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with the MCC Environmental Guidelines, including the IFC Performance Standards that are incorporated by reference therein. Specifically, MCA-Nepal will: (i) cooperate with or complete, as the case may be, any ongoing Environmental and Social Impact Assessments and, if necessary, undertake and complete any additional environmental and social assessments and analyses, such as Environmental and Social Management Plans, environmental and social audits, resettlement policy frameworks, and resettlement action plans required under the laws of Nepal, the MCC Environmental Guidelines, this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines, or as otherwise required by MCC, each in form and

substance satisfactory to MCC; (ii) ensure that Project or Activity-specific Environmental and Social Management Plans are developed and all relevant measures contained in such plans are integrated into project design, the applicable procurement documents and associated finalized contracts, in each case, in form and substance satisfactory to MCC; and (iii) implement to MCC's satisfaction appropriate environmental and social mitigation measures identified in such assessments or plans or developed to address environmental and social issues identified during Compact implementation.

Section 2.5 Social and Gender Integration Plan.

To ensure social inclusion and gender integration across the Projects and Activities, address human trafficking, and ensure compliance with the MCC Gender Policy and the MCC Gender Integration Guidelines, MCA-Nepal will develop a comprehensive social and gender integration plan ("***Social and Gender Integration Plan***") that, at a minimum, (i) identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable and/or underrepresented groups; (ii) sets forth strategies for consolidating the findings and recommendations of Project-specific social and gender analyses into final Project designs; (iii) specifies actions to be taken during the Compact Term to meet the social inclusion and gender equality objectives for the Projects; and (iv) ensures, through monitoring and coordination during Compact implementation, that final Activity designs, construction tender documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses. MCA-Nepal will, on an annual basis, review and update the Social and Gender Integration Plan as needed to reflect lessons learned and Project-specific analysis.

Section 2.6 MCC Program Procurement Guidelines and MCC Approval of Grants.

In accordance with Section 3.6 of the Compact:

(a) MCA-Nepal will comply with the MCC Program Procurement Guidelines in the procurement (including solicitation) of all goods, works and services and the award and administration of contracts in furtherance of the Compact. In addition, the Government will ensure that any bid challenges are conducted in accordance with the MCC Program Procurement Guidelines and the BCS; and

(b) Unless MCC otherwise consents in writing, MCA-Nepal will ensure that grants awarded to any non-Government entity in furtherance of the Program are awarded and administered pursuant to an open, fair, and competitive procedure administered in a transparent manner.

Section 2.7 Notice to Providers; Incorporation.

(a) MCA-Nepal will notify all Providers (and all other entities or individuals receiving MCC Funding in connection with the Program) of the requirements of Section 2.7 of the Compact and will include, or ensure the inclusion of, the requirements of Section 2.7 of the Compact in all agreements with a Provider if MCC is not a party to such agreements.

(b) MCA-Nepal will include, or ensure the inclusion of, the requirements of:

(i) Sections 2.1(c) and 2.8(c) of this Agreement and Section 3.7 of the Compact and paragraphs (b)(i) and (ii), (c), and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Section 3.7 of the Compact and paragraphs (b)(i) and (ii) and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Provider that does not meet the definition of a Covered Provider, on the other hand;

(iii) Section 3.7 of the Compact and paragraphs (b)(i) and (ii), (c), and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a Covered Provider that is a non-profit organization domiciled in the United States, on the other hand; and

(iv) Section 3.7 of the Compact and paragraphs (b)(iii), (c) and (d) of Section 3.8 of the Compact in all agreements financed with MCC Funding between the Government or any entity of the Government, on the one hand, and a non-U.S. Covered Provider, on the other hand.

Section 2.8 Reports; Notices.

(a) Unless MCC agrees otherwise in writing, MCA-Nepal will periodically provide to MCC, in form and substance satisfactory to MCC, the reports and information required by the Reporting Guidelines (each, a “***Periodic Report***”). MCA-Nepal will provide the Periodic Reports to MCC on the schedule specified in the Reporting Guidelines, and the Periodic Reports will be consistent with the Reporting Guidelines in all respects.

(b) On October 30 of each year of the Compact Term (or within thirty (30) days of any written request by MCC), MCA-Nepal will provide to MCC an annual supplemental report containing the following information:

(i) the progress made by the Government toward achieving the Compact Goal and Project Objectives;

(ii) additional information on accomplishments not presented in the Periodic Reports;

(iii) developments in Compact implementation related to the consultative process, donor coordination, and lessons learned; and

(iv) any report or document required to be delivered to MCC in connection with the Program under the MCC Environmental Guidelines (including the IFC Performance Standards that are incorporated by reference therein), any Audit Plan, or any Implementation Plan Document.

(c) MCA-Nepal will furnish, or use its best efforts to furnish, to MCC an audit report in a form satisfactory to MCC for each audit required under the Compact, other than audits arranged for by MCC, no later than ninety (90) days after the end of the period under audit, or such other time as may be agreed by MCC from time to time.

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

(e) In addition to the Periodic Reports, MCA-Nepal will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MCA-Nepal in writing, such other reports, documents, or information as MCC may request from time to time related to the Program, including any component of the Implementation Plan, the Fiscal Accountability Plan, the Program Guidelines, or any Disbursement.

(f) MCA-Nepal will submit the Periodic Reports and any other reports required hereunder electronically if requested by MCC or otherwise required by the Reporting Guidelines.

(g) MCA-Nepal will furnish MCC with a report, in form and substance satisfactory to MCC, by no later than March 31 of each calendar year regarding the Government's contribution to the objectives of the Program required by Section 2.6(a) of the Compact. The report will cover the calendar year just ended and the projected contributions for the current fiscal year.

Section 2.9 Transactions Subject to MCC Approval.

Each of the following transactions, activities, agreements, and documents requires MCC's prior written approval:

(a) Disbursements;

(b) the Implementation Plan (including each element or component thereof), the Fiscal Accountability Plan, the M&E Plan, and the Program Closure Plan and any modification of any of the foregoing;

(c) agreements between the Government and MCA-Nepal, and agreements in which any of the following are appointed, hired or otherwise engaged (each, a “**Material Agreement**”):

(i) Auditor or Reviewer;

(ii) Fiscal Agent;

(iii) Procurement Agent;

(iv) Bank;

(v) Project Partner; and

(vi) a member of the Board of Directors (including any Observer) or any Officer of MCA-Nepal (including agreements regarding compensation for any such person);

(d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;

(e) any agreement or transaction of MCA-Nepal that is not arm’s-length;

(f) any pledge of any MCC Funding or any Program Assets, or any incurrence of material indebtedness, or any guarantee, directly or indirectly of any indebtedness;

(g) any decree, legislation, regulation, charter, contractual arrangement or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization or governance of, MCA-Nepal (including the Bylaws and any staffing plan) (each, a “**Governing Document**”);

(h) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of MCA-Nepal;

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

(j) (A) any change of any member of the Board of Directors (including any Observer), of the member serving as the chairperson or in the composition or size of the Board of Directors, and the filling of any vacant seat of any member of the Board of Directors (including any Observer), (B) any change of any Officer of MCA-Nepal or in the composition or size of its management unit, and the filling of any vacant position of any Officer of MCA-Nepal, and (C) any material change in the composition or size of any Stakeholders’ Committee;

(k) any decision by MCA-Nepal to engage, accept or manage any funds in addition to MCC Funding (including from the Government or any donor agencies or organizations) during the Compact Term, or to engage in any activities or undertake any duties or responsibilities other than the Designated Rights and Responsibilities;

(l) any agreement, transaction, decision or other action or document for which MCC approval is required under any of the Program Guidelines; and

(m) any amendment, supplement, replacement, termination, revocation or other change to any of the foregoing documents or arrangements.

Section 2.10 Role of Certain Entities in Implementation.

(a) **Fiscal Agent.** MCA-Nepal will engage a Fiscal Agent, who will be responsible for, among other things, (i) ensuring and certifying that Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Fiscal Agent Agreement and the Bank Agreement, (ii) instructing the Bank to make Disbursements from a Permitted Account or requesting Disbursement be made directly to a provider as payment for goods, works, or services in accordance with the Common Payment System or any alternate payment system approved by MCC, as the case may be, and in each case following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding financial transactions, and (v) producing reports on Disbursements in accordance with established procedures set forth in the Fiscal Agent Agreement or the Bank Agreement. MCA-Nepal will enter into an agreement with the Fiscal Agent, in form and substance satisfactory to MCC, which sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions (the “**Fiscal Agent Agreement**”). Unless MCC agrees otherwise in writing, the Fiscal Agent will be a third party, independent of the Government.

(b) **Auditors and Reviewers.** MCA-Nepal will engage one or more auditors as contemplated in the Audit Guidelines (each, an “**Auditor**”). As requested by MCC in writing from time to time, MCA-Nepal will also engage an independent (i) reviewer to conduct reviews of performance and compliance under the Compact, which reviewer will have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct reviews of environmental and social performance, and (3) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III to the Compact, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a “**Reviewer**”). MCA-Nepal will select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MCA-Nepal will enter into an agreement with each Auditor or Reviewer, in form and substance acceptable to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions (the “**Auditor / Reviewer Agreement**”). The requirements of this Section 2.10(b) do not preclude the Office of the Auditor General of Nepal from conducting audits of MCA-Nepal.

(c) Procurement Agent. MCA-Nepal will engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Nepal will enter into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions (the “*Procurement Agent Agreement*”). Unless MCC agrees otherwise in writing, the Procurement Agent will be a third party, independent of the Government.

Section 2.11 Publicity and Transparency.

(a) Subject to Section 2.12, MCA-Nepal will give appropriate publicity to the Compact as a program to which the United States, through MCC, has contributed, including by identifying Program Activity sites and marking Program Assets, all in accordance with MCC’s *Standards for Global Marking*. Upon the termination or expiration of the Compact, the Government, upon MCC’s request, will cause the removal of any such references and markings on the MCA-Nepal Website or in any Government or MCA-Nepal publicity materials.

(b) MCA-Nepal will make information concerning implementation of the Compact publicly available, including by posting the following documents in English, on the website operated by MCA-Nepal (the “*MCA-Nepal Website*”), all to the extent contemplated by and in accordance with the Governance Guidelines: (i) Compact, (ii) this Agreement, (iii) minutes of the meetings of the Board of Directors and minutes of the meetings of the Stakeholders’ Committees as they relate to MCA-Nepal; (iv) the M&E Plan, along with periodic reports and final evaluations on Program performance; (v) all Environmental and Social Impact Assessments and Resettlement Action Plans for the Projects and supporting documents; (vi) all social and gender assessments and the Social and Gender Integration Plan; (vii) all audit reports by an Auditor and any periodic reports or evaluations by a Reviewer; (viii) all Disbursement Requests; (ix) all reports required to be submitted to MCC under the terms of this Agreement (including the reports required under Section 2.8(a)); (x) all procurement policies and procedures (including standard documents, procurement plans, notice of contract award decisions and the BCS) and any other procurement documents required to be made publicly available under the MCC Program Procurement Guidelines; (xi) a copy of any legislation or other documents related to the formation, organization or governance of MCA-Nepal (except to the extent classified), including the Governing Documents and any amendments thereto; and (xii) such other materials as MCC may request; ***provided, however***, that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC will be subject to MCC’s prior approval and must be consistent with any instructions provided by MCC in relevant Implementation Letters.

(c) Notwithstanding Section 2.11(b), information relating to procurements prior to the award of a contract and confidential information relating to MCA-Nepal’s agreements with employees, contractors and consultants will be excluded from the information and documents made publicly available; ***provided, however***, that MCC and MCA-Nepal will mutually determine whether any information to be excluded is confidential.

Section 2.12 Branding and Enforcement.

(a) Subject to Section 4.2(g), MCC hereby grants MCA-Nepal a revocable, royalty-free, fully paid and non-exclusive right and license to use MCC's logo and the names "Millennium Challenge Corporation," "Millennium Challenge Account" and "MCC," in each case, solely in accordance with the *MCC Standards for Global Marking*. Any such use of the logo and names will be solely for the benefit of MCC, and will not inure to the benefit of MCA-Nepal. The use of MCC's logo and names will not create any agency or legal representation, and MCA-Nepal has no authority to bind MCC in any way.

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

(c) MCA-Nepal will take all reasonable steps to ensure that the names "Millennium Challenge Account-Nepal" and "MCA-Nepal," as well as its own logo, will enjoy maximum protection under the laws now or hereafter in effect in Nepal throughout the term of this Agreement. This includes the registration of the names and the logo as a trademark, if appropriate, the monitoring of unauthorized use by third parties, and, in case of detection of unauthorized use, the enforcement of such rights. MCA-Nepal will inform MCC as soon as practicable if it becomes aware of any infringement, threat of infringement, or any other use by a third party that has not been authorized by MCC of any of: (i) the names "Millennium Challenge Account-Nepal" and "MCA-Nepal," and/or MCA-Nepal's logo; or (ii) the names "Millennium Challenge Corporation" and "MCC," and/or MCC's logo. MCA-Nepal will provide MCC assistance to enforce MCC's rights to the names "Millennium Challenge Corporation" and "MCC," as well as to MCC's logo.

Section 2.13 Government Contribution.

(a) In accordance with Section 2.6(a) of the Compact, the Government will make an appropriate contribution toward meeting the objectives of the Compact. Such contribution will be in addition to the Government's spending allocated toward such objectives in its budget for its fiscal year 2019. The Government's anticipated contributions from its national budget for fiscal years 2020 through 2024 are set forth in Schedule 3 to this Agreement. Such contributions remain subject to any legal requirements in Nepal for the budgeting and appropriation of such contributions, including approval of the Government's annual budget by Nepal's legislature. The Government's contribution may include in-kind and financial contributions (including obligations of the Government on any debt incurred toward meeting the objectives).

(b) Unless otherwise agreed by the Parties in writing, contributions denominated in the local currency of Nepal or other foreign currency will be recorded and converted to U.S. dollars at the exchange rate on the date the contribution payment is made or using an average

rate over the period of contribution, in each case, using the exchange rates published by the central bank of Nepal or such other source acceptable to MCC.

(c) The Government further agrees to adhere to the principles and procedures for managing the Government's contribution as specified in Schedule 4 to this Agreement.

ARTICLE 3.

DISBURSEMENT OF MCC FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. MCA-Nepal may request Disbursements to be made under the Compact by submitting a request in accordance with the Reporting Guidelines (each, a "***Disbursement Request***"), duly completed, to MCC not later than twenty (20) days (or such other period of time as may be agreed by MCC) prior to the commencement of each Disbursement Period. Requests for Disbursement of Program Funding and Compact Development Funding for any Disbursement Period will be made by separate Disbursement Requests using the applicable form. Unless MCC agrees otherwise in writing, MCA-Nepal may submit only one Disbursement Request for Program Funding and one Disbursement Request for Compact CDF for each quarter (such quarter, or any other period of time as agreed by MCC, the "***Disbursement Period***"). Each Disbursement Request submitted must be accompanied by the Periodic Reports covering the corresponding Disbursement Period.

(b) Approval of Disbursement Requests; Release of Proceeds.

(i) Upon receipt of a Disbursement Request, MCC will determine the appropriate amount of the Disbursement to be made based on, among other things, (A) the progress achieved under the Implementation Plan, (B) the amount of funds required to complete the activities described in the accompanying Periodic Reports during the corresponding Disbursement Period, and (C) the satisfaction, waiver or deferral of applicable conditions to such Disbursement. MCC may, in its sole discretion, disapprove any Disbursement completely or reduce the amount of any Disbursement below that proposed in a Disbursement Request based on its determination of any of the factors set forth in this Section 3.1(b)(i).

(ii) Upon MCC's approval of a Disbursement Request, the proceeds of the Disbursement may be transferred, at MCC's sole election, (A) to a Permitted Account, or (B) directly to a provider as payment for goods, works or services received by MCA-Nepal in accordance with the Common Payment System or any alternate payment system approved by MCC; ***provided, however***, that expenditures of such proceeds (including amounts transferred directly to a provider) are authorized by MCA-Nepal, and the related payment complies, as certified by the Fiscal Agent, with the most recently approved Detailed Financial Plan and the standards and procedures set forth in the Fiscal Agent Agreement and the Fiscal Accountability Plan.

(c) Permitted Accounts.

(i) Any MCC Funding to be disbursed to a bank account must be deposited in an account established by MCA-Nepal in the local currency of Nepal (the “**Local Account**”) at a financial institution acceptable to MCC, such Local Account to be interest-bearing to the extent practicable. The Local Account will be a Permitted Account. MCC and MCA-Nepal also may mutually agree in writing to the establishment of additional Permitted Accounts from time to time at financial institutions acceptable to MCC. MCA-Nepal will notify MCC promptly if any account information for a Permitted Account changes during the Compact Term and provide MCC with the updated information.

(ii) Unless otherwise authorized by MCC in writing, no funds will be co-mingled in a Permitted Account other than MCC Funding and accrued interest and earnings thereon. MCC will have the right, among other things, to view any Permitted Account statements and activity directly online, and where such viewing is not feasible, MCA-Nepal will provide copies of such written statements to MCC upon MCC’s request. Before any MCC Funding is deposited into a Permitted Account, MCA-Nepal will enter into an agreement, in form and substance satisfactory to MCC, with the financial institution approved by MCC to hold such Permitted Account (the “**Bank**”) that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to such Permitted Account (the “**Bank Agreement**”). The Fiscal Agent, and in certain specified cases in the Bank Agreement, designated representatives of MCC, will be the sole signatories on each Permitted Account.

(iii) MCC Funding held in a Permitted Account will accrue interest or other earnings in accordance with the Bank Agreement. On a quarterly basis and upon the termination or expiration of the Compact or the Bank Agreement, MCA-Nepal will ensure the transfer of all accrued interest on the United States Dollar Permitted Accounts to MCC.

(iv) Unless MCC agrees otherwise in writing, MCC Funding will be held in an authorized Permitted Account. To the extent that any amount of MCC Funding held in U.S. Dollars must be converted into the currency of Nepal for any purpose, MCA-Nepal will ensure that such amount is converted consistent with the requirements of the Bank Agreement or any other applicable Supplemental Agreement.

Section 3.2 Conditions Precedent to Disbursement of Compact Development Funding.

Prior to the initial Disbursement of Compact Development Funding or any subsequent Disbursement of Compact Development Funding, the applicable conditions set forth in Annex IV to the Compact must have been met to MCC’s satisfaction.

Section 3.3 Conditions Precedent to the Initial Disbursement of Program Funding.

Unless waived or deferred by MCC, the conditions of this Section 3.3 and the conditions set forth in Section 3.4 must have been met to MCC's satisfaction prior to the initial Disbursement of Program Funding:

(a) Entry into Force. The Compact has entered into force as provided in Article 7 of the Compact.

(b) Officers. Each of the Officers has been selected and engaged by MCA-Nepal and approved by MCC.

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

(d) M&E Plan. In the event Initial Disbursement occurs on or after 90 days following entry into force of the Compact, MCA-Nepal has developed the M&E Plan, and the plan has been approved by the Board of Directors and MCC.

(e) Implementation Plan. MCA-Nepal has developed a complete Implementation Plan.

(f) Governing Documents. MCA-Nepal delivers to MCC a copy of the official bulletin publishing the formation order creating MCA-Nepal.

Section 3.4 Conditions Precedent to Each Disbursement of Program Funding.

Unless waived or deferred by MCC, the following conditions must have been met to MCC's satisfaction prior to each Disbursement of Program Funding (including the initial Disbursement of Program Funding):

(a) Deliveries. MCA-Nepal has delivered to MCC the following documents, reports and information in form and substance satisfactory to MCC:

(i) a completed Disbursement Request, together with the Periodic Reports covering the related Disbursement Period;

(ii) copies of any reports from any technical (including environmental) auditors engaged by MCA-Nepal for any Activity delivered since the previous Disbursement Request;

(iii) a certificate of MCA-Nepal, dated as of the date of such Disbursement Request, substantially in the form provided by MCC (the "***MCA Disbursement Certificate***");

(iv) a certificate of the Procurement Agent, substantially in the form provided by MCC (the "***Procurement Agent Disbursement Certificate***"); and

(v) a certificate of the Fiscal Agent, substantially in the form provided by MCC (the “*Fiscal Agent Disbursement Certificate*”).

(b) Other Conditions Precedent. MCC has determined in its sole discretion that:

(i) all applicable conditions precedent in Schedule 2 have been duly satisfied, deferred or waived as provided in this Agreement;

(ii) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Nepal or any Government entity has occurred and is continuing under the Compact, this Agreement or any other Supplemental Agreement;

(iii) the activities to be funded with such Disbursement will not violate any applicable law or regulation;

(iv) the Implementation Plan Documents and Fiscal Accountability Plan are current and updated and are in form and substance satisfactory to MCC, and there has been progress satisfactory to MCC on the components of the Implementation Plan for any relevant Projects or Activities related to such Disbursement;

(v) there has been progress satisfactory to MCC on the M&E Plan and Social and Gender Integration Plan for the Program, relevant Project or Activity and substantial compliance with the requirements of the M&E Plan and Social and Gender Integration Plan (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period);

(vi) all Government entities involved in the implementation of the Program, including the Project Partners, are coordinating successfully with MCA-Nepal and dedicating the necessary staff and other resources to ensure successful implementation of the Program;

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

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

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

(x) MCC does not have grounds for concluding that any matter certified to it in the related MCA Disbursement Certificate, Procurement Agent Disbursement Certificate or Fiscal Agent Disbursement Certificate is not as certified;

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

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

(xiii) MCA-Nepal has complied in all material respects with its obligations set forth in Section 2.1(d) with respect to the establishment of a BCS and its obligations set forth in Section 2.3 with respect to the establishment of an M&E Plan; and

(xiv) the Government has complied in all material respects with its obligations set forth in Section 2.13 with respect to the making of its contributions in accordance with the projected timeline set forth in Schedule 3, and the implementation structure set forth in Schedule 4.

Section 3.5 Authorized Expenditures.

Except as MCC agrees otherwise in writing, a Disbursement or financial commitment involving MCC Funding may be made, and a Disbursement Request may be submitted, only if the related expense is provided for in the Detailed Financial Plan and sufficient uncommitted funds exist in the Detailed Financial Plan for the relevant period.

ARTICLE 4.

EFFECTIVENESS OF THIS AGREEMENT; CONSEQUENCES OF COMPACT TERMINATION, SUSPENSION AND EXPIRATION

Section 4.1 Entry into Force of this Agreement.

This Agreement will enter into force upon the later of (a) the signing of this Agreement by each of the Parties to this Agreement and (b) the date that the Compact enters into force as provided in Article 7 of the Compact; ***provided, however***, that the Parties agree that upon signature of this Agreement, and until this Agreement enters into force, the Parties will provisionally apply the terms of this Agreement.

Section 4.2 Consequences of Compact Termination, Suspension or Expiration.

(a) Upon the suspension, in whole or in part, of the Compact or any MCC Funding, all applicable Disbursements will be suspended, and MCC may request the Government to return any MCC Funding (or portion thereof) on deposit in any Permitted Account; ***provided, however***, MCC Funding may be used, in compliance with the Compact and this Agreement and with written consent of MCC, to pay for (i) reasonable expenditures for goods, works or services that were properly incurred under or in furtherance of the Program before the suspension of the

Compact or any MCC Funding; and (ii) reasonable costs incurred in connection with the suspension of the Compact or any MCC Funding.

(b) Upon the termination, in whole or in part, of the Compact or any MCC Funding, all applicable Disbursements will cease; *provided, however*, MCC Funding may be used, in compliance with the Compact and this Agreement and with written consent of MCC, to pay for (i) reasonable expenditures for goods, works or services that were properly incurred under or in furtherance of the Program before termination of the Compact or any MCC Funding, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program (or any part thereof) within 120 days after the termination of the Compact or any MCC Funding.

(c) Upon expiration of the Compact, all Disbursements will cease; *provided, however*, MCC Funding may be used, in compliance with the Compact and this Agreement, to pay for (i) reasonable expenditures for goods, works or services that were properly incurred under or in furtherance of the Program before expiration of the Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration.

(d) Subject to Sections 4.2(b) and (c), upon the expiration or termination of the Compact or MCC Funding, the Government will return to MCC any amounts of MCC Funding on deposit in any Permitted Account but not expended before the expiration or termination, plus accrued interest thereon, within thirty (30) days after the Government receives MCC's request for such return; *provided, however*, that if the Compact is terminated in part, only the amount of MCC Funding allocated to the terminated portion will be subject to return.

(e) Upon the full or partial termination of the Compact or any MCC Funding, MCC may, at its expense, direct that title to any Program Assets be transferred to MCC if such Program Assets are in a deliverable state, and the Government will promptly effect such transfer upon such direction; *provided, however*, that, for any Program Asset not in a deliverable state and any Program Asset partially purchased or funded with MCC Funding, the Government, upon MCC's request, will reimburse MCC in United States Dollars the cash equivalent of the fair market value of such Program Asset or portion thereof, as such is determined by MCC.

(f) Prior to expiration or upon termination of the Compact, the Parties will consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Nepal, (ii) the process for ensuring the refunds of Disbursements that have not yet been released from a Permitted Account or committed in accordance with Sections 4.2(b) and (c), and (iii) any other matter related to the winding up of the Program and the Compact.

(g) No later than 120 days after the expiration or termination of the Compact, unless MCC agrees otherwise in writing, (i) the licenses granted to MCA-Nepal in Section 2.12(a) will terminate with immediate effect, (ii) the Government will ensure that MCA-Nepal ceases to be named "Millennium Challenge Account-Nepal" and/or "MCA-Nepal," and (iii) the Government will take reasonable steps to ensure that such names and any associated logo, as well as the

names “Millennium Challenge Corporation” and “MCC,” as well as any logo associated therewith, are no longer used by MCA-Nepal or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of the Compact, MCA-Nepal will assign and hereby assigns and transfers to MCC all right, title, and interest to the names “Millennium Challenge Account-Nepal,” “MCA-Nepal,” “Millennium Challenge Corporation,” “MCC,” as well as MCA-Nepal’s logo and MCC’s logo that it might have acquired during the term of this Agreement.

(h) MCC and the Government recognize that the effects of the Compact will be long-ranging and its impact on reducing poverty may not be measurable for several years after the Compact ceases to be in force. Accordingly, MCC and the Government agree to cooperatively monitor the results and evaluate the impacts of the Compact on reducing poverty through economic growth in Nepal after the Compact ceases to be in force. As part of this cooperation, prior to expiration or upon termination of the Compact and in addition to the actions described in Section 4.2(f), the Parties will develop a post-Compact monitoring and evaluation plan that describes the future monitoring and evaluation activities, the individuals and organizations that will undertake these activities, and a budget framework for future monitoring and evaluation; *provided, however*, that nothing in this Section 4.2(h) will be construed as committing MCC to provide any assistance to the Government after the Compact ceases to be in force. The Government agrees to provide all resources necessary (including both financial and personnel) to fulfill the tasks undertaken by the Government under the post-Compact monitoring and evaluation plan.

ARTICLE 5.

GENERAL PROVISIONS

Section 5.1 Representatives.

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

Section 5.2 Communications.

The provisions of Section 4.1 of the Compact are incorporated herein by reference as if fully set forth herein, provided that documents or communications submitted to MCA-Nepal will be submitted at the following address:

Millennium Challenge Account Nepal (MCA-Nepal)
Attention: Executive Director
Yak & Yeti Complex, Durbar Marg
Kathmandu, Nepal

Tel: +977-1-4238353
Fax: +977-1-4238392

Section 5.3 Assignments.

The Government may not assign, delegate or contract implementation of its rights or obligations under this Agreement without MCC's prior written consent. The Government agrees, upon request by MCC, to execute an assignment to MCC of any contractual right or cause of action which may accrue to the Government or MCA-Nepal in connection with or arising out of the contractual performance or breach of performance by a party to a contract financed in whole or in part by MCC Funding.

Section 5.4 Amendment; Waivers.

The Parties may amend this Agreement only by a written agreement signed by the Parties. Such agreement will provide how it enters into force; *provided, however*, that the Government and MCC may by written agreement, signed by the Principal Representative or any Additional Representative of each Party and which will enter into force upon signature, modify any schedule hereto. The Parties understand that any modification of this Agreement may be entered into by the Government without the need for further action by the Government (including any parliamentary action), or satisfaction of any additional domestic requirements of Nepal. Any waiver of a right or obligation arising under this Agreement will be effective only if provided in writing.

Section 5.5 Attachments.

Each exhibit, schedule, and annex attached to this Agreement constitutes an integral part of this Agreement.

Section 5.6 Inconsistencies.

In the event of any conflict or inconsistency between this Agreement and the Compact, the terms of the Compact will prevail. In the event of any conflict or inconsistency between this Agreement and any other Supplemental Agreement or any Implementation Plan Document, the terms of this Agreement will prevail.

Section 5.7 Termination of this Agreement.

(a) MCC may terminate this Agreement, in whole or in part, without cause by giving the Government thirty (30) days' written notice. This Agreement will terminate simultaneously with the termination of the Compact by the Government in accordance with Section 5.1(a) of the Compact.

(b) MCC may immediately terminate this Agreement, in whole or in part, by written notice to MCA-Nepal and the Government if MCC determines that any event that would be a basis for termination or suspension of the Compact or MCC Funding under Section 5.1(b) of the Compact has occurred.

(c) Unless terminated earlier in accordance with the terms hereof, this Agreement will cease to be in force simultaneously with the expiration or termination of the Compact; ***provided, however,*** that, if MCC determines, consistent with Section 4.2 (b) or (c), that obligations incurred (and previously approved by MCC in a Disbursement Request) prior to the expiration or termination of the Compact remain to be paid, then the provisions of this Agreement will apply until such date as such obligations are satisfied.

Section 5.8 Survival.

Notwithstanding any expiration, suspension or termination of this Agreement, the following provisions of this Agreement will survive: Sections 1.2(b)(i), 1.2(b)(ii), 2.11, 4.2, 5.1, 5.2, 5.3, 5.8, 5.9 and 5.10.

Section 5.9 Information Provided to MCC.

MCC may use or disclose any information in any Disbursement Request, report or document developed or delivered in connection with the Program: (a) to its employees, contractors, agents and representatives, (b) to any United States inspector general or the United States Government Accountability Office or otherwise for the purpose of satisfying MCC's own reporting requirements, (c) by posting on the MCC Website for the purpose of making certain information publicly available and transparent, (d) in connection with publicizing MCC and its programs, or (e) in any other manner.

Section 5.10 Governing Law.

The Parties acknowledge and agree that this Agreement is an international agreement entered into for the purpose of implementing the Compact and as such will be interpreted in a manner consistent with the Compact and will be governed by the principles of international law.

Section 5.11 Counterparts; Electronic Delivery.

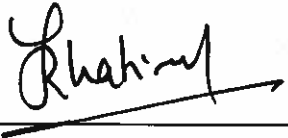
Signatures to this Agreement and to any amendment to this Agreement will be original signatures appearing on the same page or in an exchange of letters or diplomatic notes.

Signature Page Follows on the Next Page

IN WITNESS WHEREOF, each Party, by its duly authorized representative, has signed this Program Implementation Agreement.

Done at Kathmandu, Nepal, this 29 day of September, 2019, in the English language only.

**FOR THE FEDERAL DEMOCRATIC
REPUBLIC OF NEPAL, acting through
THE MINISTRY OF FINANCE**



Name: Dr. Yuba Raj Khatriwada
Title: Minister of Finance

**FOR THE UNITED STATES OF
AMERICA, acting through THE
MILLENNIUM CHALLENGE
CORPORATION**



Name: Anthony Welcher
Title: Vice President, Compact Operations

Schedule 1

DEFINITIONS

***Agreement** has the meaning provided in the preamble to this Agreement.*

***Audit Plan** has the meaning provided in Section 2.1(c).*

***Auditor** has the meaning provided in Section 2.10(b).*

***Auditor / Reviewer Agreement** has the meaning provided in Section 2.10(b).*

***Bank** has the meaning provided in Section 3.1(c)(ii).*

***Bank Agreement** has the meaning provided in Section 3.1(c)(ii).*

***BCS** has the meaning provided in Section 2.1(d).*

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

***CDF Agreement** has the meaning provided in Section 1.3(b)(ii).*

***Common Payment System** means the system pursuant to which payments of MCC Funding are made directly to vendors as further described in the Fiscal Accountability Plan.*

***Compact** has the meaning provided in the first recital to this Agreement.*

***Contribution Account** has the meaning provided in Schedule 4.*

***Counterparty** has the meaning provided in Section 1.3(b)(vi).*

***Designated Rights and Responsibilities** has the meaning provided in Section 1.3(a)(i).*

***Detailed Financial Plan** has the meaning provided in Section 2.1(b).*

***Disbursement Period** has the meaning provided in Section 3.1(a).*

***Disbursement Request** has the meaning provided in Section 3.1(a).*

***Environmental and Social Impact Assessment or ESIA** means a process for predicting, identifying, and assessing the potential environmental and social impacts of a proposed business activity or project, evaluating alternatives and designing appropriate mitigation, management and monitoring measures.*

***Environmental and Social Management Plan or ESMP** means a plan or strategy specifying the measures that will be taken to ensure that social and environmental impacts, risks and liabilities*

identified during the ESIA process are effectively managed during the construction, operation and closure of the proposed project.

Environmental and Social Management System or ESMS means a set of policies, procedures, tools and internal capacity to identify and manage an institution's exposure to the environmental and social risks of its clients, investees or stakeholders.

Fiscal Accountability Plan has the meaning provided in Section 2.2.

Fiscal Agent Agreement has the meaning provided in Section 2.10(a).

Fiscal Agent Disbursement Certificate has the meaning provided in Section 3.4(a)(v).

Funded Agreement has the meaning provided in Section 1.3(b)(vi).

General Provisions Annex means the annex titled General Provisions posted from time to time on the MCC Website or otherwise made available to the Government.

Governance Guidelines means the MCC Guidelines for Accountable Entities and Implementation Structures.

Governing Document has the meaning provided in Section 2.9(g).

Government has the meaning provided in the preamble to this Agreement.

IFC Performance Standards has the meaning provided in Section 1.2(b)(iii).

Implementation Plan has the meaning provided in Section 2.1.

Implementation Plan Document has the meaning provided in Section 2.1.

Lien has the meaning provided in Section 1.2(b)(i).

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

Matching Fund has the meaning provided in part C of Schedule 2.

Material Agreement has the meaning provided in Section 2.9(c).

MCA Disbursement Certificate has the meaning provided in Section 3.4(a)(iii).

MCA-Nepal Website has the meaning provided in Section 2.11(b), with the following address as of the date hereof: <https://mcanp.org>.

MCC has the meaning provided in the preamble to this Agreement.

MCC Gender Integration Guidelines means the guidelines on the operational procedures and milestones for gender integration in all stages of MCC program development and implementation.

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

Observer has the meaning provided in the Governance Guidelines.

Officer has the meaning provided in the Governance Guidelines.

Party and Parties have the meaning provided in the preamble to this Agreement.

Periodic Report has the meaning provided in Section 2.8(a).

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

Procurement Agent Agreement has the meaning provided in Section 2.10(c).

Procurement Agent Disbursement Certificate has the meaning provided in Section 3.4(a)(iv).

Procurement Plan has the meaning provided in Section 2.1(d).

Program Closure Plan means the closure plan developed under the Program Closure Guidelines.

Resettlement Action Plan or **RAP** means a plan designed to mitigate the negative impacts of the physical displacement of persons caused by project implementation.

Reviewer has the meaning provided in Section 2.10(b).

Social and Gender Integration Plan has the meaning provided in Section 2.5.

Strategic Road Maintenance Works Activity means the activity described in part B.2(a)(ii) of the Annex I to the Compact.

Transmission Lines Activity means the activity described in part B.1(a)(i) of the Annex I to the Compact.

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

Schedule 2

CONDITIONS PRECEDENT TO PROGRAM FUNDING

PART A. Conditions Precedent for All Projects

(i) Prior to the initial Disbursement of Program Funding to occur on or after 90 days following the Compact's entry into force, for all Projects, MCA-Nepal will have developed and approved a comprehensive Social and Gender Integration Plan and the M&E Plan, both in form and substance satisfactory to MCC.

(ii) Prior to the initial Disbursement of Program Funding for a particular works or construction contract for a given Project or Activity, MCA-Nepal will have submitted to MCC evidence, in form and substance satisfactory to MCC, that MCA-Nepal has established all necessary components of the Environmental and Social Management System ("**ESMS**").

(iii) Prior to each Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Nepal must have submitted to MCC evidence, in form and substance satisfactory to MCC, that:

(A) MCA-Nepal or the appropriate Government entity has established an Environmental and Social Impact Assessment ("**ESIA**"), an Environmental and Social Management Plan ("**ESMP**"), and/or a Resettlement Action Plan ("**RAP**") (as appropriate) with respect to such Activity, each of which must be in form and substance satisfactory to MCC; and

(B) MCA-Nepal or the appropriate Government entity is implementing the requirements of each ESIA, ESMP, forest clearance plan, Health and Safety Management Plan, RAP or other ESMS component, as appropriate, in all material respects and consistent with the MCC Environmental Guidelines (including the IFC Performance Standards that are incorporated by reference therein).

(iv) Prior to any Disbursement of Program Funding on or after the commencement of year five (5) of the Compact Term, the Government must have submitted to MCC an initial draft Program Closure Plan in accordance with the MCC Program Closure Guidelines.

(v) Prior to the initial Disbursement for each Activity, MCA-Nepal and all appropriate Government entities will have signed any Project Cooperation Agreements relevant for the specific Activity receiving funds.

PART B. Conditions Precedent for the Electricity Transmission Project

(i) Prior to any Disbursement of Program Funding for the Electricity Transmission Project, the Government will have provided evidence, in form and substance satisfactory to MCC, of a schedule and procedures, for the disbursement of the Government Contribution as set forth in Annex II of the Compact and Schedule 3 to this Agreement, and the Government shall be in compliance with such schedule.

(ii) Prior to any Disbursement of Program Funding for the transmission line from New Butwal to the Nepal-India border as part of the Transmission Lines Activity, the Government will have provided evidence, in form and substance satisfactory to MCC, that steps necessary to ensure that the construction of the transmission line between the Nepal-India border and Gorakhpur are on track to be completed on or about the Compact End Date.

(iii) Prior to the initial disbursement for payment under a particular works or construction contract for the Electricity Transmission Project, the Government will have provided evidence, in form and substance satisfactory to MCC, that approval has been issued for forest clearance for proposed MCC funded projects in alignment with domestic regulation and MCC standards.

(iv) Prior to the initial disbursement for payment under a particular works or construction contract for the Electricity Transmission Project, the Government must have committed financing for and submitted a plan, in form and substance acceptable to MCC, establishing a timeline for construction of the substation upgrades required to accommodate 400kV operation at Hetauda and Lapsephedi.

PART C. Conditions Precedent for the Road Maintenance Project

(i) Prior to the initial Disbursement of Program Funding for the matching fund component of the Strategic Road Maintenance Works Activity (the “*Matching Fund*”), the Government will have provided evidence, in form and substance satisfactory to MCC, of the Government having budgeted at least US\$47,500,000 for road maintenance works for the upcoming year.

(ii) Prior to the Disbursement of Program Funding for the second tranche of funding for the Matching Fund (i) the Government will have provided evidence, in form and substance satisfactory to MCC, of the Government having budgeted at least US\$55,000,000 for road maintenance works, reflecting a priority for routine, recurrent and periodic maintenance works, for the upcoming year; and (b) the Government will have provided evidence of actually expending the previous year’s US\$47,500,000 budget. If the Government has not spent its previously allocated budget, then it shall make up the difference between the amount actually spent and US\$47,500,00, on top of the US\$55,000,000.

(iii) Prior to the Disbursement of Program Funding for the third tranche of funding for the Matching Fund (i) the Government will have provided evidence, in form and substance satisfactory to MCC, of the Government having budgeted at least US\$62,500,000 for maintenance works, reflecting a priority for routine, recurrent, and periodic maintenance works, for the upcoming year; and (b) the Government will have provided evidence of actually expending the previous year’s US\$55,000,000 budget. If the Government has not spent its previously allocated budget, then it shall make up the difference between the amount actually spent and US\$55,000,000, on top of the US\$62,500,000.

Schedule 3

Anticipated Government Contribution

(\$US)							
Component	Period prior to Compact entry into force	Year 1	Year 2	Year 3	Year 4	Year 5	<u>Total</u>
Electricity Transmission Project	40,000,000	30,000,000	23,400,000	27,500,000			120,900,000
Road Maintenance Project		1,100,000	1,000,000				2,100,000
Program Management and Administration		2,300,000	1,300,000	1,900,000	1,500,000		7,000,000
<u>Grand Total</u>	40,000,000	33,400,000	25,700,000	29,400,000	1,500,000		130,000,000

Schedule 4

Principles for Management of the Government Contribution

A. General Principles.

1. Except as the Parties may otherwise agree in writing, the Government Contribution will conform to the requirements and provisions of the Compact and this Agreement, just as if they were MCC Funding. For the avoidance of doubt, any activities undertaken, in whole or in part, with the Government Contribution will adhere to, among other things, the Program Procurement Guidelines, the MCC Environmental Guidelines, and the Social and Gender Integration Plan.
2. The Government Contribution will be provided by the Government of Nepal as an unconditional grant, and may be used for any expenditures allowable under the Compact for the Compact Term.
3. The Government Contribution will begin to be disbursed to the Permitted Designee in the year listed in Schedule 3. Any funds not used in the appropriated year will be rolled over to the next year and be immediately available for Compact use. MCC and the Government intend that in the event any portion of the Government Contribution has not been expended by the end of the Compact Term, the Government will use the remaining portion of the Government Contribution to ensure sustainability of the Project Objectives.

B. Disbursement Principles for the Government Contribution.

1. In order to properly manage and account for the Government Contribution, prior to receiving the first disbursement of the Government Contribution, the Permitted Designee, will open a separate, segregated account under the Bank Agreement (the “**Contribution Account**”) for disbursements of the Government Contribution. No other accounts are authorized to receive or hold disbursements of the Government Contribution.
2. Upon proper request by the Permitted Designee, the Government will disburse the Government Contribution to the Contribution Account on a quarterly basis, beginning in July 2018.
3. The Permitted Designee will request all disbursements of the Government Contribution from Nepal’s Treasury Office under Nepal’s Financial Comptroller General Office by submitting: (i) an approved programmatic spending submission; and (ii) a progress report for activity since the previous quarter’s disbursement. The primary criterion for the Government to disburse the Government Contribution is that the Permitted Designee has spent the previous quarter’s disbursement. A future quarter’s requested disbursement amount may be decreased to account for the corresponding amount of funding still available from the previous disbursement.

4. Following submission of the relevant documents for disbursement from the Permitted Designee, Nepal's Treasury Office will not unreasonably withhold its approval of the Permitted Designee's disbursement request.
5. Upon approval of the Permitted Designee's submission, Nepal's Treasury Office will cause the next quarter's disbursement of funds to the Contribution Account.
6. Any funding not expended from the previous quarter will continue to remain available for the Permitted Designee to spend throughout the Compact Term.
7. Any and all interest accrued on Government Contribution received and held in the segregated account will be accounted for by the Permitted Designee. All accrued interest will be reverted to the Government quarterly after it is made available in the segregated account.

C. Oversight of the Government Contribution.

1. MCA-Nepal will ensure to MCC's satisfaction that the Government Contribution is fully and timely incorporated in the Implementation Plan Documents.