

PROGRAM IMPLEMENTATION AGREEMENT

BETWEEN

**THE UNITED STATES OF AMERICA
ACTING THROUGH**

THE MILLENNIUM CHALLENGE CORPORATION

AND

**THE REPUBLIC OF NIGER
ACTING THROUGH**

THE MINISTRY IN CHARGE OF FOREIGN AFFAIRS AND COOPERATION

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PROGRAM IMPLEMENTATION AGREEMENT

PREAMBLE

This PROGRAM IMPLEMENTATION AGREEMENT (this “*Agreement*”) is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (“*MCC*”), and the Republic of Niger, acting through the Ministry in Charge of Foreign Affairs and Cooperation (the “*Government*”) (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 July 29, 2016 (the “*Compact*”), sets forth the general terms on which MCC will provide assistance of up to Four Hundred Thirty-Seven Million Twenty-Four Thousand United States Dollars (US\$437,024,000) to the Government for a program to reduce poverty through economic growth in Niger;

Recalling that the Government has designated MCA-Niger 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 Annex I.

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-Niger, 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. The Government hereby affirms as follows:

(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 Niger 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) 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. Where there is a difference in standards between the national environmental laws and regulations and the standards required by the Compact, the Government will ensure that the stricter standard is followed. 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.

(iii) Social Inclusion and Gender Integration. 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.

Section 1.3 Role of MCA-Niger.

(a) Designation of MCA-Niger.

(i) Pursuant to Section 3.2(b) of the Compact, the Government has designated the Millennium Challenge Account-Niger, an independent legal entity with legal personality to be established through the passage of the Establishment Decree ("**MCA-Niger**"), 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, managing procurements and the execution of contracts for the supply of services with public international organizations (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-Niger 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-Niger, and all obligations assigned to the “Accountable Entity” in the Program Guidelines will be obligations of MCA-Niger.

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

(i) Power and Authorization. MCA-Niger 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-Niger (A) will carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Niger obligations in the Compact, the Grant and Implementation Agreement, this 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, each other Supplemental Agreement and the Program Guidelines, (B) except as provided in Section 2.10 or with respect to an Implementing Entity, 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-Niger will confirm each representation that it makes on behalf of the Government in any agreement, certificate or instrument delivered by MCA-Niger with all necessary Permitted Designees prior to providing such representation to MCC.

(iv) Autonomy. The Government will ensure that (A) no decision of MCA-Niger 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-Niger will not be expanded, restricted or otherwise modified, except in accordance with this Agreement and the Compact.

(v) Governance of MCA-Niger. MCA-Niger will adopt internal rules and regulations or bylaws, in form and substance satisfactory to MCC (the “*Bylaws*”). MCA-Niger 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-Niger will provide the Fiscal Agent (and MCC if it 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-Niger will include in each Funded Agreement (i) a covenant that the counterparty to such agreement (each a, “*Counterparty*”) will comply with (A) the General Provisions Annex and (B)

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 instruction given by MCA-Niger; (ii) a right for MCA-Niger to terminate such Funded Agreement if such Counterparty fails to comply with the General Provisions Annex or any such instruction of MCC; and (iii) a provision acknowledging MCC's third party rights under any such Funded Agreement.

(vii) Insurance; Performance Guaranties. MCA-Niger 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, without limitation, 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-Niger (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-Niger (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-Niger or as otherwise directed by MCC.

(viii) MCA-Niger Indemnity. If MCA-Niger 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-Niger 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-Niger's Board (including the Observer), each member of any Stakeholder Committee and each of MCA-Niger'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-Niger, **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) Employment Requirements and Work Visas. The Government will:

(a) permit MCA-Niger to engage staff pursuant to a definite contract for a period not to exceed two (2) years, renewable twice for the later of: (i) the maximum duration of the Compact Term and any associated winding up period, or (ii) six (6) years in total;

(b) 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 entry or work visas;

(c) 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 Niger for the duration of the Compact, without the need to exit the country for any period in the interim; and

(d) without limiting the generality of Section 2.6(a) of the Compact, contribute any incurred severance costs or other financial liabilities triggered by termination or expiration of the MCA-Niger employee contracts, pursuant to the terms of such contracts.

(x) Particular obligations relating to the Irrigation and Market Access Project.
The Government will:

(a) provide evidence satisfactory to MCC that the Sambera Rural Road is included in a community-based road maintenance program for the Dosso Department; and

(b) contribute, as appropriate and reasonable, to the provision of security for construction sites and MCA-Niger contractors.

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-Niger 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-Niger to submit clarifications or adjustments. MCA-Niger will submit an updated Implementation Plan or updated Implementation Plan Document (as applicable) during any quarter in which significant changes or modifications are made to a Project or to the Program, or when MCA-Niger 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-Niger 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-Niger will ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Work Plan. MCA-Niger 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-Niger 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, a detailed financial plan 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-Niger 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 described in Section 3.8(a) of the Compact. Changes to the period to be audited will be included in the Audit Plan and approved by MCC in writing.

(d) Procurement Plan. MCA-Niger 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 (6) months after the Compact enters into force as provided in Article 7 of the Compact, MCA-Niger 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-Niger will publish the BCS on the MCA-Niger website.

Section 2.2 Fiscal Accountability Plan. Except as MCC agrees otherwise in writing, MCA-Niger will develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that MCA-Niger 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, among other things, 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-Niger 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 Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

Section 2.4 Environmental and Social Performance Plans. In accordance with Section 1.2(b)(iii), MCA-Niger 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-Niger will: (i) develop, adopt and implement an Environmental and Social Management System (“*ESMS*”) for all Compact activities; (ii) undertake, cooperate with or complete, as the case may be, any necessary studies or plan including but not limited to environmental and social impact assessments, environmental and social management plans, environmental and social audits, resettlement policy frameworks and resettlement action plans required under the laws of Niger, 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; (iii) 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 (iv) 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 Inclusion and Gender Integration. To ensure social inclusion and gender integration across the Projects and Activities, address any issues related to trafficking in persons (“*TIP*”), and ensure compliance with the MCC Gender Policy and the MCC Gender Integration Guidelines, MCA-Niger will: (a) adhere to the MCC Gender Integration Guidelines and (b) 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 vulnerable and/or underrepresented groups; sets forth strategies for consolidating and incorporating the findings and recommendations of Project-specific social and gender analyses into final Project designs, as appropriate; and specifies actions to be taken during the Compact Term to meet the social inclusion and gender equality objectives for the Projects; and (ii) ensures, through monitoring and coordination during Compact implementation, that final Program, Project and Activity designs, construction tender and other bidding documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses. MCA-Niger 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-Niger 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, and consistent with Section 3.6(b) of the Compact, MCA-Niger will ensure that Grants awarded to any non-Government entity in furtherance of the Program (including, but not limited to, Grants made pursuant to the CRA Operations Manual, the PRAPS Operations Manual and the Facility Manual) 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-Niger 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-Niger will include, or ensure the inclusion of, the requirements of:

(i) Section 2.1(c) and Section 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-Niger 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-Niger 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 31 of each year of the Compact Term (or within thirty (30) days of any written request by MCC), MCA-Niger will provide to MCC an annual supplemental report, in form and substance satisfactory to MCC, containing the following information:

(i) the progress made by the Government toward achieving the Compact Goal, Program Objective 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-Niger will furnish, or use its best efforts to furnish, to the Inspector General an audit report in a form and substance satisfactory to the Inspector General 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 Niger 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-Niger 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-Niger will provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MCA-Niger in writing, such other reports, documents or information as MCC may request from time to time related to the Program, including, without limitation, any component of the Implementation Plan, the Fiscal Accountability Plan, the Program Guidelines or any Disbursement.

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

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 and the M&E Plan, and any modification of any of the foregoing;

(c) agreements between the Government and MCA-Niger, 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) Implementing Entity;
 - (vi) Outside Project Manager; and
 - (vii) a member of the Board (including any Observer) or any Key Staff of MCA-Niger (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-Niger 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-Niger (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-Niger;
 - (i) any change in character or location of any Permitted Account;
 - (j) (A) any change of any member of the Board (including any Observer), of the member serving as the chairperson or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any Observer), (B) any change of any Key Staff of MCA-Niger or in the composition or size of its management unit, and the filling of any vacant position of any Officer of MCA-Niger, and (C) any material change in the composition or size of any Stakeholder Committee;
 - (k) any decision by MCA-Niger 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) Outside Project Manager. MCA-Niger may engage qualified persons or entities (including any public international organization) to serve as outside project managers (each, an “**Outside Project Manager**”) in the event that it is advisable to do so for the proper and efficient day-to-day management of a Project or Activity; **provided, however**, that, if so required by the MCC Program Procurement Guidelines, the appointment or engagement of any Outside Project Manager will be made using a competitive selection process and, if required by the MCC Program Procurement Guidelines, will be subject to approval by the Board and by MCC prior to such appointment or engagement. Upon such approval, MCA-Niger may delegate, assign or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects or Activities; and **provided, further**, that MCA-Niger will remain accountable for those duties and responsibilities and all reports delivered by the Outside Project Manager notwithstanding any such delegation, assignment or contract and the Outside Project Manager will be subject to the oversight of the Fiscal Agent and Procurement Agent. The Board may determine that it is advisable to engage one or more Outside Project Managers and instruct MCA-Niger and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(b) Fiscal Agent. MCA-Niger 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 (without any additional consents or approvals beyond those required from MCA-Niger consistent with the Fiscal Accountability Plan), (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, Bank Agreement, or Fiscal Accountability Plan. MCA-Niger 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.

(c) Auditors and Reviewers. MCA-Niger 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-Niger 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 audits 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-Niger will select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines, the Program Procurement

Guidelines, and/or the M&E Plan, as applicable. MCA-Niger 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*”).

(d) Procurement Agent. MCA-Niger will engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Niger 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-Niger 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-Niger Website or in any Government or MCA-Niger publicity materials.

(b) MCA-Niger will make information concerning implementation of the Compact publicly available, including by posting the following documents in English (unless MCC agrees otherwise in writing), on the website operated by MCA-Niger (the “*MCA-Niger 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, and minutes of the meetings of the Stakeholders Committees as they relate to MCA-Niger; (iv) the M&E Plan, along with periodic reports and final evaluations on Program performance; (v) the ESMS and 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, contracts awarded 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-Niger (except to the extent classified), including the Governing Documents and any amendments thereto; (xii) the CRA Operations Manual, the PRAPS Operations Manual, the Facility Manual, and any other manual issued in connection with Section 3.6(b) of the Compact; and (xiii) 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-Niger's agreements with employees, contractors and consultants will be excluded from the information and documents made publicly available; **provided, however**, that MCC and MCA-Niger 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-Niger 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 not inure to the benefit of MCA-Niger. The use of MCC's logo and names will not create any agency or legal representation, and MCA-Niger has no authority to bind MCC in any way.

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

(c) MCA-Niger will take all reasonable steps to ensure that the names "Millennium Challenge Account-Niger" and "MCA-Niger," as well as its own logo, will enjoy maximum protection under the laws now or hereafter in effect in Niger 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-Niger 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-Niger," "MCA-Niger" and/or MCA-Niger's logo; or (ii) the names "Millennium Challenge Corporation," "MCC" and/or MCC's logo. MCA-Niger will provide MCC assistance to enforce MCC's rights to the names "Millennium Challenge Corporation" and "MCC," as well as to MCC's logo.

ARTICLE 3.

DISBURSEMENT OF MCC FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. MCA-Niger 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-Niger may submit only one Disbursement Request for Program Funding and one Disbursement Request for Compact Development Funding, 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 (if any) 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-Niger 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-Niger, 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-Niger in the local currency of Niger (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-Niger also may mutually agree in writing to the establishment of additional Permitted Accounts from time to time at financial institutions acceptable to MCC, which additional Permitted Accounts will also be interest-bearing to the extent practicable. MCA-Niger 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 on-line, and where such viewing is not feasible, MCA-Niger will provide copies of such statements to MCC upon its request. Before any MCC Funding is deposited into a Permitted Account, MCA-Niger 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, upon the termination or expiration of the Compact or the Bank Agreement, and such other time as requested by MCC, or MCA-Niger, MCA-Niger will ensure the transfer of all accrued interest to MCC.

(iv) Unless MCC agrees otherwise in writing, if MCC Funding is held in any Permitted Account other than the Local Account, MCA-Niger will ensure that such MCC Funding will be denominated in the currency of the United States of America prior to its expenditure or transfer to the Local Account. To the extent that any amount of MCC Funding held in U.S. Dollars must be converted into the currency of Niger for any purpose, MCA-Niger will ensure that such amount is converted consistent with the requirements of the Bank Agreement or any other applicable Supplemental Agreement. The Government acknowledges and agrees that it will promptly take any action necessary (including, without limitation, obtaining appropriate consents) to ensure that MCA-Niger is able to open and maintain any such Permitted Account denominated in U.S. Dollars.

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) Key Staff. Each of the Key Staff has been selected and engaged by MCA-Niger and approved by MCC.

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

(d) M&E Plan. MCA-Niger has developed the M&E Plan, and the plan has been approved by the Board and MCC.

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

(f) Governing Documents. The Government will have adopted any documents necessary to create MCA-Niger and ensure its valid operation, including, but not limited to, any required laws, decrees or regulations.

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-Niger 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-Niger for any Activity delivered since the previous Disbursement Request;

(iii) a certificate of MCA-Niger, 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 Annex II have been duly satisfied, deferred or waived as provided in this Agreement;

(ii) (A) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Niger or any Government entity has occurred and is continuing under the Compact, this Agreement or any other Supplemental Agreement, or under any systems, rules, policies, plans or guidance issued by MCA-Niger or the Government in fulfillment of any obligation set forth in the Compact or this Program Implementation Agreement (including any condition set forth in Annex II hereto); (B) the Government or MCA-Niger, as applicable, has made sufficient progress on implementing any systems, rules, policies, plans or guidance issued by the Government or MCA-Niger, as the case may be, in fulfillment of any obligation set forth in the Compact or this Program Implementation Agreement (including any condition set forth in Annex II hereto); and (C) the Government has obtained MCC's written consent to any modification of any systems, rules, policies, plans or guidance issued by the Government or MCA-Niger, as the case may be, in fulfillment of any obligation set forth in the Compact or this Program Implementation Agreement (including any condition set forth in Annex II hereto);

(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, ESMS and Social and Gender Integration Plan for the Program, relevant Project or Activity and substantial compliance with the requirements of the M&E Plan, ESMS 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 Implementing Entities, are coordinating successfully with MCA-Niger 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 Key Staff remains engaged, or if a position is vacant, MCA-Niger is actively engaged, to MCC's satisfaction, in recruiting a replacement; and

(xiii) MCA-Niger 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.

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.

ENTRY INTO FORCE 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 Section 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-Niger, (ii) the process for ensuring the refunds of Disbursements that have not yet been released from a Permitted Account or committed in accordance with Section 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-Niger in Section 2.12(a) will terminate with immediate effect; (ii) the Government will ensure that MCA-Niger ceases to be named "Millennium Challenge Account-Niger" and/or "MCA-Niger;" 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-Niger or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of the Compact, MCA-Niger will assign and hereby assigns and transfers to MCC all right, title, and interest to the names "Millennium Challenge Account-Niger," "MCA-Niger," "Millennium Challenge Corporation," "MCC," as well as MCA-Niger'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 Niger after the Compact's termination or expiration. As part of this cooperation, prior to the 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.

Section 5.3 Assignments by the Government. 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-Niger 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. 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-Niger 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: Section 1.2(b)(i), Section 2.10(a), Section 2.11, Section 4.2, Section 5.1, Section 5.2, Section 5.3, Section 5.7, Section 5.8, Section 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) to post 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 Washington, D.C., this 29th day of July, 2016, in the English language.

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

FOR THE REPUBLIC OF NIGER, acting
through THE MINISTRY IN CHARGE OF
FOREIGN AFFAIRS AND COOPERATION

/s/

Name: Dana J. Hyde
Title: Chief Executive Officer

/s/

Name: Ibrahim Yacoubou
Title: Minister in Charge of Foreign Affairs
and Cooperation

**SIGNATURE PAGE TO PROGRAM IMPLEMENTATION AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
ACTING THROUGH THE MILLENNIUM CHALLENGE CORPORATION
AND THE REPUBLIC OF NIGER
ACTING THROUGH THE MINISTRY OF FOREIGN AFFAIRS AND COOPERATION**

ANNEX I

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(c).

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

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).

Beneficiaries has the meaning provided in Annex IV.

Board means the board of directors of MCA-Niger.

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

CAFER has the meaning provided in Annex IV.

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 Preamble to this Agreement.

Compact Funding has the meaning provided in Annex IV.

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).

DGD has the meaning provided in Annex IV.

DGI has the meaning provided in Annex IV.

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

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

DREP has the meaning provided in Annex IV.

ESMS means environmental and social management system.

Exempt Person means natural or legal person providing goods, works or services, directly or indirectly, in furtherance of the Compact.

Fiscal Accountability Plan has the meaning provided in Section 2.2.

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

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)(ii).

Implementation Plan has the meaning provided in Section 2.1.

Implementation Plan Document has the meaning provided in Section 2.1.

Key Staff has the meaning provided in the Governance Guidelines.

Land Allocation Procedures has the meaning provided in Part B(v) of Annex II.

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

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

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-Niger has the meaning provided in Section 1.3(a)(i).

MCA-Niger Website has the meaning provided in Section 2.11(b).

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

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

Observer has the meaning provided in the Governance Guidelines.

ONAHA means the Office National des Aménagements Hydro Agricoles of Niger.

Outside Project Manager has the meaning provided in Section 2.10(a).

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(d).

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).

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

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

Sokoto Agreement means the Agreement between the Federal Republic of Nigeria and the Republic of Niger concerning the equitable sharing in the development, conservation and use of their common water resources done at Maiduguri, 18 July 1990 and as amended 5 October 1998.

Stakeholder Committee means each of the consultative mechanisms described in paragraph C(1) of Part III of Annex I to the Compact, and any successor or other body (approved by MCC) of representatives of the private sector, civil society and local and regional governments that has been formally established in accordance with the Governance Guidelines to provide advice and input to MCA-Niger regarding the implementation of the Program.

TIP has the meaning provided in Section 2.5.

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

ANNEX II

CONDITIONS PRECEDENT TO PROGRAM FUNDING

All documentation and evidence submitted in connection with the below-listed conditions precedent must be satisfactory, in form and substance, to MCC.

PART A. Conditions Precedent for All Projects.

(i) Prior to the initial Disbursement of Program Funding for a given Project or Activity where such Project or Activity (or any component thereof) is to be implemented by an Implementing Entity in whole or in part, MCA-Niger must have delivered to MCC an executed copy of an agreement between MCA-Niger and the relevant Implementing Entity that sets forth the roles and responsibilities of each party with respect to such Project or Activity, which agreement must be in form and substance satisfactory to MCC.

(ii) Prior to the second Disbursement of Program Funding, MCA-Niger will have developed and approved a comprehensive Social and Gender Integration Plan.

(iii) Prior to the second Disbursement of Program Funding, MCA-Niger will have developed and adopted an environmental and social management system (“*ESMS*”) (including a stakeholder engagement plan) in accordance with the MCC Environmental Guidelines (including the IFC Performance Standards that are incorporated by reference therein) as evidenced by (a) a resolution of the MCA-Niger Board of Directors adopting the ESMS; and (b) the corresponding staffing plan, training plan and budget for implementing the ESMS.

(iv) Prior to the initial Disbursement of MCC Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Niger must have submitted to MCC evidence that MCA-Niger or the appropriate Government Entity has developed and adopted an environmental and social impact assessment, an environmental and social management plan, health and safety management plan, a resettlement action plan or livelihood restoration plan (as appropriate), and a TIP risk assessment with respect to such Activity, each of which must be in form and substance satisfactory to MCC.

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

PART B. Conditions Precedent for the Irrigation and Market Access Project.

(i) Prior to the initial Disbursement of Program Funding for construction or works related to the Konni irrigation system rehabilitation, the Government will provide evidence of compliance with its international obligations implicated by the sub-Activity (including, but not limited to, the Sokoto Agreement).

(ii) Prior to the initial Disbursement of Program Funding for construction or works related to the Ouna-Kouanza (zones 4, 5, 6, 7) and Sia (Lower Terrace) perimeters in the

Dosso-Gaya area, the Government will provide evidence of compliance with its international obligations implicated by the Activity (including, but not limited to, the Ramsar Convention).

(iii) Prior to the initial Disbursement of Program Funding for construction or works related to the Irrigation Perimeter Development Activity, the Government will have issued an appropriate legal instrument, in form and substance satisfactory to MCC, (a) allowing for the creation of IWUAs; (b) permitting the IWUAs to manage, operate and maintain, on a long-term basis, the perimeter systems in the Activity's project areas; (c) affirming women's eligibility to be IWUA members and reserving a minimum percentage of seats on IWUA boards and committees for women; and (d) clarifying roles and responsibilities among such IWUAs, cooperatives and ONAHA.

(iv) Prior to the initial Disbursement of Program Funding for the construction or works related to the Irrigation Perimeter Development Activity, the Government will provide evidence that it has issued a communication directed at the farmers and cooperatives confirming that the farmers and cooperatives have the right in the Project intervention areas to determine their own choice of crops, without Government mandate, consistent with water availability and the requirements for rational and equitable distribution of water within the perimeters.

(v) Prior to the initial Disbursement of Program Funding for construction or works related to the Irrigation Perimeter Activity, the Government will, for the applicable area covered by such construction or works contract, (i) adopt and publish an *arrêté* (or other appropriate legal instrument) that is legally binding on the relevant local authorities (e.g. rural councils and Land Commission) establishing local socially-acceptable processes and criteria for land allocation (the "**Land Allocation Procedures**"), which Land Allocation Procedures will be consistent with the Land Allocation Core Principles agreed by MCC and the Government in Annex III of this Agreement, and (ii) submit evidence satisfactory to MCC demonstrating that such *arrêté* remains in full force and effect throughout the Compact Term.

(vi) Prior to the initial Disbursement of Program Funding for construction or works related to the Irrigation Perimeter Activity, the Government will provide, for the applicable areas covered by such construction or works contract, evidence of integration of the land use plans into the applicable local commune-level development plans in a manner consistent with the requirements of the IFC Performance Standards, the stakeholder engagement strategy and Activity-specific stakeholder engagement plans.

(vii) Prior to the initial Disbursement of Program Funding for construction or works related to the Roads for Market Access Activity, the Government will have delivered satisfactory evidence that it has prepared and adopted a road maintenance plan for the portion of the road network associated with the Irrigation and Market Access Project, which plan will: (i) address, at a minimum, the preventative, routine and periodic maintenance of each of RN7 and RN35; and (ii) ensure the availability of funds for the continued maintenance post-Compact, through, *inter alia*, the operation of any performance-based management and maintenance contract(s) to sustain the investments from the Roads for Market Access Activity and the community-based maintenance system for the Samera Rural Road.

PART C. Conditions Precedent for the Climate-Resilient Communities Project.

(i) Prior to the initial Disbursement of Program Funding for the Climate-Resilient Communities Project, the Government must submit and have adopted a plan, in form and substance satisfactory to MCC, to ensure: (a) the timely registration of MCC-funded contracts for goods, works and services entered into in furtherance of the Project; and (b) in connection therewith, any signature required to effectuate the award and/or registration of each such MCC-funded contract or invoice for goods, works and services required under this Project will be issued by MCA-Niger and the National Coordinator of the AgPIU or LPIU (as the case may be), without the need for further ministerial approval regardless of the value of the contract or invoice.

(ii) Prior to the Disbursement for the Climate-Resilient Agriculture Activity for the Facility for the quarter in which the call for proposals for the Facility will be launched, the Government will have adopted the Facility Manual.

ANNEX III

LAND ALLOCATION CORE PRINCIPLES

This Annex III sets forth the core principles that will govern land allocation decisions in the rehabilitated and newly irrigated perimeters within the project zone of the Irrigation and Market Access Project. These core principles provide a framework that will be applied by each commune, as they are developed with technical support from the commune Land Commissions. The Parties agree that these core principles will provide the starting point for the consultant(s) engaged in connection with the Compact who will be charged with completing and validating these core principles with key stakeholders in each local collective, and developing them further for site-specific application. The Parties also agree that any land allocation decisions must be done in compliance with MCC Environmental Guidelines inclusive of IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

1. Selection Criteria for Land Allocation.

- (a) Targeted groups of beneficiaries. Allocations of land rights in connection with the Management Services and Market Facilitation Activity will be conducted according to the following priorities:
- Existing rights holders;¹
 - Local² vulnerable groups (defined as including: women, particularly poor women, youth and landless farmers or herders):
 - A minimum percentage of the surface area allocated in newly established irrigated perimeters will be reserved for women's producer groups, and a minimum surface area percentage may also be reserved for youth producer groups and/or landless herders and farmers; and
 - To the extent that recipients of land allocations are required to demonstrate experience in farming, financial capacity to put parcels into production, adequate labor availability or other criteria, special exemption or dispensation will be given to members of vulnerable groups.
 - Guidelines will be established regarding potential land allocation to non-local private investors in small or medium-scale agricultural production; and
 - Other categories as appropriate.
- (b) Distribution of parcels by size and quantity. The allocation of land under the Activity seeks to achieve equity and poverty reduction among the rural population while recognizing that the circumstances of households differ. These considerations will lead to decisions regarding the optimal size and

¹For purposes of this Annex, "existing rights holders" are defined broadly as anyone holding a land or property right within a planned irrigated perimeter, whether customary or formal and whether documented or undocumented, including current occupants or users.

²"Local" is defined as people currently residing within the administrative department in which the irrigated perimeter is located.

quantity of parcels in various zones. In general, determinations about parcel size and quantity should be consistent with the following principles:

- The size and quantity of parcels in any given perimeter should be sufficient to satisfy the demands of local families and vulnerable groups;
- Parcel size will be determined in consideration of an analysis focused on achieving minimum returns necessary to ensure economic viability for poor beneficiaries;
- Maximum parcel sizes will be established; and
- Parcels should be of a size, location and quantity that is consistent with local commune development plans and policies wherever these aspects are addressed in the plans and policies.

These principles should not be construed to be absolute, but rather should function as general guidelines subject to refinement, validation and site-specific application in particular perimeters.

2. Land Allocation Institutions and Procedures.

(a) Principles of land allocation. The Parties agree that the conditions and procedures of land allocation will be governed by the following principles:

- Procedures will be open and transparent;
- Allocations will be made by the relevant municipal council based on recommendations of land allocation technical committees;
- Allocations of parcels will be considered by land allocation technical committees (see below for required representation on the committees), which will make recommendations for allocations to the relevant municipal council;
- The process will include a public information campaign (which will include, without limitation, detailed explanations of options and conditions);
- Committee meetings will be open to the public;
- Independent third-party audits will be conducted to ensure compliance with allocation procedures;
- The process will include options for mediation of conflicts; and
- An institutional ombudsman will be nominated/established to receive and review complaints.

(b) Land Allocation Committees. The Parties agree that a land allocation committee, which will be a technical committee under the direction of the local collective, will be established in each local collective according to a mayoral decision (*arrêté*) prior to acceptance of applications for land rights in any irrigated perimeter in the relevant collective. The land allocation committees will undertake their activities in coordination with ONAHA and consistent with Nigerien law. The committee members will be named in the mayoral decision (*arrêté*) and will include at least the following:

- A representative of local government;

- A representative of women's interest;
 - A representative of local youth organizations;
 - A member designated by MCA-Niger;
 - A representative of the Collective's Land Commission (*Commission Foncière*);
 - A representative of local agricultural production groups;
 - Representatives of religious authorities; and
 - Representatives of local customary land tenure authorities as appropriate.
- (c) Location of parcels within the irrigated perimeter. Location of parcels within any given perimeter will be guided by the following principles:
- Preservation of social cohesion to the extent possible;
 - Maximization of a participatory process;
 - There will be a process for determining whether scattered or concentrated holdings are preferable for groups of beneficiaries, such as women or youth; and
 - The land allocation process will consider the distance and accessibility of parcels relative to potential land beneficiaries in making decisions.

3. **Responsibilities and Rights of Beneficiaries.**

Recipients of land allocations will be subject to the following rights and responsibilities:

- All beneficiaries will receive formal and legally-protected long-term land rights as permitted by law;
- Beneficiaries and family members will have full exploitation rights, including free choice in crop selection and timing, while maintaining respect for surrounding soil characteristics, agreed overall water distribution patterns and best technical practices;
- All beneficiaries must comply with the applicable legal requirements and relevant technical guidelines and administrative policies that apply to irrigated perimeters located in the public domain; and
- Where enabled by a legal marriage certificate, joint (spousal) titling instruments may be delivered if desired by the recipients and in conformity to existing laws.

ANNEX IV

TAX SCHEDULES

The Government will ensure that MCA-Niger, Implementing Entities (including the AgPIU and the LPIU), and Exempt Persons (as such is defined in this Program Implementation Agreement) (MCA-Niger, Implementing Entities and Exempt Persons, together, “**Beneficiaries**”) that receive MCC funding directly or indirectly in furtherance of the Grant and Implementation Agreement or the Compact (both forms of funding hereinafter to be referred to as “**Compact Funding**”) are exempt from all Taxes in accordance with Section 2.2(l) of the Grant and Implementation Agreement and Section 2.8 of the Compact.

The following schedules identify specific taxes and mechanisms to implement compliance with the tax exemption under the Grant and Implementation Agreement and the Compact. The Government will provide a copy of the Grant and Implementation Agreement and the Compact to the Direction des Régimes Particuliers (“**DREP**”) in the *Direction Générale des Douanes* (“**DGD**”), *Direction Générale des Impôts* (“**DGI**”), and *Caisse Autonome de Financement de l’Entretien Routier* (“**CAFER**”) through MCA-Niger to ensure that they implement the terms of the Grant and Implementation Agreement and the Compact and the mechanisms to implement the tax exemption as agreed herein, or as otherwise adopted under the Compact.

Beneficiaries of the tax exemption will have to provide the documents listed in the following schedules or those which provide substantially equivalent information but for which terminology may vary. No additional requirements may be demanded of Beneficiaries without modification of these schedules. All applications and requests made by Beneficiaries to Government authorities in connection with the procedures included in these schedules are free of any fees or charges.

As the direct beneficiary of the tax exemption under the Grant and Implementation Agreement and the Compact, MCA-Niger will facilitate and assist all Exempt Persons (including, without limitation, Providers, Covered Providers, Implementing Entities, contractors (prime contractors and subcontractors), consultants and other entities and individuals) that receive Compact Funding directly or indirectly in furtherance of the Grant and Implementation Agreement and the Compact, to ensure compliance with the exemption terms herein.

To the extent that there are Taxes not addressed in this Annex IV, whether currently in force or established in the future, that MCC determines, in its sole discretion, are not being exempted by the Government in accordance with Section 2.8 of the Compact, the Government hereby agrees that it will implement appropriate procedures (approved in writing by MCC) to ensure that such additional Taxes are exempted in accordance with Section 2.8 of the Compact. For the avoidance of doubt, the identification (or lack of identification) of Taxes in this Annex IV, or the description (or lack of description) of procedures to implement the required exemption from such Taxes, shall in no way limit the scope of the tax exemption required by Section 2.8 of the Compact.

Pursuant to Section 2.6(a) of the Compact, the Government will provide funds to MCA-Niger to reimburse any Taxes paid under the Compact that have not been reimbursed in a timely manner.

ANNEX IV

SCHEDULE A

VALUE ADDED TAX (VAT)

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Implementing Entities
- Exempt Persons

Procedures.

1. Goods Imported (excluding fuel) into Niger by MCA-Niger

MCA-Niger must complete the requisite application for exemption of VAT on imported goods which will be provided by the DGI free of charge, and reference the Compact in the application. Along with the application, MCA-Niger will submit an original and one (1) copy of the pro forma invoice for the goods and the tax exemption certificate issued by the DGD for the imported goods. DGI will review each application and, if the application is complete, issue within forty-eight (48) hours the signed and stamped application for exemption and the pro forma which will serve as evidence of the exemption to MCA-Niger.

2. Goods Imported (excluding fuel) into Niger by an Exempt Person

An Exempt Person must complete the requisite application for exemption of VAT on imported goods. The application will be provided by DGI to the Exempt Person free of charge. The Exempt Person must then submit the application along with an original and one (1) copy of the pro forma invoice and the tax exemption certificate issued by the DGD for the imported goods to MCA-Niger, which in turn will submit the documentation to DGI. DGI will review each application and, if the application is complete, issue within forty-eight (48) hours the signed and stamped application for exemption and the pro forma which will serve as evidence of the exemption to MCA-Niger. MCA-Niger will provide the tax exemption certificate and the pro forma to the Exempt Person.

3. Goods and Services (excluding fuel) Procured in Niger by MCA-Niger

MCA-Niger will obtain a pro-forma invoice free of VAT that sets out the (i) costs of the goods, works and/or services being procured and (ii) amount of the excluded VAT. MCA-Niger must complete the requisite application for exemption and reference the Compact in the application.

The application will be provided to MCA-Niger by the DGI free of charge. For the application, MCA-Niger will submit, along with the prescribed DGI form, the pro forma invoice and a Certificate of Fiscal Regularity from the vendor that supplied the pro forma invoice, if the vendor is a Nigerien enterprise. DGI will review each application and, if the application is complete, issue within forty-eight (48) hours the signed and stamped application for exemption and the pro forma which will serve as evidence of the exemption to MCA-Niger that must then be provided to the vendor as evidence of the exemption.

4. Goods and Services (excluding fuel) Procured in Niger by any Exempt Person

An Exempt Person must obtain a pro-forma invoice free of VAT that sets out the (i) costs of the goods, works and/or services being procured and (ii) amount of the excluded VAT. The Exempt Person must submit an application for exemption, which the DGI will provide to the Exempt Person free of charge. The Exempt Person must provide the application that references the Compact therein to MCA-Niger along with the pro forma invoice and a Certificate of Fiscal Regularity from the vendor that supplied the pro forma invoice, if the vendor is a Nigerien enterprise. DGI will review each application and, if the application is complete, issue within forty-eight (48) hours the signed and stamped application for exemption and the pro forma which will serve as evidence of the exemption to MCA-Niger. MCA-Niger will provide the tax exemption certificate and the pro forma to the Exempt Person.

ANNEX IV

SCHEDULE B

IMPORT AND CUSTOMS DUTIES

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Regulation n° 09/ CM/UEMOA of 26 November 2001, adopted by the Articles 98, 165 and 141-145 of the UEMOA Customs Code
- Articles 60 and 90 of the National Customs Code
- Arrêté n° 052/MF of 13 March 1962
- Arrêté n° 136/MF/DGD of 6 June 1989, fixing the modalities and conditions for exoneration certificates for customs taxes, modified by Arrêté n° 288/MF/DGD of 28 December 1989
- Arrêté n° 108/MFAE of 29 May 1964, fixing the conditions for tax exonerations and exceptions

Beneficiaries of Exemption.

- MCA-Niger
- Implementing Entities
- Exempt Persons

Procedures.

1. Specific Procedures for MCA-Niger to Exempt Import and Customs Duties

MCA-Niger must obtain a Tax Identification Number or a *Numéro d'Identification Fiscale* (NIF) from the DGD along with an application for a certificate exempting customs duties and taxes, that will be provided free of charge. MCA-Niger must submit the application to the DREP along with a list of the materials and/or goods being imported in furtherance of the Program and the bill of lading. DGD will review each application and, if the application is complete, issue within forty-eight (48) hours a tax exemption certificate to MCA-Niger that must then be provided to customs as evidence of the exemption.

2. Specific Procedures for Exempt Persons to Exempt Import and Customs Duties

Exempt Persons must obtain a Tax Identification Number or a *Numéro d'Identification Fiscale* (NIF) from the DGD along with an application for a certificate exempting customs duties and taxes, that will be provided free of charge. The Exempt Person must submit the application along with a list of the materials and/or goods being imported in furtherance of the Program and the bill of lading to MCA-Niger. MCA-Niger will then submit the documentation to the DREP. DGD will review each application and, if the application is complete, issue within forty-eight (48) hours a tax exemption certificate to MCA-Niger that must then be provided to customs as evidence of the exemption.

3. Exemption from Customs Inspection Fee

MCA-Niger or an Exempt Person must obtain a Declaration of the Intent to Import from the DGD or the Chamber of Commerce, free of charge and submit this declaration to COTECNA along with the requisite information identifying the imported goods. COTECNA will deposit the declaration with the DGD. Once the imported goods arrive, the DGD will compare the declaration to the imported goods. Provided the contents are the same, DGD will exempt MCA-Niger or the Exempt Person from the payment of fees related to customs inspections.

4. Importation of Personal Effects

Exempt Persons (except natural persons who are citizens or permanent residents of Niger) will benefit from tax exoneration on the importation of their personal effects. The Exempt Persons must obtain an application for a certificate exempting customs duties and taxes for personal effects from the DGD, which will be provided free of charge. The Exempt Persons must submit to MCA-Niger the application, proof of foreign citizenship, and evidence that the Exempt Person is engaged in work for MCA-Niger, along with a list of the personal effects being imported. MCA-Niger will then submit the documentation to the DREP within DGD. DGD will review each application and, if the application is complete, issue within forty-eight (48) hours a tax exemption certificate to MCA-Niger that must then be provided to customs as evidence of the exemption.

5. Importation of Professional Materials by MCA-Niger

To facilitate the importation of professional equipment, MCA-Niger is entitled to apply for a temporary exemption from the normal admission procedures. MCA-Niger must submit the application to the DREP along with a list of the materials and/or goods being imported in furtherance of the Program and the bill of lading. DGD will review each application and, if the application is complete, issue within forty-eight (48) hours a tax exemption certificate to MCA-Niger that must then be provided to customs as evidence of the exemption.

6. Importation of Professional Materials by Exempt Persons

To facilitate the importation of professional equipment, Exempt Persons are entitled to apply for a temporary exemption from the normal admission procedures. The Exempt Person must submit the application along with a list of the materials and/or goods being imported in furtherance of the Program and the bill of lading to MCA-Niger. MCA-Niger will then submit the documentation to the DREP. DGD will review each application and, if the application is complete, issue within forty-eight (48) hours a tax exemption certificate to MCA-Niger that must then be provided to customs as evidence of the exemption.

ANNEX IV

SCHEDULE C

COMMUNITY TAXES (LES PRELEVEMENTS COMMUNAUTAIRES DE L'UEMOA OU DE LA CEDEAO)

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Regulation n° 09/ CM/UEMOA of 26 November 2001, on the adoption of Articles 98, 165 and 141-145 of the UEMOA Code of Customs
- Articles 60 and 98 of the National Customs Code
- Additional Act n° 04 /96, instituting a transitional preferential tariff regime related to UEMOA and its financing
- Article 5 of the Protocol on the Application of Community Levies A/P1/7/96 of 27 July 1996

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons

Procedures.

All Compact Funding is exempt from the community levies imposed by UEMOA and ECOWAS, including *Prelevement Communautaire de Solidarite* and *Prelevement Communautaire*. The request for exemption is found in the application for a certificate exempting customs duties and taxes submitted to the DGD to receive an exemption from such duties. The exemption from community taxes is reflected in the certificate and is issued pursuant to the process described in Schedule B (Import and Customs Duties) to this Annex IV.

ANNEX IV

SCHEDULE D

CORPORATE INCOME TAX (IMPOT SUR LES SOCIETES)

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons, other than Exempt Persons formed under the laws of Niger; *provided that*, in determining if an Exempt Person has been formed under the laws of Niger for the purposes of this Schedule C, the status of such Exempt Person shall be based on its status as of the time it is awarded or executes a Compact-related agreement or contract, and such initial determination shall not change regardless of: (i) the type of agreement or contract used to employ or engage such Exempt Person, (ii) any laws of Niger that purport to change such status based on period of contract performance or period of time residing and/or working in Niger and/or (iii) any requirement under the laws of Niger that a company or other legal person must establish a branch office in Niger, or otherwise register or organize itself under the laws of Niger, in order to provide goods, services or works in Niger.

Procedures.

1. Any Exempt Person earning only Compact-related corporate income in any given fiscal year

Any Exempt Person earning only Compact-related income in Niger in any given fiscal year will be exempt from paying any applicable Taxes (including *l'impôt sur les bénéfiques* and *impôts minimum forfaitaire* (IMF)) on such Compact-related corporate income and must declare such Compact-related corporate income in its year-end filing with the DGI solely for informational purposes.

2. Any Exempt Person earning Compact-related corporate income and non-Compact-related corporate income in any given fiscal year

The Exempt Person must submit and register each Funded Agreement with DGI, together with a certification from MCA-Niger confirming that the goods, services or works to be provided under the Compact Contract form a part of the Compact program.

At the end of any such fiscal year, the Exempt Person shall be permitted to exclude the gross income derived from any Funded Agreement(s) (as verified by the registered Funded Agreement(s)) for the purposes of determining its corporate income tax liability in Niger for any such fiscal year. The Exempt Person shall declare such Compact-related gross corporate income in its year-end tax filing with DGI solely for informational purposes.

ANNEX IV

SCHEDULE E

INDIVIDUAL INCOME TAX

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons, other than citizens and permanent residents of Niger, working in connection with the Program; *provided that*, in determining if an individual is a permanent resident for the purposes of this provision, the status of such individual shall be based on his/her status as of the time that such individual is awarded or executes a Compact-related agreement or contract, and such initial determination shall not change regardless of: (i) the type of contract used to employ or engage such individual and/or (ii) any laws of Niger that purport to change such status based on period of contract performance or period of time residing and/or working in Niger.

Procedures.

1. Any Exempt Person earning only Compact-related income in any given fiscal year

Any Exempt Person, as defined in this Schedule E, earning only Compact-related personal income in Niger in any given fiscal year shall be exempt from paying any applicable Taxes on such Compact-related personal income, and shall declare such Compact-related personal income in its year-end tax filing with DGI solely for informational purposes.

2. Any Exempt Person earning Compact-related income and non-Compact-related income in any given fiscal year

Any Exempt Person, as defined in this Schedule E, earning Compact-related personal income and non-Compact related personal income in any given fiscal year shall be permitted to exclude the gross amount of such Compact-related personal income for the purposes of determining his/her personal income tax liability in Niger for any such fiscal year. The Exempt Person shall declare such Compact-related gross personal income in its year-end tax filing with DGI solely for informational purposes.

ANNEX IV

SCHEDULE F

FUEL TAX (TAXE SUR LE CARBURANT)

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Implementing Entities
- Exempt Persons

Procedures.

1. For fuel purchases made by MCA-Niger and any Implementing Entity

MCA-Niger and each Implementing Entity must purchase the fuel directly from an oil distribution company. MCA-Niger must submit a reimbursement request to the DGI for the tax paid on the fuel purchases. The reimbursement request must be accompanied by the receipts or vouchers issued by the oil distribution company and provide an accounting of the quantities of fuel purchased, the amount paid for the fuel excluding tax, and the tax paid. Provided the reimbursement request is complete, DGI will consider and approve the reimbursement request within five (5) days and, in turn, request that the Ministry of Finance issue an order to be signed by the Ministry of Finance instructing the Treasury to reimburse MCA-Niger and any Implementing Entity within thirty (30) days of the Minister of Finance's signature.

2. For fuel purchases made by any Exempt Person

The Exempt Person must purchase the fuel directly from an oil distribution company. At the end of each month, Exempt Person must submit their reimbursement request to MCA-Niger for the tax paid on the fuel purchases. The reimbursement request must be accompanied by the receipts or vouchers issued by the oil distribution company and provide an accounting of the quantities of fuel consumed, the amount paid for the fuel excluding tax, and the tax paid. MCA-Niger will transmit the reimbursement request to the DGI. Provided the reimbursement request is complete, DGI will consider and approve the reimbursement request within five (5) days and in turn, request that the Ministry of Finance issue an order to be signed by the Ministry of Finance instructing the Treasury to reimburse the Exempt Individual and Exempt Person within thirty (30) days of the Minister of Finance's signature.

ANNEX IV

SCHEDULE G

INSURANCE TAX (TAXE UNIQUE SUR LES ASSURANCES)

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Person

Procedures.

1. For insurance acquired by MCA-Niger

MCA-Niger will obtain a pro-forma invoice free of tax that sets out the (i) costs of the insurance paid and (ii) amount of the excluded tax. MCA-Niger must complete the requisite application for exemption, which will be provided by the DGI free of charge and reference the Compact in the application. For the application, MCA-Niger will submit, along with the prescribed DGI form, the pro forma invoice and a Certificate of Fiscal Regularity from the enterprise that supplied the pro forma invoice, if the enterprise is a Nigerien enterprise. DGI will review each application and, if the application is complete, issue within forty-eight (48) hours the signed and stamped application for exemption and the pro forma which will serve as evidence of the exemption to MCA-Niger.

2. For insurance acquired by any Exempt Person in furtherance of the Compact

An Exempt Person will obtain a pro-forma invoice free of tax that sets out the (i) costs of the insurance paid and (ii) amount of the excluded tax. The Exempt Person must submit an application for exemption, provided by DGI free of charge, and the pro forma invoice to MCA-Niger, which in turn will submit the documentation to the DGI. For the application, the Exempt Person will submit, along with the prescribed DGI form, the pro forma invoice and a Certificate of Fiscal Regularity from the enterprise that supplied the pro forma invoice, if the enterprise is a Nigerien enterprise. DGI will review each application and, if the application is complete, issue within forty-eight (48) hours the signed and stamped application for exemption and the pro forma which will serve as evidence of the exemption to MCA-Niger. MCA-Niger will provide the tax exemption certificate and the pro forma to the Exempt Person.

ANNEX IV
SCHEDULE H
ROAD TAX

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons

Procedures.

MCA-Niger must submit to CAFER a list of the vehicles used for Compact-related activities along with a copy of the registration permit for the vehicle. Within forty-eight (48) hours of the submission of this documentation to CAFER, CAFER will issue an exemption certificate to the beneficiary of the exemption. The exemption certificate will be reissued on a quarterly basis, or on such other basis as may be required by the needs of the Program.

ANNEX IV

SCHEDULE I

PROFESSIONAL AND APPRENTICE TAX

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons, other than Exempt Persons formed under the laws of Niger; *provided that*, in determining if an Exempt Person has been formed under the laws of Niger for the purposes of this Schedule I, the status of such Exempt Person shall be based on its status as of the time it is awarded or executes a Compact-related agreement or contract, and such initial determination shall not change regardless of: (i) the type of agreement or contract used to employ or engage such Exempt Person, (ii) any laws of Niger that purport to change such status based on period of contract performance or period of time residing and/or working in Niger and/or (iii) any requirement under the laws of Niger that a company or other legal person must establish a branch office in Niger, or otherwise register or organize itself under the laws of Niger, in order to provide goods, services or works in Niger.

Procedures.

To obtain the exemption from the payment of professional tax, the Exempt Person must submit an attestation, certified by MCA-Niger, indicating that the Exempt Person is exempt from the payment of this tax pursuant to the terms of the Compact.

ANNEX IV

SCHEDULE J

LOCAL LEVEL (*COLLECTIVITÉS TERRITORIALES*) FEES AND TAXES

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons

Procedures.

MCA-Niger must compile a list of the local communes that will be impacted by Compact-related activities and transmit the list to the Ministry of Local Authorities (*Ministre en charge des collectivités territoriales*). The Ministry will inform the local authorities of the nature of the planned investments and the required exemptions. Based on this information, the municipal or local council will issue the requisite tax exemption certificates to ensure that MCC Funding is exempt from the payment of all commune level fees and taxes.

ANNEX IV

SCHEDULE K

ENVIRONMENTAL PROTECTION TAX

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons

Procedures.

MCA-Niger will request in writing that the Ministry of Environment inform the relevant local authority and relevant technical services of the nature of the Compact activities and the required exemptions. The Ministry of Environment will issue a circular to the local authority and/or technical services instructing them to comply with and respect the tax exemption status of the Exempt Persons, including for any environmental studies required as part of the Compact.

ANNEX IV

SCHEDULE L

REGISTRATION TAX, REGISTRATION FEES AND STAMP DUTY

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Persons

Procedures.

1. For Funded Agreements entered into by MCA-Niger or any Implementing Entities (including the AgPIU and the LPIU)

At the time MCA-Niger presents the applicable Funded Agreement to the DGI to be stamped and/or registered, MCA-Niger must present a copy of the Compact along with the Funded Agreement. Upon presentation of such documentation, the DGI will stamp and/or register the applicable Funded Agreement without charge and free from any applicable Taxes.

2. For Funded Agreements entered into by any Exempt Person

At the time the Exempt Person presents the applicable Funded Agreement to the DGI to be stamped and/or registered, the Exempt Person must present a copy of the Compact, together with a certification from MCA-Niger confirming that the goods, services or works to be provided under the Funded Agreement form part of the Compact Program. Upon presentation of such documentation, the DGI will stamp and/or register the applicable Funded Agreement without charge and free from any applicable Taxes.

ANNEX IV

SCHEDULE M

SOCIAL SECURITY CONTRIBUTION

Legal Basis for Exemption or Reimbursement.

- Section 2.8 of the Compact
- Bilateral Agreement
- Law No. 94-023 of 6 September 1994 (on the fiscal regime for procurements financed using donor funds)

Beneficiaries of Exemption.

- MCA-Niger
- Exempt Person other than citizens and permanent residents of Niger, working in connection with the Program; *provided that*, in determining if an individual is a permanent resident for the purposes of this provision, the status of such individual shall be based on his/her status as of the time that such individual is awarded or executes a Compact-related agreement or contract, and such initial determination shall not change regardless of: (i) the type of contract used to employ or engage such individual and/or (ii) any laws of Niger that purport to change such status based on period of contract performance or period of time residing and/or working in Niger.

Procedures.

1. For MCA-Niger

The Government will cover MCA-Niger's portion of social security contributions.

2. For employees and companies

To obtain the exemption from the payment of social security contribution, an Exempt Person (except natural persons who are citizens or permanent residents of Niger) must submit an attestation, certified by MCA-Niger, indicating that the Exempt Person is exempt from the payment of social security taxes pursuant to the terms of the Compact. The Exempt Person will provide the attestation to their employer, who will not withhold such taxes from the wages of the Exempt Person.