

**AMENDED AND RESTATED BANK AGREEMENT**

**by and among**

**MILLENNIUM CHALLENGE ACCOUNT-TANZANIA,**

**BANK OF TANZANIA  
(as the Bank),**

**and**

**ACCOUNTANT GENERAL'S DEPARTMENT OF THE MINISTRY OF FINANCE OF  
THE UNITED REPUBLIC OF TANZANIA  
(as the Fiscal Agent)**

**Dated August           , 2010**

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## AMENDED AND RESTATED BANK AGREEMENT

This AMENDED AND RESTATED BANK AGREEMENT (this “*Agreement*”) is made as of August [ ], 2010, among Millennium Challenge Account-Tanzania, an independent autonomous office established under the laws of the United Republic of Tanzania through Government Notice No. 202 published in the official gazette on September 21, 2007 (“*MCA-Tanzania*”); the Bank of Tanzania, a financial institution organized and existing under the laws of the United Republic of Tanzania in its capacity as depository bank (the “*Bank*”); and the Accountant General’s Department of the Ministry of Finance of the United Republic of Tanzania, in its capacity as Fiscal Agent under the Fiscal Agent Agreement (the “*Fiscal Agent*”) (collectively the “*Parties*” and each individually a “*Party*”). A compendium of capitalized terms defined herein is included in Schedule 1 attached hereto.

### RECITALS

**WHEREAS**, the Millennium Challenge Corporation (“*MCC*”), and the Government of the United Republic of Tanzania (the “*Government*”) executed a certain Millennium Challenge Compact (the “*Compact*”) on February 17, 2008 that sets forth the general terms and conditions pursuant to which MCC will provide funding to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in the United Republic of Tanzania;

**WHEREAS**, in connection with the Compact, MCC, the Government and MCA-Tanzania have executed the Grant and Implementation Agreement for Compact Development, dated as of October 4, 2007 (the “*609(g) Grant Agreement*”), which sets forth the general terms and conditions on which the MCC will provide funding of an amount not to exceed nine million eight hundred thousand United States Dollars (US \$9,800,000) to the Government for the purposes set forth in the 609(g) Grant Agreement;

**WHEREAS**, in connection with the Compact, MCC, the Government and MCA-Tanzania have executed the Bank Agreement, dated as of May [ ], 2007 (the “*Initial Bank Agreement*”), which sets forth the general terms and conditions on which a bank will receive, accept, hold, maintain and deliver certain funds and the proceeds derived therefrom to and in a Permitted Account, the execution, delivery and effectiveness of such bank agreement being a condition precedent to the initial 609(g) Disbursement under the 609(g) Grant Agreement and to the initial MCC Disbursement under the Compact;

**WHEREAS**, subject to the terms and conditions set forth in the Initial Bank Agreement, MCA-Tanzania appointed the Bank, and the Bank accepted such appointment;

**WHEREAS**, MCA-Tanzania engaged an entity to act as the Fiscal Agent and provide certain fiscal agency services pursuant to a Fiscal Agent Agreement, dated December 13, 2007; and

**WHEREAS**, in accordance with Section 5.10 of the Initial Bank Agreement, the Parties wish to amend and restate the Bank Agreement to reflect procedural changes necessitated by the

introduction of the centralized payment system (“*CPS*”) as a means of making payments to vendors.

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

## **ARTICLE I.**

### **APPOINTMENT; ACCOUNTS**

Section 1.1 Appointment of the Bank. Subject to the terms and conditions of this Agreement, MCA-Tanzania hereby appoints the Bank as the account bank for purposes of the 609(g) Grant Agreement, the Compact and this Agreement. The Bank hereby accepts such appointment and agrees to perform all of the obligations of the Bank hereunder in strict accordance with the terms of this Agreement and any relevant terms of the 609(g) Grant Agreement, the Compact, the Program Implementation Agreement and any other relevant Supplemental Agreement, as any of them may be amended from time to time, which agreements (and amendments) shall be delivered by MCA-Tanzania to the Bank and referred to by the Bank as required to perform its duties hereunder.

#### Section 1.2 Services.

(a) The Bank, in accordance with the terms of this Agreement, shall receive, accept, hold, maintain and transfer each of the following delivered to the Bank at any time (collectively, the “*Funds*”): (i) all Disbursements, (ii) refunds and other payments made to or for the benefit of MCA-Tanzania by the Government, including all amounts paid pursuant to the Compact, the 609(g) Grant Agreement or any Supplemental Agreement, such as refunds of taxes, indemnification amounts or other payments, (iii) the proceeds of any insurance, indemnity or similar payments made in respect of MCA-Tanzania or the Program, (iv) amounts paid by third parties to MCA-Tanzania in connection with the Program, and (v) such other amounts as MCC may approve in writing from time to time. In the event that any amounts deposited (or any amounts to be deposited) into the Permitted Accounts, the US Dollars Payment Processing Account or the Development Expenditure Account have not been adequately identified, the Bank shall request written confirmation from the Fiscal Agent (and the Bank shall deliver a copy of each such request to MCC and MCA-Tanzania) as to the source of such funds and whether such funds comply with this Section 1.2(a), and if such a request is received, the Fiscal Agent promptly shall respond to such request (and shall deliver a copy of each such response to MCC and MCA-Tanzania).

(b) Upon receipt of any Funds, the Bank shall (i) deposit such Funds in the appropriate Permitted Account for value on the date received, (ii) maintain such Funds in the Permitted Accounts for the benefit of MCA-Tanzania and MCC, and (iii) transfer such Funds, or permit the Fiscal Agent to transfer such Funds using the Tanzanian Inter-Bank Settlement System (“*TISS*”), in each case in accordance with the terms and conditions set forth herein.

#### Section 1.3 Establishment of Permitted Accounts.

(a) The Bank shall establish and maintain throughout the Term, at its offices in Dar es Salaam, United Republic of Tanzania, the following separate and irrevocable cash-only deposit accounts in the name of MCA-Tanzania (each, a “**Permitted Account**,” and collectively, the “**Permitted Accounts**”) into which accounts the Bank shall deposit, maintain and transfer the Funds as directed from time to time by the Fiscal Agent, or permit transfer by the Fiscal Agent using TISS (or by MCC in the case of and to the extent set forth in Sections 1.5(a)(ii), 1.5(g), 1.6, 4.2(d) and 4.2(e)):

(i) a segregated special United States Dollar – denominated account for the purpose of holding 609(g) Disbursements (the “**609(g) Special Account**”), subject to the terms and conditions of the 609(g) Grant Agreement and this Agreement. The 609(g) Special Account is the Bank of Tanzania Account Number - 9931206431;

(ii) a segregated special United States Dollar – denominated account (the “**Special Account**”) for purposes of holding MCC Disbursements subject to the terms and conditions of the Compact, the Program Implementation Agreement and this Agreement. The Special Account is the Bank of Tanzania Account Number - 9931206581; and

(iii) such other segregated special accounts as MCA-Tanzania and MCC agree upon in writing.

The Bank shall not open or hold any other account for or on behalf of MCA-Tanzania, directly or indirectly, without prior written approval of MCC.

(b) The Bank shall provide evidence to MCA-Tanzania, the Fiscal Agent and MCC of the establishment of the Permitted Accounts, including but not limited to, in each case, the account name, designated account number, and wire transfer instructions for deposits into such accounts (“**Account Information**”). The Bank shall provide Account Information to MCA-Tanzania, with copies to MCC and the Fiscal Agent, for each Permitted Account and shall deliver updated information as necessary.

(c) The Bank will utilize one account through which payments to be made in United States Dollars will be processed prior to the transfer of such funds into a Permitted Account (the “**US Dollars Payment Processing Account**”) in accordance with Section 1.5. The US Dollars Payment Processing Account is the Bank of Tanzania account at the Federal Reserve Bank of New York, Account Number - 021085897. In the event of any change in the account name, designated account number and wire transfer instructions for deposits into such account, the Bank shall deliver promptly thereafter updated information for the US Dollars Payment Processing Account to MCA-Tanzania, with copies to MCC and the Fiscal Agent.

(d) The Bank will (i) utilize the Special Account to receive funds processed to the US Dollar Processing Account and (ii) immediately, and no later than within 24 hours, convert the total received US Dollars to Tanzanian Shillings at the same exchange rate notified to the Fiscal Agent for preparation of the Payment Request Form processed at NBC to generate the transfer to the US Dollar Processing Account and deposit the Tanzanian Shillings amount into the Development Expenditure Account to facilitate the processing of payments to be made in Tanzanian Shillings whether by transfer by the Fiscal Agent using

TISS, or in accordance with Section 1.5(a)(i), and (iii) any other account established in accordance with Section 1.3(a)(iii). In the event of any change in the account name, designated account number and wire transfer instructions for deposits into such accounts, the Bank shall deliver promptly thereafter updated information for the Development Expenditure Account to MCA-Tanzania, with copies to MCC and the Fiscal Agent.

**Section 1.4 No Commingling of Accounts.** Unless authorized by MCC, the Bank shall hold and maintain the Funds in the Permitted Accounts, and the Permitted Accounts shall be separate and apart from any other accounts of the Bank, including accounts held on behalf of the Government, any agency thereof, or third parties under any other custodial basis; *provided*, that all payments in United States Dollars related to the 609(g) Assistance shall be deposited in the 609(g) Special Account, and all payments in United States Dollars related to the Compact Funding shall be deposited into the Special Account. Funds on deposit in or credited to any Permitted Account shall be deemed to be held by the Bank in a custodial or fiduciary capacity and shall not constitute property of the Bank.

**Section 1.5 Distribution and Use of Funds.**

(a) The Bank shall transfer or suspend transfers from the Permitted Accounts, in accordance with the following instructions:

(i) a written instruction, duly signed by two (2) Designated Signatories of the Fiscal Agent, on the letterhead of the Fiscal Agent, and substantially in the form of Exhibit 1 (a “**Transfer Instruction**”), directing the Bank to transfer immediately available Funds, in the currencies requested and on the date and in the amount set forth in such Transfer Instruction, from the Permitted Account identified in such Transfer Instruction to an account (denominated in United States Dollars or Tanzanian Shillings) identified in such Transfer Instruction; or

(ii) a written instruction given by an MCC Designated Signatory, substantially in the form of Exhibit 2 (an “**MCC Instruction**”), directing the Bank to (i) transfer immediately available Funds in the currencies requested and on the date and in the amount set forth in such MCC Instruction to an account specified by MCC therein, or (ii) immediately suspend all transfers from the Permitted Accounts until further written notice from MCC. The Bank shall implement any suspension requested by MCC immediately upon receipt of an MCC Instruction to that effect. A suspension will remain in place until the Bank receives a superseding instruction or notice from MCC directing the Bank to resume transfers. For the avoidance of doubt, the Bank shall, and shall be entitled to, comply with MCC Instructions without the consent of MCA-Tanzania, the Fiscal Agent or any other person.

(b) No transfers shall be made from or between the Permitted Accounts except as expressly provided for in this Agreement.

(c) If a Transfer Instruction or an MCC Instruction is received on or before 11:59 a.m. (local time in Dar es Salaam, United Republic of Tanzania) on a given business day and such Transfer Instruction or MCC Instruction, as the case may be, requests transfer on the same day that the Bank receives such instruction, the Bank shall make such transfer on such business day; *provided, that*, if a Transfer Instruction or MCC Instruction is received after

11:59 a.m. (local time in Dar es Salaam, United Republic of Tanzania) on a given business day and such instruction requests transfer on the same day that the Bank receives the instruction, the Bank may make such transfer on the business day immediately following such request.

(d) In the event of any conflict between the instructions contained in a Transfer Instruction and an MCC Instruction, the Bank shall comply with the instructions contained in the MCC Instruction.

(e) The Bank shall transfer Funds from the Permitted Accounts pursuant to this Section 1.5 so long as such Permitted Accounts contain sufficient available Funds to make such transfer. If at any time there are insufficient Funds to make such transfer, the Bank shall not make such transfer and shall immediately notify the Fiscal Agent, MCA-Tanzania and MCC; *provided, however*, that in the event there are sufficient Funds, but such Funds are not yet available for transfer (e.g., deposits in transit), the Bank shall make such transfer.

(f) The Fiscal Agent may, by delivery of written instructions to the Bank signed by two (2) Designated Signatories, amend or cancel a Transfer Instruction. If the Transfer Instruction has not been executed, the Bank shall amend or cancel such transfer as long as such amendment or cancellation is in accordance with the terms and conditions of this Agreement. If the Transfer Instruction has been executed, the Bank shall use its best efforts to amend or reverse such transaction payment upon receipt of a valid written instruction in accordance with this Section 1.5(f).

(g) If after the termination or expiration of this Agreement the Bank receives a transfer of Funds into a Permitted Account the Bank shall immediately notify MCA-Tanzania and MCC and remit any such Funds to a United States Government account or successor bank account designated in writing by MCC.

Section 1.6 Currency. The Bank shall hold all Funds in the 609(g) Special Account, the Special Account and the US Dollars Payment Processing Account in United States Dollars. .

Section 1.7 Monitoring of Permitted Accounts The Bank shall comply, and shall ensure that the Permitted Accounts are operated and maintained in compliance with, all applicable United States laws related to money laundering and terrorist financing, and other U.S. sanctions laws and regulations, including, (i) 18 U.S.C. Section 1956, (ii) 18 U.S.C. Section 1957, (iii) 18 U.S.C. Section 2339A, (iv) 18 U.S.C. Section 2339B, (v) 18 U.S.C. Section 2339C, (vi) 18 U.S.C. Section 981, (vii) 18 U.S.C. Section 982, (viii) Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, (ix) all applicable U.S. laws and regulations regarding restrictive trade practices or boycotts, including 15 C.F.R. Part 760, and (x) all other economic sanctions promulgated from time to time by means of Statute, Executive Order, or Regulation and as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor U.S. governmental authority, including those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598. The Bank shall ensure that no payments have been or will be received by or on behalf of the Bank, any official, officer, director, employee,

agent or representative of the Bank, or any party having any interest in the Bank, in connection with this Agreement, and no payments have been made by or on behalf of any official, officer, director, employee, agent or representative of the Bank to any third party in connection with this Agreement, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (“*FCPA*”) as if the Bank were deemed to be an entity subject to the FCPA. The Bank shall comply with any policies and procedures for monitoring its operations, as may be required and established from time to time by MCA-Tanzania or MCC.

#### Section 1.8 Permitted Account Statements; Access Rights.

(a) The Bank shall implement an account statement and monitoring system to generate Permitted Account statements, under which all Permitted Account transactions and other activities related thereto are posted on a daily basis directly on a special on-line, secured website (the “*Account Monitoring System*”). The information provided in the Account Monitoring System shall be on a “read-only” basis for the sole and exclusive purpose of identifying transactions, transfers or holdings of the Permitted Accounts and the Funds, determining the balance from time to time in the Permitted Accounts, the dates upon which transactions or transfers were made, the identity of the sources of transactions, the identity of the recipients of such transactions and other similar information requested by MCC, MCA-Tanzania or the Fiscal Agent. Except as otherwise specified herein, the Bank shall update all information generated by the Account Monitoring System at least within one (1) business day of any activity.

(b) The Bank shall give MCA-Tanzania, the Fiscal Agent, and MCC and their respective authorized representatives unrestricted access to the Account Monitoring System.

(c) The Bank shall establish appropriate security procedures in respect of the Permitted Accounts to ensure (i) proper verification of Transfer Instructions, MCC Instructions and other instructions, notifications and communications provided hereunder, and (ii) early detection of errors in the content or transmission of such instructions or communications.

#### Section 1.9 Books and Records; Audits.

(a) The Bank shall maintain complete and accurate accounting books, records, documents and other evidence relating to the Permitted Accounts detailing the receipt, use and transfer of all Funds, including all information provided pursuant to the Permitted Account Monitoring System, and all other Compact Records required pursuant to and in accordance with the 609(g) Grant Agreement or the Compact, as applicable, pertaining to the activities contemplated by this Agreement (collectively, “*Account Records*”).

(b) The Bank, at all reasonable times upon receipt of written notice by MCC, shall (i) permit authorized representatives of MCC, an authorized United States inspector general, the United States Government Accountability Office, MCA-Tanzania, the Fiscal Agent, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of the 609(g) Grant Agreement or the Compact, and any agents or representatives engaged by any of the foregoing, to conduct any assessment, review, or evaluation of the Program, and the

opportunity to audit, review, evaluate, or inspect or copy the Account Records, and (ii) ensure that any person referred to in the preceding sub-section (i) shall have access to all of the Bank's relevant directors, officers and employees. The Bank shall comply with the applicable audit requirements set forth in the 609(g) Grant Agreement or the Compact, as applicable. A summary of such provisions may be found on the MCC website at [http://www.mcc.gov/guidance/compact/audits\\_reviews\\_provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

(c) The Bank shall maintain the Account Records (i) in accordance with generally accepted international accounting principles, or at the Government's option and with the prior written approval by MCC, other accounting principles and (ii) for such period as may be required by applicable law, and in any event for at least five (5) years after the Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any legal or regulatory requirements affecting the Parties or MCC, unless such items have been returned to MCA-Tanzania pursuant to Section 4.2(f).

#### Section 1.10 Other Obligations.

(a) The Bank shall:

(i) Furnish such other information and documents related to the Permitted Accounts this Agreement and the transactions contemplated herein, as the Fiscal Agent, MCA-Tanzania or MCC may request from time to time and, at the request of the Fiscal Agent, MCA-Tanzania or MCC, the Bank shall provide such information to any other person or entity that the Fiscal Agent, MCA-Tanzania or MCC may designate in writing. All information and documents delivered by the Bank shall be certified as true and correct by the Bank;

(ii) Comply with (i) all applicable laws and (ii) this Agreement and any other agreement entered into in connection with this Agreement;

(iii) Not impose or permit the imposition of any Lien (as defined below) on any Permitted Account or on any Funds held therein; and

(iv) Inform MCA-Tanzania, the Fiscal Agent and MCC immediately (i) of any attempt on the part of any person, entity, or governmental body to create a lien, attachment, enforcement of judgment, pledge or other encumbrance, or secure credit or collateral (each, a "**Lien**"), or set-off for any other obligation that may affect the Funds in any Permitted Account or (ii) if any person, entity or governmental body (other than MCA-Tanzania or MCC) claims that it has a property interest in any Permitted Account or in the Funds held therein.

(b) The Bank shall ensure that no director, officer, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Bank, members of any such person's or entity's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such persons or entities (each, a "**Bank Related Person**") shall participate in the selection, award, or administration of a contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by Funds in which (i) a Bank Related Person has a financial interest, or (ii) a Bank Related Person is negotiating or has any arrangement concerning prospective employment, unless such Bank Related Person has in each case first disclosed in writing to MCA-Tanzania and MCC the

conflict of interest and, following such disclosure, MCA-Tanzania and MCC have agreed in writing to proceed notwithstanding such conflict. The Bank shall ensure that neither it nor any other Bank Related Person involved in the selection, award, administration or implementation of any contract, grant or other benefit or transaction financed in whole or in part (directly or indirectly) by Funds shall solicit or accept or offer a third-party or seek or be promised directly or indirectly for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Bank shall ensure that neither it nor any other Bank Related Person active in the Program engages in any activity which is, or gives the appearance of being, a conflict of interest.

Section 1.11 Use and Treatment of Funds. Each Party shall ensure that the use and treatment of Funds in connection with this Agreement shall not violate any limitations or requirements specified in the 609(g) Grant Agreement or the Compact.

## ARTICLE II.

### THE BANK

Section 2.1 Standard of Care. At all times during the duration of this Agreement, the Bank shall maintain sole custody over the Permitted Accounts, the US Dollars Payment Processing Account or the Development Expenditure Account, and shall exercise all skill, reasonable care, and diligence in the performance of its duties and obligations under the 609(g) Grant Agreement, the Compact, this Agreement and any other applicable Supplemental Agreement in conformity with the best technical, financial and management practices required for the successful provision of services hereunder. The Bank shall have exclusive responsibility and liability for maintaining the Funds in the Permitted Accounts, the US Dollars Payment Processing Account or the Development Expenditure Account, and transfer of all such Funds, in each case in accordance with the terms and conditions of the 609(g) Grant Agreement, the Compact, this Agreement and any other applicable Supplemental Agreement.

Section 2.2 Fees. The Bank shall not be entitled to any compensation, costs, expenses or payment (including payment or reimbursement for third-party costs and expenses) in respect of this Agreement.

Section 2.3 Duties and Rights of the Bank.

(a) If at any time the Bank is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, including with respect to any Lien (an “**Action**”) that in any way affects the Funds, the Permitted Accounts or any Funds in the US Dollars Payment Processing Account or the Development Expenditure Account or this Agreement or the transactions contemplated herein, the Bank shall give prompt notice and a copy of such Action to MCC, the Fiscal Agent and MCA-Tanzania.

(b) Each of MCC, MCA-Tanzania and the Fiscal Agent (in the case of MCA-Tanzania or the Fiscal Agent, with the prior written consent of MCC) (each, a “**Party in Interest**”) shall have the right, at any time, (x) to participate, at its expense, with the Bank in

the defense of such Action, or (y) upon written notice to the Bank (a “*Defense Notice*”) within thirty (30) days of its receipt from the Bank of notice of the Action, to assume and conduct, at its expense, the defense of such Action in its own name or, if necessary, in the name of the Bank or, if appropriate, in the name of MCA-Tanzania. In the event that the Party in Interest delivers a Defense Notice and assumes the defense of such Action, the Party in Interest shall pursue such Action in good faith and the Bank will cooperate with and make available to the Party in Interest such assistance and materials as may be reasonably requested by it. If a Party in Interest exercises its right to participate with the Bank in the defense of an Action, the Bank shall not be entitled to compromise or settle such Action without the prior written consent of the Party in Interest.

(c) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Bank hereunder, the Bank may, in its reasonable discretion, notify MCC, MCA-Tanzania and the Fiscal Agent of such ambiguity or uncertainty and refrain from taking any action other than to retain possession of the Funds, unless and until the Bank receives from the party that provided the original notice, instruction or communication, as applicable, a clarifying instruction that eliminates such ambiguity or uncertainty (which clarifying instruction shall be copied to the other Parties and to MCC and shall be satisfactory to MCC); *provided*, that in the event of any inconsistency between the instructions delivered by MCC and any other Party, the Bank shall comply with the instructions delivered by MCC.

(d) The Bank shall notify MCA-Tanzania and MCC of any (i) change in the Bank Principal Representatives or the Bank’s Additional Representatives, (ii) negative findings resulting from any audit conducted pursuant to this Agreement, the 609(g) Grant Agreement or the Compact, (iii) negative findings by any ministry or oversight bodies with jurisdiction over the Bank, and (iv) any amendment to, or repeal of, any existing law, order or decree or any enactment of any new law, order or decree that, directly or indirectly, affects the organization or governance of the Bank.

#### Section 2.4 Liabilities; Indemnification.

(a) The Bank shall indemnify, defend and hold harmless each of MCC, MCA-Tanzania and its permitted assigns and the Fiscal Agent (including their respective directors, officers, employees, affiliates, representatives, agents and advisors) from and against any and all claims, losses, actions, liabilities, costs, damages or expenses, including reasonable attorneys’ fees and expenses (but excluding any lost profits or other special, incidental, indirect, punitive or consequential damages, regardless of the form of action and whether or not any such damages were foreseeable or contemplated) (collectively, the “*MCA-Tanzania Losses*”), arising from or in connection with the negligence, bad faith, willful or intentional misconduct of the Bank, or a breach of this Agreement by the Bank; *except, that*, neither MCA-Tanzania nor the Fiscal Agent shall be indemnified if, and to the extent that, any such MCA-Tanzania Losses are attributable to its own gross negligence or willful misconduct.

(b) MCA-Tanzania shall indemnify, defend and hold harmless the Bank (including its directors, officers, employees, representatives, agents and advisors) from and against any and all claims, losses, actions, liabilities, costs, damages or expenses, including reasonable

attorneys' fees and expenses (but excluding any lost profits or other special, incidental, indirect, punitive or consequential damages, regardless of the form of action and whether or not any such damages were foreseeable or contemplated) (collectively, the "**Bank Losses**"), arising from or in connection with the negligence, bad faith, willful or intentional misconduct of MCA-Tanzania, or a breach of this Agreement by MCA-Tanzania; *except that*, the Bank shall not be indemnified if, and to the extent that, any such Bank Losses are attributable to its own gross negligence or willful misconduct.

Section 2.5 Terrorist Financing. The Bank will not provide material support or resources directly or indirectly to any individual, corporation or other entity that the Bank knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including but not limited to the individuals and entities (i) on the master list of "Specially Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac) (ii) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council, or (iii) on such other list as MCA-Tanzania may identify from time to time. For purposes of this provision, "material support and resources" includes currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

Section 2.6 Anti-Bribery. The Bank shall ensure that no payments have been or will be received by any official of the Bank in connection with this Agreement and no payments have been or will be made by the Bank to any third party, in connection with this Agreement, in violation of the FCPA (as if the Bank were deemed to be an entity subject to the FCPA), a copy of which shall be provided to the Bank by MCC upon request.

### ARTICLE III.

#### FISCAL AGENT

Section 3.1 Incumbency of the Fiscal Agent. The Fiscal Agent shall deliver to the Bank an incumbency certificate and specimen signature for each designated signatory of the Fiscal Agent substantially in the form of Exhibit 3 immediately upon execution of this Agreement (each, a "**Designated Signatory**"). The Fiscal Agent shall notify MCA-Tanzania, the Bank and MCC of any change in any of its Designated Signatories and shall provide an incumbency certificate and specimen signature with respect to any new Designated Signatory.

Section 3.2 Exclusive Authority of the Fiscal Agent; MCC. Subject to MCC's right to suspend the Fiscal Agent under Section 3.3(a) below, the Designated Signatories of the Fiscal Agent shall be the only persons that have signature authority for each respective Permitted Account and with respect to any Funds, the US Dollars Payment Processing Account or the Development Expenditure Account, and, except for MCC's right to issue MCC Instructions in

accordance with Sections 1.5(a)(ii), 1.5(g) and 1.6 and MCC's rights as set forth in Sections 4.2(d) and 4.2(e), such Designated Signatories of the Fiscal Agent shall be the only persons that have authority to make or instruct any transfer of funds to or from the Permitted Accounts, the US Dollars Payment Processing Account or the Development Expenditure Account, with respect to Funds only, and no other person or entity (other than an MCC Designated Signatory) shall have any such authority, including: (a) any director, officer, employee, agent and representative of MCA-Tanzania (other than the Fiscal Agent), or (b) any official of the Government or any of its ministries, departments, or agencies.

### Section 3.3 Suspension or Removal of the Fiscal Agent.

(a) Upon receipt by the Bank of a notice in writing from MCC directing the Bank to immediately suspend the Fiscal Agent's access to, and all authority with respect to, the Permitted Accounts, the US Dollars Payment Processing Account or the Development Expenditure Account, the Account Monitoring System and the Account Records (a "***Fiscal Agent Suspension Instruction***"), the Bank immediately shall block all access by the Fiscal Agent thereto as of the date of the Fiscal Agent Suspension Instruction. The Bank shall only resume access by the Fiscal Agent to the Permitted Accounts, the US Dollars Payment Processing Account, the Development Expenditure Account, the Permitted Account Monitoring System and the Account Records upon receipt of a superseding notice to that effect from MCC.

(b) Upon receiving notice from MCC or MCA-Tanzania (countersigned by MCC) of termination of the Fiscal Agent Agreement or the resignation or removal of the Fiscal Agent under the Fiscal Agent Agreement, the Bank immediately shall terminate the Fiscal Agent's access to the Permitted Accounts, the US Dollars Payment Processing Account, the Tanzanian Shillings Payment Processing Accounts, the Account Monitoring System and the Account Records, and shall cease to comply with any Transfer Instruction received as of the date of such notice. The Bank shall only provide access to a successor Fiscal Agent to the Permitted Accounts, the US Dollars Payment Processing Account, the Development Expenditure Account, the Account Monitoring System and the Account Records following receipt of a notice from MCC or MCA-Tanzania (with written acknowledgment from MCC) certifying the appointment of a successor Fiscal Agent.

(c) MCA-Tanzania shall cause any successor Fiscal Agent appointed in accordance with the Fiscal Agent Agreement to execute and deliver an assignment and assumption agreement, pursuant to which the successor Fiscal Agent shall assume all of the Fiscal Agent's rights and obligations under this Agreement. Thereafter, (i) the successor Fiscal Agent shall be bound by the terms of this Agreement, shall succeed to and become vested with all the rights, powers, privileges and duties of the former Fiscal Agent and shall appoint Designated Signatories pursuant to Sections 3.1 and 5.6, and (ii) the former Fiscal Agent shall be discharged from its duties and obligations hereunder and shall have no further obligation with respect to the Permitted Accounts, the US Dollars Payment Processing Account, the Development Expenditure Account and the Funds.

## ARTICLE IV.

### TERM; SUSPENSION; TERMINATION

Section 4.1 Term. This Agreement shall become effective upon the execution and delivery of this Agreement by the duly authorized representatives of the Parties (the “**Effective Date**”) and shall end one (1) year after the Effective Date (“**Term**”), unless earlier terminated pursuant to Section 4.2; *provided, however*, that this Agreement may, at the option of MCA-Tanzania, be extended for additional one year periods through the term of the 609(g) Grant Agreement and of the Compact; *provided, further*, that this Agreement may be extended for an additional one hundred twenty (120) days following the expiration or termination of the 609(g) Grant Agreement or the Compact, whichever is later, if MCC determines that obligations incurred prior to the expiration or termination of the 609(g) Grant Agreement or the Compact remain to be paid or additional time is required to resolve any litigation, claims or audit findings or any statutory requirements.

#### Section 4.2 Termination.

(a) The Bank may terminate this Agreement by providing written notice to MCA-Tanzania, the Fiscal Agent and MCC not less than ninety (90) days prior to the Bank’s proposed termination date; *provided, however*, that such termination shall not be effective until satisfaction of clauses (c) through (f) of this Section 4.2.

(b) MCA-Tanzania (with the prior written approval of MCC) or MCC may terminate this Agreement, at any time with or without cause, by prior written notice to each other Party; *provided, however*, that such termination shall not be effective until satisfaction of clauses (c) through (f) of this Section 4.2.

(c) Following the delivery of a termination notice pursuant to Section 4.2(a) or (b), MCA-Tanzania may appoint, with the prior written approval of MCC, a successor bank (a “**Successor Bank**”). Upon an entity’s acceptance of appointment as a Successor Bank, MCA-Tanzania shall provide written notice thereof to the Bank and to the Fiscal Agent (and shall provide a copy of such written notice to MCC).

(d) MCA-Tanzania shall cause the Successor Bank and the Fiscal Agent to execute a new bank agreement (the “**Successor Bank Agreement**”), the form and substance of which shall be approved by MCC. Upon receipt of instructions from the Fiscal Agent (countersigned by MCC) or MCC, the Bank shall transfer all Funds held in the existing Permitted Accounts to the Successor Bank. The Bank also shall deliver simultaneously all Account Records to the Successor Bank (or to MCC if so instructed by MCC), and close all of the existing Permitted Accounts at the Bank; *provided, however*, that upon notice by MCC, if a Successor Bank Agreement is not executed within ninety (90) days of a termination notice pursuant to Section 4.2(a) or Section 4.2(b), the Bank shall transfer all Funds held in the existing Permitted Accounts and the US Dollars Payment Processing Account to the account indicated by MCC pursuant to Section 4.2(e), and shall deliver simultaneously all Account Records to MCA-Tanzania pursuant to Section 4.2(f) and close all of the existing Permitted Accounts at the Bank; *provided, further*, that MCC may, at any time upon (or after) such

termination notice, instruct the Bank to, and the Bank shall, immediately transfer all Funds to an account indicated by MCC and deliver immediately all Account Records to MCA-Tanzania or such agent or representative designated by MCA-Tanzania (with MCC written approval) or to MCC in accordance with this Section 4.2. Immediately upon conclusion of the transfers described in this Section 4.2(d), this Agreement shall terminate.

(e) Without limiting the generality of the Bank's obligation to comply with MCC Instructions, upon the expiration or termination of this Agreement, the Bank shall transfer all amounts then held in the Permitted Accounts and all Funds held in the US Dollars Payment Processing Account to such United States Government account or accounts as designated by MCC in writing, immediately after the Bank receives such written request.

(f) Upon any early termination of this Agreement, the Bank shall ensure the orderly and timely transfer of all records, documents, data and information (together with all electronic copies thereof) to MCA-Tanzania or such agent or representative designated by MCA-Tanzania (with MCC's written approval) or to MCC, and the Bank shall take any other actions reasonably requested by MCA-Tanzania to ensure the proper transition of any services provided by the Bank pursuant to this Agreement, if applicable.

Section 4.3 Survival. Notwithstanding any expiration or termination of this Agreement, the following provisions of this Agreement shall survive: Sections 1.9, 2.2, 2.3(a), 2.4, 4.3, 5.2, 5.4, 5.5, 5.7, 5.14, 5.18 and 6.1.

## **ARTICLE V.**

### **MISCELLANEOUS**

Section 5.1 Representations and Warranties of the Bank. The Bank hereby represents and warrants to the other Parties that:

- (a) it is a financial institution, duly formed, validly existing and in good standing under the laws of the United Republic of Tanzania, and has all requisite power and authority to execute and deliver this Agreement and to perform the obligations hereunder;
- (b) this Agreement has been duly authorized, executed and delivered on its behalf;
- (c) this Agreement constitutes a valid and legally binding obligation of the Bank, enforceable against it in accordance with its terms;
- (d) all consents and approvals necessary or appropriate for the performance of its obligations hereunder have been obtained;
- (e) neither the execution and delivery of this Agreement, nor the performance by the Bank of its obligations hereunder will, with or without the giving of notice or the passage of time or both: (i) violate the provisions of any law applicable to it; (ii) violate the provisions of its organizational documents; (iii) violate any judgment, decree, order or award of any court or governmental authority applicable to it; or (iv) conflict with or result in the breach or

termination of any term or provision of, or constitute a default under, any instrument or agreement to which it is a party or by which it or any of its assets is bound;

(f) no payments have been or will be made by the Bank to an official of the Government in connection with this Agreement and no payments have been made by the Bank to any third party in connection with this Agreement or the Program in violation of the FCPA (assuming for these purposes that the Bank is deemed to be an entity subject to the FCPA); and no payments have been made, or caused to be made, by the Bank to any third party in connection with this Agreement in violation of any applicable laws or regulations of the United Republic of Tanzania relating to anti-bribery and corruption; and

(g) the Bank, its personnel, subcontractors and associates have not been (i) blacklisted from participation in procurements funded by The World Bank, (ii) debarred or suspended from participation in procurements funded by the United States Government, or (iii) otherwise prohibited from receiving assistance by applicable United States law or executive order or United States policies including under any then-existing anti-terrorist laws or policies.

#### Section 5.2 Confidentiality.

(a) Except to the extent disclosure is expressly permitted or required under Sections 1.8, 1.9(b) or 1.10(a) of this Agreement, each Party hereto shall hold, and shall use commercially reasonable efforts to cause its affiliates, and their respective employees, officers, agents and advisors (“**Representatives**”) to hold, in strict confidence from any person (other than any such Affiliate or Representative) all documents or other information furnished to it by any other Party or such other Party’s Representatives pertaining to this Agreement or the transactions contemplated hereby (“**Confidential Information**”); *provided*, that any such Confidential Information may, and at the request of MCC shall, be disclosed to MCC.

(b) Notwithstanding Section 5.2(a), in the event that any Party is required to disclose any Confidential Information provided to it by any other Party (i) in connection with any judicial or administrative proceedings or (ii) in the reasonable opinion of counsel to the disclosing Party, to avoid violating applicable laws, the disclosing Party will in advance of such disclosure provide the other Parties with prompt notice of such requirement(s). Each Party also agrees, to the extent legally permissible, to provide the other Parties, in advance of any such disclosure, with copies of any Confidential Information it intends to disclose (and, if applicable, the text of the disclosure language itself) and to cooperate with the other Parties to the extent it may reasonably seek to limit such disclosure.

Section 5.3 Prohibition on Set-Off. The Bank waives any and all rights of set-off, combination of accounts or counterclaim or any other right whatsoever it may have or hereafter acquire to apply Funds or any other amounts standing or credited to the Permitted Accounts or any Funds in the US Dollars Payment Processing Account or the Tanzanian Shillings Payment Processing Accounts in discharge or satisfaction of any cost, right of reimbursement, expense, loss of the Bank or any other liability or obligation to the Bank and all such rights are hereby waived and released by the Bank. All transfers or payments made by the Bank under this

Agreement shall be made without any deduction, withholding, set-off or counterclaim of any kind.

Section 5.4 Communications. Any notice, instruction, certificate, request, report, approval, document or other communication required, permitted, or submitted by a Party to another Party under this Agreement shall be (a) in writing, (b) in English, and (c) deemed duly given (i) upon personal delivery to the Party (or MCC, as applicable) to be notified; (ii) when sent by tested and confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party (or MCC, as applicable); if not, then on the next business day; or (iii) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery with written verification of receipt, to the Party (or MCC, as applicable) to be notified at the address indicated below, or at such other address as such Party (or MCC, as applicable) may designate by notice to the other Parties (and MCC):

To the Bank:

Governor  
Bank of Tanzania  
P.O. Box 2939, Dar es Salaam, Tanzania  
Tel. Gen: 255 22 2110946-52/2110977-79  
Dir: 255 22 2112879  
Attention: Daudi Ballal  
Facsimile: 255 22 2112671  
Email: [governoroffice@hq.bot-tz.org](mailto:governoroffice@hq.bot-tz.org)

To the Fiscal Agent:

Accountant General's Department of the  
Ministry of Finance of the United Republic of Tanzania  
Madaraka Avenue  
P.O.Box 9111  
Dar es Salaam  
Tanzania  
Attention: Mwanaidi Mtanda  
Facsimile: 255 22 2123982  
Telephone: 255 22 2123904  
Email: [nicmtati2000@yahoo.com](mailto:nicmtati2000@yahoo.com)

To MCA-Tanzania:

MCA-Tanzania  
c/o Ministry of Finance  
Madaraka Avenue  
Dar es Salaam, United Republic of Tanzania  
Attention: Bernard Mchomvu  
Email: benmchomvu@yahoo.com

To MCC:

Millennium Challenge Corporation  
Attention: Vice President, Department of Compact Implementation  
(with a copy to the Vice President and General Counsel)  
875 Fifteenth Street, N.W.  
Washington, D.C. 20005  
United States of America  
Facsimile: (202) 521-3700  
Email: [VPIImplementation@mcc.gov](mailto:VPIImplementation@mcc.gov) (Vice President, Department of Compact Implementation);  
[VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)

Whenever under the terms hereof the time for giving a notice or performing an act falls upon a day that is not a business day, such time shall be extended to the next business day.

Section 5.5 Assignment. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns. A Party may not assign, delegate, subcontract or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of MCA-Tanzania, the Bank and MCC, and with the prospective assignee executing an assignment and assumption agreement prior to such transfer, signed by MCA-Tanzania, the Fiscal Agent and the Bank and approved in writing by MCC, under which such assigning Party assigns to such assignee all of its right, title and interest to this Agreement and such assignee assumes all such rights and obligations of such Party then existing under this Agreement. Notwithstanding the foregoing, MCA-Tanzania and the Fiscal Agent may assign any claims under this Agreement to MCC, which assignment shall be effective upon receipt by the Bank of written notice of the assignment duly signed by MCA-Tanzania (or the Fiscal Agent, as the case may be) and MCC.

Section 5.6 Representatives. For all purposes relevant to this Agreement, MCA-Tanzania shall be represented by the individual holding the position of, or acting as, its Chief Executive Officer (the "***MCA-Tanzania Principal Representative***"); the Bank shall be represented by the individual holding the position of, or acting as, its Director of Financial Markets (the "***Bank Principal Representative***"); and the Fiscal Agent shall be represented by the individual holding the position of, or acting as, its Accountant General (the "***Fiscal Agent Principal Representative***") and together with the MCA-Tanzania Principal Representative and the Bank Principal Representative, each a "***Principal Representative***" and, collectively, the

“**Principal Representatives**”), each of whom, by written notice, may designate one or more additional representatives (each, an “**Additional Representative**”) for all purposes other than signing amendments to this Agreement. The names of each Party’s Principal Representative and its respective Additional Representatives shall be provided with specimen signatures to the other Parties, and each Party may accept as duly authorized any instrument signed by such Principal Representative or Additional Representative relating to the implementation of this Agreement, until receipt of written notice of revocation of their authority. A Party may replace its Principal Representative or an Additional Representative with a new representative upon written notice to the other Parties, which notice shall include the specimen signature of the new Principal Representative or Additional Representative, as the case may be.

Section 5.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United Republic of Tanzania.

Section 5.8 Ownership of Documents. The copyright in all studies, reports and related data and documents prepared by the Bank, or made available by the Bank to MCA-Tanzania, the Fiscal Agent or MCC, under this Agreement shall pass to MCA-Tanzania, unless otherwise specified in writing to the Bank by MCC or MCA-Tanzania (with the prior written consent of MCC).

Section 5.9 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship among the Parties.

Section 5.10 Amendment. The Parties may amend this Agreement only by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties; *provided*, that any such amendment shall be subject to, and shall not be effective without, the prior written approval of MCC.

Section 5.11 Nonwaiver of Remedies; Waiver. The Parties agree that no delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach, default or noncompliance by another Party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. The Parties further agree that any waiver, permit, consent or approval of any kind or character on any Party’s part of any breach, default or noncompliance under this Agreement or any waiver on such Party’s part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 5.12 Attachments. Any exhibit, schedule or other attachment expressly attached hereto (together, the “**Attachments**”) is incorporated herein by reference and shall constitute an integral part of this Agreement.

Section 5.13 Headings. The Section and Subsection headings used in this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.

#### Section 5.14 Rights of MCC.

(a) The Parties acknowledge and agree that the Government, MCC and MCA-Tanzania have entered into the 609(g) Grant Agreement and the Government, MCC and MCA-Tanzania shall enter into the Program Implementation Agreement, and that pursuant to the foregoing agreements the Government and MCA-Tanzania acknowledge and agree to the rights of MCC set forth in this Agreement.

(b) This Agreement is for the exclusive benefit of the Parties and their respective permitted successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever, with the exception of MCC, which is hereby designated as an intended beneficiary to this Agreement and shall have all of the rights provided to or reserved for it throughout this Agreement.

(c) The Parties further agree that (i) MCC shall have final approval rights to the terms and conditions of this Agreement, and any amendments hereto, and any or all documents related to this Agreement and the activities contemplated hereunder; (ii) MCC, in reserving any or all of the approval rights, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these approval rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Agreement; (iii) MCC may, from time to time, exercise its rights, or discuss matters related to this Agreement with the Parties jointly or separately, without thereby incurring any responsibility or liability to the Parties jointly or separately; (iv) any approval (or failure to approve) or exercise (or failure to exercise) any rights by MCC shall not bar MCA-Tanzania, the Fiscal Agent or MCC from asserting any right, or relieve the Bank of any liability which the Bank might otherwise have to MCA-Tanzania, the Fiscal Agent or MCC; and (v) MCC shall have the right, as set forth in this Agreement, to receive copies of the reports and other documentation delivered to the Bank, MCA-Tanzania or the Fiscal Agent.

(d) For the benefit of MCC, each of MCA-Tanzania and the Fiscal Agent agrees that it shall comply with all the terms of and its respective obligations under this Agreement and the Fiscal Agent Agreement.

(e) For the benefit of MCC, the Bank agrees that it shall comply with all the terms of and its obligations under this Agreement.

(f) MCC shall deliver to the Bank an incumbency certificate and specimen signature for each designated signatory of MCC substantially in the form of Exhibit 4 (each, an “*MCC Designated Signatory*”). MCC shall notify MCA-Tanzania, the Bank and the Fiscal Agent of any change in any of the MCC Designated Signatories and shall provide an incumbency certificate and specimen signature with respect to any new MCC Designated Signatories.

(g) For the avoidance of doubt, MCC shall incur no obligations or liabilities under this Agreement, whether as the result of its status as assignee of MCA-Tanzania or otherwise.

In no event shall anything in this Agreement be construed as a waiver of immunity from, or submission by MCC to, the jurisdiction of the courts of the United Republic of Tanzania or of any other jurisdiction, or of any other body, including the arbitral body or any arbitration under Section 6.1.

Section 5.15 Severability. If one or more provisions of this Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 5.16 Entire Agreement. This Agreement, including all Attachments, and all certificates, documents or agreements executed and delivered in connection with and in furtherance of this Agreement, when executed and delivered, shall constitute the entire agreement of the Parties with respect to the subject matter hereof, superseding and extinguishing all prior agreements, understandings and representations and warranties relating to the subject matter hereof.

Section 5.17 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures and each when so executed and delivered shall be an original instrument, but such counterparts together shall constitute a single agreement. Except as the Parties may otherwise agree in writing from time to time, a signature delivered by facsimile or electronic mail in accordance with Section 5.4 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 5.18 Waiver of Immunity. Each Party, as to itself and its assets, hereby irrevocably and unconditionally waives any right of immunity (sovereign or otherwise) and agrees not to claim or assert any immunity with respect to the matters covered by this Agreement or any arbitration, suit or action with respect to this Agreement, whether arising by statute or otherwise, which it may have or may subsequently acquire, including rights under the doctrines of sovereign immunity and act of state, immunity from legal process (including service of process or notice, pre-judgment or pre-award attachment, attachment in aid of execution, or otherwise), immunity from jurisdiction or judgment of any court, arbitrator or tribunal (including any objection or claim on the basis of inconvenient forum), immunity from enforcement or execution of any award or judgment or any other remedy, and immunity from execution with respect to any type of asset.

Section 5.19 Definitions. When used in this Agreement, capitalized terms defined in Schedule 1 hereto shall have the respective meanings given to such terms in that Schedule.

Section 5.20 Language. This Agreement is prepared and executed in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English language version shall prevail.

Section 5.21 Rules of Construction. The following rules of construction shall be followed when interpreting this Agreement:

(a) except as otherwise set forth herein, all references contained herein to contracts, agreements, or other documents shall be deemed to mean such contracts, agreements or documents, as the same may be modified, supplemented, or amended from time to time;

(b) each reference to a law shall be construed as a reference to such law as it may have been, or may from time to time be, amended, replaced, extended or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such law and all protocols, codes, proclamations and ordinances issued or otherwise applicable under any such law;

(c) any reference to a “*business day*” shall mean any day other than a Saturday, Sunday, or commercial banking holiday in Dar es Salaam, United Republic of Tanzania or Washington, D.C., United States of America, or a federal or national holiday in the United Republic of Tanzania or the United States of America; and any reference to a “*day*” shall mean a calendar day;

(d) any reference to a “*month*”, “*quarter*” or “*year*” shall have the common meaning given such terms based on a Gregorian calendar year beginning on January 1 and ending on December 31 and divided into four approximately equal quarters beginning on each of January 1, April 1, July 1 and October 1 of each such respective calendar year.

## **ARTICLE VI.**

### **DISPUTE RESOLUTION**

#### **Section 6.1 Dispute Resolution.**

(a) All disputes arising from, or in connection with, this Agreement should be settled amicably through consultation by the Parties. Either Party may, at any time, request consultations relating to the interpretation or implementation of this Agreement. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank.

(b) All disputes in connection with the execution or interpretation of this Agreement that cannot be settled amicably by the Parties, pursuant to paragraph (a) above, within thirty (30) days of notice of the dispute to the other Party, shall finally and exclusively be settled in accordance with the Arbitration Act (Cap 15) R.E. 2002 (the “**Rules**”). The court shall appoint or confirm arbitrators in accordance with said Rules. The arbitration will be held in Dar es Salaam, United Republic of Tanzania, and shall be conducted in English. The arbitration panel shall maintain a written transcript of the proceedings or hearings and render a reasoned written award.

(c) Without limiting the generality of Section 5.14 or the immunity of MCC under Section 5.18, MCC at its sole discretion shall have the right (but not the obligation) to observe or to participate or join in any such arbitration in order to enforce its rights under, arising out of, or in connection with, this Agreement. The Parties shall provide MCC with written transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within ten (10) days after (i) each such proceeding or hearing or (ii) the date on which any such award is issued. The acceptance by MCC of the right to be an observer or a party to the arbitration shall not constitute consent to the jurisdiction of the courts or any other body of the United Republic of Tanzania or any other jurisdiction or to the jurisdiction of any arbitral panel.

(d) The costs associated with any settlement efforts before arbitration or associated with arbitration shall be allocated among the Parties as follows: (i) each Party shall be responsible for its own attorneys' fees and expenses, (ii) costs related to translation or interpretation shall be shared equally by the Parties, and (iii) all other costs associated with the arbitration shall be allocated as determined by the arbitration panel.

*[Signature Page Follows.]*

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

**MILLENNIUM CHALLENGE ACCOUNT - TANZANIA**

By: \_\_\_\_\_  
Name: Bernard Mchomvu  
Title: Chief Executive Officer

**BANK OF TANZANIA, as the Bank**

By: \_\_\_\_\_  
Name: Bernard Ndullu  
Title: Governor

**ACCOUNTANT GENERAL'S DEPARTMENT OF THE MINISTRY OF FINANCE OF THE UNITED REPUBLIC OF TANZANIA, as the Fiscal Agent**

By: \_\_\_\_\_  
Name: Mwanaidi Mtanda  
Title: Accountant General

## Schedule 1

### DEFINITIONS

For purposes of this Agreement:

**“609(g) Assistance”** shall mean the program to be implemented by the Government and MCC using 609(g) Funding, for the purposes set forth in the 609(g) Grant Agreement.

**“609(g) Disbursement”** shall mean the disbursement of 609(g) Funding by MCC from time to time to a Permitted Account or through such other mechanism agreed by the Parties, in accordance with the 609(g) Grant Agreement, for expenditures incurred in furtherance of the Program, in accordance with the 609(g) Grant Agreement.

**“609(g) Funding”** shall mean an amount not to exceed nine million eight hundred thousand United States Dollars (US \$9,800,000) granted by MCC to the Government, subject to the terms and conditions of the 609(g) Grant Agreement.

**“609(g) Grant Agreement”** shall have the meaning set forth in the Recitals to this Agreement.

**“609(g) Special Account”** shall have the meaning set forth in Section 1.3(a)(i).

**“Account Information”** shall have the meaning set forth in Section 1.3(b).

**“Account Monitoring System”** shall have the meaning set forth in Section 1.8(a).

**“Account Records”** shall have the meaning set forth in Section 1.9(a).

**“Action”** shall have the meaning set forth in Section 2.3(a).

**“Additional Representative”** shall have the meaning set forth in Section 5.6.

**“Affiliate”** shall mean the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

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

**“Attachments”** shall have the meaning set forth in Section 5.13.

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

**“Bank Losses”** shall have the meaning set forth in Section 2.4(b).

**“Bank Principal Representative”** shall have the meaning set forth in Section 5.6.

**“Bank Related Person”** shall have the meaning set forth in Section 1.10(b).

**“Compact”** shall have the meaning set forth in the Recitals to this Agreement.

**“Compact Funding”** shall mean the amount, expressed in United States Dollars, that MCC grants to the Government pursuant to the Compact to help the Government implement the Program, as more particularly defined in the Compact.

**“Compact Records”** shall mean accounting books, records, documents and other evidence relating to the Compact or the 609(g) Grant Agreement adequate to show to MCC’s satisfaction the use of all Funds in accordance with the Compact and the 609(g) Grant Agreement.

**“Confidential Information”** shall have the meaning set forth in Section 5.2(a).

**“Defense Notice”** shall have the meaning set forth in Section 2.3(b).

**“Designated Signatory”** shall have the meaning set forth in Section 3.1.

**“Development Expenditure Account”** shall have the meaning set forth in Section 1.3(d).

**“Disbursement”** shall mean any MCC Disbursement or 609(g) Disbursement.

**“Effective Date”** shall have the meaning set forth in Section 4.1.

**“FCPA”** shall have the meaning set forth in Section 1.7.

**“Fiscal Agent”** shall mean the person appointed as fiscal agent under and pursuant to the Fiscal Agent Agreement.

**“Fiscal Agent Agreement”** shall mean that certain Fiscal Agent Agreement by and between the Fiscal Agent and MCA-Tanzania, dated as of the date of this Agreement.

**“Fiscal Agent Principal Representative”** shall have the meaning set forth in Section 5.6.

**“Fiscal Agent Suspension Instruction”** shall have the meaning set forth in Section 3.3(a).

**“Funds”** shall have the meaning set forth in Section 1.2(a).

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

**“Initial Bank Agreement”** shall have the meaning set forth in the Recitals to this Agreement.

**“Lien”** shall have the meaning set forth in Section 1.10(a)(iv).

**“MCA-Tanzania”** shall have the meaning set forth in the Preamble to this Agreement.

**“MCA-Tanzania Losses”** shall have the meaning set forth in Section 2.4(a).

**“MCA-Tanzania Principal Representative”** shall have the meaning set forth in Section 5.6.

“**MCC**” shall have the meaning set forth in the Recitals to this Agreement.

“**MCC Designated Signatory**” shall have the meaning set forth in Section 5.14(f).

“**MCC Disbursement**” shall mean the disbursement of Compact Funding by MCC from time to time to a Permitted Account or through such other mechanism agreed by the Parties, in accordance with the Compact, for expenditures incurred in furtherance of the Program, in accordance with the Compact and the Program Implementation Agreement.

“**MCC Instruction**” shall have the meaning set forth in Section 1.5(a)(ii).

“**Millennium Challenge Account**” shall mean the development fund established by the United States Government and managed by the Millennium Challenge Corporation.

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

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

“**Party in Interest**” shall have the meaning set forth in Section 2.3(b).

“**Permitted Account(s)**” shall have the meaning set forth in Section 1.3(a).

“**Principal Representatives**” shall have the meaning set forth in Section 5.6.

“**Program**” shall mean the program to use Funds to advance the United Republic of Tanzania’s progress towards economic growth and poverty reduction, which program is described in the Compact.

“**Program Implementation Agreement**” shall mean that certain agreement with respect to the disbursement of Compact Funding by and among MCC, the Ministry of Finance of the United Republic of Tanzania, on behalf of the Government, and MCA-Tanzania, to be entered into in connection with the Compact.

“**Representatives**” shall have the meaning set forth in Section 5.2(a).

“**Rules**” shall have the meaning set forth in Section 6.1(b).

“**Special Account**” shall have the meaning set forth in Section 1.3(a)(ii).

“**Successor Bank**” shall have the meaning set forth in Section 4.2(c).

“**Successor Bank Agreement**” shall have the meaning set forth in Section 4.2(d).

“**Supplemental Agreement**” shall mean one or more agreements memorializing any funding, implementing and other arrangements in furtherance of the 609(g) Grant Agreement or the Compact between (a) the Government (or any Affiliate of the Government or Permitted Designee) and MCC, (b) MCC and/or the Government (or any Affiliate of the Government or Permitted Designee) and any third party, including any Permitted Designee or (c) any third

parties where neither MCC nor the Government is a party, before, on or after the entry into force of the Compact.

***“Tanzanian Shillings”*** shall mean the official currency of the United Republic of Tanzania.

***“Term”*** shall have the meaning set forth in Section 4.1.

***“TISS”*** shall have the meaning set forth in Section 1.2(b).

***“Transfer Instruction”*** shall have the meaning set forth in Section 1.5(a)(i).

***“United States Dollars”*** shall mean the official currency of the United States of America.

***“US Dollars Payment Processing Account”*** shall have the meaning set forth in Section 1.3(c).

***“United States Government”*** shall mean the government of the United States of America.

# EXHIBIT 1

## FORM OF TRANSFER INSTRUCTION

Prepared By: \_\_\_\_\_  
Signature Fiscal Agent Unit

Control number (For FA use only) \_\_\_\_\_



Expected Payment Date **29-July-2010**

### MCA-T Non-US Bank Payment Request Form - USD Tanzania

												MCA-T Only	
												Correspondent Bank	
Row No	New or Updated Vendor	Invoice Number	Recipient Name	Bank Name	Account Number	SWIFT Number	Currency Code	MCC Funding Source	MCC Project	MCC Activity	Amount	Bank Name	SWIFT Number
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1			Vendor										
2													
3													
4													
5													
6													
<b>Control Total (Not for ITS Entry)</b>													

In Signing this document, I certify that these payments:

- i. Are authentic
- ii. Are within the Approved budget and quarterly financial report for this period
- iii. Are within the approved Procurement Plan for this period
- iv. Comply with the Grant Agreement, the Compact, the Program Implementation Agreement and any other relevant Supplementary Agreements.
- v. Have been checked to ensure that beneficiaries of the Funds are not on the excluded parties lists of the US Treasury and UN
- vi. Comply with the Contract or PO, and
- vii. Invoice receipts have been retained and filed at the MCA - Tanzania

\_\_\_\_\_  
Signature Date

Head Fiscal Agent Tanzania

**EXHIBIT 1**

**FORM OF TRANSFER INSTRUCTION**

**(Continued)**

Prepared By: \_\_\_\_\_  
Signature Fiscal Agent Unit

Control number (For FA use only) \_\_\_\_\_



Expected Payment Date: **29-July-2010**

**MCA-T Non-US Bank Payment Request Form - TZS  
Tanzania**

												MCA-T Only				
												Recipient Bank Details				
Row No	New or Updated Vendor	Invoice Number	Recipient Name	Bank Name	Account Number	SWIFT Number	Currency Code	MCC Funding Source	MCC Project	MCC Activity	Amount	Bank Name	Recipient Name	Branch Number	Account Number	TZS Amount
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
			MCA-T Special Account													
1																
<b>Control Total (Not for ITS Entry)</b>																
											TZS:USD Rate Used: <input type="text"/>					

In Signing this document, I certify that these payments:

- i. Are authentic
- ii. Are within the Approved budget and quarterly financial report for this period
- iii. Are within the approved Procurement Plan for this period
- iv. Comply with the Grant Agreement, the Compact, the Program Implementation Agreement and any other relevant Supplementary Agreements.
- v. Have been checked to ensure that beneficiaries of the Funds are not on the excluded parties lists of the US Treasury and UN
- vi. Comply with the Contract or PO, and
- vii. Invoice receipts have been retained and filed at the MCA - Tanzania

\_\_\_\_\_  
Signature Date

Head Fiscal Agent Tanzania

**EXHIBIT 2**

**FORM OF MCC INSTRUCTION**

[LETTERHEAD OF MILLENNIUM CHALLENGE CORPORATION]

Date: \_\_\_\_\_

Reference is made to the Bank Agreement among MCA-Tanzania, the Bank of Tanzania (the “**Bank**”) and the Accountant General’s Department of the Ministry of Finance of the United Republic of Tanzania (the “**Fiscal Agent**”), dated as of [date] (the “**Bank Agreement**”). All capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Bank Agreement.

Pursuant to Section 1.5(a)(ii) of the Bank Agreement, the Millennium Challenge Corporation (“**MCC**”) hereby gives notice to the Bank to (check all appropriate box(es) below):

- Immediately suspend all payments and transfers from the Permitted Accounts until further written notice from MCC.
  
- Transfer immediately available funds in the Permitted Account in accordance with the following:

**Originator**

Originator:

Code:

Originator Bank:

Code:

Account No: \_\_\_\_\_

Amount in GEL: \_\_\_\_\_

Amount in words: \_\_\_\_\_

Currency for Transfer: \_\_\_\_\_

Amount in Transfer Currency \_\_\_\_\_

**EXHIBIT 2**

**FORM OF MCC INSTRUCTION  
(Continued)**

**Beneficiary**

Beneficiary: \_\_\_\_\_

Code: \_\_\_\_\_

Beneficiary Bank: \_\_\_\_\_

Code: \_\_\_\_\_

Account No: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**Purpose of Payment**

*[Insert description.]*

**MILLENNIUM CHALLENGE CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 3**

**FORM OF FISCAL AGENT INCUMBENCY CERTIFICATE  
AND SPECIMEN SIGNATURE**

I, the undersigned, as [title] of the Accountant General’s Department of the Ministry of Finance of the United Republic of Tanzania, hereby certify pursuant to Section 3.1 of the Bank Agreement, dated as of [date] (the “**Bank Agreement**”), among MCA-Tanzania; the Bank of Tanzania, a financial institution organized and existing under the laws of the United Republic of Tanzania, in its capacity as depository bank; and the Accountant General’s Department of the Ministry of Finance of the United Republic of Tanzania, in its capacity as Fiscal Agent, as follows:

The signature set forth opposite the name of each individual listed below is the true and genuine signature of such individual:

Name	Office	Signature

Each individual named above shall be a Designated Signatory of the Fiscal Agent for purposes of the Bank Agreement.

The above named Designated Signatories shall be the only persons that have signature authority for each respective Permitted Account, and except for MCC’s right to issue an MCC Instruction in accordance with Section 1.5(a)(ii) of the Bank Agreement and MCC’s rights as set forth in Section 4.2(e) of the Bank Agreement, such Designated Signatories of the Fiscal Agent shall be the only persons that have authority to make or instruct any transfer of funds to or from the Permitted Accounts, and no other person or entity shall have any such authority, including: (a) any director, officer, employee, agent and representative of MCA-Tanzania (other than the Fiscal Agent), or (b) any official of the Government or any of its ministries, departments, or agencies.

Capitalized terms used in this Certificate shall have the meaning given to such terms in the Bank Agreement.

IN WITNESS WHEREOF, the undersigned, as the [title] of the Accountant General’s Department of the Ministry of Finance of the United Republic of Tanzania, has executed this Certificate as of [date].

\_\_\_\_\_  
[Name]  
[Title]

**EXHIBIT 4**

**FORM OF MCC INCUMBENCY CERTIFICATE AND SPECIMEN SIGNATURE**

I, the undersigned, as [title] of Millennium Challenge Corporation ("**MCC**"), hereby certify pursuant to Section 3.1 of the Bank Agreement dated as of [date] (the "**Bank Agreement**"), among MCA-Tanzania; the Bank of Tanzania, in its capacity as depository bank; and the Accountant General's Department of the Ministry of Finance of the United Republic of Tanzania, in its capacity as Fiscal Agent, as follows:

The signature set forth opposite the name of each individual listed below is the true and genuine signature of such individual:

Name	Office	Signature

Each individual named above shall be an MCC Designated Signatory for purposes of the Bank Agreement.

The above named MCC Designated Signatories shall be the only persons that have signature authority for an MCC Instruction in accordance with Section 1.5(a)(ii) of the Bank Agreement.

Capitalized terms used in this certificate shall have the meaning given to such terms in the Bank Agreement.

IN WITNESS WHEREOF, the undersigned, as the [title] of Millennium Challenge Corporation, has executed this certificate as of [date].

\_\_\_\_\_  
[Name]  
[Title]