

**PROGRAM IMPLEMENTATION AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES OF AMERICA,**  
**ACTING THROUGH**  
**THE MILLENNIUM CHALLENGE CORPORATION**  
**AND**  
**THE KINGDOM OF LESOTHO,**  
**ACTING THROUGH**  
**THE MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL RELATIONS**

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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 Kingdom of Lesotho, acting through the Ministry of Foreign Affairs and International Relations (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 May 12, 2022 (the “*Compact*”), sets forth the general terms on which MCC shall provide assistance of up to US\$300,000,000 to the Government for a program to reduce poverty through economic growth in Lesotho;

Recalling that the Government has designated MCA-Lesotho II 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 GOVERNMENT

#### Section 1.1 Definitions.

Capitalized terms and acronyms used in this Agreement and not defined in this Agreement have the meanings provided in the Compact. All other capitalized terms and acronyms have the meanings provided in Annex I.

#### Section 1.2 Role of the Government.

(a) Government Responsibilities. The Government shall 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-

Lesotho II, 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 shall 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 Lesotho that would have the effect of allowing any such impoundment, rescission, sequestration, or liquidation 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 shall promptly seek the release of such Lien and, if such Lien is required by a final and non-appealable court order, shall pay any amounts due in order to obtain such release; *provided, however*, that the Government shall not use MCC Funding, the Government Contribution, or any Program Assets to satisfy any such obligation.

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

(iii) Environmental and Social Performance. Unless MCC and the Government agree otherwise in writing, the Government shall 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 Environmental Guidelines, including the environmental and social performance standards set forth in the IFC Performance Standards that have been incorporated by reference into the Environmental Guidelines. The Government also shall 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 between national environmental laws and regulations and the standards required by the Compact, the Government shall ensure that the stricter standard is followed. Unless MCC agrees otherwise in writing, the Government shall fund all costs of environmental and social mitigation measures necessary for the Program (including, without limitation, costs of resettlement) that are not specifically provided for in the

Compact, or that exceed the amount of MCC Funding and/or Government Contribution specifically allocated for such costs in, the Detailed Financial Plan for any Project or Activity.

(iv) Gender and Social Inclusion. Unless MCC and the Government agree otherwise in writing, the Government shall 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 *Gender Policy*, *Counter-Trafficking in Persons Policy*, and the *Operational Requirements and Milestones for Social Inclusion and Gender Integration*.

(v) Project-Specific Undertakings. The Government shall fulfill each of the Project-related commitments described in Annex IV.

### Section 1.3 Role of MCA-Lesotho II.

(a) Designation of MCA-Lesotho II.

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

(ii) The Government shall ensure that MCA-Lesotho II is and remains throughout the Compact Term (and during the Closure Period as provided in the Closure Plan), duly organized, sufficiently staffed and empowered to exercise the Designated Rights and Responsibilities.

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

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

(i) Power and Authorization. MCA-Lesotho II 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, any Implementation Letter or the Program Guidelines.

(ii) Government Responsibilities. MCA-Lesotho II (A) shall carry out the Designated Rights and Responsibilities (including all obligations specified as MCA-Lesotho II obligations in the Compact, this Agreement, the CDF Agreement, or any other Supplemental Agreement) with due care, efficiency and diligence in conformity with sound technical, financial and management practices, and in conformity with the Compact, this Agreement, the CDF Agreement, any other Supplemental Agreement and the Program Guidelines, (B) except as provided in Section 2.6 or with respect to an Implementing Entity, shall not assign, delegate or otherwise transfer any of the Designated Rights and Responsibilities without the prior written consent of MCC, and (C) shall 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-Lesotho II shall confirm each representation that it makes on behalf of the Government in any agreement, certificate or instrument delivered by MCA-Lesotho II with all necessary Permitted Designees prior to providing such representation to MCC.

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

(v) Governance of MCA-Lesotho II. MCA-Lesotho II shall adopt internal rules and regulations or bylaws ("**Bylaws**") and a human resource manual ("**HR Manual**"), each in form and substance satisfactory to MCC, that will provide the framework for MCA-Lesotho II's operations and administration and the general terms and conditions for employment of its staff. MCA-Lesotho II shall 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-Lesotho II shall provide the Fiscal Agent (and MCC if it so requests) a copy of each agreement that is funded (directly or indirectly) with MCC Funding or the Government Contribution (each a, "**Funded Agreement**"), regardless of whether MCC has approval rights with respect to such agreement. Unless otherwise instructed by MCC, MCA-Lesotho II shall include in each Funded Agreement (A) a covenant that the counterparty to such agreement (each a, "**Counterparty**") shall comply with (i) the General Provisions Annex and (ii) any instruction received by such Counterparty from MCC regarding the performance by such Counterparty of the terms of the General Provisions Annex notwithstanding any other instruction given by MCA-Lesotho II; and (B) a right for MCA-Lesotho II to terminate such Funded Agreement if such Counterparty fails to comply with the General Provisions Annex or any such instruction of MCC.

(vii) Insurance; Performance Guaranties. MCA-Lesotho II shall, to MCC's satisfaction, cause all Program Assets to be insured (including, without limitation, through self-insurance) and shall arrange such other appropriate insurance to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain

adequate insurance and to post adequate performance bonds or other guaranties. With MCC's prior consent, MCC Funding may be used to pay the costs of obtaining such insurance. MCA-Lesotho II (or, as appropriate and with MCC's prior approval, another entity) shall 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-Lesotho II (and MCC, if it so requests) shall be named as additional insureds on any such insurance. The Government shall promptly notify MCC of the payment of any proceeds from claims paid under such insurance or guaranty and shall ensure that such proceeds shall be used to replace or repair any lost or damaged Program Assets; ***provided, however***, that, at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Lesotho II or as otherwise directed by MCC.

(viii) **MCA-Lesotho II Indemnity**. If MCA-Lesotho II is held liable under any indemnification or other similar provision of any agreement, then the Government shall pay such indemnity in full on behalf of MCA-Lesotho II and shall not use MCC Funding, the Government Contribution, or any Program Assets to satisfy such obligation. In addition, the Government shall indemnify and hold harmless each member of MCA-Lesotho II's Board (including each observer), each member of any Stakeholder Committee and each of MCA-Lesotho II's Key Staff 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-Lesotho II, ***provided, however***, that the Government shall 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 shall not use MCC Funding, the Government Contribution, or any Program Assets to satisfy its obligations under this Section 1.3(b)(viii).

## ARTICLE 2.

### IMPLEMENTATION FRAMEWORK

Section 2.1 **Implementation Plan**. The framework for the Program's implementation shall be further elaborated in a set of documents, in form and substance approved by MCC, consisting of (i) Work Plans, (ii) a Detailed Financial Plan, (iii) an Audit Plan, (iv) a Procurement Plan, (v) a Fiscal Accountability Plan, (vi) an M&E Plan, (vii) an Environmental and Social Performance Plan, (viii) a Social and Gender Integration Plan, and (ix) an AFC Action Plan (each, an ***“Implementation Plan Document”*** and collectively the ***“Implementation Plan”***). MCA-Lesotho II shall 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 shall review the proposed Implementation Plan and as necessary may request MCA-Lesotho II to submit clarifications or adjustments. MCA-Lesotho II shall submit an updated Implementation Plan or updated Implementation Plan Document during any quarter in which significant changes or modifications are made to a Project or to the Program, or when MCA-Lesotho II 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 shall be submitted each quarter. In



such instances, MCA-Lesotho II shall submit to MCC for approval a proposed revised Implementation Plan or an updated Implementation Plan Document (as applicable) on the same date as the next Periodic Report is due. MCA-Lesotho II shall ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Work Plan. MCA-Lesotho II shall develop and implement a work plan, in form and substance satisfactory to MCC, for the overall administration of the Program and such other work plans relating to the Projects and/or Activities as MCC may request from time to time (collectively, the “**Work Plans**”).

(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 and the overall allocation of the Government Contribution 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-Lesotho II shall 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 and the Closure Period, 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-Lesotho II shall develop and implement the Audit Plan for the audit of the expenditures of the entities that are subject to audit pursuant to the Audit Guidelines. The Audit Plan shall be in form and substance satisfactory to MCC and shall be developed no later than sixty (60) days before the end of the first period to be audited.

(d) Procurement Plan. MCA-Lesotho II shall 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 shall be prepared and updated in accordance with the Program Procurement Guidelines. In addition, no later than six months after the Compact is signed, MCA-Lesotho II shall 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 shall be subject to MCC approval. Upon MCC’s approval of the BCS, MCA-Lesotho II shall publish the BCS on the MCA-Lesotho II website.

(e) Fiscal Accountability Plan. MCA-Lesotho II shall develop and implement a manual (as approved by MCC) setting forth the principles, mechanisms and procedures (the “**Fiscal Accountability Plan**”) that MCA-Lesotho II shall use to ensure appropriate fiscal accountability for the use of MCC Funding or Government Contribution. The Fiscal Accountability Plan shall also include, among other things, requirements with respect to (i) budgeting, (ii) accounting, (iii) cash management, (iv) financial transactions (receipts and payments), (v) opening and managing Permitted Accounts, (vi) personnel and payroll management, (vii) travel and vehicle use, (viii) asset and inventory control, (ix) audits and

(x) reporting. The Fiscal Accountability Plan shall be revised periodically, subject to review and approval by MCC.

(f) M&E Plan. By the time specified in Annex II to this Agreement, MCA-Lesotho II shall develop and implement an M&E Plan to serve as the primary governing document for monitoring and evaluation activities for the Program over the Compact Term. The M&E Plan shall be developed, implemented and updated in accordance with the M&E Policy.

(g) Environmental and Social Performance Plans. In accordance with Section 1.2(b)(iii), MCA-Lesotho II shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding or the Government Contribution comply with the Environmental Guidelines, including the IFC Performance Standards that are incorporated by reference therein. Specifically, MCA-Lesotho II shall: (i) cooperate with or complete, as the case may be, any ongoing environmental and social impact assessments, and if necessary, undertake and complete any additional environmental and social assessments and analyses, such as environmental and social management plans, environmental and social audits, resettlement policy frameworks, stakeholder engagement plans, and resettlement action plans required under the laws of Lesotho, the Environmental Guidelines, this Agreement, the Compact, any other Supplemental Agreement or the Program Guidelines, or as otherwise required by MCC, each in form and substance satisfactory to MCC; (ii) ensure that Project or Activity-specific environmental and social management plans are developed, maintained, and updated and all relevant measures contained in such plans are integrated into project design and construction, the applicable procurement documents and associated finalized contracts, in each case, in form and substance satisfactory to MCC; and (iii) implement to MCC's satisfaction appropriate environmental and social mitigation measures identified in such assessments or plans or developed to address environmental and social risks and impacts identified during Compact implementation.

In addition, MCA-Lesotho II may engage the services of an Environmental and Social Oversight Consultant or ESOC to enhance MCA-Lesotho II's environmental and social performance and gender and social inclusion capacity. The ESOC shall (i) support MCA-Lesotho II in complying with the *Environmental Guidelines*, *Gender Policy*, *Counter-Trafficking in Persons Policy*, MCA-Lesotho II's Social and Gender Integration Plan, and Lesotho environmental and social regulations and requirements through all phases of the Projects; (ii) provide training and oversee effective implementation of the ESMS and complementary stakeholder engagement plan developed by MCA-Lesotho II; and (iii) maintain sufficient technically qualified staff throughout the period of performance to ensure MCA-Lesotho II's compliance with the policies, plans, and regulations and requirements described in clause (i) above and to MCC's satisfaction.

(h) Social and Gender Integration Plan. To ensure social inclusion and gender integration across the Projects and Activities, address human trafficking, and ensure compliance with the *Gender Policy* and the *Operational Requirements and Milestones for Social Inclusion and Gender Integration*, MCA-Lesotho II shall develop a comprehensive social and gender integration plan (the "***Social and Gender Integration Plan***") that, at a minimum, (i) identifies

approaches for regular, meaningful and inclusive consultations with women and other vulnerable and/or underrepresented groups; (ii) sets forth strategies for consolidating the findings and recommendations of Project-specific social and gender analyses into final Project designs; and specifies actions to be taken during the Compact Term to meet the social inclusion and gender equality objectives for the Projects; and (iii) ensures, through monitoring and coordination during Compact implementation, that final Activity designs, construction, and consultant tender documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses and recommendations. MCA-Lesotho II shall, on an annual basis, review and update the Social and Gender Integration Plan as needed to reflect lessons learned and Project-specific analysis.

(i) Anti-Fraud and Corruption Action Plan. MCA-Lesotho II shall develop and adopt an anti-fraud and corruption action plan to articulate how MCA-Lesotho II will supplement MCC-mandated controls to prevent fraud and corruption specific to its operating environment (the “*AFC Action Plan*”). The AFC Action Plan shall be created after completion of, and based on the findings of, an anti-fraud and corruption risk assessment carried out in compliance with the *Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*. Such anti-fraud and corruption risk assessment shall occur at a time agreed upon between MCA-Lesotho II and MCC. MCC will approve the AFC Action Plan, monitor its implementation, and refine MCC’s oversight strategy in relation to the AFC Action Plan, when necessary.

Section 2.2 Program Procurement Guidelines and Program Grant Guidelines. In accordance with Section 3.6 of the Compact:

(a) MCA-Lesotho II shall comply with the 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 shall ensure that any bid challenges are conducted in accordance with the Program Procurement Guidelines and the BCS; and

(b) MCA-Lesotho II shall comply with the Program Grant Guidelines in the solicitation, award, and administration of grants awarded to any non-Government entity in furtherance of the Program.

Section 2.3 Notice to Providers; Incorporation.

MCA-Lesotho II shall notify all Providers (and all other entities or individuals receiving MCC Funding in connection with the Program) of the requirements of Sections 2.7 and 3.7, and paragraphs (b), (c), and (d) of Section 3.8 of the Compact and shall include, or ensure the inclusion of, the requirements of such provisions in all agreements with a Provider.

#### Section 2.4 Reports; Notices.

(a) Unless MCC agrees otherwise in writing, MCA-Lesotho II shall 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-Lesotho II shall provide the Periodic Reports to MCC on the schedule and in the manner specified in the Reporting Guidelines.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget of the normal and expected resources that the Government 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-Lesotho II, 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.

(c) In addition to the Periodic Reports, MCA-Lesotho II shall provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by MCC and MCA-Lesotho II in writing, such other reports, documents, or information as MCC may request from time to time related to the Program.

(d) MCA-Lesotho II shall submit the Periodic Reports and any other reports required hereunder electronically if requested by MCC or otherwise required by the Reporting Guidelines.

(e) MCA-Lesotho II shall periodically provide to MCC, in form and substance satisfactory to MCC, the reports and information regarding the Government Contribution towards the objectives of the Program described in Section 2.6(a) of the Compact as required by the *Guidelines for Country Contributions* (each, a “**Country Contribution Report**”). MCA-Lesotho II shall provide the Country Contribution Reports to MCC on the schedule and in the manner specified in the *Guidelines for Country Contributions*.

#### Section 2.5 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) and any modification of any of the foregoing;

(c) agreements between the Government and MCA-Lesotho II, 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-Lesotho II (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-Lesotho II that is not arm’s-length;

(f) any pledge of any MCC Funding, the Government Contribution, 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-Lesotho II (including the Bylaws, HR Manual, 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-Lesotho II;

(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) and (B) any change of any Key Staff of MCA-Lesotho II or in the composition or size of its management unit, and the filling of any vacant position of any Key Staff of MCA-Lesotho II (including any process related to the recruitment and selection of any such Key Staff);

(k) any decision by MCA-Lesotho II to engage, accept or manage any funds in addition to MCC Funding and the Government Contribution (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 formation or acquisition of a subsidiary or other related entity of MCA-Lesotho II;

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

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

#### Section 2.6 Role of Certain Entities in Implementation.

(a) Outside Project Manager. MCA-Lesotho II may engage qualified persons or entities 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 Program Procurement Guidelines, the appointment or engagement of any Outside Project Manager shall be made using a competitive selection process and, if required by the Program Procurement Guidelines, shall be subject to approval by the Board and by MCC prior to such appointment or engagement. Upon such approval, MCA-Lesotho II 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-Lesotho II shall 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 shall 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-Lesotho II and, where appropriate, the Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(b) Fiscal Agent. MCA-Lesotho II shall engage a Fiscal Agent, who shall be responsible for, among other things, (i) ensuring and certifying that Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Fiscal Agent Agreement and the Bank Agreement, (ii) instructing the Bank to make Disbursements from a Permitted Account or requesting Disbursement be made directly to a provider as payment for goods, works or services in accordance with the Common Payment System or any alternate payment system approved by MCC, as the case may be, and in each case following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding or Government Contribution financial transactions, and (v) producing reports on Disbursements in accordance with established procedures set forth in the Fiscal Agent Agreement or the Bank Agreement.

MCA-Lesotho II shall 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 shall be a third party, independent of the Government.

(c) Auditors and Reviewers. MCA-Lesotho II shall 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-Lesotho II shall also engage one or more independent (i) reviewers to conduct reviews of performance and compliance under the Compact, which reviewer shall have the capacity to (A) conduct general reviews of performance or compliance, (B) conduct audits of environmental and social performance, and (C) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III to the Compact, and/or (ii) evaluators to assess performance as required under the M&E Plan (each, a “*Reviewer*”). MCA-Lesotho II shall select the Auditor(s) and/or Reviewer(s) in accordance with the Audit Guidelines and the M&E Plan, as applicable. MCA-Lesotho II shall 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-Lesotho II shall engage a Procurement Agent to carry out and/or certify specified procurement activities in furtherance of the Compact and this Agreement. MCA-Lesotho II shall 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 shall be a third party, independent of the Government.

## Section 2.7 Publicity and Transparency.

(a) Subject to Section 2.8, MCA-Lesotho II shall 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 the *Standards for Global Marking*. Upon the termination or expiration of the Compact, the Government, upon MCC’s request, shall cause the removal of any such references and markings on the website operated by MCA-Lesotho II (the “*MCA-Lesotho II Website*”) or in any Government or MCA-Lesotho II publicity materials.

(b) MCA-Lesotho II shall make information concerning implementation of the Compact publicly available, by posting the following documents in English, on the MCA-Lesotho II Website, all to the extent contemplated by and in accordance with the Governance Guidelines: (i) Compact, this Agreement, and the CDF Agreement (including amendments thereto); (ii) minutes of the meetings of the Board and minutes of the meetings of any Stakeholders Committees; (iii) the M&E Plan, along with periodic reports and final evaluations

on Program performance; (iv) all environmental and social impact assessments and supporting documents for the Projects; (v) all audit reports by an Auditor and any periodic reports or evaluations by a Reviewer; (vi) a summary of all Disbursement Requests; (vii) all procurement policies and procedures (including the BCS and all documents required to be made public by the Program Procurement Guidelines or Program Grant Guidelines); (viii) the AFC Action Plan and related implementation reports; (ix) the Governing Documents and any amendments thereto; and (x) 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 shall be subject to MCC's prior approval and must be consistent with any instructions provided by MCC in relevant Implementation Letters.

(c) Notwithstanding Section 2.7(b), information relating to procurements prior to the award of a contract and confidential information relating to MCA-Lesotho II's agreements with employees, contractors and consultants shall be excluded from the information and documents made publicly available; **provided, however**, that MCC and MCA-Lesotho II shall mutually determine whether any information to be excluded is confidential.

#### Section 2.8 Branding and Enforcement.

(a) Subject to Section 4.2(g), MCC hereby grants MCA-Lesotho II 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 *Standards for Global Marking*. Any such use of the logo and names shall be solely for the benefit of MCC, and not inure to the benefit of MCA-Lesotho II. The use of MCC's logo and names shall not create any agency or legal representation, and MCA-Lesotho II has no authority to bind MCC in any way.

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

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



provide MCC assistance to enforce MCC's rights to the names "Millennium Challenge Corporation" and "MCC," as well as to MCC's logo.

Section 2.9 Government Contribution.

(a) In accordance with Section 2.6(a) of the Compact, the Government shall make a Government Contribution toward meeting the objectives of the Compact. Such contribution shall be in addition to the Government's spending allocated toward such objectives in its budget for the year immediately preceding the year that the Compact is signed and shall comply with the provisions of the *Guidelines for Country Contributions*. Annex III to this Agreement sets forth the budget allocation of the Government Contribution to the Projects and Program Administration over the Compact Term.

(b) Unless otherwise agreed by the Parties in writing, contributions denominated in the local currency of Lesotho or other foreign currency shall be recorded and converted to U.S. dollars at the exchange rate on the date the contribution payment is made or using an average rate over the period of contribution, in each case, using the exchange rates published by the central bank of Lesotho or such other source acceptable to MCC.

### ARTICLE 3.

#### DISBURSEMENT OF MCC FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. MCA-Lesotho II 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 Facilitation Funding for any Disbursement Period shall be made by separate Disbursement Requests using the applicable form. Except as otherwise permitted by the Reporting Guidelines, MCA-Lesotho II may submit only one Disbursement Request for Program Funding, and one Disbursement Request for Compact Facilitation 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 shall determine the appropriate amount of the Disbursement to be authorized 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 Disbursement Request during the corresponding Disbursement Period and (C) the satisfaction, waiver or deferral of applicable conditions to such Disbursement.

MCC may, in its 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 election, (A) to a Permitted Account, (B) directly to a third party as payment for goods, works or services received by MCA-Lesotho II in accordance with the Common Payment System or any alternate payment system approved by MCC, or (C) directly to an employee of MCA-Lesotho II (or to the Government, as reimbursement for authorized expenses of MCA-Lesotho II); ***provided, however***, that expenditures of such proceeds (including amounts transferred directly to a provider) are authorized by MCA-Lesotho II, 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 one or more Permitted Accounts, which shall be established by MCA-Lesotho II and must be held at a financial institution acceptable to MCC and interest-bearing to the extent practicable. MCA-Lesotho II may designate one of the Permitted Accounts to hold funds denominated in the local currency of Lesotho (the "***Local Account***") and shall designate one of the Permitted Accounts solely for the deposit of the Government Contribution ("***Government Account***"). MCA-Lesotho II shall 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 shall be commingled in any Permitted Account set up to receive MCC Funding other than MCC Funding and accrued interest and earnings thereon. Likewise, no funds other than the Government Contribution and accrued interest and earnings thereon shall be commingled in the Government Account. MCC shall 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-Lesotho II shall provide copies of such statements to MCC upon its request. Before any MCC Funding or Government Contribution is deposited into a Permitted Account, MCA-Lesotho II shall 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, shall be the sole signatories on each Permitted Account.

(iii) MCC Funding or Government Contribution proceeds held in the Permitted Accounts may accrue interest or other earnings in accordance with the applicable Bank Agreement. On a quarterly basis and upon the termination or expiration of the Compact or the applicable Bank Agreement, MCA-Lesotho II shall ensure the transfer of all accrued interest on

MCC Funding to MCC. Accrued interest on the Government Contribution held in a Permitted Account shall be retained in such account until the funds may be transferred to the Government according to instructions agreed upon between the Bank and the Government.

(iv) Unless MCC agrees otherwise in writing, if MCC Funding is held in any Permitted Account other than the Local Account, MCA-Lesotho II shall ensure that such MCC Funding shall 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 Lesotho for any purpose, MCA-Lesotho II shall ensure that such amount is converted consistent with the requirements of the Bank Agreement or any other applicable Supplemental Agreement.

Section 3.2 Conditions Precedent to Disbursement of Compact Facilitation Funding. The applicable conditions set forth in Annex IV to the Compact must be met to MCC's satisfaction before the initial and each subsequent Disbursement of Compact Facilitation Funding.

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 be met to MCC's satisfaction before 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-Lesotho II and approved by MCC.

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

(d) Implementation Plan. MCA-Lesotho II has developed a complete Implementation Plan.

(e) Governing Documents. MCA-Lesotho II has been legally established and the Government has provided MCC with copies of all decrees, legislations, or other documents relating to the establishment of MCA-Lesotho II and its operations (including the Bylaws and HR Manual). MCA-Lesotho II has developed and adopted the HR Manual, and the manual has been approved by MCC.

Section 3.4 Conditions Precedent to Each Disbursement of Program Funding. Unless waived or deferred by MCC, the following conditions must be met to MCC's satisfaction before each Disbursement of Program Funding (including the initial Disbursement of Program Funding):

(a) Deliveries. MCA-Lesotho II 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-Lesotho II for any Activity delivered since the previous Disbursement Request;

(iii) a certificate of MCA-Lesotho II, 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 discretion that:

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

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

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

(iv) the Implementation Plan Documents are current and updated and are in form and substance satisfactory to MCC, and there has been both progress on, and compliance with, the components of the Implementation Plan for any relevant Projects or Activities related to such Disbursement (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period), in each case, satisfactory to MCC;

(v) all Government entities involved in the implementation of the Program, including the Implementing Entities, are coordinating successfully with MCA-Lesotho II and dedicating the necessary staff and other resources to ensure successful implementation of the Program;

(vi) 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);

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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;

(xi) each of the Key Staff remains engaged, or if a position is vacant, MCA-Lesotho II is actively engaged, to MCC's satisfaction, in recruiting a replacement;

(xii) MCA-Lesotho II 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 2.1(f) with respect to the establishment of an M&E Plan; and

(xiii) The Government has complied in all material respects with its obligations set forth in Section 2.9 with respect to the making of its contributions in accordance with the projected timeline set forth in Annex III.

Section 3.5 Authorized Expenditures. Except as MCC agrees otherwise in writing, a Disbursement, or financial commitment involving MCC Funding or the Government Contribution 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 shall 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 shall 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 shall 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 shall 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 shall cease; ***provided, however,*** MCC Funding may be used, in compliance with the Compact, this Agreement, and the Program Guidelines, 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 during the Closure Period.

(d) Subject to Sections 4.2(b) and (c), upon the expiration or termination of the Compact or MCC Funding, the Government shall 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 shall 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 shall 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, shall 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, MCA-Lesotho II shall prepare a plan for administrative closure and sustainability of the Program in accordance with the *Program Closure Guidelines* (the "***Closure Plan***"). During the Closure Period, MCA-Lesotho II

shall take all steps necessary to close the Program in an orderly manner in accordance with the Closure Plan and the *Program Closure Guidelines*.

(g) No later than 120 days after the expiration or termination of the Compact, unless the *Standards for Global Marking* permits otherwise, (i) the licenses granted to MCA-Lesotho II in Section 2.8(a) shall terminate with immediate effect; (ii) the Government shall ensure that MCA-Lesotho II ceases to be named “Millennium Challenge Account-Lesotho” and/or “MCA-Lesotho II;”, and (iii) the Government shall 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-Lesotho II or any other entity for any purpose not authorized by MCC. Furthermore, upon expiration or termination of the Compact, MCA-Lesotho II shall assign and hereby assigns and transfers to MCC all rights, title, and interest to the names “Millennium Challenge Account-Lesotho,” “MCA-Lesotho II,” “Millennium Challenge Corporation,” “MCC,” as well as MCA-Lesotho II’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 are 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 Lesotho after the Compact ceases to be in force. To that end and as part of the orderly closure of the Program, the Parties shall develop a post-Compact monitoring and evaluation plan that describes the future monitoring and evaluation activities, the individuals and organizations that shall undertake these activities, and a budget framework for future monitoring and evaluation, provided, however, that nothing in this Section 4.2(h) shall be construed as committing MCC to provide any assistance to the Government after the Compact ceases to be in force. The Government shall 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-

Lesotho II 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 shall 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 shall enter into force upon signature, modify any annex hereto. The Parties understand that any modification of this Agreement may be entered into by the Government without the need for further action by the Government (including any parliamentary action), or satisfaction of any additional domestic requirements of Lesotho. Any waiver of a right or obligation arising under this Agreement shall 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 shall 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 shall prevail.

Section 5.7 Termination of this Agreement.

(a) MCC may terminate this Agreement in whole or in part, by giving the Government thirty (30) days' written notice. This Agreement shall 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-Lesotho II 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 shall 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 shall 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 shall survive: Sections 1.2(b)(i), 1.2(b)(ii), 2.7, 4.2, 5.1, 5.2, 5.3, 5.7(c), 5.8, 5.9 and 5.10.



Section 5.9 Information Provided to MCC. MCC may use or disclose any information in any Disbursement Request, report or document developed or delivered in connection with the Program: (a) to its employees, contractors, agents and representatives, (b) to any United States inspector general or the United States Government Accountability Office or otherwise for the purpose of satisfying MCC's own reporting requirements, (c) 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 shall be interpreted in a manner consistent with the Compact and shall be governed by the principles of international law.

Section 5.11 Signatures. Signatures to this Agreement and to any amendment to this Agreement shall 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 Maseru, Lesotho, this 12<sup>th</sup> day of May 2022.

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

FOR THE KINGDOM OF LESOTHO,  
acting through THE MINISTRY OF  
FOREIGN AFFAIRS AND  
INTERNATIONAL RELATIONS

/s/

/s/

---

Name: Alice P. Albright  
Title: Chief Executive Officer

---

Name: Honorable 'Mats'epo Molise-Ramakoae  
Title: Minister of Foreign Affairs and  
International Relations

**SIGNATURE PAGE TO PROGRAM IMPLEMENTATION AGREEMENT  
BETWEEN THE UNITED STATES OF AMERICA  
ACTING THROUGH THE MILLENNIUM CHALLENGE CORPORATION  
AND THE KINGDOM OF LESOTHO  
ACTING THROUGH THE MINISTRY OF FOREIGN AFFAIRS  
AND INTERNATIONAL RELATIONS**

## Annex I

### DEFINITIONS

***AFC Action Plan** has the meaning provided in Section 2.1(i).*

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

***Auditor** has the meaning provided in Section 2.6(c).*

***Auditor / Reviewer Agreement** has the meaning provided in Section 2.6(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).*

***Board** means the board of directors of MCA-Lesotho II.*

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

***Closure Period** means the 120-day period beginning on the first day after the last day of the Compact Term (or, if the Compact is terminated earlier in accordance with its terms, the last day that the Compact was in effect) and ending 120 calendar days thereafter.*

***Closure Plan** has the meaning set forth in Section 4.2(f).*

***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.*

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

***Country Contribution Report** has the meaning provided in Section 2.4(e).*

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

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

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

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

***Fiscal Accountability Plan** has the meaning provided in Section 2.1(e).*

**Fiscal Agent Agreement** has the meaning provided in Section 2.6(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 MCC's Policy on Accountable Entities and Implementation Structures.

**Governing Document** has the meaning provided in Section 2.5(g).

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

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

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

**Implementation Plan** has the meaning provided in Section 2.1.

**Implementation Plan Document** has the meaning provided in Section 2.1.

**Irrigation Act** has the meaning provided in Annex IV.

**Irrigation Policy** has the meaning provided in PART B of Annex II.

**Key Staff** means the following positions in the Operations Unit: (1) chief executive officer (also referred to as the director general, national coordinator, or managing director), (2) each deputy chief executive officer (sometimes referred to as the chief operating officer), (3) chief financial officer, (4) legal advisor, (5) director of procurement, (6) manager of environmental and social performance, (7) manager of gender and social inclusion, (8) manager of monitoring and evaluation, and (9) each project director of a Project.

**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 2.5(c).

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

**MCA-Lesotho II Website** has the meaning provided in Section 2.7(a).

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

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

**Outside Project Manager** has the meaning provided in Section 2.6(a).

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

**Periodic Report** has the meaning provided in Section 2.4(a).

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

**Procurement Agent Agreement** has the meaning provided in Section 2.6(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 2.6(c).

**Social and Gender Integration Plan** has the meaning provided in Section 2.1(h).

**Stakeholder Committee** means one or more bodies of representatives from the private sector, beneficiaries, civil society and local and regional governments established by MCA-Lesotho II as part of fulfilling the requirements of any stakeholder engagement plan, and to provide advice and input to MCA-Lesotho II regarding the implementation of the Program.

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

## Annex II

### CONDITIONS PRECEDENT TO PROGRAM FUNDING<sup>1</sup>

#### **PART A. Conditions Precedent for Entire Disbursement Request (Applicable to All Projects)**

(i) Before the second Disbursement of Program Funding, MCA-Lesotho II must develop and adopt a comprehensive Social and Gender Integration Plan, in form and substance satisfactory to MCC.

(ii) Before the second Disbursement of Program Funding, MCA-Lesotho II must develop and adopt a comprehensive M&E Plan, in form and substance satisfactory to MCC.

(iii) Before the first Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Lesotho II must submit evidence, in form and substance satisfactory to MCC, that MCA-Lesotho II or the appropriate Government entity has developed and adopted an Environmental and Social Impact Assessment or ESIA, an Environmental and Social Management Plan or ESMP, a Health and Safety Management Plan or HSMP, and/or a Resettlement Action Plan or RAP (as appropriate) with respect to such Project or Activity, each of which must be in form and substance satisfactory to MCC.

(iv) Before each Disbursement of Program Funding for payment under a particular works or construction contract for a given Project or Activity, MCA-Lesotho II must submit evidence, in form and substance satisfactory to MCC, that MCA-Lesotho II or the appropriate Government entity is implementing the requirements of each ESIA, ESMP, HSMP or RAP, as appropriate, in all material respects and consistent with the *Environmental Guidelines* (including the IFC Performance Standards that are incorporated by reference therein).

(v) Before any Disbursement of Program Funding on or after the commencement of year five (5) of the Compact Term, MCA-Lesotho II must submit to MCC an initial draft Closure Plan in accordance with the *Program Closure Guidelines*.

(vi) Before the first Disbursement of Program Funding for any activity to be carried out under an implementing entity arrangement, MCA-Lesotho II must deliver to MCC a copy of a signed agreement between MCA-Lesotho II and the relevant Implementing Entity that

<sup>1</sup> In the case of the enactment of any law, regulation, policy, or amendments or modifications to any of the foregoing that the Government commits to in this Annex II, the Government shall share a draft of the applicable document with MCC for its review before it is submitted to the final approving authority within the Government.

sets forth the roles and responsibilities of each party with respect to the Project or Activity, which agreement must be in form and substance satisfactory to MCC.

**PART B. Conditions Precedent for Disbursement of Funds for the Market Driven Irrigated Horticulture (or MDIH) Project**

(i) Before the second Disbursement of Program Funding for the Institutional Reform Activity, MCA-Lesotho II must provide evidence, in form and substance satisfactory to MCC, that the Government has established and funded staff positions with gender expertise within the Ministries of Local Government and Chieftainship, Agriculture and Food Security, and Water, sufficient to enable timely implementation of the legal, administrative, and institutional reforms proposed by the Project.

(ii) Before the first Disbursement of Program Funding for the Rural Land Registration Reform Sub-Activity under the Institutional Reform Activity, MCA-Lesotho II must provide evidence, in form and substance satisfactory to MCC, that the Government has adopted amendments to (a) the regulations associated with the Land Act and/or the Land Administration Authority Act to allow the addition of the name of a spouse “married in community of property” to a land title that was issued during the marriage, prior to the marriage, or prior to the coming of operation of the Legal Capacity of Married Persons Act of 2006; and (b) the Land Act (or other relevant laws) to affirmatively permit co-ownership of land by people who are not in a marriage relationship, and to allow the addition of names to land titles to reflect co-ownership.

(iii) Before the first Disbursement of Program Funding for the Irrigation and Water Reform Sub-Activity under the Institutional Reform Activity, MCA-Lesotho II must provide evidence, in form and substance satisfactory to MCC, that the Government has enacted revisions to the Water Act to: (a) improve inter-sectoral coordination and collaboration at the inter-ministerial and river basin levels; (b) strengthen provisions on data collection and management as well as river basin management planning, and strengthen the legal basis for integrated catchment management; (c) create a more effective water use permitting regime that provides for the issuance of secure longer term permits for major investments while reducing the administrative burden for small commercial users and non-commercial users; and (d) strengthen provisions on protected areas/protection zones, charging for the use of water resources, dam safety and inspection and enforcement particularly as regards applicable sanctions.

(iv) Before the first Disbursement of Program Funding for payment under a particular works or construction contract for a given Irrigation Scheme under the Irrigation Infrastructure Development Activity, MCA-Lesotho II must submit evidence, in form and substance satisfactory to MCC, of a written commitment from one or more commercial investors that expresses their intent to invest in the applicable Irrigation Scheme on terms that support the economic feasibility of the scheme’s overall investment.

(v) Before the first Disbursement of Program Funding for the Irrigation Infrastructure Development Activity, MCA-Lesotho II must provide evidence, in form and substance satisfactory to MCC, that the Government has developed and adopted a national irrigation policy (the “*Irrigation Policy*”), to be implemented by the MAFS that: (a) provides for the establishment of non-profit, self-governing, WUAs managed by their beneficiaries as a

special type of legal entity to be responsible for the management, operation and maintenance of irrigation schemes, which have the necessary legal powers to adopt and impose irrigation rules within such schemes; (b) indicates that publicly funded irrigation infrastructure may be transferred in use to a WUA on the basis of a long term (20 years or more) agreement; (c) foresees the development and approval of a specific type of standard land lease for use in irrigation schemes to ensure leaseholder compliance with irrigation rules and the duty to pay irrigation fees; and (d) provides support for the role of women and youth in irrigation and sustainable natural resource management.



## Annex III

### GOVERNMENT CONTRIBUTION ALLOCATION

Project/Activity	Type	Pre-EIF	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
<b>1. Health Systems Strengthening Project</b>								
<b>PHC Service Provision Activity</b>								
Government takeover of HSS communications support contract	In-Kind					\$ 350,000	\$ 350,000	\$ 700,000
<b>Digital Health Activity</b>								
Government takeover of HSS digital health district support contract	In-Kind					\$ 500,000	\$ 500,000	\$ 1,000,000
<b>2. Market Driven Irrigated Horticulture Project</b>								
<b>Institutional Reform Activity</b>								
Gender counterpart positions	In-Kind		\$ 54,000	\$ 59,400	\$ 65,340	\$ 71,874	\$ 79,061	\$ 329,675
Develop and implement national ICM programming in catchments aligned with compact irrigation sites	In-Kind			\$3,200,000	\$3,200,000			\$ 6,400,000
Development of the system to implement inheritance reforms	In-Kind			\$ 455,383	\$ 550,199	\$ 288,454		\$ 1,294,036
<b>Irrigated Horticulture Support Services Activity</b>								
Electricity infrastructure for villages around MCC irrigation perimeters	In-Kind		\$1,619,940	\$1,619,940	\$1,619,940			\$ 4,859,820
<b>Irrigation Infrastructure Development Activity</b>								
Construction of water supply systems and sanitation facilities (Ventilated Improved Pit latrines)	In-Kind		\$ 596,139	\$ 596,139	\$ 596,139	\$ 596,139	\$ 596,139	\$ 2,980,696
<b>3. Business Environment and Technical Assistance Project</b>								
<b>Strengthening the Business Ecosystem Activity</b>								
Gender counterpart positions	In-Kind		\$ 54,000	\$ 59,400	\$ 65,340	\$ 71,874	\$ 79,061	\$ 329,675
<b>Program Administration and Control</b>								
<b>MCA-Lesotho II Administration</b>								
MCA-Lesotho II office space	In-Kind	\$ 702,674	\$ 650,475	\$ 702,513	\$ 758,714	\$ 819,411	\$ 884,964	\$ 4,518,750
Placeholder to meet 7.5% contribution requirement, if needed	Financial							\$ -
<b>Grand Total</b>		<b>\$ 702,674</b>	<b>\$2,974,554</b>	<b>\$ 6,692,775</b>	<b>\$ 6,855,672</b>	<b>\$ 2,697,752</b>	<b>\$2,489,226</b>	<b>\$22,412,653</b>

## Annex IV

### PROJECT-SPECIFIC UNDERTAKINGS

In addition to the undertakings of the Government set forth in this Agreement, the Government commits to the following:

(1) The Government shall, before the last day of the third year of the Compact Term, begin managing, fully funding, and paying all amounts that become due under each of the following contracts entered into by MCA-Lesotho II with respect to the HSS Project; ***provided, however,*** if MCA-Lesotho II has not entered into such contracts by the start of the third year of the Compact Term, the Government shall promptly (and no later than the last day of the third year of the Compact Term), procure the described services through another Government entity and manage and fully fund the resulting contracts:

- a) Contract with a third-party service provider for the provision of health-focused, district-level ICT support and maintenance; and
- b) Contract with a third-party service provider for the provision of communication services for the MOH.

(2) The Government shall, prior to the full commissioning of the Irrigation Schemes anticipated in the third year of the Compact Term, enact legislation (an “***Irrigation Act***”) that reflects the principles of the Irrigation Policy and includes provisions that support:

- a) the establishment of non-profit, self-governing, WUAs managed by their beneficiaries as a special type of legal entity to be responsible for the management, operation and maintenance of irrigation and drainage schemes and which have the necessary legal powers to adopt and impose irrigation rules within such schemes;
- b) the transfer of publicly funded irrigation schemes in use to a WUA on the basis of a long term (20 years or more) agreement. The abstraction and use of water for irrigation will take place on the basis of a permit issued pursuant to the Water Act;
- c) the development and use in irrigation schemes of specific irrigation land leases to ensure leaseholder compliance with irrigation rules and the duty to pay irrigation fees; and
- d) the establishment of a specific public entity, in the form of a department, agency or unit to undertake sector planning and to provide technical and other support to farmers engaging in irrigated agriculture as well as general sector oversight.