

GOVERNANCE AGREEMENT

BY AND AMONG

MILLENNIUM CHALLENGE CORPORATION,

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

AND

FUNDACIÓN RETO DEL MILENIO-NICARAGUA

DATED AS OF _____, 2006

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GOVERNANCE AGREEMENT

This **GOVERNANCE AGREEMENT** (the “*Agreement*”) is entered into as of _____, 2006 (the “*Effective Date*”), by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Technical Secretariat of the Presidency (the “*Technical Secretariat of the Presidency*”), acting on behalf of the Government of the Republic of Nicaragua (the “*Government*”), and *Fundación Reto del Milenio - Nicaragua*, a Nicaraguan not-for-profit foundation established under Nicaraguan law through *Decreto Legislativo* No. 4452 published in the official gazette, *La Gaceta*, on January 4, 2006 (“*MCA-Nicaragua*”) (collectively, the “*Parties*,” and each individually a “*Party*”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to such terms in the Compact (as defined below).

RECITALS

WHEREAS, the United States of America, acting through MCC, and the Government, executed the Millennium Challenge Compact on July 14, 2005 (the “*Compact*”), which sets forth the general terms and conditions on which MCC will provide funding of up to \$175,000,000 to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in the Republic of Nicaragua; and

WHEREAS, as a condition precedent to the initial MCC Disbursement under the Compact, the Parties must execute and deliver a governance agreement that, in addition to the Articles of Constitution (*Acta de Constitución*) (“*Articles of Constitution*”) and Bylaws (*Estatutos*) of MCA-Nicaragua contained in *Escritura Pública Número Cincuenta y Nueve* (59) granted by Bertha Marina Argüello Román, Public Notary of the Republic of Nicaragua on October 24, 2005, (the “*Bylaws*” and, together with the Articles of Constitution, the “*Organizational Documents*”), further specifies the organizational structure of MCA-Nicaragua, and the respective powers, rights and duties of its Board of Directors, the General Director, the MCA-Nicaragua Technical Secretariat (as defined in Section 3.1) and certain other parties involved in the implementation of the Program.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties, intending to be legally bound, agree:

ARTICLE I.

BOARD OF DIRECTORS

MCA-Nicaragua and the Government shall ensure that the Board of Directors of MCA-Nicaragua (the “*Board*”) shall be formed, constituted, governed and operated in accordance with this Agreement, the Organizational Documents, the Compact and the following terms and conditions:

Section 1.1 Composition. The Board shall be comprised of (a) voting members (“**Directors**”) and (b) non-voting observer members (“**Observers**,” and jointly with the Directors, the “**Board Members**”), and shall have the composition described in Articles Seven and Nine of the Bylaws.

Section 1.2 Appointment of the Directors of the Board.

(a) Each Director shall be appointed, with the prior approval of MCC, in accordance with Articles Seven, Ten and Eleven of the Bylaws and Section 3(d)(ii)(2) of Annex I of the Compact, as modified by the Letter dated _____ from Dr. Carlos Guillermo Sequeira, on behalf of the Government of the Republic of Nicaragua, acknowledged by John Hewko, Vice President Operations at the Millennium Challenge Corporation.

(b) In the event that a Director is unable to participate in a meeting of the Board, such Director may appoint a proxy to participate for such Director on his or her behalf, *provided*, that (i)(A) in the case of a voting Government Board Member (“**Government Director**”), such proxy shall be such Government Director’s principal deputy or equivalent, (B) in the case of a voting Civil Board Member (“**Civil Director**”), such proxy shall be another member of such Civil Director’s civil society organization, and (C) in the case of a voting Mayor Board Member (“**Mayor Director**”), such proxy shall be such Mayor Director’s principal deputy or equivalent; (ii) such appointment shall be in writing and such writing shall specify the duration of such appointment; and (iii) any such appointment shall be subject to the approval of the Board.

(c) In the event that a vacancy is created with respect to one or more Directors at any time and for any reason, such vacancy shall be filled in accordance with Articles Seven, Ten and Eleven of the Bylaws, as follows, and subject to the prior approval of MCC: (A) in the case of a Government Director, by another government official of comparable rank from a ministry or other governmental body relevant to the Program activities, chosen by the Government, (B) in the case of a Civil Director, by the civil society organization that appointed such Civil Director, and such replacement shall serve the remainder of such Board Member’s term(s) unless otherwise agreed in writing by the Parties; and (C) in the case of a Mayor Director, by another mayor elected by all mayors of all the municipalities within the department where such Mayor Director to be replaced is from, and such replacement shall serve the remainder of such Mayor Director’s term(s), unless otherwise agreed in writing by the Parties.

Section 1.3 Appointment of the Chairman of the Board.

(a) The activities of the Board shall be managed by the chairman of the Board (the “**Chairman**”). The Chairman shall be a Government Director chosen by mutual agreement of the Government and MCC. Each Chairman so chosen shall serve for a term of two and one-half (2½) years. The Chairman shall preside over all meetings of the Board. In the case of the absence of the Chairman (or his/her designated proxy), the Directors shall elect one of the Directors to act as chairman for the purposes of such meeting.

(b) The Chairman shall have the additional responsibilities granted to it, among others, by Article Fourteen of the Bylaws, and shall have authority to certify the minutes of the Board. The Chairman shall certify to MCC that (i) all documents and reports submitted to MCC by MCA-Nicaragua in accordance with this Agreement, the Organizational Documents or the

Compact have been approved by the Board, and (ii) such submissions are true, accurate and complete.

Section 1.4 Appointment of Observers.

(a) The Observers shall be appointed, replaced and expanded with the prior approval of MCC, in accordance with Article Nine of the Bylaws.

(b) The Observers shall not have any voting rights with respect to any action to be taken by the Board. Except as otherwise expressly provided in this Agreement or in the Bylaws, each Observer shall have the right to attend all meetings of the Board, participate in discussions of the Board, and receive all information and documents provided to the Board, together with any other rights (other than voting rights) granted to a Board Member pursuant to the Bylaws or this Agreement, including access to records, employees or facilities.

(c) Each of the Government and MCA-Nicaragua hereby waives and releases all claims related to any liability or action arising out of each Observer's role on the Board.

Section 1.5 Indemnification; Insurance. The Government shall indemnify and hold harmless each Director, Observer and each member of the MCA-Nicaragua Technical Secretariat from and against any and all claims, losses, actions, liabilities, costs, damages or expenses, including reasonable attorneys' fees and expenses, arising or incurred by such Director, Observer or such MCA-Nicaragua Technical Secretariat member by reason of such Director's activities as a "Director," such Observer's activities as an "Observer," or such MCA-Nicaragua Technical Secretariat member's activities as a member of the MCA-Nicaragua Technical Secretariat, as applicable, *provided*, that the Government shall have no obligation to indemnify any Directors, Observers or members of the MCA-Nicaragua Technical Secretariat under this Section 1.5 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 Director, Observer or such member of the MCA-Nicaragua Technical Secretariat. The indemnification rights granted to each Director, each Observer and each member of the MCA-Nicaragua Technical Secretariat pursuant to the preceding sentence are contractual rights that, notwithstanding anything to the contrary in this Agreement (including the amendment provisions of Section 8.10), cannot be diminished without the consent of the beneficiary of such rights. The Government, at its sole cost and expense, and from national funds (and not by application of MCC Funding, Accrued Interest or any Program Assets), shall at all times maintain directors and officers liability insurance or provide other equivalent coverage, on terms approved by the Board and MCC, and MCA-Nicaragua shall cause each Director, each Observer and each member of the MCA-Nicaragua Technical Secretariat to be included as insureds under all applicable policies and/or coverage(s).

Section 1.6 MCC Representative. In all matters arising under, relating to or in connection with the Compact, the Organizational Documents, this Agreement, or the activities of MCA-Nicaragua, the MCC Representative shall be entitled to the protections of Sections 5.5. and 5.8 of the Compact and Section 3(d)(ii)(4) of Annex I to the Compact and shall not be subject to the jurisdiction of the courts or any other body of Nicaragua, nor to any arbitral body, and nothing in such agreements or activities shall be construed as the consent of the MCC Representative to any

such jurisdiction. MCA-Nicaragua hereby acknowledges that the MCC Representative shall owe no duty whatsoever, including any fiduciary duty, to MCA-Nicaragua.

Section 1.7 Authority of the Board. Subject to MCC's contractual rights of approval as set forth in the Compact (including Section 3(c) of Annex I of the Compact), in this Agreement, or in any relevant Supplemental Agreement, and in addition to the responsibilities and authority set forth in Article Thirteen of the Bylaws, the Board shall have the following responsibilities and authority (which may not be delegated further):

- (a) Oversight with respect to:
 - (i) The MCA-Nicaragua Technical Secretariat;
 - (ii) The overall implementation of the Program in accordance with the Compact and the relevant Supplemental Agreements, including oversight of the Implementation Plan and any component plans thereto, as amended from time to time in accordance with the Compact and the relevant Supplemental Agreements; and
 - (iii) The performance of the MCA-Nicaragua Designated Rights and Responsibilities (as that term is defined in the Grant Agreement).
- (b) Perform such other obligations and oversight functions in respect of MCA-Nicaragua activities as contemplated by the Compact, the Organizational Documents, the Grant Agreement, this Agreement and other Supplemental Agreements.
- (c) Without limiting the foregoing provisions of this Section 1.7, each of the following actions of MCA-Nicaragua are specifically subject to the prior approval of the Board (each, a "**Board Action**"):
 - (i) Any transaction, activity, agreement or document that requires MCC approval pursuant to the Compact or pursuant to any Supplemental Agreement (including the transactions, activities, agreements and documents described in Paragraph 3(c) of Annex I of the Compact), except as otherwise specified in writing by MCC to MCA-Nicaragua from time to time;
 - (ii) Re-Disbursements to any Provider to the extent that MCC, by notice to MCA-Nicaragua and the Fiscal Agent, directs the Board to review and approve such Re-Disbursement;
 - (iii) Except for activities or actions included in clause (iv) below, entering into any agreement that would obligate MCA-Nicaragua to a contractual obligation greater than US \$100,000 (One Hundred Thousand United States Dollars), or such other amount as may be agreed by MCC and MCA-Nicaragua, and any amendments, modifications or termination of any such agreement;
 - (iv) Any activities or actions that require Board approval pursuant to the Procurement Agreement;

(v) Submission of any MCC Disbursement Request to MCC (which approval shall include the approval of all attachments to such MCC Disbursement Request and the approval of the management discussion and analysis portions of such MCC Disbursement Request);

(vi) Approval of (A) each component of the Implementation Plan (including the Financial Plan, the Procurement Plan, the M&E Plan, the Fiscal Accountability Plan and the Program and Project Work Plans), (B) the Audit Plans, (C) staffing plans (and any amendments, modifications, or supplements to any of the items described in Section 1.7(c)(vi)(A)-(C)), and (D) any response to any finding in any audit identified in the Audit Plan;

(vii) Entering into and execution of any material Supplemental Agreement to which MCA-Nicaragua is a party, and any amendments, modifications or termination of any thereof, and any action that would have the effect of amending, replacing or terminating any such Supplemental Agreement;

(viii) Any proposal to (or any action that would) amend, replace, terminate, suspend or otherwise change any Board Action or other matter previously approved by the Board;

(ix) The terms of employment (including compensation) and the employment agreement for the General Director, and any material amendments thereto;

(x) The hiring and dismissal of the members of the MCA-Nicaragua Technical Secretariat (including the General Director), and of any employee, consultant or expert to be hired by MCA-Nicaragua whose compensation is greater than US \$3,000 per month, and the applicable terms of employment (including compensation) and the employment agreement for such person, and any material amendments thereto;

(xi) Review and approval of any reports, plans or other documents to be submitted to MCC (whether or not such documents require MCC approval) or the Government as required by the Compact, the Bylaws, this Agreement, or any Supplemental Agreement (such approval of the Board to be received prior to submission of such reports, plans or other documents to MCC or the Government, as applicable);

(xii) Adjusting the allocation of funds between or among the line items set forth in the Multi-Year Financial Plan Summary in Annex II of the Compact, subject to the provisions of the Compact (including Paragraph 4 of Annex II of the Compact) and the prior approval of MCC;

(xiii) Any change in the composition or number of members of the Board or the MCA-Nicaragua Technical Secretariat (such change shall be subject to the prior approval of MCC);

(xiv) Any amendment to the Bylaws (each such amendment shall be subject to the prior approval of MCC);

(xv) Any decision (including any amendment to the Bylaws) to (A) reorganize MCA-Nicaragua, (B) dissolve, wind up or liquidate MCA-Nicaragua, or (C) to make any other change in the organization of MCA-Nicaragua; *provided that*, each such decision (1) with respect to items (A) or (C) shall require the approval of seventy five percent (75%) of the Directors present at a meeting at which there is a Quorum (*provided*, that a change described in Section 1.7(c)(xv)(C) that is an immaterial change in the organization of MCA-Nicaragua shall require the approval of the Board in the manner set forth in Section 1.8 hereof), (2) with respect to item (B) shall require the approval of seventy five percent (75%) of all Directors, (3) may not be made pursuant to Section 1.10 hereof, and (4) shall be subject to the prior approval of MCC; and

(xvi) Any other activities, agreements, documents, or actions requiring Board approval as may be set forth in the Compact, the Organizational Documents, this Agreement, or in any relevant Supplemental Agreement, or as may be required or requested from time to time by MCC.

The Board shall deliver notice of any such Board Action, along with a copy of any applicable agreement or document, if appropriate, to MCC, which notice shall be certified by the Chairman, and such certification shall also state that such agreements and documents attached thereto are true, accurate and complete.

Section 1.8 Meetings of Board. Meetings of the Board shall be held in accordance with Article Twelve of the Bylaws, as follows: Ordinary meetings shall be held at least once a month, and extraordinary meetings may be held from time to time if requested by the Chairman or by a majority of the Directors. Notice stating the place, date, time and agenda of the meeting shall be given to each Board Member by the Secretary of the Board (as defined below), in the following manner: (a) in respect of an ordinary meeting, either by mail, facsimile or electronic mail at least seven (7) days prior to the date of the ordinary meeting, and (b) in respect of an extraordinary meeting, either by mail not less than 48 hours before the date of the extraordinary meeting or by telephone or telegram not less than 24 hours before the date of such extraordinary meeting. Notwithstanding the foregoing, (x) any Board Member may waive, in writing, the requirement to receive notice in respect of any such meeting, and (y) a Board Member's presence at any such meeting shall constitute waiver by such Board Member of the requirement to receive notice of such meeting. A valid meeting of the Board may not be held unless each Board Member receives notice (or waives or is deemed to waive notice) of such meeting. All minutes of all Board meetings shall be translated into English.

Section 1.9 Quorum; Voting. Except as may be otherwise specifically provided in this Agreement, (a) at all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business (a "*Quorum*") and (b) except as set forth in Sections 1.7(c)(xv) and 1.10, the decision of a majority of the Directors present at any meeting at which there is a Quorum shall be an act of the Board. Each Director shall have one (1) vote in respect of any vote on any decision of the Board. If a Quorum is not present at any meeting of the Board, the Board Members present may adjourn the meeting, without notice other than announcement at the meeting, until a Quorum shall be present. Except as set forth in Section 1.10, each decision, election, appointment or action by the Board, whether specifically set forth herein or otherwise, shall be made in accordance with the procedures set forth in this Section 1.9.

Section 1.10 Action by Written Consent. Unless otherwise provided in this Agreement, any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if (a) notice of such proposed action is sent to all Directors, and (b) all the Directors consent in writing to such action. Any such action approved by written consent shall be filed with the minutes of proceedings of the Board.

Section 1.11 Meetings by Means of Conference Telephone. Unless otherwise provided by this Agreement, the Board Members may participate in a meeting of the Board by means of a conference telephone or similar communications equipment that enables all persons participating in the meeting to hear and speak to each other. Participation in a meeting pursuant to this Section 1.11 shall constitute presence in person at such meeting.

Section 1.12 Reporting Requirements. The agenda of any meeting of the Board, the name of all attendees at such meeting, the issues discussed at such meeting, and all resolutions approved at such meeting shall be reflected in the minutes of the meeting which will be recorded by the Secretary of MCA-Nicaragua, and such minutes shall be signed by the Chairman and the Secretary. The minutes of each Board meeting shall be posted on the MCA-Nicaragua website within two (2) weeks after each such meeting.

Section 1.13 Remuneration. Board Members shall not receive any remuneration in connection with the performance of their duties as Board Members on (or, as applicable, as Chairman of) the Board; *provided*, that Board Members may be reimbursed for reasonable expenses incurred in connection with their attendance at meetings of the Board (as evidenced by reasonable documentation) pursuant to a Board Action.

Section 1.14 Committees. The Board may create one or more committees and, except as otherwise provided in this Agreement and the Compact, appoint members of the Board or other persons as the Committee designates, to serve on such committee or committees. All committee members of each committee shall serve at the pleasure of the Board and shall have the limited authority to make informed recommendations to the Board. The committees shall not have the authority to bind MCA-Nicaragua or the Board. The designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of any responsibilities imposed under this Agreement, the Compact and any Supplemental Agreement.

ARTICLE II.

SECRETARY

Section 2.1 Responsibilities. MCA-Nicaragua and the Government shall ensure that the Board appoints the General Director (defined below) to act as Secretary of the Board (the “*Secretary*”). The Secretary shall undertake the duties and functions typically performed by a company secretary, including without limitation, providing notice of Board meetings, attending and keeping minutes of Board meetings, maintaining MCA-Nicaragua’s books and records at the offices of MCA-Nicaragua, signing all documents on which the signature of the Secretary is necessary or appropriate, attesting to the authenticity of any MCA-Nicaragua-generated documents, and performing other Board secretariat functions. As and when circumstances so

require, the Chairman of the Board may appoint from among the participating Directors a temporary *ad hoc* secretary for purposes of recording the minutes of such meeting.

ARTICLE III.

MCA-NICARAGUA TECHNICAL SECRETARIAT

MCA-Nicaragua and the Government shall ensure that the MCA-Nicaragua Technical Secretariat is composed of qualified experts from the public or private sectors, including such offices and staff as may be necessary to carry out effectively its responsibilities, in accordance with this Agreement, the Compact, the Organizational Documents and any other Supplemental Agreements and the following terms and conditions:

Section 3.1 Appointment. The Government and MCA-Nicaragua shall ensure that the Board selects and hires a General Director to head the MCA-Nicaragua Technical Secretariat (the “**General Director**”) after an open and competitive recruitment and selection process, which selection, hiring and dismissal shall be subject to the prior approval of MCC. The other members of the MCA-Nicaragua Technical Secretariat shall be selected and hired by the General Director after an open and competitive recruitment and selection process (together with the General Director, the “**MCA-Nicaragua Technical Secretariat**”). The MCA-Nicaragua Technical Secretariat shall have the responsibilities set forth in this Agreement, the Compact, the Organizational Documents and any other Supplemental Agreements, and its base composition shall include the following positions, in addition to the General Director and such other positions as the Board may see fit, which positions shall not be eliminated without the consent of the Board and the prior approval of MCC:

- (a) A Deputy General Director;
- (b) An Administration and Finance Director;
- (c) A Monitoring and Evaluation Director;
- (d) An Environmental and Social Impact Specialist;
- (e) A Management Information Systems Director;
- (f) A Communications Director;
- (g) A Procurement Director;
- (h) A General Counsel;
- (i) An Infrastructure Specialist; and
- (j) A Rural Business Project Director (who is referred to herein and in the Compact as the “**Rural Business Specialist**”) (each person in items (i) and (j), a “**Project Specialist**”).

The MCA-Nicaragua Technical Secretariat shall have the responsibilities set forth in this Agreement, the Compact, the Organizational Documents and other Supplemental Agreements, as approved by the Board. A brief description of the responsibilities of each member of the MCA-Nicaragua Technical Secretariat is attached to this Agreement as Exhibit B; *provided*, that, such responsibilities may be adjusted by the General Director from time to time. The MCA-Nicaragua Technical Secretariat will be supported by an office manager and appropriate administrative and support personnel. Unless otherwise agreed in writing by the Parties and in accordance with Article Sixteen of the Bylaws, the MCA-Nicaragua Technical Secretariat shall report, through the General Director, directly to the Board.

Section 3.2 Authority of the MCA-Nicaragua Technical Secretariat. The MCA-Nicaragua Technical Secretariat shall assist the Board in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Board, and subject to MCC's rights of approval as set forth in the Compact (including Section 3(c) of Annex I of the Compact), in this Agreement and in any relevant Supplemental Agreement) for the overall management of the implementation of the Program, including:

(a) Development and administration of (i) all components of the Implementation Plan (including the Financial Plan, Procurement Plan, M&E Plan, Fiscal Accountability Plan, and all Program and Project Work Plans), (ii) the Audit Plans, (iii) staffing plans (and any amendments, modifications or supplements to any of the items in Section 3.2(a)(i) - (iii)), and (iv) any response to any finding in any audit;

(b) Oversight of the implementation of the Projects, including, subject to the requirements of Sections 3(e), (f), (g), (h), (i) and (j) of Annex I of the Compact, the authority to hire or engage Outside Project Managers, Implementing Entities, the Fiscal Agent, Auditors, Reviewers, the Procurement Agent and a Procurement Supervisor;

(c) Coordination of the overall Program, each Project, and the other activities contemplated under the Compact and any Supplemental Agreements, including in connection with the performance of any MCA-Nicaragua Designated Rights and Responsibilities (as defined in the Grant Agreement);

(d) Management, implementation and coordination of the monitoring and evaluation of the Program and the Projects (including collection and analysis of data);

(e) Development, oversight, management, coordination and implementation of such policies and procedures as may be necessary to facilitate the effective implementation of the Compact and as may be advisable in connection with any Supplemental Agreement, and such other policies, procedures, or activities as may be required or requested by the Board in furtherance of the Compact;

(f) Preparation and review of reports regarding the finances and accounting (including management reporting, accounts receivable, accounts payable, monthly, quarterly and annual financial statements, cash flow statements and projected cash flow requirements), performance, monitoring and evaluation, procurements, budgets, and audit reports of the

Program, each Project and the other activities contemplated under, or carried out in furtherance of, the Compact and any other reports requested by the Board;

- (g) Maintenance of accounting records for the Program, including for each Project;
- (h) Development and maintenance of a management information system to allow the systematic tracking of programmatic and financial implementation of and performance under the Compact, including each Project;
- (i) Commission and supervision of baseline and ex-post studies for each Project as may be required by the M&E Plan; establishment of data collection, analysis, and reporting systems for the overall Program and for each Project;
- (j) Conduct and oversight of procurements, and other procurement actions (including approvals thereof) in accordance with the Procurement Agreement and the standards set forth in the Procurement Guidelines;
- (k) Administration of the MCA-Nicaragua website to post current information about Compact-related activities, M&E Plan reporting, financial reporting, and Compact-related procurements (to the extent such procurement postings are required by the Procurement Agreement);
- (l) Provision of advice and written recommendations to the Board on matters constituting Board Actions and in connection therewith, the MCA-Nicaragua Technical Secretariat shall prepare and submit to the Board the relevant agreements, documents or actions to be approved, along with a written recommendation to the Board on how to proceed on such agreement, document or action and any other documents needed to support such recommendation;
- (m) Preparation of and submission to the Board of any Compact Report or any other report, document, agreement or action as may be designated or requested by the Board from time to time, along with a written recommendation to the Board on how to proceed; and
- (n) Any other responsibilities within the scope of its Program implementation management role that may be required or requested from time to time by the Board.

Section 3.3 Role of the General Director.

- (a) Subject to the provisions of the Compact, the Bylaws, this Agreement, or any Supplemental Agreement, the General Director shall:
 - (i) Pursuant to the Compact, the Organizational Documents and any Supplemental Agreements, supervise the daily activities of MCA-Nicaragua, convene and chair the MCA-Nicaragua Technical Secretariat meetings, manage MCA-Nicaragua personnel, and organize and manage MCA-Nicaragua activities; *provided that*, the General Director may delegate any of its responsibilities under this Section 3.3(a)(i) to any member of the MCA-Nicaragua Technical Secretariat;

(ii) Develop the structure of the MCA-Nicaragua Technical Secretariat and the staff of MCA-Nicaragua; assign the functions and responsibilities of MCA-Nicaragua employees; approve internal policies and procedures and job descriptions of MCA-Nicaragua employees (or terms of reference in the case of consultants or temporary employees retained to supplement full-time MCA-Nicaragua staff);

(iii) Hire and dismiss all MCA-Nicaragua employees, and determine the applicable terms of employment (including compensation) and the employment agreement for each such employee, and any amendments thereto; *provided that*, any such decisions with respect to any member of the MCA-Nicaragua Technical Secretariat and any other key employee, expert or consultant whose compensation is greater than USD \$3,000 (Three Thousand United States Dollars) per month shall be subject to the prior approval of the Board and MCC;

(iv) Determine disciplinary actions and incentives for MCA-Nicaragua employees in accordance with Nicaraguan law; and exercise supervision over staff performance;

(v) Represent MCA-Nicaragua in relations with third parties, and act as the official contact person on behalf of MCA-Nicaragua in relations with MCC; *provided*, that, the General Director may delegate any of its responsibilities under this Section 3.3(a)(v) to any other member of the MCA-Nicaragua Technical Secretariat;

(vi) Submit each component of the Implementation Plan and any amendments thereto to the Board for approval; present the Financial Plan and Audit Plan (and any amendments, modifications or supplements thereto) to the Board; submit reports on financial management, performed activities, and project implementation to the Board; submit the results of any audit, detailed report of the previous economic year and the report on progress of all aspects of the Implementation Plan to the Board; and submit other reports as required by the Compact or as otherwise requested by the Board;

(vii) Organize the preparation of and distribution of agendas for the meetings of the Board (*provided*, that, the General Director may delegate such responsibility to any member of the MCA-Nicaragua Technical Secretariat); and organize and administer meetings of the Board (*provided*, that, the General Director may delegate such responsibility to the Deputy General Director); and

(viii) Exercise other powers in accordance with the Compact, the Bylaws, and any Supplemental Agreement on matters related to MCA-Nicaragua activities.

(b) The General Director must approve each of the following, which approval responsibility may not be delegated further except as specifically set forth below:

(i) Recommendations to the Board on any matter submitted to the Board for decision as a Board Action;

(ii) Actions, decisions, documents or agreements and certain human resources decisions, in respect of MCA-Nicaragua for which, pursuant to the provisions of the Compact, this Agreement or any other Supplemental Agreement, approval by the Board is not required;

(iii) Review and, if appropriate, approve any activities or actions that require General Director approval pursuant to the Procurement Agreement (*provided*, that the General Director may delegate its approval rights for procurement actions related to Shopping (as defined in the Procurement Guidelines) to the Deputy General Director);

(iv) Re-Disbursements to any Provider; *provided*, that the General Director can delegate to the Deputy General Director the General Director's authority to approve any Re-Disbursement;

(v) Execution of any agreement for the provision of goods or services to MCA-Nicaragua or any other Supplemental Agreement to which MCA-Nicaragua is a party, or any amendments, modifications, termination or suspension of any such agreement; *provided that*, the General Director may delegate to the Deputy General Director the General Director's authority to sign any such agreement (or any modification or amendment thereto);

(vi) Certification of other procurement activities as further set forth in the Procurement Agreement or other Supplemental Agreements; and

(vii) Each Compact Report or such other reports as may be requested by the Board from time to time.

(c) Except as otherwise provided herein, the General Director may not delegate the duties, powers and authorities set forth in Section 3.3.

Section 3.4 Reporting Requirements. The General Director, with the assistance of the MCA-Nicaragua Technical Secretariat, shall promptly deliver and certify any reports, documents or other submissions requested by or required to be delivered to the Board or MCC.

ARTICLE IV.

MCC APPROVAL RIGHTS

Section 4.1 MCC Approval Rights. In addition to any other rights granted to MCC in this Agreement, MCC shall have the right to approve the following:

(a) A Re-Disbursement to any Provider to the extent that MCC has notified MCA-Nicaragua and the Fiscal Agent that MCC wishes to review and approve such Re-Disbursement;

(b) Any activities or actions that require MCC approval pursuant to the Procurement Agreement;

(c) Except for activities or actions included in paragraph (b) above, any contract for which the value of the contract is greater than US \$100,000 (One Hundred Thousand United States Dollars) or such other amount as may be agreed by MCC and MCA-Nicaragua), and any amendments, modifications or termination of any thereof;

(d) Any approval rights granted to MCC in the Compact, including in respect of any transaction, activity, agreement or document described in Paragraph 3(c) of Annex 1 to the Compact (each such approval to be procured prior to the execution or carrying out of such transaction, activity, agreement or document, and prior to any MCC Disbursement or Re-Disbursements in connection therewith); and

(e) Any approval rights granted to MCC in the Disbursement Agreement, Procurement Agreement or any other Supplemental Agreement.

The Government and MCA-Nicaragua shall ensure that no such actions are taken without receipt of approval by MCC.

Section 4.2 No Liability on MCC. Notwithstanding anything in this Agreement, the Compact or any Supplemental Agreement to the contrary, the review and/or approval by MCC of any action, decision, agreement or document of MCA-Nicaragua and/or the Government (a) shall not impose or create any liability on MCC in respect of such action, decision, agreement or document, and (b) shall not preclude the exercise by MCC of any other rights or privileges that MCC may have pursuant to the Compact, this Agreement, or any Supplemental Agreement.

ARTICLE V.

OTHER MCA-NICARAGUA OBLIGATIONS

Section 5.1 Information. MCA-Nicaragua shall provide the Fiscal Agent (and MCC to the extent that MCC notifies MCA-Nicaragua) with a copy of each agreement that is funded (directly or indirectly) with MCC Funding, regardless of whether MCC has approval rights with respect to such agreement.

Section 5.2 Monitoring of Permitted Accounts. MCA-Nicaragua shall ensure that it, as well as the operation of the Permitted Accounts and the use of all MCC Funding, complies with all applicable United States laws, regulations and executive orders regarding money laundering and terrorist financing, restrictive trade practices and boycotts, United States sanctions laws and regulations and other economic sanctions or other restrictions promulgated from time to time by means of any statute, executive order, or regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, 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, (ix) 15 C.F.R. Part 760, and (x) those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598. MCA-Nicaragua shall also comply with any applicable Nicaraguan laws and regulations regarding terrorist financing, money laundering or similar activity. MCA-Nicaragua shall ensure that no payments are made or caused to be made by MCA-Nicaragua to any third party, including any government official, in connection with this Agreement in violation of (x) applicable Nicaraguan laws or regulations regarding corruption or bribery or (y) the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the “*FCPA*”), or that would be in violation of the FCPA if MCA-Nicaragua was a United States person or

entity. Upon the request of MCA-Nicaragua, MCC will provide to MCA-Nicaragua a copy of any of the above documents.

Section 5.3 Compliance with Laws; Compact; Other Agreements. MCA-Nicaragua shall comply with (a) all applicable laws and (b) this Agreement, all relevant provisions of the Compact (including the Annexes attached thereto), the Disbursement Agreement, the Grant Agreement and other relevant Supplemental Agreements to which it is a party. MCA-Nicaragua shall not establish any subsidiary or other venture without the prior consent of the Government and MCC.

Section 5.4 Audits, Books, Records; Inspections.

(a) The first fiscal year of MCA-Nicaragua shall begin on the date of Entry into Force of the Compact and shall end on December 31, 2006. Each succeeding fiscal year shall begin on January 1 of such year, and shall end on December 31 of such year.

(b) The financial statements of MCA-Nicaragua shall be audited annually by an independent auditor selected by MCA-Nicaragua with the prior consent of MCC. Such annual audit report shall be submitted to MCC within ninety (90) days after the end of each financial year. The MCA-Nicaragua Technical Secretariat shall assist the Auditor and provide all information requested by the Auditor. Upon the request of MCC, or in accordance with the requirements of the Compact or the Audit Plan, MCA-Nicaragua shall arrange for other periodic or special audits to be performed from time to time.

(c) MCA-Nicaragua shall keep (i) accurate and systematic books, records, documents and other evidence of MCA-Nicaragua's performance of its obligations under the Grant Agreement and the Compact, and (ii) all Compact Records, in accordance with the requirements of Section 3.8 of the Compact.

(d) MCA-Nicaragua shall permit authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, the Government, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of the Compact, and any agents or representatives engaged by any of the foregoing to conduct any assessment, review, audit or evaluation of the Program, at all reasonable times, the opportunity to audit, review, evaluate, inspect or copy all records and documents in the control or possession of MCA-Nicaragua. MCA-Nicaragua shall ensure access by MCC, the Inspector General, the United States Government Accountability Office, the Government, or relevant auditor, reviewer or evaluator or their respective representatives or agents, to all of MCA-Nicaragua's directors, officers, employees, Affiliates, contractors, advisors, representatives and agents. MCA-Nicaragua shall keep and make available such books, records and documents for a period of at least five (5) years after the expiration or termination of the Compact, or such longer period if required to resolve any litigation, claims, audit findings or if required by any statutory requirements.

ARTICLE VI.
TRANSPARENCY

Section 6.1 Publication of MCA-Nicaragua Information. To achieve the goals of transparency and accountability set forth in the Compact, MCA-Nicaragua shall:

(a) Establish and maintain an e-mail suggestion box, as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MCA-Nicaragua;

(b) Develop and maintain a website (the “*MCA-Nicaragua Website*”), which shall include accurate and updated postings of information regarding the activities and organizational structure of MCA-Nicaragua, the Program and the Projects, and including, without limitation, the following documents posted in both English and Spanish:

(i) All minutes of the meetings of the Board;

(ii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iii) All relevant Environmental Impact Assessments and supporting documents;

(iv) Such financial information as may be required by the Compact or as may otherwise be agreed from time to time between MCC and the Government;

(v) All Compact Reports;

(vi) All audit reports by MCA-Nicaragua’s external auditor and any reports and evaluations by a Reviewer;

(vii) A copy of the Disbursement Agreement, as amended from time to time;

(viii) A copy of the Procurement Agreement (including Procurement Guidelines), Procurement Plan, procurement policies and standard documents, bid requests and awarded contracts; and

(ix) A copy of any documents related to the formation, organization and governance of MCA-Nicaragua, including the Bylaws, this Agreement and any other Governing Documents, and any amendments to any thereto.

ARTICLE VII.

TERM; SUSPENSION; TERMINATION

Section 7.1 Term.

(a) This Agreement shall be effective as of the Effective Date and shall terminate (unless terminated earlier pursuant to the provisions of this Agreement) on the date that is one hundred twenty (120) days following the later of (i) the expiration or termination of the Compact, or (ii) the completion of the liquidation and winding up of MCA-Nicaragua; *provided, however,* that the term of this Agreement may be extended for a period that is longer than such one hundred twenty (120) day period if MCC determines that obligations of MCA-Nicaragua incurred prior to such expiration or termination remain to be performed.

(b) Prior to the expiration or termination of the Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the treatment of MCA-Nicaragua following the expiration or termination of the Compact, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement nor otherwise committed in accordance with Section 5.4(e) of the Compact, and (iii) any other matter related to winding up of MCA-Nicaragua, the Program, this Agreement, and the Compact.

Section 7.2 Termination; Suspension.

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

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

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

(ii) Any event that would be a basis for termination or suspension of the Compact or MCC Funding under Section 5.4 of the Compact has occurred; or

(iii) Any other event has occurred, or circumstances arisen, which in the sole opinion of MCC, constitutes a Material Adverse Change.

Section 7.3 Effect of Termination. Notwithstanding any expiration, suspension or termination of this Agreement pursuant to this Article V, the following provisions of this Agreement shall survive: Sections 1.5, 7.3, 8.2, 8.4, 8.6, 8.7, 8.8 and 8.11.

ARTICLE VIII.
MISCELLANEOUS

Section 8.1 Representations and Warranties.

(a) MCA-Nicaragua hereby represents and warrants to MCC that, as of the Effective Date, MCA-Nicaragua has the power and authority to execute, deliver and perform its obligations under this Agreement and each other agreement, certificate, or instrument contemplated hereby. The execution, delivery and performance by MCA-Nicaragua of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action and (ii) will not violate (A) any applicable law or regulation or (B) any obligation of MCA-Nicaragua. No other action, consent, approval, registration or filing with or any other action by any person, entity or governmental authority is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of MCA-Nicaragua.

(b) The Technical Secretariat of the Presidency, on behalf of the Government, hereby represents and warrants to MCC that, as of the Effective Date, the Technical Secretariat of the Presidency, on behalf of the Government, has the power and authority to execute, deliver and perform its obligations and each other agreement, certificate, or instrument contemplated hereby on behalf of the Government. The execution, delivery and performance by the Technical Secretariat of the Presidency, on behalf of the Government, of this Agreement (i) have been duly authorized by all necessary action on the part of the Government and (ii) will not violate (A) any applicable law or regulation or (B) any obligation of the Technical Secretariat of the Presidency, any Government Affiliate or any other Permitted Designee. No other action, consent, approval, registration or filing with or any other action by any governmental authority is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of the Government, acting through the Technical Secretariat of the Presidency.

Section 8.2 Confidentiality. The Government and MCA-Nicaragua shall treat all documents, reports, cost estimates, technical data and information concerning the Program that is not otherwise publicly available as confidential in a reasonable and appropriate manner and in accordance with applicable professional standards, *provided, however*, that all such documents, reports, cost estimates, technical data and other information may be provided by MCC to any employees, contractors, agents, representatives of MCC, the Inspector General, the General Accountability Office, or others designated by MCC; *provided, further*, that MCA-Nicaragua may post on its website or otherwise make publicly available certain information, including quarterly financial reports. Each of the Government and MCA-Nicaragua shall ensure that only those with a need to know and under similar obligations of confidentiality shall have access to any and all information, documents, cost estimates data and information provided to such Party or otherwise generated in connection with this Agreement and the Program. MCA-Nicaragua shall ensure that each Board Member and each member of the MCA-Nicaragua Technical Secretariat complies with the confidentiality obligations set forth in this Section 8.2. MCA-Nicaragua shall include obligations of confidentiality similar to those set forth in this Section 8.2 in the employment agreements of each member of the MCA-Nicaragua Technical Secretariat.

Section 8.3 Communications. Any notice, certificate, request, report, approval, document or other communication required, permitted, or submitted by any Party to the other under this Agreement shall be (a) in writing, (b) in English, and (c) deemed duly given: (i) upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day (with an original to follow by mail); or (iii) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party or Parties to be notified at the address indicated below, or at such other address as such Party may designate by notice to the other Parties:

To the Government:

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

To MCC:

Millennium Challenge Corporation
Attention: Vice President for Operations (with a copy to the Vice President and General Counsel)
875 Fifteenth Street, N.W.
Washington, D.C. 20005
United States of America
Fax: (202) 521-3700
Email: VPOperations@mcc.gov (Vice President for Operations);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To MCA-Nicaragua:

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

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

Section 8.4 Assignment. MCC may assign, delegate or contract its rights and obligations, in whole or in part, under this Agreement to any Affiliate, agent, or representative of MCC, to the full extent permitted by the laws of the United States of America, without the prior consent of MCA-Nicaragua and/or the Government. MCC shall provide notice to MCA-Nicaragua and the Government upon the effectiveness of such assignment, delegation or contract. Neither MCA-Nicaragua nor the Government may assign, delegate or contract its rights and obligations under this Agreement without the prior consent of MCC.

Section 8.5 Representatives. For all purposes relevant to this Agreement, MCA-Nicaragua shall be represented by the individual holding the position of, or acting as, its General Director (the “*MCA-Nicaragua Principal Representative*”), MCC shall be represented by the individual holding the position of, or acting as, its Vice President for Operations (the “*MCC Principal Representative*”), and the Government shall be represented by the individual holding the position of, or acting as, the Secretary of the Technical Secretariat of the Presidency (the “*Government Principal Representative*,” and together with the MCA-Nicaragua Principal Representative and the MCC Principal Representative, the “*Principal Representatives*”), each of whom, by notice, may designate one or more additional representatives (each, an “*Additional Representative*”) for all purposes other than signing amendments to this Agreement. The names of each Party’s Principal Representative and its respective Additional Representatives shall be provided, with specimen signatures, to each other Party, 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 notice of revocation of their authority. A Party may replace its Principal Representative with a new representative upon notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 8.6 Governing Law. The Parties agree and acknowledge that this Agreement is 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 8.7 Consultation. Any Party may, at any time, request consultations relating to the interpretation or implementation of this Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (20) days from the commencement of the consultations then each Party shall refer the consultation to its respective Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than forty-five (45) days from date of commencement. If the matter is not resolved within such time period, MCC may terminate this Agreement upon notice to MCG and the Government. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 8.8 MCC Status. Each of MCA-Nicaragua and the Government recognizes and agrees that MCC is a United States government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Agreement, is immune from any action or proceeding arising under or relating to this Agreement, and each of MCA-Nicaragua and the Government hereby waives and releases all

claims related to any such liability. In matters arising under or relating to this Agreement, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of Nicaragua or any other jurisdiction.

Section 8.9 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship between the Parties.

Section 8.10 Amendment; Waiver. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties. 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 8.11 Nonwaiver of Remedies. 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.

Section 8.12 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 8.13 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 8.14 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 8.15 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 8.16 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures and each counterpart when so executed and delivered shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature to this Agreement or any amendment to this Agreement pursuant to Section 8.10 shall be delivered only as an original signature. With respect to all other signatures, except as the Parties may otherwise agree in writing from time to time, a signature delivered by facsimile or electronic mail in

accordance with Section 8.3 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 (*provided*, that a signature on an audit report shall be followed by an original in overnight express mail). Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 8.17 Definitions. All capitalized terms used and defined herein shall have the meaning given such terms in Exhibit A. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Compact.

Section 8.18 Prohibited Actions.

(a) The Government and MCA-Nicaragua shall ensure that no payments have been made to any third party in connection with the Program in violation of the conflict of interest and ethics regulations, and other related provisions, of Nicaraguan laws. The Government and MCA-Nicaragua shall ensure that no payments have been or will be received by any employee, agent or representative of either of the Government or MCA-Nicaragua in connection with the procurement of goods and services or works funded or to be funded under the Compact. MCA-Nicaragua shall ensure that each Board Member and each member of the MCA-Nicaragua Technical Secretariat complies with the restrictions on payments to certain persons set forth in this Section 8.18(a). MCA-Nicaragua shall include prohibitions similar to those set forth in this Section 8.18(a) in the employment agreement of each member of the MCA-Nicaragua Technical Secretariat.

(b) The Government and MCA-Nicaragua shall ensure that no employee, agent, Board Member, member of the MCA-Nicaragua Technical Secretariat, or representative of the Government or MCA-Nicaragua (each, an "*affiliate*") 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 MCC Funding in which (i) such affiliate, members of such affiliate's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such affiliate, has or have a financial or other interest, or (ii) the affiliate is negotiating or has any arrangement concerning prospective employment, unless, in either case, such affiliate has first disclosed in writing to MCA-Nicaragua and MCC the conflict of interest and, following such disclosure, MCA-Nicaragua or the Government (as applicable) and MCC have agreed in writing to proceed notwithstanding such conflict. The Government and MCA-Nicaragua each agrees that it shall not, and shall ensure that none of its respective affiliates (and shall seek to ensure that no other person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding) (x) solicits or accepts from, or offers to, a third party or seeks or is promised directly or indirectly for itself or for another person or entity, any gift, gratuity, favor, service, discount, loan, fee, property, benefit or anything else of value (a "*gift*"), other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time, or (y) engages in any activity which is, or gives the appearance of being, a conflict of interest. For the purposes of this Section 8.18(b), "*items of de minimus value*" shall include any gift that does not exceed the equivalent of US\$30 per gift and which, when taken together with all such other gifts received by such person,

does not exceed the cumulative equivalent of US\$100 in any given year. MCA-Nicaragua shall include conflict of interest provisions similar to those set forth in this Section 8.18(b) in the employment agreement of each member of the MCA-Nicaragua Technical Secretariat.

Section 8.19 Written Consents, Approvals and Notices. Notices, permits, consents, licenses, approvals and authorizations, and any equivalent actions, to be provided or made hereunder shall only be effective if done in writing.

Section 8.20 Rules of Interpretation. The following rules of construction shall be followed when interpreting this Agreement:

- (a) Words importing the singular also include the plural and vice versa;
- (b) References to natural persons or parties include firms or any other entity having legal capacity;
- (c) Words importing one gender include the other gender;
- (d) The words “include,” “including,” and variants thereof mean “includes, but not limited to” and corresponding variant expressions;
- (e) Except as otherwise set forth herein, all references contained herein to the Compact, the Articles of Constitution, the Bylaws any Supplemental Agreement, any contract or other agreements or documents shall be deemed to mean the Compact, the Articles of Constitution, the Bylaws, such Supplemental Agreements, contracts, agreements or documents, as the same may be modified, supplemented, or amended from time-to-time;
- (f) Each reference to any applicable law shall be construed as a reference to such applicable law as it may have been, or may from time to time be, amended, replaced, extended or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such applicable law and all protocols, codes, proclamations and ordinances issued or otherwise applicable under any such law;
- (g) The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement and not any one particular Article, Section, Schedule, or other subdivision of this Agreement;
- (h) Except as otherwise expressly specified herein, any reference to a Section, clause, Exhibit or Schedule shall mean a Section, clause, Exhibit or Schedule of this Agreement;
- (i) Any reference to “business day” shall mean any day other than a Saturday, Sunday, commercial banking holiday in Washington, D.C. or Managua, Nicaragua or a federal holiday in the United States of America or Nicaragua; and any reference to “day” shall mean a calendar day;
- (j) All references to notices, permits, licenses, consents, approvals, and authorizations and any equivalent actions hereunder shall mean written notices, permits, licenses, consents, approvals, and authorizations in accordance with Section 8.19; and

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

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 CORPORATION

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

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

By: _____
Name: Dr. Carlos Guillermo Sequeira
Title: Secretary

FUNDACIÓN RETO DEL MILENIO-NICARAGUA

By: _____
Name: _____
Title: _____

EXHIBIT A
DEFINITIONS

***Additional Representative** shall have the meaning set forth in Section 8.5.*

***affiliate** shall have the meaning set forth in Section 8.18(b).*

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

***Articles of Constitution** shall have the meaning set forth in the Recitals to this Agreement.*

***Attachments** shall have the meaning set forth in Section 8.12.*

***Board** shall have the meaning set forth in Article I.*

***Board Action** shall have the meaning set forth in Section 1.7(c).*

***Board Members** shall have the meaning set forth in Section 1.1.*

***Bylaws** shall have the meaning set forth in the Recitals to this Agreement.*

***Chairman** shall have the meaning set forth in Section 1.3(a).*

***Civil Director** shall have the meaning set forth in Section 1.2(b).*

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

***Designated Rights and Responsibilities** shall have the meaning set forth in the Grant Agreement.*

***Directors** shall have the meaning set forth in Section 1.1.*

***Effective Date** shall have the meaning set forth in the Preamble to this Agreement.*

***FCPA** shall have the meaning set forth in Section 5.2.*

***General Director** shall have the meaning set forth in Section 3.1.*

***gift** shall have the meaning set forth in Section 8.18(b).*

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

***Government Director** shall have the meaning set forth in Section 1.2(b).*

***Government Principal Representative** shall have the meaning set forth in Section 8.5.*

***Grant Agreement** means that certain Designation and Grant Agreement of MCA-Nicaragua dated _____, 2006, by and among the Government, MCA-Nicaragua and MCC.*

***Material Adverse Change** shall have the meaning set forth in the Disbursement Agreement.*

***Mayor Director** shall have the meaning set forth in Section 1.2(b).*

***MCA-Nicaragua** shall have the meaning set forth in the Preamble of this Agreement.*

***MCA-Nicaragua Principal Representative** shall have the meaning set forth in Section 8.5.*

***MCA-Nicaragua Technical Secretariat** shall have the meaning set forth in Section 3.1.*

***MCA-Nicaragua Website** (www.cuentadelmilenio.org.ni) shall have the meaning set forth in Section 6.1(b).*

***MCC** shall have the meaning set forth in the Preamble of this Agreement.*

***MCC Principal Representative** shall have the meaning set forth in Section 8.5.*

***Observers** shall have the meaning set forth in Section 1.1.*

***Organizational Documents** shall have the meaning set forth in the Recitals to this Agreement.*

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.

Project Specialist shall have the meaning set forth in Section 3.1(j).

Quorum shall have the meaning set forth in Section 1.9.

Principal Representatives shall have the meaning set forth in Section 8.5.

Rural Business Specialist shall have the meaning set forth in Section 3.1(j).

Secretary shall have the meaning set forth in Section 2.1.

Technical Secretariat of the Presidency shall have the meaning set forth in the Preamble to this Agreement.

EXHIBIT B

MCA-NICARAGUA TECHNICAL SECRETARIAT RESPONSIBILITIES

1. **General Director:** *See* Section 3.3.
2. **Deputy General Director:** The Deputy General Director is responsible for day-to-day operations of MCA-Nicaragua. The Deputy General Director reports to the General Director and coordinates the general operation of the MCA-Nicaragua Program components. The Deputy General Director assists the General Director with MCA-Nicaragua management and direction of strategic planning, organizational development, and MCA-Nicaragua Program development and operations.
3. **Administration and Finance Director** (“A&F Director”): The A&F Director works under the supervision of the General Director or Deputy General Director and is responsible for all financial aspects of MCA-Nicaragua. The A&F Director serves as the primary liaison with the Fiscal Agent who is responsible for ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures. The A&F Director assures proper accounting of all MCC Funding financial transactions.
4. **Monitoring and Evaluation Director** (“M&E Director”): The M&E Director is responsible for developing and guiding the M&E Plan and for implementing related activities within MCA-Nicaragua. The M&E Director is responsible for providing timely and relevant information to MCA-Nicaragua stakeholders in the Government of Nicaragua, in the civil society community and in the private sector. This entails close communication with all parties involved in M&E design and implementation: the General Director; the Deputy General Director; the Communications Director; representatives from the Board; MCA-Nicaragua Project Managers and other support staff when appropriate; Implementing Entities M&E staff; MCC M&E staff in Washington; external consultants; and members of external M&E-related missions from MCC.
5. **Environmental and Social Impact Specialist** (“ESI Specialist”): The ESI Specialist assesses, evaluates and develops policy concerning the environmental and social impacts of MCA-Nicaragua activities. The ESI Specialist will serve as the in-house expert on environmental and social impact issues.
6. **Management Information Systems Director** (“MIS Director”): The MIS Specialist will be responsible for developing, implementing and maintaining a management information system which will be used as a tool for regular reports, both financial and technical, planning activities, and monitoring purposes.
7. **Communications Director:** The Communications Director is responsible for developing messaging campaigns, coordinating press outreach, drafting statements for the General Director and all other public relations activities. This entails working with relevant staff within each Project to ensure a coordinated message. Other activities include drafting press releases and managing press content on the MCA-Nicaragua web site.

8. **Procurement Director:** The Procurement Director will act as the main liaison between MCA-Nicaragua and the Procurement Agent and will be responsible for overseeing the activities of the Procurement Agent in regards to procuring goods and services for MCA-Nicaragua program implementation. The Procurement Director will support MCA-Nicaragua and the Procurement Agent in starting up the program in regards to identifying initial procurement needs and organizing procurement operations while the formal bidding documents and operational manuals are set up. Among other responsibilities, he or she will also review all *Bidding and Proposal* documents as well as the *Procurement Operations Manual* prepared by the Procurement Agent. The Procurement Director will report to the General or Deputy General Director of MCA-Nicaragua.

9. **General Counsel (“GC”):** The GC is responsible for providing advice to MCA-Nicaragua staff on all legal issues affecting MCA-Nicaragua and its operations. The GC assists teams by addressing and resolving legal issues associated with MCA-Nicaragua Program development, including evaluating and conducting due diligence on various proposals and Compact implementation. The GC provides legal advice on all issues affecting the internal operation of MCA-Nicaragua, including, but not limited to, government contracts, fiscal law and corporate records management. The GC is responsible for identifying and analyzing legal issues, negotiating and drafting key documents (including all powers of attorney and delegations of authority), presenting clear recommendations and assuring legal compliance by MCA-Nicaragua. The GC shall perform such other duties and exercise such other powers as are commonly incidental to the office of the general counsel, as well as such other duties and powers that shall be assigned from time to time by the General Director.

10. **Infrastructure Specialist:** The Infrastructure Specialist will coordinate and oversee all Project Activities under the Transportation Project and report to the General Director of MCA-Nicaragua. The Infrastructure Specialist also will work with the other Project Specialists within MCA-Nicaragua to coordinate efforts between the Transportation Project and other Projects of the MCA-Program. The Infrastructure Specialist will facilitate the development of terms of reference in close coordination with the Transportation Project Manager and Procurement Agent.

11. **Rural Business Specialist:** The Rural Business Specialist will work closely with the Rural Business Project Director to ensure successful implementation of the Rural Business Project activities and report to the General Director or Deputy General Director of MCA-Nicaragua. The Rural Business Specialist also will work with the other Project Specialists within MCA-Nicaragua to coordinate efforts between the Rural Business Development Project and other Projects of the MCA-Program. Further project design, implementation management, and some procurement management responsibilities would be carried out by the Rural Business Development Specialist.