

## **BID CHALLENGE TRIBUNAL CONTRACT**

[For Each member of the of the three persons who are jointly called the Bid Challenge Tribunal]

Name and details of Invitation:-----

Name and address of MCA-Jordan:-----

Name and address of Claimant:-----

Name and address of Member:-----

**Whereas** the MCA-Jordan published Invitation for [insert as appropriate: Prequalification, Proposals, Bids] for Central Tender No. (XX/2012)-MCC for [insert Project name], which is called “Invitation”, and the Claimant submitted [insert as appropriate: Application, Proposal, Bid] in response to the Invitation and desire jointly to appoint the Member to act as one of the three persons who are jointly called the “BCT” (or “Bid Challenge Tribunal”) [and desire the Member to act as Chairman of the Bid Challenge Tribunal].

**The MCA-Jordan, Claimant and Member jointly agree** as follows:

1. The Conditions of this Bid Challenge Tribunal Contract comprises the “General Conditions of Bid Challenge Tribunal Contract” which is appended to this Bid Challenge Tribunal Contract, and the following provisions. In these provisions, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Bid Challenge Tribunal Contract.
2. The following documents shall be deemed to form and be read and construed as part of this Contract:
  - (a). General Conditions (GC) of Bid Challenge Tribunal Contract.
  - (b). Annex A: MCA-Jordan Bid Challenge System
  - (c). Annex B: General Provisions.
  - (d). Annex C: Declaration of Impartiality and Confidentiality

3. In accordance with Clause 11 of the General Conditions of Bid Challenge Tribunal Contract, the Member shall be paid as follows:

A retainer fee of ----- US per case.

4. In consideration of these fee to be made by the unsuccessful party (MCA-Jordan or the Claimant as the case may be) in accordance with Clause 11 of the General Conditions of Bid Challenge Tribunal Contract, the Member undertakes to serve, as described in this Bid Challenge Tribunal Contract, as one of the three persons who are jointly to act as the Bid Challenge Tribunal (BCT).

5. The MCA-Jordan and the Claimant undertakes to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 11 of the General Conditions of Bid Challenge Tribunal Contract.

6. In contrast of Section H. Insurance in Article 13. General Provisions in the General Conditions of Contract, the Member is not required to obtain insurance or other protections appropriate to cover against risks or liabilities associated with performance of this Contract.

7. The Bid Challenge Tribunal Contract shall be governed the applicable laws of Jordan, in accordance with Clause 15 of the General Conditions of Bid Challenge Tribunal Contract.

SIGNED by:-----      SIGNED by:-----      SIGNED by:-----

for and on behalf of the MCA-      for and on behalf of the      The Member in the presence  
Jordan in the presence of      Claimant in the presence of      of

Witness:-----      Witness:-----      Witness:-----

Name:-----      Name:-----      Name:-----

Address:-----      Address:-----      Address:-----

Date:-----      Date:-----      Date:-----

## General Conditions (GC) of Bid Challenge Tribunal Contract

### 1. DEFINITIONS

Each Bid Challenge Tribunal Contract (“Contract”) is a tripartite Contract by and between:

- (a) the Millennium Challenge Account Jordan (the “MCA-Jordan”);
- (b) the “Claimant”; and
- (c) the Bid Challenge Tribunal Member “Member” who is defined in the CONTRACT FOR BID CHALLENGE TRIBUNAL MEMBERS SERVICES as being:
  - (i) one of the three persons who are jointly called the “BCT” (or “Bid Challenge Tribunal”) and, the other two persons are called the “Other Members”.

The MCA-Jordan published Invitation for [insert as appropriate: Prequalification, Proposals, Bids] for Central Tender No. (XX/2012)-MCC for [insert Project name], which is called “Invitation”, and the Claimant submitted [insert as appropriate: Application, Proposal, Bid] in response to the Invitation.

### 2. INTRODUCTION

#### 2.1 Millennium Challenge Corporation

The United States of America acting through the Millennium Challenge Corporation (“MCC”) and the Government of (“Jordan”) (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Jordan (the “Compact”) in the amount of approximately 275.1 MUSD (“MCC Funding”). The Government, acting through the MCA-Jordan, intends to apply a portion of the MCC Funding to enter into various contracts to carry out the goals of the Compact. No party other than the Government and the MCA-Jordan shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

#### 2.2 MCA-Jordan Bid Challenge System

In accordance with the MCC Program Procurement Guidelines (“MCC PPG”), MCA-Jordan put in place a Bid Challenge System (“BCS”) Annex A to the Contract for the purpose of enabling Claimants who believe to have been wrongly treated, to seek review of the procurement process and therefore be remedied if they have suffered loss or injury due to negligence or abuse of procurement process by MCA-Jordan.

MCA-Jordan received a written protest from the Claimant, and in accordance with the BCS established a permanent specialized challenge review committee (“Challenge Review Committee”). Following a review of the written protest, the Challenge Review Committee rejected the same and informed the Claimant of its decision. In view of the fact that the Claimant has exercised its right to appeal against the decision of the Challenge Review Committee and submitted a notice of bid challenge (“Notice of Bid Challenge”) to MCA-Jordan in writing, MCA-Jordan and the Claimant has appointed from the list of Bid Challenge Panel Members

established pursuant to Article 6 of the BCS a Bid Challenge Tribunal consisting of three (3) members each a “Bid Challenge Tribunal Member” and together the “Bid Challenge Tribunal Members” pursuant to Article 7 of the BCS, to rule on the Appeal.

**2.3 Description of Services**

The Bid Challenge Tribunal, solely in accordance with the terms and conditions of the MCC PPG, the Bidding Documents and the BCS, shall consider the facts and all written and oral representations made by the parties in respect of the Notice of Bid Challenge submitted by the Claimant, to determine whether or not the procurement was conducted in accordance with the Bidding Documents and the MCC PPG. The Bid Challenge Tribunal on concluding its review shall present MCA-Jordan and the Claimant with a written report of its opinions or decisions and issue a statement describing the basis of the opinion or decision, and any actions to be undertaken.

**3. OBJECTIVES**

The overall objective of the assignment is for the Bid Challenge Tribunal to examine the Notice of Bid Challenge submitted by the Claimant to determine whether or not the procurement was conducted in accordance with the Bidding Documents and the MCC PPG.

**4. SCOPE OF SERVICES**

The Member shall perform the services specified in the BCS.

The Member shall submit to MCA-Jordan and the Claimant the reports in the form and within the time periods specified in the BCS.

The Member shall in addition to the provisions of the BCS perform the following:

- (i) Sign the Declaration of Impartiality and Confidentiality as provided in Annex C to the Contract before signing the Contract;
- (ii) Apply the MCC PPG, Bidding Documents and the BCS for the process;
- (iii) Review all documents and statements, and discuss the facts and merits of the Notice of Bid Challenge submitted by the Claimant and the submission presented by the MCA-Jordan in reply to the Notice of Bid Challenge;
- (iv) Prepare a written report of its opinions or decisions and issue a statement describing the basis of the opinion or decision, and any actions to be undertaken, within twenty-five (25) working days after the Claimant has submitted its Notice of Bid Challenge, stating the reasons upon which the decision is based.

**5. BID CHALLENGE TRIBUNAL MEMBER’S QUALIFICATIONS**

The Member shall be nominated from the list of competent and qualified professional specialists published at MCA-Jordan website [www.mca-jordan.gov.jo](http://www.mca-jordan.gov.jo) who have considerable public procurement expertise but in no event shall any Member have an interest in the outcome of the procurement or have been involved in the procurement process.

**6. REPORTING REQUIREMENTS**

After hearing and reviewing all documents and statements, the Bid Challenge Tribunal will discuss the facts and merits of the Notice of Bid Challenge submitted by the Claimant and the submission presented by the

MCA-Jordan in reply to the Notice of Bid Challenge.

The Report of the Bid Challenge Tribunal opinion, decisions and any actions to be undertaken shall be signed by all members of the Bid Challenge Tribunal and the Bid Challenge Tribunal shall deliver copies of the decision to MCA-Jordan and the Claimant within 24 hours of rendering a decision.

**7. DURATION OF THE ASSIGNMENT**

The Bid Challenge Tribunal shall issue a decision not more than twenty-five (25) Working Days after the Claimant has submitted its Notice of Bid Challenge, unless delayed for justified reasons and the Bid Challenge Tribunal requests an extension of time onto which period may be extended for an additional five (5) Working Days on written notice from the Bid Challenge Tribunal to MCA-Jordan and the Claimant.

**8. FACILITIES AND INFORMATION TO BE PROVIDED BY THE MCA-JORDAN AND THE CLAIMANT**

MCA-Jordan and the Claimant shall provide necessary information such as:

- (i) Declaration of Impartiality and Confidentiality Form (Annex C to the Contract);
- (ii) MCA-Jordan Bid Challenge System;
- (iii) MCC Program Procurement Guidelines;
- (iv) Bidding Documents for the respective project subject to the Appeals process;
- (v) Notice of Bid Challenge;
- (vi) Evaluation Report for the respective project subject to the Appeals process;
- (vii) All correspondence between MCA-Jordan and the Claimant, relevant to the Appeals Process; and
- (viii) Any other documents necessary for the Bid Challenge Tribunal to complete the review of the Appeal.

**9. OUTPUTS**

The Member undertakes to perform the services with the highest standards of professional and ethical competence and integrity.

All decisions by the Bid Challenge Tribunal shall be made in writing, shall state the reasons upon which the decision is based, shall be signed by all Bid Challenge Tribunal Members, shall contain the date on which and the place where the decision was made and shall be final and binding on MCA-Jordan and the Claimant (a "Decision"). The Parties shall undertake to carry out the Decision without delay.

The Decision of the Bid Challenge Tribunal shall be in English.

The Bid Challenge Tribunal shall deliver copies of the Decision to MCA-Jordan and the Claimant within 24 hours of rendering a Decision.

**10. CONFIDENTIALITY**

The Member shall not, during the term of the Bid Challenge Tribunal Contract and after its expiration, disclose any proprietary or confidential information relating to the services, the Bid Challenge Tribunal Contract or the MCA-Jordan's or the Claimant's business or operations without their prior written consent.

The Member shall sign the Declaration of Impartiality and Confidentiality.

**11. PAYMENT**

The Member shall submit an invoice to the unsuccessful party (MCA-Jordan or the Claimant as the case may be) after the report of the Bid Challenge Tribunal's opinion and decisions have been submitted. The invoice shall be based on the cost of the case as agreed beforehand in the Contract.

Payment by the unsuccessful Party (MCA-Jordan or the Claimant as the case may be) shall be made no later than 30 days following the receipt of the Decision of the Bid Challenge Tribunal.

**12. INSURANCE TO BE PROVIDED BY THE CLAIMANT**

The Claimant shall before signing the Contract submit to MCA-Jordan a certified check in the name of MCA-Jordan in the amount of 9000.00 US Dollars as insurance for payment of the Bid Challenge Tribunal invoice incase determined by the Bid Challenge Tribunal as the unsuccessful party.

**13. GENERAL PROVISIONS**

The General Provisions "General Provisions" Annex B to the Contract shall apply to the Contract.

**14. TERMINATION AND SUSPENSION**

**14.1 By MCA-Jordan and/or the Claimant**

MCA-Jordan and/or the Claimant as the case may be may terminate the Contract, effective immediately unless otherwise specified, in the case of the occurrence of any of the events specified in paragraphs (14.1.1) through (14.1.7) of this Clause 14.1 and in the case of paragraph (14.1.6) of this Clause 14.1, MCA-Jordan may suspend the Contract if the Compact is suspended.

14.1.1 If the Member, in the determination of MCA-Jordan or MCC, fails to perform its obligations relating to the use of funds set out in General Provisions, Annex B to the Contract. Termination under this provision will require that the Member repay any and all funds so misused pursuant to clause 13. General Provisions, Annex B to the Contract.

14.1.2 If the Member does not remedy a failure in the performance of its obligations under the Contract (other than failure to perform obligations relating to use of funds as set forth in Clause 14.1.1 of this GC), within three (3) days after being notified or within any further period as MCA-Jordan and the Claimant may have subsequently approved in writing.

14.1.3 If the Member, in the judgment of MCA-Jordan has engaged in corrupt, fraudulent, collusive, coercive or prohibited practices in executing the Contract.

For the purposes of this provision, the terms set forth above are defined as follows:

(i) **"corrupt practice"** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including Employer and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract

execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in Jordan;

- (ii) **“fraudulent practice”** means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit or to avoid (or attempt to avoid) an obligation;
- (iii) **“collusive practice”** means a scheme or arrangement between two or more parties, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the Employer of the benefits of free and open competition;
- (iv) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;
- (v) **“prohibited practice”** means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of the “General Provisions Annex” that will be made a part of the contract and may be found on the MCC website at [http://www.mcc.gov/guidance/compact/general\\_provisions.pdf](http://www.mcc.gov/guidance/compact/general_provisions.pdf).

14.1.4 If, as the result of Force Majeure, the Member is unable to perform a material portion of the services for a period of not less than five (5) days, such termination shall become effective three (3) days after notice of termination by MCA-Jordan and the Claimant.

For the purposes of this Contract:

**“Force Majeure”** means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a Party, and is not the result of any acts, omissions or delays of the Party relying on such event of Force Majeure, (or of any third person over whom such Party has control, including any Sub-Consultant), (b) is not an act, event or condition the risks or consequence of which such Party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such Party’s reasonable diligence, and (d) makes such Party’s performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the circumstances.

14.1.5 If MCA-Jordan and/or the Claimant, in its sole discretion and for any reason whatsoever, decides to terminate this Contract, such termination shall become effective three (3) days after notice of termination.

14.1.6 If the Compact expires, is suspended or terminates in whole or in part in accordance with Section 5.4 of the Compact, such suspension or termination shall become effective immediately upon notice, in accordance with the terms of the notice. The amount payable upon suspension or termination pursuant to this Clause 14.1.6 shall be equal to the amount owed but unpaid for performance provided on or before the suspension or termination date plus reimbursement of reasonable expenses (as determined by MCC) relating to such termination; provided that the Member sends MCA-Jordan an invoice not later than 90 days after the expiration, suspension or termination of the Compact. If the Contract is suspended pursuant to this Clause 14.1.6, the Member has an obligation to mitigate all expenses, damages and losses to MCA-Jordan during the period of the suspension.

14.1.7 If suspension is permitted under Applicable Law. The amount payable upon suspension or termination pursuant to this Clause 14.1.7 shall be equal to the amount owed but unpaid for performance provided on or before the suspension date plus reimbursement of reasonable expenses (as determined by MCA-Jordan or MCC) relating to such suspension. If the Contract is suspended pursuant to this Clause 14.1.7, the Member has an obligation to mitigate all expenses, damages and losses to MCA-Jordan during the period of the suspension.

#### **14.2 By the Member**

The Member may terminate the Contract, by not less than three (3) days' written notice to MCA-Jordan and Claimant, such notice to be given after the occurrence of any of the events specified in paragraphs 14.2.1 through 14.2.2 of this Clause 14.2:

14.2.1 If MCA-Jordan or the Claimant fails to pay any money due to the Member pursuant to the Contract and not subject to dispute pursuant to Clause 16 hereof within forty-five (45) days after receiving written notice from the Member that such payment is overdue.

14.2.2 If, as the result of Force Majeure, the Member is unable to perform a material portion of the services for a period of not less than five (5) days. Such termination shall become effective three (3) days after the notice of termination.

**15. LAW GOVERNING BID  
CHALLENGE TRIBUNAL  
AGREEMENT AND  
LANGUAGE**

The Contract shall be governed by the applicable laws of the Hashemite Kingdom of Jordan. The language of the Contract shall be English.

**16. DISPUTE RESOLUTION**

16.1 The Member and MCA-Jordan/or Claimant agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The parties to the Contract shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation.

16.2 Any dispute between the parties to the Contract arising pursuant to the Contract that cannot be settled amicably within thirty (30) days after the receipt by one party of the other party's request for such amicable settlement shall be settled by arbitration in accordance with the Jordan Arbitration law.

16.3 Arbitration shall take place in Amman- Jordan.

16.4 Arbitration shall be conducted in English Language.

#### **ANNEXES TO CONTRACT**

Annex A: MCA-Jordan Bid Challenge System

Annex B: General Provisions

Annex C: Declaration of Impartiality and Confidentiality

**MILLENNIUM CHALLENGE ACCOUNT - JORDAN**  
**“MCA-JORDAN”**

**BID CHALLENGE SYSTEM RULES**

## **BID CHALLENGE SYSTEM RULES**

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## **BID CHALLENGE**

Whereas, on October 25, 2010, the United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Hashemite Kingdom of Jordan (the “Government”) signed a Millennium Challenge Compact (the “Compact”) and a Program Implementation Agreement (the “PIA”) that set forth the general terms and conditions on which MCC will provide funding of up to \$272,980,000 to the Government for a program to reduce poverty through economic growth in Jordan (the “Program”) and describes terms and conditions for procurements of goods, services and works made in furtherance of the Compact using MCC Funding;

Whereas, the Government has designated the Millennium Challenge Account – Jordan (“MCA-Jordan”) to implement the Program pursuant to Government Resolution no. 1220 of April 25, 2010;

Whereas, pursuant to Section 2.1(d) of the PIA, MCA-Jordan is obliged to establish a bid challenge system that provides bidders (goods suppliers, service providers and contractors, etc) the ability to seek review of procurement actions and decisions;

Now, therefore, in consideration of the promises and covenants contained in the Compact, the PIA and Supplemental Agreements, MCA-Jordan has established the rules set forth in this Bid Challenge System (the “Rules”) and agrees that challenges in relation to the bidding shall be referred to the Bid Challenge System (the “BCS”) in accordance with these Rules, and these Rules shall be incorporated in all bidding documents lodged by suppliers, providers and contractors (the “Bidders”, and each individually, a “Bidder”).

The principles upon which these Rules are based are:

- a) Clearly and openly state the basis on which decisions are made to accept and evaluate bids and proposals in the requests for bids or proposals;
- b) Provide unsuccessful bidders and proponents, upon request, clear explanations of why their bids or proposals were rejected or not selected; and
- c) Establish and implement a formal bid challenge process to address complaints about how procurement rules and procedures were applied to specific procurement actions.

## **SECTION 1 - INTRODUCTORY RULES**

### **Article 1. Scope of application**

- 1.1. These Rules shall govern the BCS, except that where any of these Rules are in conflict with provisions of the Compact, PIA or the MCC Program Procurement Guidelines,

provisions of the latter shall prevail.

- 1.2. The bidding documents shall state that every Bidder bidding for the provision of services and/or the supply of goods or execution of works agrees to be bound by these Rules and they further accept at the commencement of bidding that no legal challenge of any kind may be instituted in any court in any jurisdiction with respect to any matter, claim or thing arising out of the bidding and procurement processes until and unless a protest and a Bid Challenge have been completed in accordance with these Rules.
- 1.3. MCA-Jordan may, with the prior written approval of MCC, modify these Rules in writing from time to time. For the avoidance of doubt, the Rules included in standard bidding documents obtained by suppliers, providers and contractors shall govern with respect to those suppliers, providers and contractors, even if MCA-Jordan subsequently modifies the Rules in accordance with this Article 1.3.

## **Article 2. Notice, calculation periods of time**

- 2.1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is delivered to the addressee at the address set forth in Article 2.3. Notice shall be deemed to have been received on the day it is so delivered.
- 2.2. For the purposes of calculating a period of time under these Rules, such period shall begin on the first Working Day (as defined herein) following the day when a notice, notification, communication or proposal is received. If not otherwise specified in these Rules, all references to “days” shall mean Working Days. “Working Day” means any day in Jordan that is not a public holiday or a weekend.
- 2.3. Notices and all other documents required to be delivered to MCA-Jordan, to the Challenge Review Committee and to the Bid Challenge Tribunal under these Rules shall be sent to the following address:

Millennium Challenge Account - Jordan  
Chief Executive Officer  
No. 86 Uqba Ben Nafee Street, Jabal Amman - Amman, Jordan  
Telephone: (962)-6-5936339  
Telephone/Fax: (962)-6-5936332  
Email: office@mca.gov.jo

## **Article 3. Protests**

- 3.1. Challenge Review Committee
  - (a) For the purposes of these Rules, MCA-Jordan shall establish a permanent specialized challenge review committee (the “Challenge Review Committee”),

consisting of three (3) members and entrusted with the review and decision-making on the protest submitted by bidders.

(b) The Challenge Review Committee shall consist of the following three members – MCA-Jordan Chief Executive Officer (who shall serve as the Chairman of the Challenge Review Committee), MCA-Jordan Legal Advisor and MCA-Jordan Procurement Director.

(c) The decisions of the Challenge Review Committee shall be adopted by all members.

### 3.2. Filing a Protest

(a) Subject to paragraphs (b), (c), (d) and (e) of this Article 3.2, any Bidder may file a written protest (which may be in electronic form) with MCA-Jordan at the following times:

- i) within five (5) working days of the date of (a) issuance or modification of a request for proposals/bids or (b) a decision to extend the time for submission of proposals/bids;
- ii) in the event that the procurement process requires prequalification prior to the request for proposals/bids, within five (5) working days of the date that the results of the prequalification are notified to bidders;
- iii) in the event that the procurement process requires a technical evaluation prior to the opening of financial proposals, within five (5) working days of the date that the results of the technical evaluation are notified to bidders; and
- iv) within five (5) working days of the date that the proposed award is notified to bidders.
- v) Solely to the extent that a protest is based on facts or information that was not available to a Bidder at the times set forth above, the Bidder may also file a protest within five (5) working days of the date that the Bidder knows or should reasonably be expected to know (whichever is earlier) of the fact that gives rise to the protest. Untimely protests shall be dismissed.

(b) Any written protest submitted by a Bidder shall:

- i) identify the procurement action out of which the protest arises;
- ii) describe the nature of the protest and the facts supporting such protest, including the clause of the MCC Program Procurement Guidelines and/or clause of the bidding documents which were allegedly violated, and the timeliness of the protest;
- iii) indicate the justification for its relief and compensation form requested;
- iv) provide justification for the protest; and

- v) include the name, address, telephone and facsimile numbers, as well as the email address of the Bidder.
- (c) The following shall not be subject to the filing of a protest provided for in Article 3.2(a):
  - i) the selection of a method of procurement (QCBS, QBS, etc.) or the type of procurement (goods, works, non-consultant services, consultant services); or
  - ii) a decision by MCA-Jordan to reject all bids, proposals, offers or quotations.
- (d) Under no circumstance shall any protest be submitted by a potential subcontractor or subconsultant.
- (e) All protests should be sent to MCA-Jordan at the address set forth in Article 2.3. Within one (1) Working Day, the Chairman of the Challenge Review Committee will forward any protest s/he receives to each member of the Challenge Review Committee.
- (f) The Challenge Review Committee shall reject a protest:
  - i) that is filed after signing of the contract;
  - ii) that is filed after the five (5) Working Day period set forth in paragraph 3.2(a) above; or
  - iii) that does not meet the requirements set forth in Article 3.2(b)(i)-(iv) above.

After the Challenge Review Committee receives a protest that complies with the requirements of Article 3.2(a) and is not rejected pursuant to Article 3.2(f), the Challenge Review Committee shall instruct the Procurement Agent to suspend the disputed procurement proceeding and communicate the suspension of the process to other Bidders until the Challenge Review Committee has issued a decision on the protest in accordance with these Rules, unless the Challenge Review Committee believes:

- i) the protest is unjustified; or
- ii) MCA-Jordan or other Bidders may sustain disproportionately greater damage in relation to that which threatens the Bidder filing the protest.

### 3.3. Challenge Review Committee Decision

- (a) The Challenge Review Committee shall issue a written decision on any protest filed in accordance with Article 3.2 within five (5) Working Days from receipt of such protest, which period may be extended for an additional five (5) Working Days on written notice from the Challenge Review Committee to the Bidder who filed the protest. The Challenge Review Committee shall deliver copies of the written decision to the Procurement Agent and the Bidder who filed the protest within one (1) Working Day of rendering a written decision.

- (b) In reaching its decision, the Challenge Review Committee may, in its discretion, seek assistance from experts in the field. When such additional experts are consulted, the Challenge Review Committee shall use its best efforts to appoint experts who are best qualified and shall ensure such experts do not have any direct or perceived interest in the outcome of the protest and shall not have been involved in the procurement process at issue.
- (c) The Challenge Review Committee will determine:
  - i) whether the Bidder, submitting the protest, has an interest in the procurement concerned;
  - ii) whether the information provided discloses a reasonable indication that the procurement has not been carried out in accordance with the MCC Program Procurement Guidelines; and
  - iii) whether the Bidder has filed sufficient information to support its protest. The Challenge Review Committee at any time following receipt of the protest may request additional information relating to the relevant procurement, indicating the time in which the Bidder shall provide such information.
- (d) The Challenge Review Committee may decide to dismiss the protest or uphold the protest in whole or in part and indicate corrective measures.
- (e) Any decision issued by the Challenge Review Committee shall state the reasons for the decision and, if the Challenge Review Committee upholds the protest in whole or in part, which steps in the procurement process shall be redone.
- (f) The Challenge Review Committee shall send a copy of the decision to each of the MCA-Jordan Board of Directors and MCC for their respective records.

#### **Article 4. Appeal; Notice of Bid Challenge**

- 4.1. A Bidder may initiate recourse to the bid challenge tribunal (the “Bid Challenge Tribunal”) as set in Article 6 and in accordance with Articles 4.2 and 4.3 only if it has first fully complied with the protest procedures set forth in Article 3.
- 4.2. Within five (5) Working Days from the date on which the Challenge Review Committee issues a decision on a protest pursuant to Article 3.3 or rejects a Bidder’s protest pursuant to Article 3.2(f), the Bidder (the “Claimant”) may appeal the decision by submitting a notice of bid challenge (the “Notice of Bid Challenge”) to MCA-Jordan at the address mentioned in Article 2.3.
- 4.3. If the Challenge Review Committee fails to issue a decision within five (5) Working Days from receipt of the protest as required by Article 3.2 (or ten (10) Working Days, if

the Challenge Review Committee exercises its right to extend the decision period in accordance with Section 3.3(a)), then the Claimant may, within five (5) Working Days from the date on which such decision was to be made, submit a Notice of Bid Challenge to MCA-Jordan at the address mentioned in Article 2.3.

4.4. The Notice of Bid Challenge shall include the following:

- (a) A request that the challenge be referred to the Bid Challenge Tribunal;
- (b) The name, telephone, email and address of the Claimant;
- (c) A reference to the bid challenge decision;
- (d) The general nature and detailed statement of the facts supporting the claim and an indication of the amount involved, if any;
- (e) The relief or remedy sought;
- (f) The name and address of the Claimant representatives, if different from (b);
- (g) All documents or reference to the documents or other evidence the Claimant deems relevant.

If the Notice of Bid Challenge does not include one or more of the abovementioned items, the case shall be dismissed by MCA-Jordan.

#### **Article 5. Representation and assistance**

The Claimant and/or MCA-Jordan (each a “Party” and together the “Parties”) may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

### **SECTION 2 - COMPOSITION OF THE BID CHALLENGE TRIBUNAL**

#### **Article 6. Bid Challenge Panel Members**

Within forty-five (45) Working Days of MCC’s approval of these Rules, MCA-Jordan shall establish a list of competent and qualified persons, appointed by MCA-Jordan (each a “Bid Challenge Panel Member” and together the “Bid Challenge Panel Members”). The Bid Challenge Panel Members shall be independent and impartial, and have no interest (through financial, family, business or beneficial ownership or otherwise, directly or indirectly) in the outcome of the procurement, nor be involved in or connected with the procurement process. The list of full names, addresses, occupations, nationalities and qualifications of all Bid Challenge Panel Members, shall be posted on the MCA-Jordan website.

#### **Article 7. Appointment of Bid Challenge Tribunal Members**

7.1. The Bid Challenge Tribunal shall consist of three members (each a “Bid Challenge

Tribunal Member” and together the “Bid Challenge Tribunal Members”), appointed from the list of Bid Challenge Panel Members established pursuant to Article 6 to hear a particular Bid Challenge.

- 7.2. Within five (5) Working Days from the date of the Notice of Bid Challenge each party shall appoint one (1) Bid Challenge Tribunal Member from the list of Bid Challenge Panel Members established pursuant to Article 6. The first Bid Challenge Tribunal Member shall be appointed by the Claimant and the second shall be appointed by MCA-Jordan. In case a Bid Challenge Tribunal Member is challenged or replaced in accordance with Articles 8 through 12 of these Rules, either Party shall appoint a new member.
- 7.3. The two Bid Challenge Tribunal Members thus appointed shall appoint, within three (3) Working Days, a third person from the list of Bid Challenge Panel Members to be the presiding member of the Bid Challenge Tribunal, called the Chairman of the Bid Challenge Tribunal.
- 7.4. If within three (3) Working Days after the receipt of a Party's notification of the appointment of a Bid Challenge Tribunal Member by the other Party, the other Party has not notified the first party of the Bid Challenge Tribunal Member it has appointed, then the Bid Challenge Tribunal Member may appoint a second Bid Challenge Tribunal Member.

#### **Article (8 to 12) - Challenges to Bid Challenge Tribunal Members**

##### **Article 8.**

A prospective Bid Challenge Tribunal Member shall immediately disclose to the Party who approaches him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. A Bid Challenge Tribunal Member, once appointed or chosen, shall disclose such circumstances to the Parties unless they have already been informed by him of these circumstances.

##### **Article 9.**

- 9.1. The proposing of any Bid Challenge Tribunal Member may be challenged by a Party if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence.
- 9.2. A Party may challenge the proposing of any Bid Challenge Tribunal Member only for reasons of which he becomes aware after the appointment has been made.

##### **Article 10.**

- 10.1. A Party who intends to challenge the proposing of any Bid Challenge Tribunal Member

shall send notice of its challenge within three (3) Working Days after the later of (i) the proposing of the challenged Bid Challenge Tribunal Member or (ii) the challenging Party becomes aware of circumstances that give rise to justifiable doubts as to his/her impartiality or independence.

- 10.2. The challenging Party shall give notice of the challenge to the other Party, to the Bid Challenge Tribunal Member who is challenged and to the other Bid Challenge Tribunal Members. The notification shall be in writing and shall state the reasons for the challenge.
- 10.3. When the proposing of any Bid Challenge Tribunal Member has been challenged by one Party, the other Party may agree to the challenge, and the procedure provided in Article 7 shall be used in full for the appointment of the substitute Bid Challenge Tribunal Member, even if during the process of proposing the challenged Bid Challenge Tribunal Member, the other Party had failed to exercise its right to appoint or to participate in the appointment.

#### **Article 11.**

If the other Party does not agree to the challenge of the proposed Bid Challenge Tribunal Member and the challenged Bid Challenge Tribunal Member does not withdraw from the Bid Challenge Tribunal within three (3) Working Days after delivery of a notice pursuant to Article 10.2, the decision on the challenge will be made by the Chairman (Preceding Member). If the Chairman decides the challenged Bid Challenge Tribunal Member should not participate in the Bid Challenge Tribunal, then the Chairman shall appoint a substitute member of the Bid Challenge Tribunal from the list of Bid Challenge Tribunal Members.

#### **Article 12. Replacement of a Bid Challenge Tribunal Member**

- 12.1. In the event of death or resignation of a Bid Challenge Tribunal Member during the course of the Bid Challenge proceedings, a substitute Bid Challenge Tribunal Member shall be appointed or chosen pursuant to the procedure set forth in Article 7 that was applicable to the appointment or choice of the Bid Challenge Tribunal Member being replaced.
- 12.2. In the event that a Bid Challenge Tribunal Member fails to act or in the event of the de jure or de facto impossibility of him performing his functions, the procedure in respect of the challenge and replacement of a Bid Challenge Tribunal Member as provided in the preceding articles shall apply. For the avoidance of doubt, Articles 8 through 12 shall apply to any substitute Bid Challenge Tribunal Member appointed pursuant to Articles 10 or 11 or any replacement Bid Challenge Tribunal Member appointed pursuant to Article 12.

## **SECTION 3 - BID CHALLENGE PROCEEDINGS**

### **Article 13. General provisions**

- 13.1. Subject to these Rules, the Bid Challenge Tribunal may conduct the proceedings in such manner as it considers appropriate, provided the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to present its case.
- 13.2. If either Party so requests in its Notice of Bid Challenge or Statement of Defense, the Bid Challenge Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Bid Challenge Tribunal shall decide, within three (3) Working Days after MCA-Jordan files its Statement of Defense, whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 13.3. All documents or information supplied to the Bid Challenge Tribunal by a Party shall at the same time be communicated by such Party to the other Party.

### **Article 14. Place of bid challenge procedure**

- 14.1. The Bid Challenge Tribunal shall sit in Amman, Jordan.
- 14.2. The Bid Challenge Tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The Parties shall be given at least two (2) Working Days notice.

### **Article 15. Language**

The language to be used in the proceedings shall be English. If translation is required, the translator will be arranged and be paid for by requesting Party. This determination shall apply to the Notice of Bid Challenge, the Statement of Defense, any further written statements and, if oral hearings take place, to the language to be used in such hearings.

### **Article 16. Statement of Defense; Counterclaims**

- 16.1. Within five (5) Working Days after the MCA-Jordan receives the Notice of Bid Challenge from the Claimant, MCA-Jordan shall communicate its Statement of Defense in writing to the Bid Challenge Tribunal.
- 16.2. The Statement of Defense shall reply to all the points raised in the Notice of Bid Challenge and shall also state whether MCA-Jordan is requesting any hearings pursuant to Article 19. MCA-Jordan may annex to its Statement of Defense the documents on which it relies for its defense or may add a reference to the documents or other evidence it will submit within two (2) Working Days of submitting the Statement of Defense.

- 16.3. In its Statement of Defense, or at a later stage in the Bid Challenge proceedings if the Bid Challenge Tribunal decides that the Notice of Bid Challenge was justified under the circumstances, MCA-Jordan may make a counter-claim arising out of the same issue or rely on a claim arising out of the same issue for the purpose of a set-off. Such counter-claims shall be submitted to the Claimant and to the Bid Challenge Tribunal. The Claimant shall reply to such counter-claims within five (5) Working Days of receipt of the counter-claim.

#### **Article 17. Further written statements**

The Bid Challenge Tribunal shall decide if any further written statements, in addition to the Notice of Bid Challenge, Statement of Defense, any counter-claims and any replies to counterclaims shall be required from the Parties and shall fix the periods of time for communicating such statements, such periods not to exceed three (3) Working Days.

The Bid Challenge Tribunal at any time following receipt of a Notice of Bid Challenge may request, in writing, additional information relating to the relevant procurement, and must include the time in which the Claimant or MCA-Jordan shall provide such information. Each Party must furnish the information requested by the Bid Challenge Tribunal, provided that the Claimant may refuse to disclose certain information if it would be contrary to the public interest; would prejudice the legitimate commercial interests or fair competition between Bidders; or would be in breach of a legal professional privilege or a confidentiality agreement to which the Claimant is a party. Any refusal to disclose information is to be accompanied by reasons in writing. In case the Claimant does not provide such requested information, the Bid Challenge Tribunal shall continue with the review process without the information. However, if the Bid Challenge Tribunal believes that the review cannot be continued without this information, it may decide to terminate the review proceedings, and declare the complaint invalid.

If any confidential information of the Claimant is disclosed by the Claimant to the Bid Challenge Tribunal at the Bid Challenge Tribunal's request, the Claimant may request that such information only be made available to members of the Bid Challenge Tribunal. In such cases, a statement is to be provided by the Claimant identifying the Claimant's confidential information, together with a copy of the confidential information (which is to be provided to the Bid Challenge Tribunal only, the address will be given to the Claimant at the time of the review) and one copy of the documents where the confidential information has been deleted.

#### **Articles (18 and 19) - Evidence and hearings**

##### **Article 18.**

- 18.1. Each Party shall have the burden of proving the facts relied on to support its claim or defense.

- 18.2. The Bid Challenge Tribunal may, at any time, if it considers it appropriate, require a party to deliver to the Bid Challenge Tribunal and to the other Party, within the time limit as determined appropriate by the Bid Challenge Tribunal, a summary of the documents and other evidence, which that Party intends to present in support of the facts in issue set out in its Notice of Bid Challenge or Statement of Defense.

**Article 19.**

- 19.1. In the event of an oral hearing pursuant to Article 13.2, the Bid Challenge Tribunal shall give the Parties at least five (5) Working Days advance notice of the date, time and place thereof.
- 19.2. If, in accordance with Article 13.2 witnesses are to be heard, then at least three (3) Working Days before the hearing each Party shall communicate to the Bid Challenge Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject matter and the languages in which such witnesses will give their testimony.
- 19.3. The Party who intends to present a witness in accordance with Article 13.2 shall make arrangements for the translation of such witness's oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the Bid Challenge Tribunal under the circumstances of the case, or if the Parties have agreed thereto and have communicated such agreement to the Bid Challenge Tribunal at least three (3) Working Days before the hearing. Any translations and records required to be delivered pursuant to this Article 19.3 shall be delivered within two (2) Working Days from the date of the hearing.
- 19.4. Evidence of witnesses may also be presented in the form of written statements signed by them.
- 19.5. The Bid Challenge Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

**Article 20. Experts**

- 20.1. The Bid Challenge Tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Bid Challenge Tribunal. A copy of the expert's terms of reference and qualifications, established by the Bid Challenge Tribunal, shall be communicated to the parties.
- 20.2. The Parties shall give the expert any relevant information or produce for inspection any relevant documents or goods that the expert may require of them. Any dispute between a Party and such expert as to the relevance of the required information or production shall be referred to the Bid Challenge Tribunal, and the Bid Challenge Tribunal shall make a decision within three (3) Working Days of such referral.

20.3. Upon receipt of the expert's report, the Bid Challenge Tribunal shall communicate a copy of the report to the Parties who shall be given the opportunity to express, in writing, their opinion of the report within three (3) Working Days of their receipt of such report. A Party shall be entitled to examine any document on which the expert has relied in his report.

20.4. At the request of either Party, the expert after delivery of the report, may be heard at a hearing where the Parties have the opportunity to be present and address questions to the expert. At this hearing either Party may present expert witnesses in order to testify on the points at issue. The provisions of Article 19 shall be applicable to such proceedings.

#### **Article 21. Default**

21.0 If the Claimant failed to communicate its Notice of Bid Challenge in accordance with Article 4.5 within five (5) Working Days without showing sufficient cause for such failure, the Bid Challenge Tribunal shall order termination of the proceedings.

21.1 If one of the Parties, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the Bid Challenge Tribunal may proceed with the Bid Challenge proceedings.

21.2 If one of the Parties, duly invited to produce documentary evidence, fails to do so within the required period of time without showing sufficient cause for such failure, the Bid Challenge Tribunal may render the award on the evidence before it.

#### **Article 22. Closure of hearings**

The Bid Challenge Tribunal may inquire of the Parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it shall promptly, and in any event no more than three (3) Working Days after the hearings started, declare the hearings closed.

#### **Article 23.**

A Party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the Bid Challenge procedures without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

#### **Article 24.**

The Bid Challenge Tribunal records shall be maintained with the Procurement Agent for the duration of the Compact. These would include a record of the proceedings and all materials provided to the Bid Challenge Tribunal (the "Records"). Following the issuance of a Decision

pursuant to Article 26, the Parties may request a copy of the Records.

#### **SECTION 4 - THE DECISION**

##### **Article 25. Decisions**

- 25.1. The Bid Challenge Tribunal shall issue a decision not more than twenty-five (25) Working Days after the Claimant has submitted its Notice of Bid Challenge, unless delayed for justified reasons and the Bid Challenge Tribunal requests an extension of time onto which period may be extended for an additional five (5) Working Days on written notice from the Bid Challenge Tribunal to both Parties.
- 25.2. Any decision of the Bid Challenge Tribunal shall be made by a majority of the members of the Bid Challenge Tribunal.
- 25.3. In the case of questions of procedure when there is no majority, the decision shall be made by the Chairman of the Bid Challenge Tribunal.

##### **Article 26. Form and Effect of the Decision**

- 26.1. All decisions by the Bid Challenge Tribunal shall be made in writing, shall state the reasons upon which the decision is based, shall be signed by all Bid Challenge Tribunal Members, shall contain the date on which and the place where the decision was made and shall be final and binding on the Parties (a “Decision”). The Parties shall undertake to carry out the Decision without delay.
- 26.2. The decision of the Bid Challenge Tribunal shall be in English.
- 26.3. The Bid Challenge Tribunal shall deliver copies of the Decision to MCA-Jordan and the Claimant within 24 hours of rendering a Decision.
- 26.4. Either Party may enforce a Decision in any court with jurisdiction.
- 26.5. All records of the Bid Challenge shall be provided to each of the MCA-Jordan Board of Directors and to MCC.
- 26.6. The Claimant shall have no right to complain or appeal to MCC.

##### **Article 27. Applicable Principles**

In its deliberations, the Bid Challenge Tribunal shall apply the procurement principles set out in

the Compact and the MCC Program Procurement Guidelines, as set out in the PIA. Training materials will be provided to the Bid Challenge Tribunal before the start of the proceedings.

#### **Article 28. Remedies**

In its decision, the Bid Challenge Tribunal shall determine whether or not the procurement was conducted in accordance with the bidding documents and the MCC Program Procurement Guidelines and may order one or more of the following remedies:

- (a) correction of any breach of the MCC Program Procurement Guidelines;
- (b) order compensation for any loss or damage suffered by a successful Claimant, such amount not to exceed the costs reasonably incurred by the Claimant in connection with the procurement proceedings, provided that such reasonable costs do not include profit lost, travel costs, or punitive damages because of non-acceptance of a bid (or, proposal, offer or quotation) of the Claimant; or
- (c) cancellation of a procurement in whole or in part that is under challenge.

#### **Article 29.**

If, before the award is made, the Parties agree on a settlement of the Bid Challenge, the Bid Challenge Tribunal shall either issue an order for the termination of the proceedings or, if requested by both Parties and accepted by the Bid Challenge Tribunal, record the settlement in the form of a Decision on agreed terms.

#### **Article 30. Correction**

- 30.1. Within five (5) Working Days after the Bid Challenge Tribunal issues a Decision, either Party, with notice to the other Party, may request that the Bid Challenge Tribunal correct any errors in computation, any clerical or typographical errors, or any errors of similar nature in the Decision. The Bid Challenge Tribunal may within three (3) Working Days after the communication of the Decision make such corrections on its own initiative.
- 30.2. Such corrections shall be in writing, and the provisions of Article 26 shall apply.

#### **Article (31 to 32) – Costs**

##### **Article 31.**

The Bid Challenge Tribunal shall fix the costs beforehand of the Bid Challenge procedure in its

award decision. The term “costs” includes only:

(a) The fees, travel, per diem, translation services, administrative costs, and other expenses of the Bid Challenge Tribunal calculated in accordance with the agreements that each Panel member has entered into with the respective Party;

(b) The reasonable costs of expert advice and of other assistance required by the Bid Challenge Tribunal;

(c) The travel and other expenses of witnesses to the extent such expenses are approved by the Bid Challenge Tribunal;

(d) The costs for legal representation and assistance of the successful Party if such costs were claimed during the Bid Challenge proceedings, and only to the extent that the Bid Challenge Tribunal determines that the amount of such costs is reasonable.

**Article 32.**

32.1. The costs of Bid Challenge proceedings including costs of legal representation shall be borne by the unsuccessful Party.

32.2. When the Bid Challenge Tribunal issues an order for the termination of the Bid Challenge proceedings or makes a Decision on agreed terms, it shall fix the costs of proceedings referred to in Article 31, in the text of that Decision.

32.3 The Decision of the Bid Challenge Tribunal shall be implemented by MCA- Jordan within 30 days.

**SECTION 5 - GENERAL PROVISIONS**

**Article 33. Governing Law**

These Rules, and any disputes arising under these Rules, shall be governed by and construed in accordance with the laws of the Hashemite Kingdom of Jordan.

## ANNEX B

### GENERAL PROVISIONS

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the contract to which this Annex is attached (the "**Contract**") and that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government of Jordan (the "**Government**"), signed on October 22, 2007, as may be amended from time to time (the "**Compact**").

MCA-Jordan is the entity responsible for the oversight and management of the implementation of the Compact on behalf of the Government (the "**MCA Entity**"). The MCA-Entity intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (i) such payments will only be made at the request of and on behalf of the MCA Entity and as authorized by the Fiscal Agent, (ii) MCC shall have no obligations to the Auditor (for the purposes of this Annex, the "**Contract Party**") under the Compact or this Contract, (iii) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (iv) no party other than the MCA Entity shall derive any rights from the Compact or have any claim to MCC Funding.

#### A. MCC Status; Reserved Rights; Third-Party Beneficiary

1. MCC Status. 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 Contract, and is immune from any action or proceeding arising under or relating to this Contract. In matters arising under or relating to this Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights

(a) Certain rights are expressly reserved to MCC under the Compact, including the right to approve the terms and conditions of this Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate this Contract.

(b) MCC, in reserving such rights under the Compact has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Contract.

(c) MCC may, from time to time, exercise its rights, or discuss matters related to this Contract with the parties to this Contract, the Government or the MCA Entity, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

(d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the MCA Entity, MCC or any other person or entity from asserting any right against the Contract Party, or relieve the Contract Party of any liability which such entity might otherwise have to the MCA Entity, MCC, or any other party. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, Affiliate, contractor, agent or representative.

3. Third-Party Beneficiary. MCC shall be deemed to be a third party beneficiary under this Contract.

#### **B. Limitations on the Use or Treatment of MCC Funding**

The use and treatment of MCC Funding in connection with this Contract does not, and shall not, violate any limitations or requirements specified in the Compact, including Section 2.3 and 5.4(b) of the Compact or any other relevant Supplemental Contract or Implementation Letter or applicable law or U.S. Government policy. A summary of the applicable Compact provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits\\_reviews\\_provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf)

#### **C. Procurement**

The Contract Party shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in Section 3.6 of the Compact and in the Procurement Guidelines. The Bid Challenge Tribunal Agreement Party shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the MCA Entity. A summary of the applicable Compact provision referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits\\_reviews\\_provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

With respect to subcontracting, the Procurement Guidelines provide as follows:

1. Every contract or subcontract for goods, services or works with any party that receives at least USD \$50,000 in the aggregate of MCC Funding shall require the contracting party to follow the Procurement Principles set out in the Compact to the maximum extent consistent with the objectives and requirements of the contract when subcontracting for goods, services or works.

2. In every contract or subcontract valued in excess of USD \$1,000,000, the contracting party shall be required to have written procurement procedures that may be subject to review by MCA - Jordan, MCC, the Government and any of their respective agents or representatives.

3. Any contractor or subcontractor planning to subcontract for a major item of supply, services, or works, (deemed major if valued in excess of USD \$100,000) shall seek MCA - Jordan's prior written approval of the subcontractor.

#### **D. Reports and Information; Access; Audits; Reviews**

1. Reports and Information. The Contract Party shall maintain such books and records and provide such reports, documents, data or other information to the MCA Entity in the manner and to the extent required by Sections 3.8 (a) and (b) of the Compact, and as may be reasonably requested by the MCA Entity from time to time in order to comply with its reporting requirements arising under the Compact. The provisions of Section 3.8(a) and (b) of the Compact that are applicable to the Government shall apply, *mutatis mutandis*, to the Contract Party as if such Contract Party were the Government under the Compact. A summary of the applicable Compact provisions referenced in this paragraph may be found on the MCC website at

[www.mcc.gov/guidance/compact/audits\\_reviews\\_provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf)

2. Access; Audits and Reviews. The Contract Party shall permit such access, audits, reviews and evaluations as provided in the Compact. The provisions of the Compact that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to the Contract Party as if such Contract Party were the Government under the Compact. A summary of the applicable Compact provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits\\_reviews\\_provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

3. Application to Providers. The Contract Party shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other Providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at [www.mcc.gov/guidance/compact/audits\\_reviews\\_provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

#### **E. Compliance with Anti-Corruption Legislation**

The Contract Party shall ensure that no payments have been or will be made by such Contract Party to any official of the Government, the MCA Entity, or any third party (including any other government official) in connection with this Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the "FCPA") or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws. The Contract Party affirms that no payments have been or will be received by any official, employee, agent or representative of such Contract Party in connection with this Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws.

**F. Compliance with Anti-Money Laundering Legislation**

The Contract Party shall ensure that MCC Funding received pursuant to this Contract is not used for money-laundering activities and, to that end, shall comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by the Contract Party, MCC, the MCA Entity, the Fiscal Agent, the Procurement Agent, or the Bank.

**G. Compliance with Terrorist Financing Statutes and Other Restrictions**

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

2. The Contract Party shall ensure that its activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598.

3. Other restrictions on the Contract Party shall apply as set forth in Section 5.4(b) of the Compact with respect to drug trafficking, terrorism, sex trafficking, prostitution, fraud, felony, any misconduct injurious to MCC or the MCA Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement or that materially and adversely affects the Program Assets or any Permitted Account.

#### **H. Insurance**

The Contract Party shall obtain insurance, performance bonds, guarantees or other protections appropriate to cover against risks or liabilities associated with performance of the Contract. The Contract Party shall be named as payee on any such insurance and the beneficiary of any such guarantee, including performance bonds. MCC and the MCA Entity shall be named as additional insured on any such insurance or other guarantee, to the extent permissible under applicable laws. The Contract Party shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, services, works, *provided, however*, at MCC's election, such proceeds shall be deposited in an account as designated by the MCA Entity and acceptable to MCC or as otherwise directed by MCC.

#### **I. Publicity, Information and Marking.**

The Contract Party shall cooperate with the MCA Entity and the Government to provide the appropriate publicity to the goods, works and services provided under this Agreement, including identifying Program activity sites and marking Program Assets as goods, services, and works funded by the United States, acting through MCC, *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of the Compact, MCC may request the removal of, and the Contract Party shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials. MCC shall have the right to use any information or data provided in any report or document provided to MCC for the purpose of satisfying MCC's reporting requirements or in any other manner.

**J. Conflict of Interest**

The Contract Party shall ensure that no person or entity shall participate in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Contract Party shall ensure that no 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 in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

**K. Inconsistencies**

In the event of any conflict between this Contract and the Compact, the Disbursement Agreement, or the Procurement Agreement, the term(s) of the Compact, the Disbursement Agreement or the Procurement Agreement shall prevail.

**L. Other Provisions**

The Contract Party shall abide by such other terms or conditions as may be specified by the MCA Entity or MCC in connection with the Contract consistent with the Compact and the other Supplemental Agreements.

**M. Flow-Through Provisions**

In any subcontract or sub-award entered into by the Contract Party, as permitted by the Contract, the Contract Party shall ensure the inclusion of all the provisions contained in paragraphs (A) through (L) above.

**Declaration of Impartiality and Confidentiality**

NOTE: Confidential information shall not be disclosed to any Bid Challenge Tribunal Member or anyone seeing or reviewing the reports from the Bid Challenge Tribunal until they agree to execute and be bound by the terms of a Confidentiality Agreement.

MCA – ENTITY	
PROJECT NAME	
PROCUREMENT NO	

I hereby affirm, under penalty of law that I comply with the following:

I confirm that I have taken the appropriate steps to familiarize myself with the information available to date concerning this Bid Challenge Tribunal agreeing to provide my CV and/or biographical data upon request of the Bid Challenge parties.

I shall execute my responsibilities on this Service honestly and fairly.

To the best of my knowledge and belief, neither I nor my spouse, dependent child, general partner, or any organization which I am serving as an officer, director, trustee, general partner, or employee, or any person or organization with whom I am negotiating or have an arrangement concerning prospective employment, has a financial or other outside interest that can be affected by any decision I make on this Bid Challenge Tribunal.

I also acknowledge my responsibility to disclose the acquisition of any financial or other outside interest as described above that would be affected by any action I may take on this Bid Challenge Tribunal I agree to hold in trust and confidence any information or documents (“confidential information”) disclosed to me or discovered by me or prepared by me in the course of or as a result of the services and agree that it shall be used only for the purposes of the services and shall not be disclosed to any third party. I also agree not to retain copies of any written information or prototypes supplied to me or created by me.

NAME	
SIGNED	
DATE	