

**NON-REIMBURSABLE FINANCING AGREEMENT**

**No. GRT/FM-13897-GY**

between the

CO-OPERATIVE REPUBLIC OF GUYANA

and the

INTER-AMERICAN DEVELOPMENT BANK  
Acting as Administrator of the IADB/Global Environment Facility Fund

Sustainable Energy Program for Guyana

December 11, 2013

# **Non-reimbursable Financing Agreement**

## **SPECIAL CONDITIONS**

### **INTRODUCTION**

#### **Parties, Purpose, Constituent Elements and Executing Agency**

#### **1. PARTIES AND PURPOSE OF THE AGREEMENT**

AGREEMENT entered into on December 11, 2013 between the Co-operative Republic of Guyana (hereinafter referred to as the “Beneficiary”) and the Inter-American Development Bank acting in its capacity as Administrator of the IADB/GEF Fund (hereinafter referred to as the “Bank”) to cooperate in the execution of a sustainable energy program for Guyana (hereinafter referred to as the “Program”). The major aspects of the Program are described in detail in the Annex.

This Agreement is entered into pursuant to the Financial Procedures Agreement signed between the Bank and the International Bank for Reconstruction and Development (IBRD) as trustee of the Global Environment Facility (GEF), on April 5<sup>th</sup> 2010 and the provisions set forth in Document GN-2304-4 approved by the Bank’s Board of Executive on December 9, 2009.

#### **2. CONSTITUENT ELEMENTS OF THE AGREEMENT AND REFERENCE TO THE GENERAL CONDITIONS**

(a) This Agreement consists of these Special Conditions, the General Conditions, and the Annex, which are attached hereto. If any provision of the Special Conditions or the Annex should present any inconsistency or contradiction with the General Conditions, the provisions of the Special Conditions or the Annex shall prevail. In case of inconsistencies or contradictions between the Special Conditions and the Annex, specific rules shall prevail over general rules.

(b) Rules for the application of disbursement clauses, as well as other conditions related to Project execution, are established in detail in the General Conditions. The General Conditions also include general definitions.

#### **3. EXECUTING AGENCY**

The parties agree that the execution of the Program and the utilization of the resources of the financing from the Bank shall be carried out by the Beneficiary, through the Office of the Prime Minister, which, for the purposes of this Agreement, shall be referred to as either the “OPM”, “Beneficiary” or the “Executing Agency”.

## CHAPTER I

### **Costs, Financing and Additional Resources**

**SECTION 1.01**      **Cost of the Program.** The total cost of the Program is estimated to be the equivalent of six million two hundred and fifty thousand dollars of the United States of America (US\$6,250,000). Unless otherwise stated in this Agreement, the term “dollars” hereinafter signifies the currency of legal tender in the United States of America.

**SECTION 1.02**      **Amount of the Non-reimbursable Financing for the Program.** In accordance with this Agreement, the Bank agrees to grant to the Beneficiary, and the Beneficiary accepts, a nonreimbursable financing, hereinafter referred to as the “Contribution,” chargeable to the resources of the IADB/GEF Fund, of up to the amount of five million dollars of the United States of America (US\$5,000,000). The Beneficiary agrees to use the resources for the execution of the Program as foreseen in this Agreement.

**SECTION 1.03**      **Additional Resources.** The amount of the additional resources which, pursuant to Article 6.04 of the General Conditions, the Beneficiary shall undertake to contribute in a timely manner for the complete and uninterrupted execution of the Program is estimated to be the equivalent of one million two hundred and fifty thousand dollars (US\$1,250,000), in kind, although this estimate shall not imply any limitation or reduction of the obligation of the Beneficiary under said Article. For determination of the equivalence in dollars, the rules set forth in Section 2.03 of these Special Conditions shall apply.

## CHAPTER II

### **Disbursements**

**SECTION 2.01**      **Disbursement currency, availability of resources, and use of funds.** (a) The Financing amount will be disbursed in dollars, that are part of the IADB/GEF Fund, to the extent that the International Bank for Reconstruction and Development (IBRD), in its capacity as Administrator of the GEF, makes them available to the Bank in the IADB/GEF Fund, in accordance with the Financial Procedures Agreement signed with the Bank, as amended, to pay for goods, works, consultants and activities agreed upon between the Beneficiary and the Bank, in accordance with and for the other purposes indicated in this Agreement.

(b)      The resources from the Contribution can only be used to pay for goods, works, and consultants from member countries of the Bank.

**SECTION 2.02**      **Special Conditions Prior to the First Disbursement.** The first disbursement of the Contribution shall be subject to the fulfillment, to the satisfaction of the Bank, of the conditions set forth in Article 3.01 of the General Conditions, and the following requirements:

(a) presentation of evidence that the Executing Agency has selected the following experts for the Program Implementation Unit (PIU): (i) Project Manager (PM); (ii) Procurement Specialist; (iii) Financial Specialist; (iv) Electrical Engineer; and (v) Social-Environmental Specialist;

(b) presentation of evidence that the Executing Agency has approved the Program Operations Manual (POM), in accordance with the terms agreed upon with the Bank;

(c) presentation of evidence that a high-level Project Steering Committee (PSC) has been established; and

(d) presentation of evidence that the use of an Accounting System with training activities has commenced.

**SECTION 2.03      Exchange Rate.** For the purposes of the provisions set forth in Article 4.01 of the General Conditions of this Agreement, the parties agree that the applicable exchange rate shall be that which is indicated in subsection (a) (ii) of said Article. For this purpose, the exchange rate to be applied will be that in effect on the day on which the Beneficiary, the Executing Agency or any natural or juridical person in whom the power to incur expenditures has been vested makes the related payments to the contractor or supplier.

**SECTION 2.04      Reimbursement of Expenditures Chargeable to the Contribution.** With the consent of the Bank, resources of the Contribution may be used to reimburse expenditures incurred or to finance those that may be incurred in the Program on or after July 12, 2013 and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

**SECTION 2.05      Disbursement and Execution Period.** The period for disbursement of the resources of the Contribution shall expire in seventy two (72) months from the effective date of this Agreement. The period for execution of the Program shall expire in sixty six (66) months from the entry into force of this Agreement.

### **CHAPTER III**

#### **Execution of the Program**

**SECTION 3.01      Procurement of Goods, Works and Non-Consulting Services.** (a) Goods and works shall be procured in accordance with the provisions set forth in Document GN-2349-9 ("Policies for the Procurement of Goods and Works Financed by the Inter-American Development Bank"), dated March 2011, and approved by the Bank on April 19, 2011 (hereinafter referred to as the "Procurement Policies").

(b) For the procurement of works and goods and non-consulting services, any of the methods described in the Procurement Policies may be used, provided that such method has been identified for the respective procurement in the Procurement Plan approved by Bank.

(c) The threshold for determining the use of international competitive bidding will be made available to the Beneficiary or the Executing Agency, as the case may be, at [www.iadb.org/procurement](http://www.iadb.org/procurement). Below that threshold, the selection method shall be determined according to the complexity and characteristics of the procurement, which should be reflected in the Procurement Plan approved by the Bank.

(d) Additional Procurement Requirements: The Beneficiary, shall carry out the procurement of goods and works in accordance with: (i) the general plans, technical, social and environmental specifications, budgets and other documents required for the acquisition or the construction, and, as the case may be, the specific guidelines and other documents necessary for the call for prequalification or bids; and (ii) in the case of works, evidence that it has, prior to the initiation of the works and with respect to the real property where the works will be constructed, the right of legal possession, easements or other rights necessary to initiate the construction.

**SECTION 3.02**     **Recognition of Expenses Chargeable to the local Contribution.** The Bank may recognize as part of the local contribution expenditures incurred or which may be incurred in the Project on or after July 12, 2013 and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

**SECTION 3.03**     **Selection and Contracting of Consultant Services.** (a) The selection and contracting of Consultants shall be carried out in accordance with the provisions set forth in Document GN-2350-9 (“Policies for Selection and Contracting of Consultants financed by the IDB”), dated March 2011, and approved by the Bank on April 19, 2011 (hereinafter referred to as the “Consultant Policies”).

(b) For the selection and contracting of consulting services, any of the methods described in the Consultant Policies may be used, provided that such method for the respective procurement has been identified in the Procurement Plan approved by Bank.

(c) The threshold for determining the short list of international consultants will be made available to the Beneficiary or the Executing Agency, as the case may be, at [www.iadb.org/procurement](http://www.iadb.org/procurement). Below that threshold, the short list may be composed entirely of national consultants of the Beneficiary’s country.

**SECTION 3.04.**     **Procurement Plan update.** In order to update the Procurement Plan in accordance with the provisions of Article 6.02(c) of the General Conditions, the Beneficiary must use or, where appropriate, cause the Executing Agency to use, the implementation and monitoring system of procurement plans as determined by the Bank.

## CHAPTER IV

### **Records, Inspections, and Reports**

**SECTION 4.01**     **Records, Inspections, and Reports.** The Beneficiary agrees to directly or through the Executing Agency: maintain records; permit inspections; submit reports; maintain a management, accounting and financial administration system acceptable to the Bank; and submit

financial statements and financial reports to the Bank in accordance with the provisions established in this Chapter and in Chapter VII of the General Conditions.

**SECTION 4.02      Supervision of Program Execution.** (a) The Bank shall use the Project execution plan referred to in Article 3.01(d)(i) of the General Conditions as an instrument to supervise Project execution. The Project execution plan shall include a complete planning of the Project, with the critical path of actions to be implemented in order to disburse the resources of the Contribution before the expiration of the disbursement period set forth in Section 2.05 of these Special Conditions.

(b) The Project execution plan shall be updated as needed, particularly upon the occurrence of a significant change that causes or may cause a delay in Program execution. The Beneficiary shall inform the Bank of any change in the Project Execution Plan no later than upon presentation of the respective semiannual Program execution report.

**SECTION 4.03      Financial Statements.** The Beneficiary agrees to, directly or through the Executing Agency, submit to the Bank, within one hundred twenty (120) days following the closing of each fiscal year of the Executing Agency and within the disbursement period of the Contribution, the Program's audited financial statements, duly audited by a firm of independent public accountants acceptable to the Bank. The last of these reports shall be submitted within one hundred twenty (120) days following the date stipulated for the final disbursement of the Contribution.

## **CHAPTER V**

### **Miscellaneous Provisions**

**SECTION 5.01      Entry into Effect.** The parties agree that this Agreement shall enter into effect on the date of its signature.

**SECTION 5.02      Termination of the IADB/GEF Fund.** In the event that the grounds indicated in Article 5.01(f) of the General Conditions of this Agreement are invoked, all the rights and obligations referring to the Bank will be transferred to the GEF Secretariat, thereby releasing the Bank of all responsibility with regards to the Beneficiary.

**SECTION 5.03      Validity.** The rights and obligations established in this Agreement are valid and enforceable in accordance with its terms, regardless of the laws of any given country.

**SECTION 5.04      Communications.** Any notice, request, or communication from one party to another by virtue of this Agreement shall be made in writing and shall be considered to have been made when the relevant document is delivered to the addressee at the respective address as shown below, unless the parties agree otherwise in writing:

For the Beneficiary:

Mailing address:

Ministry of Finance  
49 Main & Urquhart Street  
Georgetown, Guyana

Facsimile: (592) 227-3931

For the Executing Agency:

Mailing address:

Office of the Prime Minister  
Wight's Lane, Kingston, Georgetown Guyana

Facsimile: (592) 227-7573

For the Bank:

Mailing address:

Inter-American Development Bank  
1300 New York Avenue, N.W.  
Washington, D.C. 20577  
U.S.A.

Facsimile: (202) 623-3096

## CHAPTER VI

### Arbitration

**SECTION 6.01**      **Commitment to Arbitrate.** For the solution of any controversy which may arise out of this Agreement and which is not resolved by agreement between the parties, they unconditionally and irrevocably submit themselves to the procedure and ruling of the Arbitration Tribunal referred to in Chapter IX of the General Conditions.

IN WITNESS WHEREOF, the Beneficiary and the Bank, each acting through its authorized representative, have signed this Agreement, in two (2) equally authentic copies in Georgetown, Guyana, on the date above written.

MINISTRY OF FINANCE

INTER-AMERICAN DEVELOPMENT  
BANK

/s/ Ashni Singh

/s/ Sophie Makonnen

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Dr. Ashni Singh  
Minister of Finance

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Sophie Makonnen  
Representative in Guyana



## **GENERAL CONDITIONS**

### **CHAPTER I**

#### **Application of General Conditions**

**ARTICLE 1.01.**     **Application of General Conditions.** These General Conditions set forth terms and conditions applicable to the non-reimbursable financing agreements agreed between the Bank and the Beneficiaries, and their provisions form an integral part of this Agreement.

### **CHAPTER II**

#### **Definitions**

**ARTICLE 2.01.**     **Definitions.** For the purposes of the obligations contracted between the parties, the following definitions are adopted:

(a)     “Advance of Funds” means the amount of resources advanced by the Bank to the Beneficiary, chargeable to the resources of the Contribution, to cover eligible expenditures of the Project, as provided in Article 3.06 of these General Conditions.

(b)     “Agreement” means the entirety of the Special Conditions, the General Conditions and the Annexes.

(c)     “Bank” means the Inter-American Development Bank.

(d)     “Beneficiary” means the party to which the Contribution is made available.

(e)     “Closing Period” means a ninety (90)-day period from the date stipulated for the final disbursement of the Contribution, in order to finalize pending payments to third parties, to present the final justification of expenditures made, to reconcile the books and records, and to reimburse to the Bank the resources disbursed from the Contribution but not used and/or justified, as provided in Article 3.07 of these General Conditions.

(f)     “Contracting Agency” means the entity with the legal capacity to sign the Contract for the Procurement of Works and Goods and the Selection and Contracting of Consultants with the Contractor, Supplier, and Consulting Firm or Individual Consultant, as the case may be.

(g)     “Contribution” means the funds which the Bank has agreed to make available to the Beneficiary, on a non-reimbursable basis, to assist in carrying out the Project.

(h) “Executing Agency” means the entity responsible for executing all or part of the Project.

(i) “General Conditions” means the entirety of Articles which comprise Part Two of this Agreement and reflect the basic policies of the Bank uniformly applicable to its non-reimbursable financing agreements.

(j) “Procurement Plan” means a tool for programming and monitoring the procurement related to the operation, in the terms described in the Procurement Policies and Consultant Policies

(k) “Prohibited Practices” means the act(s) defined in Article 5.03 of these General Conditions.

(l) “Project” means the Program or Project for which the Contribution has been extended.

(m) “Semester” means the first or second six months of a calendar year.

(n) “Special Conditions” means the entirety of the provisions which comprise Part One of this Agreement and contain the particular terms of the operation.

### **CHAPTER III**

#### **Conditions Relating to Disbursements**

**ARTICLE 3.01. Conditions Prior to First Disbursement.** The first disbursement of the Contribution shall be subject to the fulfillment of the following requirements to the satisfaction of the Bank:

(a) The Bank shall have received one or more well-founded legal opinions which establish, with citations of the pertinent constitutional, legal, and regulatory provisions, that the obligations undertaken by the Beneficiary in this Agreement are valid and enforceable. Such opinions shall also refer to any other legal question that the Bank may reasonably deem relevant.

(b) The Beneficiary shall have designated one or more persons authorized to represent it in all acts relating to the execution of this Agreement, and submission to the Bank of authenticated specimen signatures of such persons. If two or more officials are designated, the designation shall indicate whether they may act severally or jointly;

(c) The Beneficiary, either directly or through the Executing Agency, if any, shall have demonstrated to the Bank that sufficient resources have been allocated to cover, at least during the first calendar year, the execution of the Project, in accordance with the investment schedule referred to in the following paragraph. If this Contribution constitutes a continuation of the same operation, the earlier stage or stages of which the Bank is financing, the obligation set forth in this paragraph shall not be applicable.

(d) The Beneficiary, either directly or through the Executing Agency, if any, shall have presented to the Bank an initial report prepared in the form indicated by the Bank which, in addition to such other information as the Bank may reasonably request pursuant to the provisions of this Agreement, shall set forth: (i) a plan for implementation of the Project including the plans and specifications deemed necessary by the Bank, except with respect to a program for the granting of credits; (ii) a calendar or schedule of work or granting of credits, as the case may be; (iii) a table of the source and use of funds setting forth a detailed schedule of investments in accordance with the categories of investment established in this Agreement and an indication of the annual contributions needed from the various sources of funds from which the Project will be financed; and (iv) the content that the progress reports referred to in Article 7.03 of these General Conditions shall have. If this Agreement permits the recognition of expenditures made prior to its entry into effect, the initial report shall include a statement of the investments and, in accordance with the objectives of the Contribution, a description of works carried out under the Project or a statement as to credits granted, as the case may be, up to a date immediately preceding the report.

(e) The Beneficiary shall have demonstrated to the Bank that it has an adequate financial information system and internal control structure for the purposes indicated in this Agreement.

**ARTICLE 3.02. Period for Fulfilling the Conditions Precedent to First Disbursement.**

If within one hundred eighty (180) days from the effective date of this Agreement, or within such longer period as the parties may agree in writing, the conditions precedent to the first disbursement established in Article 3.01 of these General Conditions and in the Special Conditions have not been fulfilled, the Bank may terminate this Agreement by giving notice to the Beneficiary.

**ARTICLE 3.03. Requisites for All Disbursements.** For the Bank to make any disbursement, it shall be necessary that: (a) the Beneficiary or the Executing Agency, as the case may be, shall have submitted in writing, or by electronic means in such form and conditions as may be specified by the Bank, a disbursement request and, in support thereof, shall have supplied to the Bank such pertinent documents and other background materials as the Bank may have required; (b) the Beneficiary or the Executing Agency, as the case may be, shall have opened and maintains one or more bank accounts in a financial institution to which the Bank shall make the disbursements; (c) unless the Bank otherwise agrees, disbursement requests must be presented no later than thirty (30) calendar days in advance of the date of expiration of the term for disbursement or of any extension thereof; and (d) none of the circumstances described in Article 5.01 of these General Conditions shall have occurred.

**ARTICLE 3.04. Disbursement Procedures.** The Bank may make disbursements against the Contribution: (a) by transferring to the Beneficiary the sums to which it is entitled under this Agreement, under the modality of reimbursement of expenses and/or Advances of Funds; (b) by making payments on behalf of and in agreement with the Beneficiary to third parties; (c) by utilizing such other modality as the parties may agree upon in writing. Any banking expenses that may be charged by a third party in connection with disbursements shall be borne by the Beneficiary. Unless the parties agree otherwise, disbursements shall be made only in amounts of

not less than the equivalent of one hundred thousand dollars of the United States of America (US\$100,000) each.

**ARTICLE 3.05. Reimbursement of Expenditures.** (a) With resources of the Contribution and upon fulfillment of the requirements set forth in Articles 3.01 and 3.03 of these General Conditions and the pertinent requirements established in the Special Conditions, the Bank may disburse resources of the Contribution to reimburse the Beneficiary for expenditures related to the execution of the Project that are eligible to be financed with resources of the Contribution, pursuant to the provisions of this Agreement.

(b) Except by express agreement between the parties, the disbursement requests for reimbursing expenditures financed by the Beneficiary, in accordance with paragraph (a) above, shall be made promptly following the incurrence of such expenses, or not later than sixty (60) days following the conclusion of each Semester or within such other term as the parties may agree.

**ARTICLE 3.06. Advance of Funds.** (a) Provided that the requirements of Articles 3.01 and 3.03 of these General Conditions and those which may be established in the Special Conditions have been fulfilled, the Bank may disburse resources from the Contribution as an Advance of Funds to the Beneficiary to cover eligible expenditures related to the execution of the Project, in accordance with the provisions of this Agreement.

(b) The maximum amount of each Advance of Funds shall be set by the Bank on the basis of the liquidity needs of the Project to cover periodic projected expenditures, in accordance with paragraph (a) above. At no time may the maximum amount of an Advance of Funds exceed the amount required to finance such expenditures, during a period of up to six (6) months, in accordance with the investment schedule and the cash flow required to meet such purpose and the capacity demonstrated by the Beneficiary or the Executing Agency, as the case may be, to use the resources of the Contribution.

(c) The Bank may: (i) increase the maximum amount of an Advance of Funds when immediate cash flow needs that merit such increase arise, upon presentation of a request duly justified and accompanied by a statement of projected expenditures for the execution of the Project during the corresponding Advance of Funds period in effect; or (ii) make a new Advance of Funds on the basis of the provisions contained in paragraph (b) above, provided that at least eighty percent (80%) of the total amount of resources disbursed as an Advance of Funds has been justified. The Bank may take any of the above-mentioned actions, provided that the requirements of Article 3.03 of these General Conditions and those which may be established in the Special Conditions have been fulfilled.

(d) The Bank may also reduce or cancel the total aggregate balance of any Advance or Advances of Funds should the Bank determine that the disbursed resources of the Contribution have not been used and/or have not been justified to the Bank sufficiently and on a timely basis, in accordance with the provisions of this Agreement.

**ARTICLE 3.07. Closing Period.** The Beneficiary or the Executing Agency, as the case may be, shall: (a) present to the Bank's satisfaction, within a period of ninety (90) days from the date stipulated for the final disbursement of the Contribution, the supporting documentation relating to expenditures made for the execution of the Project, and any other information that the Bank may have requested; and (b) return to the Bank, at the latest on the day of expiration of the Closing Period, the balance of disbursed resources of the Contribution that has not been duly justified or used. If audit services are to be financed with resources of the Contribution, and such services will not be concluded or billed prior to the expiration of the Closing Period referred to in section (a) above, the Beneficiary or the Executing Agency, as the case may be, shall inform and reach agreement with the Bank as to the way in which payment for such services will take place, and shall return to the Bank the resources of the Contribution allotted for such purpose, should the Bank not receive the audited financial statements and/or audited financial reports within the periods stipulated in this Agreement.

## **CHAPTER IV**

### **Exchange Rate, Renunciation and Cancellation**

**ARTICLE 4.01. Exchange Rate.** (a) To determine the equivalency in Dollars of an expenditure incurred in the currency of the Beneficiary, one of the following rates of exchange shall be used, in accordance with the provisions set forth in the Special Conditions of this Agreement:

- (i) The same exchange rate used in the conversion of resources disbursed in Dollars to the currency of the Beneficiary's country. In this case, for purposes of the reimbursement of expenditures chargeable to the Contribution and the recognition of expenditures chargeable to the local counterpart, the applicable exchange rate shall be the prevailing exchange rate on the date on which the request is presented to the Bank; or
  - (ii) The prevailing exchange rate in force in the Beneficiary's country on the effective date of payment of the expenditure in the currency of the the Beneficiary's country.
- (b) The rate of exchange referred to in sections (a)(i) and (a)(ii) above, shall be the following:
- (i) The rate of exchange pursuant to the understanding in force between the Bank and the respective member country for the purposes of maintaining the value of the currency in conformity with the provisions of Article V, Section 3 of the Agreement Establishing the Bank.
  - (ii) Should there be no agreement in force, the rate of exchange to be applied shall be that which on the due date is utilized by the Central Bank of the Beneficiary country or by the corresponding monetary authority to sell

Dollars to residents of such country, other than government agencies, for the following transactions: (a) payment of principal and interest due; (b) remittance of dividends or other income from capital investments in the respective country; and (c) remittance of investment capital. In the event that there is no uniform rate of exchange for these three types of operations, the highest rate shall be applied, i.e., the rate representing the highest number of units of the currency of such country per Dollar.

- (iii) If, on the date of the presentation of the request to the Bank referred to in section (a)(i) above, or if on the date on which the payment of an expenditure is due as referred to in section (a)(ii) above, the foregoing rule cannot be applied because the operations referred to do not exist, payment shall be made on the basis of the most recent rate of exchange used for such operations within the thirty (30) days preceding the date of presentation of the request to the Bank referred to in section (a)(i) above, or to the effective date of the payment of the expense incurred referred to in section (a)(ii) above, as the case may be.
- (iv) If, notwithstanding the application of the foregoing rules, the effective rate of exchange cannot be ascertained, or if discrepancies arise in the determination thereof, the determination of the Bank shall prevail, taking into consideration the realities of the foreign exchange market of the country of the Beneficiary.

**ARTICLE 4.02.     Receipts.** At the request of the Bank, the Beneficiary shall sign and deliver to the Bank, upon the completion of disbursements, a receipt or receipts for the amounts disbursed.

**ARTICLE 4.03.     Renunciation of Part of the Contribution.** The Beneficiary may renounce, by written notice to the Bank, its right to utilize any part of the Contribution which has not been disbursed before the receipt of the notice, provided that the amounts foreseen in Article 5.03 of these General Conditions are not involved.

**ARTICLE 4.04.     Automatic Cancellation of Part of the Contribution.** Unless the Bank and the Beneficiary expressly agree in writing to extend the term for making disbursements, that portion of the Contribution not committed or disbursed, as the case may be, within the corresponding term, shall automatically be canceled.

## **CHAPTER V**

### **Suspension of Disbursements and Accelerated Maturity**

**ARTICLE 5.01.     Suspension of Disbursements.** The Bank, by written notice to the Beneficiary, may suspend disbursements if any of the following circumstances occurs and so long as it continues:

(a) Non-fulfillment by the Beneficiary of any other obligation set forth in this Agreement or in any other Contract entered into with the Bank for the financing of the Project.

(b) Withdrawal or suspension from membership in the Bank of the country in which the Project is to be executed.

(c) The Project or the purposes of the Contribution may be affected by: (i) any restriction, modification or alteration of the legal capacity, functions or assets of the Beneficiary or the Executing Agency; or (ii) any modification or change made without the written concurrence of the Bank of the basic conditions fulfilled before the approval of the Resolution authorizing the Contribution or the signature of this Agreement. In such cases, the Bank will have the right to require the Beneficiary to provide reasoned and detailed information. Only after hearing the Beneficiary and weighing the information or clarification received, or if the Beneficiary fail to respond, may the Bank suspend disbursements if it considers that the modifications made affect the Project substantially and unfavorably or make its execution impossible.

(d) When the Beneficiary is not a member country, any extraordinary circumstance which, in the opinion of the Bank, makes it unlikely that the Beneficiary will be able to comply with the obligations established in this Agreement or to fulfill the purposes for which it was entered into.

(e) If it is determined, in accordance with the sanctions procedures of the Bank, that an employee, agent, or representative of the Beneficiary, Executing Agency or Contracting Agency, has engaged in a Prohibited Practice during the procurement process or during the execution of a contract.

(f) The termination of the Financial Procedures Agreement signed between the Bank and the International Bank for Reconstruction and Development (IBRD) as trustee of the Global Environmental Facility (GEF), on April 5th 2010.

**ARTICLE 5.02. Termination or Partial Cancellation of Undisbursed Balances.** (a) The Bank may terminate this Agreement with respect to the part of the Contribution not yet disbursed if: (i) any of the circumstances set forth in paragraphs (a) and (b) of the preceding Article continues for more than sixty (60) days; or (ii) the information referred to in paragraph (c) of the preceding Article, or the clarifications or additional information presented by the Beneficiary or the Contracting Agency, if any, are not satisfactory to the Bank.

(b) The Bank may cancel the part of the Contribution earmarked for a contract, when it is determined in accordance with the sanctions procedures of the Bank, that a firm, entity or individual bidding for or participating in an activity financed by the Bank, including, inter alia, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers or suppliers, concessionaires, the Beneficiary, the Executing Agency or the Contracting Agency (including their respective officers, employees and agents, irrespective of whether the agency is express or implied) has engaged in a Prohibited Practice at any stage of the procurement or implementation of a contract; and that there is

evidence that the Beneficiary, the Executing Agency or the Contracting Agency has not taken adequate remedial measures (including, *inter alia*, providing adequate notice to the Bank upon learning of the Prohibited Practice) within a period of time the Bank considers reasonable.

(c) The Bank may also cancel the undisbursed portion of the Contribution pertaining to the procurement of certain goods, works or related services, or consulting services, if it determines at any time that the procurement was carried out without following the procedures set forth in this Agreement.

**ARTICLE 5.03. Prohibited Practices.** (a) For the purposes of this Contract, a “Prohibited Practice” shall be understood to include the following acts: (i) a “corrupt practice”, is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; (ii) a “fraudulent practice”, is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; (iii) a “coercive practice”, is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; (iv) a “collusive practice”, is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and (v) an “obstructive practice”, is (A) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (B) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Articles 7.01(c), 7.02(e) and 7.04(g) of these General Conditions.

(b) In addition to the provisions established in Articles 5.01(e) and 5.02(b) of these General Conditions, if it is determined in accordance with the sanctions procedures of the Bank, that a firm, entity or individual bidding for or participating in an activity financed by the Bank, including, *inter alia*, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers, concessionaires, the Beneficiary, the Executing Agency or the Contracting Agency (including their respective officers, employees and agents, irrespective of whether their authority has been formally or implicitly granted) has engaged in a Prohibited Practice at any stage during the procurement process or during the execution of a contract, the Bank may:

- (i) not finance any proposal to award a contract for works, goods, and related services or for consultant services;
- (ii) determine that a contract will not be eligible for Bank financing whenever there is evidence that the Beneficiary, the Executing Agency or the Contracting Agency has not taken adequate remedial measures (including, *inter alia*, providing adequate notice to the Bank upon learning of the commission of the Prohibited Practice) within a period of time the Bank considers reasonable;



- (iii) issue the firm, entity or individual a reprimand in the form of a formal letter of censure for its behavior;
- (iv) declare that a firm, entity or individual is ineligible, either permanently or for a stated period of time, to (A) be awarded or participate in contracts under activities financed by the Bank; and (B) be a nominated sub-consultant, sub-contractor, supplier or service provider of an otherwise eligible firm being awarded a Bank-financed contract;
- (v) refer the matter to appropriate law enforcement authorities; and/or
- (vi) impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement to the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions set forth in Article 5.01(e), Article 5.02(b) and Article 5.03(b)(i) to (v).

(c) The provisions of Article 5.01(e) and Article 5.03(b)(i) will also be applicable in cases where firms, entities or individuals have been declared temporarily ineligible for the awarding of additional contracts pending the final outcome of a sanction proceeding, or other resolution.

(d) The imposition of any action to be taken by the Bank pursuant to the provisions referred to above will be made public.

(e) Any firm, entity or individual bidding for or participating in an activity financed by the Bank, including, *inter alia*, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers, concessionaires, the Beneficiary, the Executing Agency or the Contracting Agency (including their respective officers, employees and agents, (irrespective of whether the agency is express or implied) may be subject to sanctions pursuant to agreements the Bank may have with other international financial institutions regarding the mutual enforcement of debarment decisions. For purposes of this paragraph (e) the term “sanction” shall mean any permanent debarment, conditions on future contracting or any publicly-disclosed action taken in response to a violation of an international financial institution’s applicable framework for addressing allegations of Prohibited Practices.

(f) When a Beneficiary procures works, goods or related services directly from a specialized agency or hires a specialized agency to provide consulting services using resources of the Financing, under an agreement between the Beneficiary and such specialized agency, all provisions under this Agreement regarding sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, suppliers, contractors, consulting firms or individual consultants, personnel, sub-contractors, sub-consultants, service providers, concessionaires (including their respective officers, employees and agents, irrespective of whether the agency is express or implied ), or to any other entities that have signed contracts with such specialized

agency to supply works, goods and related services, in connection with the Bank-financed activities. The Bank reserves the right to require the Beneficiary to invoke remedies such as suspension or termination. The Beneficiary agrees that contracts with specialized agencies shall include provisions requiring them to consult the Bank's list of firms and individuals debarred, either temporarily or permanently by the Bank. In the event a specialized agency signs a contract or purchase order with a firm or an individual temporarily or permanently debarred by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

**ARTICLE 5.04. Obligations not Affected.** Notwithstanding the provisions of the foregoing Articles 5.01 and 5.02, none of the measures set forth in this Chapter shall affect the disbursement by the Bank of: (a) any amounts subject to the guarantee of an irrevocable letter of credit; and (b) any amounts which the Bank by specific written agreement with the Beneficiary or the Executing Agency, or the Contracting Agency, if any, has agreed to provide from the resources of the Contribution to make payments to a contractor or supplier of goods and related services or consultant services. The exceptions set forth in subparagraph (b) shall not apply if the Bank determines that a Prohibited Practice occurred with respect to the procurement of, or the negotiation or execution of the contract for, the works, goods and related services or consultant services.

**ARTICLE 5.05. Non-waiver of Rights.** Any delay by the Bank in the exercise of its rights pursuant to this Agreement, or failure to exercise them, shall not be construed as a waiver by the Bank of any such rights nor as acquiescence in events or circumstances which, had they occurred, would have empowered it to exercise them.

**ARTICLE 5.06. Provisions not Affected.** The application of any of the measures provided by this Chapter shall not affect the obligations of the Beneficiary established in this Agreement, which shall remain in full force and effect.

## **CHAPTER VI**

### **Execution of the Project**

**ARTICLE 6.01. General Provisions for Execution of the Project.** (a) The Beneficiary agrees to execute the Project in accordance with the objectives thereof, with due diligence in an economic, financial, administrative and technically efficient manner and in accordance with the provisions of this Agreement and the plans, specifications, investment schedule, budgets, regulations, and other relevant documents of the Project approved by the Bank. The Beneficiary further agrees that its obligations or those of the Executing Agency, shall be fulfilled to the satisfaction of the Bank.

(b) Any important modification in the plans, specifications, investment schedule, budgets, regulations or other documents which the Bank approves, as well as any substantial change in contracts financed with resources of the Contribution shall require the written consent of the Bank.

(c) In case of contradiction or inconsistency between the provisions of this Agreement and any plan, specification, investment schedule, budget, regulations, or other relevant document of the Project approved by the Bank, the provisions of this Agreement shall prevail over those documents.

**ARTICLE 6.02. Selection and contracting of works and non-consulting services, procurement of goods and selection and contracting of consulting services.** (a) Subject to the provisions of subparagraph (b) of this Article, the Beneficiary undertakes to carry out and, where appropriate, cause the Executing Agency or the Contracting Agency, if any, to carry out the procurement of works and non-consulting services as well as the procurement of goods, in accordance with the Procurement Policies and the Procurement Plan approved by the Bank, and the selection and contracting of consulting services, in accordance with the Consultant Policies and the Procurement Plan approved by the Bank. The Beneficiary acknowledges and undertakes to inform the Executing Agency, the Contracting Agency and the specialized agency, as the case may be, of the Procurement Policies and the Consultant Policies.

(b) When the Bank has validated the systems of the member country of the Bank where the Project will be executed, the Beneficiary or the Executing Agency, as the case may be, may carry out the procurement and contracting financed wholly or partially with resources of the Contribution using such systems, in accordance with the terms of the validation of the Bank and applicable validated legislation, which are identified in the Special Conditions. The Beneficiary, directly or via the Executing Agency as the case may be, undertakes to notify the Bank of any change in legislation or change affecting it, in which case the Bank may cancel, suspend or change the terms of its validation. The use of country systems does not constitute a waiver of the application of the provisions set forth in Section I of the Procurement Policies and Consultant Policies, including the requirement that the respective procurements and contracting of services be contained in the Procurement Plan, and said use of country systems is subject to the remaining provisions of this Agreement.

(c) The Beneficiary, directly or via the Executing Agency as the case may be, undertakes to update the Procurement Plan at least annually or more frequently, depending on the Project needs. Each updated version of the Procurement Plan shall be submitted for review and approval of the Bank.

(d) The Bank will conduct a review of the selection process, contracting and procurement, ex-ante or ex-post, as set forth in the Procurement Plan. At any time during the execution of the Project, the Bank may change the method of review of these processes, with prior notice to the Beneficiary or the Executing Agency. The changes approved by the Bank shall be reflected in the Procurement Plan.

(e) The Beneficiary, directly or via the Executing Agency, as the case may be, agrees to obtain, prior to awarding the contract for each of the works of the Project, if any, legal possession of the property where the construction of the respective work is to take place, easements or other rights required for its construction and use, as well as water rights required for the work in question.

**ARTICLE 6.03. Use of Goods.** Except with the express authorization of the Bank, the goods acquired with the resources of the Contribution shall be used exclusively for the purposes of the Project. Once the Project has been completed, the construction machinery and equipment utilized in the execution of the Project may be used for other purposes.

**ARTICLE 6.04. Additional Resources.** (a) The Beneficiary shall contribute in a timely manner all the resources in addition to those of the Contribution which may be necessary for the complete and uninterrupted execution of the Project, the estimated amount of which is specified in the Special Conditions. If during the process of disbursement of the Contribution an increase in the estimated cost of the Project arises, the Bank may require the modification of the investment schedule referred to in Article 3.01(d) of these General Conditions in order that the Beneficiary shall meet such increase.

(b) Beginning with the calendar year following the initiation of the Project and during the period of its execution, the Beneficiary shall demonstrate to the Bank in the first sixty (60) days of each calendar year that it will have available when needed the resources necessary to make the local contribution to the Project during that year.

## **CHAPTER VII**

### **Records, Inspections and Reports**

**ARTICLE 7.01. Financial Information and Internal Control Systems.** (a) The Beneficiary or the Contracting Agency, as the case may be, shall maintain: (i) a financial information system acceptable to the Bank that enables accounting, budgetary and financial record-keeping, as well as the issuance of financial statements and other reports related to the resources of the Contribution and other financial sources, as the case may be; and (ii) an internal control structure that enables effective Project management; provides reliability regarding the financial information and the physical, magnetic and electronic records and files; and enables the fulfillment of the provisions of this Agreement.

(b) The Beneficiary or the Executing Agency, or the Contracting Agency, as the case may be, shall preserve the original records of the Project for a minimum period of three (3) years after the expiration date of the Disbursement Period or any extension thereof, in such a way as to: (i) make possible the identification of the sums received from the different sources; (ii) show, in accordance with the financial information system approved by the Bank, the investments in the Project, financed both with the resources of the Contribution and with the other funds to be provided for its complete execution; (iii) include sufficient detail to show the works performed, goods procured and services contracted, as well as the utilization of such works, goods and services; (iv) provide evidence as to conformity in the acceptance, authorization and payments for the purchased or contracted works, goods and services; (v) maintain documentation relating to the bidding process and the execution of the contracts financed by the Bank and other financial sources, including, but not limited to, bid requests, bid packages, summaries, bid evaluations, contracts, correspondence, work product and drafts, invoices, certificates and acceptance reports, and receipts, including documents relating to the payment of commissions, and payments to agents, consultants and contractors; and (vi) show the cost of the investments in

each category and the physical and financial progress of the works, goods and services. With respect to credit programs, the records shall also detail the credits granted, the recoveries obtained, and the utilization of the funds recovered.

(c) The Beneficiary agrees that all bidding documents, requests for proposals and contracts financed with a Bank Contribution that are entered into by the Beneficiary, the Executing Agency or the Contracting Agency shall include a provision that requires that providers of goods or services, suppliers and subcontractors, consultants and their agents, personnel or concessionaires, keep all documents and records related to Bank-financed activities for a period of seven (7) years after completion of the work contemplated in the relevant contract.

**ARTICLE 7.02. Inspections.** (a) The Bank may establish such inspection procedures as it deems necessary to ensure the satisfactory development of the Project.

(b) The Beneficiary and the Contracting Agency, if any, shall permit the Bank to inspect at any time the Project and the equipment and materials involved therein, and to examine such records and documents as the Bank may deem pertinent. The personnel which the Bank shall send or designate as investigators, agents, auditors or experts for this purpose shall receive the complete cooperation of the respective authorities. All the costs relating to transportation, salaries, and other expenses of such personnel shall be borne by the Bank.

(c) The Beneficiary or the Contracting Agency, as the case may be, shall, upon request of an authorized representative of the Bank, provide to the Bank any documents, including procurement-related documents that the Bank might reasonably request. In addition, the Beneficiary and the Contracting Agency, if any, shall make their personnel available, upon reasonable notice, to respond to questions from Bank personnel, which arise during the review or audit of such documents. The Beneficiary or the Contracting Agency, as the case may be, shall produce the documents in a timely manner or shall submit an affidavit to the Bank setting forth the reasons why the requested material is unavailable or is being withheld.

(d) If the Beneficiary or Contracting Agency, as the case may be, refuses to comply with the Bank's request, or otherwise obstructs the Bank's review of the matter, the Bank, in its sole discretion, may take appropriate action against the Beneficiary or Contracting Agency, as the case may be.

(e) The Beneficiary agrees that all bidding documents, requests for proposals and contracts financed by the Bank that are entered into by the Beneficiary, the Executing Agency or the Contracting Agency shall include a provision that requires applicants, bidders, suppliers and their agents, contractors, consultants, personnel, sub-contractors, sub-consultants, service providers and concessionaires to: (i) allow the Bank to inspect any and all accounts, records and other documents relating to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank; (ii) provide full assistance to the Bank in the case of an investigation; and (iii) deliver to the Bank any document deemed necessary for the investigation of allegations of Prohibited Practices and ensure that those employees or agents who are responsible for Bank-financed activities will be available to respond to inquiries within

the context of an investigation, be it from Bank personnel or from any investigator, agent, auditor or consultant duly assigned to the investigation. If any applicant, bidder, supplier or its agent, contractor, consulting firm or individual consultant, personnel, subcontractor, sub-consultant, service provider, or concessionaire refuses to cooperate or fails to comply with the Bank's request or otherwise obstructs an investigation carried out by the Bank, the Bank, in its sole discretion, may take appropriate action against said applicant, bidder, supplier and its agent, contractor, consultant, personnel, subcontractors, sub-consultants, service provider, or concessionaire.

**ARTICLE 7.03.     Reports.** The Beneficiary or the Executing Agency, as appropriate, shall present to the Bank's satisfaction the reports on the execution of the Project, within sixty (60) days following the end of each Semester, or within such other period as the parties may agree, prepared in accordance with the relevant rules agreed to with the Bank; and such other reports as the Bank may reasonably request regarding the investment of the sums lent, the use of goods acquired with such sums, and the progress of the Project.

**ARTICLE 7.04.     External Audit.** (a) The Beneficiary shall present to the Bank, directly or through the Executing Agency, within the deadlines, for the period of duration, and with the frequency provided in the Special Conditions of this Contract, the financial statements and other reports, and any additional financial information that the Bank may request, in accordance with accounting principles and standards acceptable to the Bank.

(b) The Beneficiary agrees to have the financial statements and other reports, as indicated in the Special Conditions of this Contract, audited by independent auditors acceptable to the Bank, in accordance with auditing principles and standards acceptable to the Bank, and to present to the Bank's satisfaction such information as may be requested by the Bank related to the independent auditors whose services have been engaged.

(c) The Beneficiary shall select and hire directly or through the Executing Agency, as the case may be, the independent auditing services that are necessary for the timely submission of the financial statements and other reports indicated in paragraph (b) above, no later than four (4) months before the closing of each fiscal year of the Beneficiary, beginning on the date on which this Contract enters into effect, or such other time as may be agreed upon between the parties, in accordance with procedures and terms of reference previously agreed upon with the Bank. The Beneficiary or the Executing Agency, as the case may be, shall authorize the external auditors to provide the Bank with any additional information it may reasonably request with respect to the audited financial statements and/or audited financial reports.

(d) In cases in which the audit is to be performed by an official auditing agency and such agency is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the deadlines, for the period of duration or with the frequency mentioned in this Contract, the Beneficiary or the Executing Agency, as the case may be, shall select and contract the services of independent auditors acceptable to the Bank, as provided under section (c) above.

(e) Notwithstanding the provisions above, the Bank may, on an exceptional basis and subject to prior agreement between the parties, select and hire the services of independent

auditors to prepare the financial statements of the Project and other audited reports as provided in this Contract when: (i) the benefits of the selection and hiring of such services by the Bank outweigh the costs of doing so; (ii) there is limited access to auditing services within the country; or (iii) special circumstances warrant the selecting and hiring of such services by the Bank.

(f) The Bank shall have the right to request the Beneficiary or the Executing Agency, as the case may be, to have other types of independent audits and/or services carried out relating to the auditing of projects, of the Executing Agency and related entities, of the financial information system, and of the bank accounts of the Project, among others. The nature, frequency, scope, timing, methodology, type of applicable auditing norms, reports, selection procedures and terms of reference shall be agreed upon between the parties.

(g) All bidding documents, requests for proposals and contracts financed by the Bank that are entered into by the Beneficiary, the Executing Agency or the Contracting Agency with a provider of goods or services, contractor, subcontractor, consultant, sub-consultant, personnel or concessionaire shall include a provision allowing the Bank to inspect any and all accounts, records and other documents related to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank.

## **CHAPTER VIII**

### **Provision on Taxes**

**ARTICLE 8.01.** **Taxes.** The Beneficiary undertakes to pay any tax, fee, or duty applicable to the signing, negotiation, and execution of this Agreement.

## **CHAPTER IX**

### **Arbitration Procedure**

**ARTICLE 9.01.** **Composition of the Tribunal.** (a) The Arbitration Tribunal shall be composed of three members to be appointed in the following manner: one by the Bank, another by the Beneficiary, and a third, hereinafter called the “Referee”, by direct agreement between the parties or through their respective arbitrators. If the parties or the arbitrators fail to agree on who the Referee shall be, or if one of the parties should not designate an arbitrator, the Referee shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, one shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his successor shall be appointed in the same manner as for the original appointment. The successor shall have the same functions and faculties as his predecessor.

(b) If the controversy affects not only the Beneficiary but also the Guarantor, if any, both shall be considered a single party and consequently shall act jointly in the designation of the arbitrator and for the other purposes of the arbitration proceedings.

**ARTICLE 9.02. Initiation of the Procedure.** In order to submit the controversy to arbitration, the claimant shall address to the other party a written communication setting forth the nature of the claim, the satisfaction or compensation which it seeks, and the name of the arbitrator it appoints. The party receiving such communication shall, within forty-five (45) days, notify the adverse party of the name of the person it appoints as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the parties have not agreed as to the person who is to act as Referee, either party may request the Secretary General of the Organization of American States to make the appointment.

**ARTICLE 9.03. Convening of the Tribunal.** The Arbitration Tribunal shall be convened in Washington, District of Columbia, United States of America, on the date designated by the Referee, and, once convened, shall meet on the dates which the Tribunal itself shall establish.

**ARTICLE 9.04. Procedure.** (a) The Tribunal shall be competent to hear only the matters in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity to make oral presentations.

(b) The Tribunal shall proceed ex aequo et bono, basing itself on the terms of this Agreement, and shall issue an award even if either party should fail to appear or present its case.

(c) The award shall be in writing and shall be adopted with the concurrent vote of at least two members of the Tribunal. It shall be handed down within approximately sixty (60) days from the date on which the Referee is appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The award shall be notified to the parties by means of a communication signed by at least two members of the Tribunal, and shall be complied with within thirty (30) days from the date of notification. The award shall be final and will not be subject to any appeal.

**ARTICLE 9.05. Costs.** The fees of each arbitrator shall be paid by the party which appointed him and the fees of the Referee shall be paid by both parties in equal proportion. Prior to the convening of the Tribunal, the parties shall agree on the remuneration of the other persons who, by mutual agreement, they deem should take part in the arbitration proceedings. If such agreement is not reached in a timely manner, the Tribunal itself shall determine the compensation which may be reasonable for such persons under the circumstances. Each party shall defray its own expenses in the arbitration proceedings, but the expenses of the Tribunal shall be borne equally by the parties. Any doubt regarding the division of costs or the manner in which they are to be paid shall be determined, without appeal, by the Tribunal.

**ARTICLE 9.06. Notification.** All notifications relative to the arbitration or to the award shall be made in the manner provided in this Agreement. The parties waive any other form of notification.



## ANNEX

### **THE PROGRAM**

#### **Sustainable Energy Program for Guyana**

#### **I. Objective**

- 1.01** The general objective of the Program is to improve institutional capacities of Guyana Power & Light Inc. (GP&L) and the Office of the Prime Minister (OPM), through the training of said institutions' staff and promotion of the use of Renewable Energy Technology (RETs) in the urban areas and the Hinterlands with the aim to: (i) implement sustainable business models for Operation and Maintenance (O&M) of Renewable Energy (RE) projects; (ii) increase quality energy access in Guyana; (iii) reduce the long-term operational costs of on-grid and off-grid electricity service; and (iv) contribute to sector sustainability and reduction of Greenhouse Gases (GhGs) emissions.

#### **II. Description**

- 2.01** In order to achieve the above-mentioned objectives, the Program will implement the following components:

**Component I. Strengthening of the policy and institutional framework to implement RETs in Guyana.**

- 2.02** The specific objective of this Component is to develop a national renewable energy strategy as an action plan, to promote the implementation of RETs under the low-carbon development strategy (LCDS), including the revision of existing regulatory framework. The strategy will promote the introduction of RETs to deliver electricity to the grid areas and the Hinterlands under public (via GP&L), private (via Independent Power Producers (IPP) and/or self-supply) and community based business modalities. The strategy will draw on the lessons-learned from the Hinterlands Electrification Program (HEP) solar-PV demonstration project and private initiatives, including cogeneration and wind energy. The strategy will explore the design of sustainable business models and O&M modalities for the Hinterlands. It will further clarify the roles and responsibilities of involved stakeholders to establish a sound basis for rural electrification schemes in the Hinterlands, and strengthen capacities and skills.
- 2.03** Revision of existing regulation will include aspects such as: (i) promotion of private investment in RE and energy efficiency (EE) technologies; (ii) drafting of dispatch rules, grid code and quality requirements for RE-based power generators; (iii) drafting of a tariff system for RE-based electricity delivered to the grid; (iv) proposals of incentives for the implementation of RETs; and (v) proposals of incentives to promote rural electrification. Policy development will be supported by a public awareness and

information campaign to communicate the benefits of RETs and of the rational use of energy. The development of Component I will serve as an action plan, in order to improve the present regulatory framework and facilitate the development of Components II and III.

**Component II. Strengthening of the Power Utility capabilities to improve electricity supply and promote the use of RETs.**

- 2.04** The specific objective of Component II is to develop the technical capacity and expertise of professionals from GP&L and representatives from Hinterland communities for the planning, design, installation, O&M of RE projects. Component II will be funded with the Program's resources, to create the necessary technical expertise in GP&L and contribute to its financial recovery and operational improvement, vis-à-vis the LCDS.
- 2.05** Energy sector professionals will be trained to develop the necessary skills in RE projects. Component II will enhance current training and promotional activities financed by the Beneficiary and implemented by Guyana Energy Agency (GEA), such as training on operational issues and the technical and financial management of RETs. With respect to the Hinterlands, this component will address the capacity barriers identified under the HEP. It will further complement and identify the necessary skills to operate and manage the Kato SHP over the Chiung River, which will be constructed during Program execution using parallel financing, and prepare the local staff for this task.
- 2.06** Component II will finance the procurement and installation of wind measuring equipment to collect high-quality, long-term data to assess the wind resource potential in Guyana. Component II will also support hydrological measurements for future hydro projects as well as performance data from solar-PV systems. Subsequently, the acquired data will be analyzed and made available to public and private stakeholders, including private project developers. The potential of biomass for energy generation will be assessed using parallel financing and explore both large-scale applications (e.g., cogeneration, biofuels) and community-based options for local energy production.

**Component III. Contribute to sector sustainability with the implementation of cost-effective RETs for on-grid and off-grid electricity generation.**

- 2.07** The specific objective of Component III is to implement RE pilot projects and demonstrate the technical, social, economic, financial and environmental Sustainability of selected on-grid and off-grid RETs, through the implementation of pilot investments, such as wind energy, solar-PV and small hydropower. In addition, these pilot investments will provide the evidence that would give the grounds to proposals for amendments to the institutional and regulatory framework. At the end of the program, pilot projects in the coastal zone can expectedly interconnect to the grid on a commercial basis and provide electricity at a competitive price. With respect to rural electrification, the Program will prepare and test sustainable business models for ownership, O&M and address the current technical, institutional and capacity barriers.

- 2.08** The direct social and economic benefits will be a reduction in operating costs for the local communities, as well as improved access to electricity services by the population in the Hinterlands, in terms of quality of service and number of households served.
- 2.09** The selection of pilot projects includes an assessment of current and available information in the country. Such assessment will review information related to: (i) detailed feasibility studies and technical designs for project construction; (ii) projects that have been considered and approved by the Beneficiary for hinterland electrification; (iii) projects with criteria to judge socio-economic impact, cost-effectiveness, project risks, visibility and replication potential. The implementation modality for the on-grid demonstration pilot (envisaged wind energy and bioenergy) will be defined in the Program Operations Manual (POM).
- 2.10** Based on the outcome of the assessment, Component III will provide financing to complement selected pilot projects that will be executed by OPM. Contributions from the execution of parallel projects, with financing provided by GOG, the EU Energy and Water Initiative, and the Guyana REDD+ Investment Fund (GRIF) will be considered in the assessment to receive additional support from the Program.
- 2.11** The Program envisages facilitating the installation of approximately 1,112-kW of PV systems to villages in the Hinterlands. Once in place, the systems will be managed under a community-based business and operational model. Based on the strategy for rural electrification considered in the HEP and the assessment conducted under Component III, the Executing Agency, in close dialogue with Ministry of Amerindian Affairs (MoAA) and the village councils, will continue the electrification of rural communities. Small hydroelectric power (SHP) will be implemented under a mixed business model, providing support to the completion of current hydropower developments or new initiatives of the Beneficiary. The technical development process will be monitored closely to confirm technological choices. Adaptation measures to the risks of climate change will be taken to safeguard the integrity of the power plants during their expected technical lifetime of 25-years.

### **III. Total Cost of the Program and Financing Plan**

- 3.01** The total cost of the Program, estimated in the amount of US\$6,250,000, will be distributed as follows:

Activities	Financing (in US\$)		
	Bank IDB/GEF Fund	Local Counterpart	Total
Component I	210,000	150,000	360,000
Component II	140,000	500,000	640,000
Component III	4,430,000	100,000	4,530,000
<b>Components Sub-total</b>	<b>4,780,000</b>	<b>750,000</b>	<b>5,530,000</b>
<b>Administration, monitoring, auditing</b>	<b>220,000</b>	<b>500,000</b>	<b>720,000</b>
<b>TOTAL</b>	<b>5,000,000</b>	<b>1,250,000</b>	<b>6,250,000</b>

#### **IV. Execution**

- 4.01** The Beneficiary of the Program will be the Co-operative Republic of Guyana. Program implementation will entail two levels: (i) the strategic level; and (ii) the operational level.
- 4.02** Strategic Level. As condition precedent to the first disbursement, the Beneficiary will establish a high-level Project Steering Committee (PSC) to: (i) provide guidance and orientation concerning Program's priorities; (ii) monitor progress of implementation according to the agreed time schedule and reports prepared by the Executing Agency; and (iii) recommend and give support on operational issues at high level. The PSC will be composed of OPM as Chairperson, representatives of the Ministry of Finance, the MoAA, the GEA, GP&L and the Project Manager as its Secretary.
- 4.03** Operational Level. The OPM will be the Executing Agency (EA) which will be responsible for the fulfillment of the technical, administrative and fiduciary tasks (including procurement and financial management) related to the execution of the Program, as well as the planning, monitoring, supervision and evaluation thereof.
- 4.04** The PIU will be the existing Hinterland Electrification Unit (HEU) at OPM. The PIU will be responsible for, inter alia: (i) the technical execution of Program's activities; (ii) the procurement of goods, works, consultancy services and non-consultancy services; (iii) registering accounting information of Program funds; (iv) contract management and administration of all contracts entered into through the PIU; (v) reporting periodically to the EA and the Bank on the technical and administrative activities of the Program; and (vi) coordinate the monitoring of Program progress towards outcomes and goals.
- 4.05** Project Manager (PM). The PM will be responsible, among others, for the preparation of Terms of Reference, support for the selection process of contracted consultancies, services and procured goods, review of the products delivered by consultancy firms, budget administration, logistics, local support and coordination among the stakeholders. The PM will also prepare the Annual Operation Plan (AOP) to assist the EA in the execution and supervision of the Program. The PM will report to the PSC, the EA, the GEF and the Bank.

#### **V. Monitoring and Evaluation**

- 5.01** Monitoring. The result matrix will be the basic instrument for monitoring the Program's outcomes and outputs. Additionally, a Monitoring and Evaluation Plan (M&E) will facilitate the process and provide guidance to the HEU. The HEU will be responsible for the monitoring process and the preparation of quarterly and annual reports following the GEF and Bank requirements during the Program execution period. The OPM, through the HEU, will also be responsible for the preparation of financial documentation needed for the annual financial audits of Program statements. In addition, the HEU will ensure the proper documentation of counterpart spending including in-kind contributions.

- 5.02** The PSC will guarantee a strategic overview in the Program. The members of the PSC, will meet, at least, twice a year. The minutes from the meetings of the PSC will be included as part of the annual progress reports.
- 5.03** Evaluation. Independent consultants will be hired to prepare a mid-term and final evaluation of the Program to assess the implementation process and its progress towards attaining the envisaged objectives. The mid-term and final evaluation will be financed with resources of the Contribution. The mid-term evaluation will be held three (3) years after first disbursement. The final independent evaluation will be carried out three (3) months before the last disbursement is made. Both evaluations will use a before and after methodology using the indicators defined in the M&E plan.