

NON-REIMBURSABLE FINANCING AGREEMENT

No. GRT/ER-16412-JA

between

JAMAICA

and the

INTER-AMERICAN DEVELOPMENT BANK

Acting as Administrator under the Contribution Agreement with the European Union Caribbean
Investment Facility ("EU-CIF")

EU-CIF Energy Management and Efficiency Non-Reimbursable Financing Operation

January 30, 2018

PART ONE: SPECIAL CONDITIONS

This non-reimbursable financing agreement, hereinafter the “Non-Reimbursable Financing Agreement,” is entered into between JAMAICA, hereinafter referred to as the “Beneficiary” and the INTER-AMERICAN DEVELOPMENT BANK, hereinafter referred to as the “Bank” and together with the Beneficiary, as the “Parties”, and the Bank acting as administrator under the Framework Administrative Agreement between the European Union (“EU”) and the Bank dated June 10, 2015 (the “Framework Agreement”).

This Non-Reimbursable Financing Agreement is entered into pursuant to a specific contribution agreement (the “Contribution Agreement”) signed between the Bank and the EU-CIF on December 20, 2017, whereby the EU-CIF agreed to contribute an amount of up to nine million one hundred and seventy thousand Euros (€9,170,000) for the non-reimbursable financing of the EU-CIF Energy Management and Efficiency Non-Reimbursable Financing Operation (the “Project”), subject to the terms and conditions stated therein.

Further, the purpose of this Project is to co-finance the loan operation JA-L1056 (the “EMEP Loan”), which comprises US\$15 million from the ordinary capital of the Bank and US\$15 Million to be provided by Japan International Cooperation Agency (“JICA”). The EMEP Loan together with this Project are hereinafter referred to as the “Energy Management and Efficiency Programme” or the “Programme”.

CHAPTER I

Purpose and Constituent Elements of the Non-Reimbursable Financing Agreement

SECTION 1.01. Purpose of the Non-Reimbursable Financing Agreement. The purpose of this Non-Reimbursable Financing Agreement is to establish the terms and conditions under which the Bank will grant to the Beneficiary the EU resources for the financing of the Project. The main aspects of the Project are set forth in Annex A (Description of the Project).

SECTION 1.02. Constituent Elements of the Non-Reimbursable Financing Agreement. This Non-Reimbursable Financing Agreement is composed of these Special Conditions, the General Conditions, Annex A (Description of the Project) and Annex B (Supplementary Agreement; Additional Obligations Resulting from the Framework Agreement).

CHAPTER II

The Contribution

SECTION 2.01. Amount and Approval Currency of the Contribution. Subject to the terms and conditions of this Non-Reimbursable Financing Agreement, the Bank agrees to grant to the Beneficiary, and the Beneficiary accepts, a non-reimbursable financing of up to the Dollar equivalent of nine million one hundred and seventy thousand Euros (€9,170,000) (the

“Contribution”), which is estimated to be ten million Dollars (US\$10,000,000)¹, chargeable to the resources received by the Bank from the EU-CIF under the Contribution Agreement.

CHAPTER III

Disbursements and Utilization of the Resources of the Contribution

SECTION 3.01. Special Conditions Precedent to First Disbursement. In addition to the conditions precedent stipulated in Article 3.01 of the General Conditions, the first disbursement of the Contribution shall be subject to the compliance, to the satisfaction of the Bank, of the following:

(a) the Beneficiary, acting through the Executing Agency, has certified that the Project Executing Unit created under the EMEP Loan, comprising its Programme Manager, Financial Specialist and Procurement Specialist, has been authorized to execute this Project;

(b) the Project operation manual (“OM”) of the EMEP Loan has been updated to include this Project and its specific requirements, including the Project implementation obligations described in Annex B and the environmental and social safeguards obligations described in Article V of Annex A;

(c) the environmental and social conditions set forth in Section 5.02 of Annex A have been met; and

(d) evidence that the agreement between the Beneficiary and the Executing Agency referred to in Section 4.01(b) below has entered into effect.

SECTION 3.02. Disbursements, Currency Availability and Applicable Exchange Rate.

(a) The amount of the Contribution will be disbursed in Dollars.

(b) If the Bank is unable to obtain Dollars, the Bank, in consultation with the Beneficiary, may disburse the Contribution in another currency of its choice.

(c) In accordance with the Contribution Agreement, the Bank will receive from the EU the resources of the Contribution in Euros. The Bank will disburse those resources to the Beneficiary in accordance with Articles 3.05-3.09 of the General Conditions and Article 19 of Annex B. Any disbursements of the Contribution to be made by the Bank under this Non-Reimbursable Financing Agreement are subject to the condition that it has received such resources from the EU.

SECTION 3.03. Utilization of the Resources of the Contribution. The resources of the

¹ The estimated Dollar amount is based on the exchange rate as of May 1, 2017 (€0.917 to one Dollar). The amount of Dollars to be disbursed from the Contribution can be greater or smaller than the estimated amount depending on the exchange rate to be used when making the conversion. In no event will the Bank undertake any exchange rate risk related to the conversions made under this Non-Reimbursable Financing Agreement.

Contribution shall be used to pay expenses that: (i) are necessary for the Project and in accordance with its objectives; (ii) are carried out in accordance with the provisions of this Non-Reimbursable Financing Agreement, Bank policies and Article 18 of Annex B; (iii) are adequately recorded and documented in the Beneficiary's or Executing Agency's system and in accordance with Article 16 of Annex B; and (iv) are incurred during the Implementation Period, as this term is defined in Annex B, including any extensions thereof. Such expenses are hereinafter referred to as "Eligible Expenditures".

SECTION 3.04. Disbursement Period. The Original Disbursement Period will be four (4) years from the date of signature of the Contribution Agreement. The Original Disbursement Period may be extended with the prior written consent of the EU-CIF and the Bank.

SECTION 3.05. Applicable Exchange Rate for Expenditures. For purposes of Article 3.10 of the General Conditions, the Parties agree that the applicable exchange rate shall be that indicated in paragraph (b)(ii) of said Article. Accordingly, the agreed exchange rate shall be the exchange rate on the date the Beneficiary, or any other person or legal entity in whom the power to incur expenditures has been vested makes the related payments to the contractor, the supplier, or final beneficiary.

CHAPTER IV **Execution of the Project**

SECTION 4.01. Executing Agency. (a) Petroleum Corporation of Jamaica will be the Executing Agency of the Project. The Beneficiary hereby certifies the legal and financial capacity of the Executing Agency to act as such.

(b) The Beneficiary acting through the Ministry of Finance and the Public Service will enter into an agreement with the Executing Agency by which it will assign and transfer the resources of the Contribution to the Executing Agency, together with all the obligations and responsibilities related to Project implementation, including all obligations specified in Annex B.

SECTION 4.02. Conditions concerning Procurement. The procurement of goods, works and services with resources of the Contribution will be carried out in accordance with the Procurement Policies of the Bank, with the following two partial exceptions to Articles 4.01(c) and 4.04 of the General Conditions, respectively:

(a) Expanded List of Eligible Countries to include Other Eligible Countries: as provided for in Article 21.01(a)(iii) of Annex B; and

(b) Archiving of relevant financial information for at least 5 years after the End Date: as provided for in Article 16.02 of Annex B.

SECTION 4.03. Other Documents Governing Programme Execution. The Parties agree the Programme execution shall be governed by the provisions of this Non-Reimbursable Financing Agreement and those established in the OM referred to in Section 3.01(b) of these Special

Conditions. If any provision of this Non-Reimbursable Financing Agreement should present any inconsistency or contradiction with the OM, the relevant provision of this Non-Reimbursable Financing Agreement shall prevail.

SECTION 4.04. Environmental and Social Management. The Beneficiary will comply with the Environmental and Social Obligations set forth in the Project's Environmental and Social Management Report ("ESMR"), transcribed Section V of Annex A.

SECTION 4.05. Maintenance. The Maintenance obligations set forth in Section 4.10 of the Special Conditions of the Bank's Contract for the EMEP Loan will extend to this Project.

CHAPTER V

Supervision and Evaluation of the Programme

SECTION 5.01. Supervision of Project Execution. For purposes of Article 5.02 of the General Conditions, the documents that, as of the date of this Non-Reimbursable Financing Agreement, have been identified as necessary to supervise progress in the execution of the Project are the semi-annual and final reports in accordance with the requirements specified in Article 3.01, 3.02 and 3.04 of Annex B.

SECTION 5.02. Supervision of the Financial Management of the Programme. For purposes of Article 5.03 of the General Conditions, the Beneficiary agrees to submit to the Bank the reports, audits and assurance reports described in Article 3.02 of Annex B.

SECTION 5.03. Evaluation of Results. In order to determine the degree of compliance with the Programme's objective and its results, the Beneficiary shall provide the mid-term evaluation report and the final evaluation report as set forth in Article 5.03 of the EMEP Loan. The scope of such reports will include the evaluation of the entire resources of the Energy Efficiency and Management Programme.

CHAPTER VI

Miscellaneous Provisions

SECTION 6.01. Entry into Effect of the Non-Reimbursable Financing Agreement. This Non-Reimbursable Financing Agreement shall enter into effect on the signature date.

SECTION 6.02. Communications and Notices. (a) Any notice, request, communication, or report from one Party to another by virtue of this Non-Reimbursable Financing Agreement related to the execution of the Project, with the exception of the notices indicated in paragraph (b) hereof, 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 given below, or by electronic means under such terms and conditions as the Bank establishes and communicates to the Beneficiary, unless the Parties agree otherwise.

For the Beneficiary:

Mailing address:

Ministry of Finance and the Public Service
30 National Heroes Circle
Kingston 4
Jamaica, West Indies

Facsimile: (876) 924-9291

Email address: finsec@mof.gov.jm

For the Executing Agency:

Mailing address:

Petroleum Corporation of Jamaica
36 Trafalgar Road
Kingston 10
Jamaica

Facsimile: (876) 929 2409

Email address: ica@pcj.com

For the Bank:

Inter-American Development Bank
Country Office in Jamaica

Mailing address:

Inter-American Development Bank
Representative of the Bank in Jamaica
40-46 Knutsford Boulevard
Kingston, 5
Jamaica, West Indies

Facsimile: (876) 764-0815

(b) Any notice from one party to another by virtue of this Non-Reimbursable Financing Agreement regarding matters other than those related to the execution of the Project, including disbursement requests, shall be made in writing and sent by certified mail, electronic mail, or facsimile addressed to its addressee at any of the respective addresses given below and shall be considered to have been made when the relevant document is delivered to the addressee at the respective address given below, or by electronic means under such terms and conditions as the Bank establishes and communicates to the Beneficiary, unless the Parties agree otherwise.

For the Borrower:

Mailing address:

Ministry of Finance and the Public Service
30 National Heroes Circle
Kingston 4
Jamaica, West Indies

Facsimile: (876) 924-9291

Email address: finsec@mof.gov.jm

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

SECTION 6.03. **Commitment to Arbitrate.** For the resolution of any conflict arising out of or connected with this Non-Reimbursable Financing 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 X of the General Conditions.

IN WITNESS WHEREOF, the Beneficiary and the Bank, each acting through its authorized representative, have signed this Non-Reimbursable Financing Agreement in two (2) equally authentic copies in Kingston, Jamaica, on [no date was included in the original], 2018.

JAMAICA

**INTER-AMERICAN DEVELOPMENT
BANK**

/s/

/s/

Honourable Audley Shaw, CD, MP
Minister of Finance and the Public Service

Therese Turner-Jones
Representative of the Bank in Jamaica

PART TWO GENERAL CONDITIONS

CHAPTER I Application and Interpretation

ARTICLE 1.01. Application of the General Conditions. These General Conditions are uniformly applicable to the non-reimbursable investment financing contracts with resources from its donors, which the Bank enters into with its member countries or with other beneficiaries.

ARTICLE 1.02. Interpretation. (a) **Inconsistency.** In the event of contradiction or inconsistency between the provisions of the Special Conditions, any annex of the Contract, and these General Conditions, those provisions shall prevail over the provisions of these General Conditions. In the event of contradiction or inconsistency between provisions of a single element of this Contract, or between the provisions of the Special Conditions, any annex of the Contract, the specific provision shall prevail over the general.

(b) **Headings and Subheadings.** Any heading or subheading of the chapters, articles, clauses, or other sections of this Contract are included solely for reference and should not be taken into account in the interpretation of this Contract.

(c) **Periods.** Unless this Contract provides otherwise, periods expressed in days, months, or years shall be understood as calendar days, months, or years.

CHAPTER II Definitions

ARTICLE 2.01. Definitions. Whenever the following terms are capitalized in this Contract, they shall have the meaning set forth below. Any reference to the singular includes the plural and vice versa.

1. “Additional Resources” means resources that are additional to those financed by the Bank, which are necessary for the complete and uninterrupted execution of the Project.
2. “Advance of Funds” means the amount of resources advanced by the Bank to the Beneficiary, chargeable to the Contribution, to cover Eligible Expenditures of the Project, as provided in Article 3.07 of these General Conditions.
3. “Bank” shall have the meaning assigned to it in the Special Conditions.
4. “Board” means the Board of Executive Directors of the Bank.
5. “Beneficiary” means the party to which the Financing is made available.

6. “Business Day” means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York City.
7. “Closing Period” means a period of up to ninety (90) days from the expiration date of the Original Disbursement Period, or any extension thereof.
8. “Consultant Policies” mean the Policies for the Selection and Contracting of Consultants Financed by the Inter-American Development Bank in force at the time of the approval of the Contribution by the Bank.
9. “Contract” means this non-reimbursable financing contract.
10. “Contracting Agency” means the entity with legal capacity to enter into contracts, and which, in agreement with the Beneficiary or the Executing Agency, as the case may be, assumes all or part of the responsibility for the procurement of goods or works, consulting services or non-consulting services for the Project.
11. “Contracting Entity” means the entity with legal capacity to enter into a contract for the procurement of goods, works, consulting services, and non-consulting services with a contractor, supplier, consulting firm, or individual consultant, as the case may be.
12. “Contribution” means the funds disbursed from the Financing.
13. “Dollar” means the legal tender of the United States of America.
14. “Eligible Expenditure” shall have the meaning assigned to it in the Special Conditions.
15. “Executing Agency” means the entity with legal capacity responsible for executing the Project and for using the proceeds of the Contribution. Whenever there is more than one Executing Agency, these will be co-executing agencies and shall be referred to indistinctly as “Executing Agencies” or “Co-executing Agencies.”
16. “Financial Plan” means a tool for planning and monitoring the cash flows of the Project, which is used in coordination with other project planning tools, including the Procurement Plan.
17. “General Conditions” mean the entirety of articles which comprise Part Two of this Contract.
18. “Local Currency” means any currency other than the Dollar that is legal tender in the countries of Latin America and the Caribbean.

19. “Original Disbursement Period” means the original period for disbursements of the Contribution, which is set forth in the Special Conditions.
20. “Parties” shall have the meaning assigned to it in the introduction to the Special Conditions.
21. “Procurement Plan” means a tool for programming and monitoring the procurement related to the Project, in the terms described in the Special Conditions, Procurement Policies, and Consultant Policies.
22. “Procurement Policies” mean the Policies for the Procurement of Works and Goods Financed by the Inter-American Development Bank in force at the time of the approval of the Contribution by the Bank.
23. “Prohibited Practices” mean the practices prohibited by the Bank in connection with the activities it finances, as defined by the Board or that are defined in the future and communicated to the Beneficiary, including coercive practice, collusive practice, corrupt practice, fraudulent practice, and obstructive practice.
24. “Project” means the project or program identified in the Special Conditions comprising a set of activities with a development objective that are financed by proceeds of the Contribution.
25. “Quarter” means each of the following three-month (3-month) periods of the calendar year: the period beginning on January 1 and ending on March 31; the period beginning on April 1 and ending on June 30; the period beginning on July 1 and ending on September 30; and the period beginning on October 1 and ending on December 31.
26. “Semester” means the first or second six (6) months of a calendar year.
27. “Special Conditions” mean the entirety of provisions which comprise Part One of this Contract.

CHAPTER III

Disbursements, Renunciation, and Automatic Cancellation

ARTICLE 3.01. Conditions Precedent to First Disbursement of Resources of the Contribution. Without prejudice to the other requirements set forth in the Special Conditions, the first disbursement of the resources 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 Contract, are

valid and enforceable. Such opinions shall also refer to any other legal question that the Bank may deem relevant.

- (b) The Beneficiary or the Executing Agency, as the case may be, shall have designated one or more officials to represent it for purposes of requesting disbursements of the Contribution and for other acts relating to the financial management of the Project, and shall have furnished the Bank with authentic copies of the signatures of said representatives. Should two or more officials be designated, the designation shall indicate whether such officials may act separately or must act jointly.
- (c) The Beneficiary or the Executing Agency, as the case may be, shall have provided to the Bank information in writing, through its representative authorized to request disbursements of the Contribution, regarding the bank account into which disbursements of the Contribution are to be deposited. Separate accounts shall be required for disbursements in Local Currency and Dollars. This information will not be necessary in the event the Bank agrees that the resources of the Contribution are to be posted in the Beneficiary's general treasury account.
- (d) The Beneficiary or Executing Agency, as the case may be, shall have demonstrated to the Bank that it has an adequate financial information system and internal control structure for the purposes indicated in this Contract.

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 Contract, 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 other conditions precedent to the first disbursement agreed upon in the Special Conditions have not been fulfilled, the Bank may terminate this Contract in advance by giving notice to the Beneficiary.

ARTICLE 3.03. Conditions for All Disbursements. (a) As a condition for all disbursements and without prejudice to the conditions precedent to the first disbursement of the resources of the Contribution established in Article 3.01 of these General Conditions and in the Special Conditions, if any, the Beneficiary or the Executing Agency, as the case may be, undertakes to present to the Bank in writing, whether physically or by electronic means, in such form and conditions as may be specified by the Bank, a disbursement request together with the pertinent documents and other background materials required by the Bank. Unless the Bank agrees otherwise, the last disbursement request shall be presented to the Bank no later than thirty (30) days in advance of the expiration date of the Original Disbursement Period or any extension thereof.

(b) Unless the Parties agree otherwise, disbursements shall be made only in amounts of not less than the equivalent of one hundred thousand Dollars (US\$100,000) each.

(c) Any charge, fee, or expense assessed to the bank account into which disbursements of the resources of the Contribution are deposited shall be borne by, and are the responsibility of, the Beneficiary or the Executing Agency, as the case may be.

ARTICLE 3.04. Income Generated in the Bank Account for Disbursements. Income generated from the resources of the Contribution deposited in the bank account designated to receive disbursements shall be used to finance Eligible Expenditures.

ARTICLE 3.05. Disbursement Methods. At the request of the Beneficiary or the Executing Agency, as the case may be, the Bank may make disbursements of the resources of the Contribution through: (a) reimbursement of expenditures; (b) Advance of Funds; (c) direct payments to third parties; and (d) reimbursement under a letter of credit guarantee.

ARTICLE 3.06. Reimbursement of Expenditures. (a) The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the reimbursement of expenditures method when the Beneficiary or the Executing Agency, as the case may be, has paid for Eligible Expenditures with its own resources.

(b) Unless the Parties agree otherwise, disbursement requests for reimbursing expenditures shall be made promptly to the extent that the Beneficiary or the Executing Agency, as the case may be, has incurred such expenditures, and not later than sixty (60) days following the conclusion of each calendar semester.

ARTICLE 3.07. Advance of Funds. (a) The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the Advance of Funds method. The amount of the Advance of Funds shall be set by the Bank on the basis of (i) the liquidity needs of the Project in order to cover periodic projections of Eligible Expenditures during a period of up to six (6) months, unless the Financial Plan provides for a longer period, which in no case may exceed twelve (12) months, and (ii) the risks associated with the capacity demonstrated by the Beneficiary or the Executing Agency, as the case may be, to manage and use the resources of the Contribution.

(b) Each Advance of Funds shall be subject to: (i) the request for Advance of Funds being presented in a manner acceptable to the Bank; and (ii) with the exception of the first Advance of Funds, the Beneficiary or the Executing Agency, as the case may be, having presented a justification for the use of at least eighty percent (80%) of the total cumulative balances pending justification for this purpose, and the Bank having accepted such justification, unless the Financial Plan specifies a lower percentage, which in no case may be less than fifty percent (50%).

(c) The Bank may, during the term of the Financial Plan, provide for a one-time increase in the amount of the last Advance of Funds granted to the Beneficiary or the Executing Agency, as the case may be, to the extent that additional resources are needed to pay Eligible Expenditures that were unforeseen in said plan.

(d) The Beneficiary or the Executing Agency, as the case may be, shall present the last Advance of Funds request no later than thirty (30) days prior to the date of the expiration of the Original Disbursement Period or any extension thereof, in the understanding that the justification for such Advance of Funds shall be presented to the Bank during the Closing Period. The Bank shall not disburse resources subsequent to the expiration of the Original Disbursement Period or any extension thereof.

(e) The value of each Advance of Funds to the Beneficiary or the Executing Agency, as the case may be, must be maintained in the equivalent value expressed in the respective disbursement currency or in the Approval Currency. Eligible Expenditures incurred with resources of an Advance of Funds must be justified in the equivalent of the total amount of the Advance of Funds expressed in the respective disbursement currency or in the Approval Currency, using the exchange rate established in this Contract. The Bank may accept adjustments in the justification of the Advance of Funds due to exchange rate fluctuations, provided that they do not impact the execution of the Project.

ARTICLE 3.08. Direct payments to third parties. (a) The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the method of direct payments to third parties, by means of which the Bank directly pays providers or contractors on behalf of the Beneficiary or the Executing Agency, as the case may be.

(b) In case of direct payments to third parties, the Beneficiary or the Executing Agency shall be responsible for payment of the amount equivalent to the difference between the amount of the disbursement requested by the Beneficiary or the Executing Agency and the amount received by the third party as the result of exchange rate fluctuations, commissions, and other financial costs.

ARTICLE 3.09. Reimbursement under a Letter of Credit Guarantee. The Beneficiary or the Executing Agency, as the case may be, may request disbursements through reimbursement under a letter of credit, in order to reimburse commercial banks for payments made to contractors or providers of goods and services by virtue of a letter of credit issued and/or confirmed by a commercial bank and guaranteed by the Bank. The letter of credit must be issued and/or confirmed in a manner satisfactory to the Bank. The resources committed under the letter of credit and guaranteed by the Bank shall be used exclusively for the purposes established in the letter of credit for as long as the guarantee remains in effect.

ARTICLE 3.10. Exchange rate. (a) The Beneficiary undertakes to justify, or to cause the Executing Agency to justify, as the case may be, expenditures chargeable to the Contribution or the Additional Resources, expressing such expenditures in either the currency of denomination or the Approval Currency of the respective disbursement.

(b) To determine the equivalence of an Eligible Expenditure incurred in the Local Currency of the Beneficiary's country to the currency in which the disbursements are made, or alternatively to the Approval Currency, for purposes of accounting and justification of expenses, regardless of the source of financing of the Eligible Expenditure, one of the following exchange rates shall be used, pursuant to the Special Conditions:

- (i) the exchange rate in force on the date on which the Approval Currency or disbursement currency is converted into the Local Currency of the Beneficiary's country; or

- (ii) the exchange rate in force on the date of payment of the expenditure in the Local Currency of the Beneficiary's country.

(c) In those cases in which the exchange rate established in paragraph (b)(i) of this Article is selected, to determine the equivalent of expenditures incurred in the Local Currency chargeable to the Additional Resources or the reimbursement of expenditures chargeable to the Contribution, the rate used shall be the exchange rate agreed upon with the Bank in the Special Conditions.

ARTICLE 3.11. Receipts. At the request of the Bank, the Beneficiary shall sign and deliver to the Bank, upon completion of disbursements, a receipt or receipts for the amounts disbursed.

ARTICLE 3.12. Renunciation of Part of the Contribution. The Beneficiary may renounce, by notice to the Bank, its right to utilize any part of the Contribution which has not been disbursed before the receipt of such notice, provided that the resources of the Contribution are not subject to the guarantee of an irrevocable letter of credit, pursuant to Article 6.04 of these General Conditions.

ARTICLE 3.13 Automatic Cancellation of Portion of the Contribution. Upon expiration of the Original Disbursement Period and any extension thereof, any portion of the Contribution not committed or disbursed shall automatically be cancelled.

ARTICLE 3.14. Closing Period. (a) The Beneficiary undertakes to carry out, or to cause the Executing Agency to carry out, as the case may be, the following actions during the Closing Period: (i) finalize pending payments to third parties, if any; (ii) reconcile its records and present to the Bank's satisfaction the supporting documentation relating to expenditures charged to the Project and other information that the Bank may request; and (iii) return to the Bank the unjustified balance of disbursed resources of the Contribution.

(b) Notwithstanding the foregoing, if this Contract provides for external financial audit reports financed with resources of the Contribution, the Beneficiary or the Executing Agency, as the case may be, agrees to reserve, in the manner agreed with the Bank, sufficient resources to cover the payment of the corresponding auditing services. In this case, the Beneficiary or the Executing Agency, as the case may be, also undertakes to agree with the Bank as to how the corresponding payments for such audits will be made. In the event the Bank does not receive the above-mentioned external financial audit reports within the periods stipulated in this Contract, the Beneficiary or the Executing Agency, as the case may be, agrees to return to the Bank the resources reserved for such purpose, which shall not be construed as a waiver by the Bank to exercise the rights set forth in Chapter VI of this Contract.

CHAPTER IV

Execution of the Project

ARTICLE 4.01. Financial Management Systems and Internal Control. (a) The Beneficiary shall maintain, or cause the Executing Agency and Contracting Agency, if any, to maintain, as the case may be, internal controls so as to reasonably ensure: (i) that Project resources are used for the purposes of this Contract, devoting special attention to the principles of economy and efficiency; (ii) that Project assets are adequately safeguarded; (iii) that Project transactions, decisions, and activities are duly authorized and executed in accordance with the provisions of this Contract and any other contract related to the Project; and (iv) that transactions are properly documented and recorded in a way that facilitates the production of timely and reliable reports.

(b) The Beneficiary shall maintain, and shall cause the Executing Agency and the Contracting Agency, if any, to maintain, an acceptable and reliable financial management system for the timely management of Project resources that provides for: (i) financial planning; (ii) accounting, budgetary, and financial record-keeping; (iii) contract administration; (iv) payment processing; (v) the issuance of financial audit reports and other reports associated with the resources of the Contribution, the Additional Resources, and other financing sources of the Project, if any.

(c) The Beneficiary shall preserve, and shall cause the Executing Agency or the Contracting Agency, as the case may be, to preserve, the original records of the Project for a minimum period of three (3) years after the expiration date of the Original Disbursement Period or any extension thereof. Such documents and records shall be maintained adequately in order to: (i) substantiate Project-related activities, decisions, and transactions, including all expenditures incurred; and (ii) show the correlation of the expenditures incurred under the Contribution to the respective disbursement made by the Bank.

(d) The Beneficiary shall include, or cause the Executing Agency and the Contracting Agency, if any, to include in all bidding documents, requests for proposals, and contracts financed with the resources of the Contribution that they enter into, respectively, a provision requiring that providers of goods or services, contractors, subcontractors, consultants and their agents, personnel, subconsultants, subcontractors, or concessionaires contracted by them, keep all documents and records related to activities financed with resources of the Contribution for a period of seven (7) years after completion of the work contemplated in the relevant contract.

ARTICLE 4.02. Additional Resources. The Beneficiary, directly or through the Executing Agency, as the case may be, commits to contribute Additional Resources in a timely manner. If, as of the approval date of the Contribution by the Bank, it has been determined that Additional Resources are needed, the estimated amount of such Additional Resources shall be that specified in the Special Conditions. Whether or not an estimate of the amount of the Additional Resources has been determined shall neither limit nor diminish the obligation of the Beneficiary, directly or through the Executing Agency, to contribute in a timely manner all additional resources which may be necessary for the complete and uninterrupted execution of the Project.

ARTICLE 4.03. General Provisions for Execution of the Project. (a) The Beneficiary shall execute, or cause the Executing Agency, as the case may be, to execute the Project in accordance with the objectives thereof, with due diligence in an economically, financially, administratively, and technically efficient manner, and in accordance with the provisions of this Contract and the plans, specifications, investment schedule, budgets, regulations, and other relevant documents of the Project approved by the Bank. The Beneficiary or the Executing Agency, as the case may be, further agrees that all of its obligations shall be fulfilled to the satisfaction of the Bank.

(b) Any significant modification of 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 Contract and any plan, specification, investment schedule, budget, regulations, or other relevant document of the Project approved by the Bank, the provisions of this Contract shall prevail over those documents.

ARTICLE 4.04. 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 paragraph (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 represents that it is aware of the Procurement Policies and Consultant Policies and undertakes to inform the Executing Agency, the Contracting Agency, and the specialized agency, as the case may be, of these Policies.

(b) When the Bank has validated a system or subsystem 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 system or subsystem, in accordance with the terms of the validation of the Bank and applicable validated legislation and processes. The terms of such validation shall be notified in writing by the Bank to the Beneficiary and the Executing Agency. Use of the country system or subsystem may be suspended by the Bank when, in its opinion, changes have occurred in the parameters or practices the Bank used as the basis for its validation, until such time as the Bank determines whether such changes are compatible with international best practices. During such suspension, the Procurement Policies and Consultant Policies of the Bank will apply. The Beneficiary, directly or through the Executing Agency, as the case may be, undertakes to notify the Bank of any change in the applicable legislation or processes that have been so validated. The use of country systems or subsystems 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 procurement and contracting of services be contained in the Procurement Plan and is subject to the remaining provisions of this Contract. The provisions of

Section I of the Procurement Policies and Consultant Policies shall apply to all contracts, regardless of amount or contracting method. The Beneficiary agrees to include, or to cause the Executing Agency, as the case may be, to include in the model bidding documents, contracts, and instruments used in electronic or information systems (in physical or electronic media) measures to ensure the application of the provisions set forth in Section I of the Procurement Policies and Consultant Policies, including the provisions on Prohibited Practices.

(c) The Beneficiary agrees to update, or to cause the Executing Agency, as the case may be, to maintain an updated Procurement Plan, and 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, contracting, and procurement processes, 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.

ARTICLE 4.05. Use of Goods. Except as otherwise expressly authorized by the Bank, any goods procured with the resources of the Contribution shall be used exclusively for the purposes of the Project.

ARTICLE 4.06. Environmental and Social Safeguards. (a) The Beneficiary, directly or through the Executing Agency, as the case may be, agrees to carry out the execution (preparation, construction, and operation) of the activities included in the Project in accordance with the environmental and social policies of the Bank, pursuant to the specific provisions on environmental and social considerations included in the Special Conditions.

(b) The Beneficiary, directly or through the Executing Agency, as the case may be, agrees to immediately inform the Bank of any noncompliance with the environmental and social obligations set forth in the Special Conditions.

(c) The Beneficiary, directly or through the Executing Agency, as the case may be, agrees to implement a corrective action plan, agreed upon with the Bank, to mitigate, correct, and compensate any adverse consequences that may result from the failure to comply with the implementation of the environmental and social obligations set forth in the Special Conditions.

(d) The Beneficiary agrees to allow the Bank, whether directly or through the contracting of consulting services, to carry out supervision activities, including environmental and social audits of the Project, in order to confirm compliance with the environmental and social obligations set forth in the Special Conditions.

ARTICLE 4.07. Ineligible Expenditures for the Project. In the event that the Bank determines that an expenditure incurred does not meet the requirements to be considered an Eligible Expenditure or Additional Resources, the Beneficiary or the Executing Agency, as the case may be, shall take such actions as are necessary to remedy the situation, as required by the

Bank, including reimbursement of the resources of the Contribution used for ineligible expenses, without prejudice to any other measures the Bank or EU-CIF may exercise under this Contract.

CHAPTER V

Supervision and Evaluation of the Project

ARTICLE 5.01. Inspections. (a) The Bank may establish such procedures as it deems necessary to ensure the satisfactory development of the Project.

(b) The Beneficiary shall permit, or cause the Executing Agency, as the case may be, and the Contracting Agency, if any, to permit the Bank, its investigators, agents, auditors, and experts it engages, to inspect, at any time, the Project and the facilities, equipment, and materials involved therein, and to examine such systems, records, and documents as the Bank may deem pertinent. In addition, the Beneficiary or the Executing Agency, as the case may be, and the Contracting Agency, if any, shall ensure that their agents fully cooperate with the personnel which the Bank sends or designates for this purpose. All the costs relating to transportation, salaries, and other expenses of such personnel shall be borne by the Bank.

(c) The Beneficiary shall provide, or cause the Executing Agency, as the case may be, and the Contracting Agency, if any, to provide to the Bank any documents relating to the Project that the Bank may request, in a form and within a time frame acceptable to the Bank. Without prejudice to any measures the Bank may take under this Contract in the event such documentation is not available, the Beneficiary or the Executing Agency, as the case may be, and the Contracting Agency, if any, shall submit an affidavit to the Bank setting forth the reasons why the requested material is unavailable or is being withheld.

(d) The Beneficiary shall include, or cause the Executing Agency, as the case may be, and the Contracting Agency, if any, to include a provision in bidding documents, requests for proposals, and contracts entered into by them relating to the execution of the Contribution in order to: (i) allow the Bank, its investigators, agents, auditors, or experts, to inspect accounts, records, and other documents relating to the submission of bids and to the performance of the corresponding contract or agreement; and (ii) provide that such accounts, records, and documents may be submitted to the auditors designated by the Bank for an opinion.

ARTICLE 5.02. Plans and Reports. To enable the Bank to supervise progress in the execution of the Project and the scope of its results, the Beneficiary, directly or through the Executing Agency, as the case may be shall:

- (a) Present to the Bank the information, plans, reports, and other documents in such form and substance as the Bank may reasonably request, based on the progress of the Project and its level of risk;
- (b) Comply with the actions and obligations established in such plans, reports, and other documents agreed upon with the Bank;

- (c) Inform the Bank upon identifying any risks or significant changes that cause or may cause delays or difficulties in Project execution; and
- (d) Inform the Bank within no more than thirty (30) days of the initiation of any proceedings, claim, suit, or legal, arbitral, or administrative action relating to the Project and keep the Bank informed on the status thereof.

ARTICLE 5.03. External Financial Audit Reports and other Financial Reports.

(a) Unless the Special Conditions establish otherwise, the Beneficiary, directly or through the Executing Agency, as the case may be, shall present the Bank with the external financial audit reports and other reports identified in the Special Conditions within one hundred twenty (120) days following the closing of each fiscal year of the Project and within the Original Disbursement Period or any extension thereof, and within one hundred twenty (120) days following the date of the last disbursement.

(b) In addition, the Beneficiary, directly or through the Executing Agency, as the case may be, shall present to the Bank other financial reports in such form and with such content and frequency as the Bank may reasonably request during the Project's execution when, in the opinion of the Bank, the analysis of the level of the Project's fiduciary risk, complexity, or nature so warrant.

(c) Any external audit that may be required under the provisions of this Article and the corresponding provisions of the Special Conditions shall be performed by independent auditors who have been previously accepted by the Bank or by a supreme audit institution previously accepted by the Bank, in accordance with auditing principles and standards acceptable to the Bank. The Beneficiary, directly or through the Executing Agency, as the case may be, shall authorize the supreme audit institution or the independent auditors to provide the Bank with such additional information it may reasonably request with respect to the external financial audit reports.

(d) The Beneficiary, directly or through the Executing Agency, as the case may be, shall select and contract the independent auditors indicated in paragraph (c) above, in accordance with the procedures and terms of reference agreed upon with the Bank. In addition, the Beneficiary or the Executing Agency, as the case may be, shall provide to the Bank any information it requests relating to the independent auditors under contract.

(e) In the event an external audit required under the provisions of this Article and the corresponding provisions of the Special Conditions is to be performed by a supreme audit institution and such agency is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the deadlines, for the period, or with the frequency stipulated 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 paragraphs (c) and (d) of this Article.

(f) Notwithstanding the provisions above, the Bank may, on an exceptional basis, select and contract the services of independent auditors to audit the financial audit reports provided for in this Contract when: (i) pursuant to the findings of a Bank-conducted cost-benefit analysis, it

is determined that the benefits associated with the hiring of such services by the Bank outweigh the costs; (ii) there is limited access to auditing services in the country; or (iii) special circumstances warrant the selecting and hiring of such services by the Bank.

(g) The Bank reserves the right to request the Beneficiary or the Executing Agency, as the case may be, to have external audits other than financial audits or to have 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, auditor selection procedures, and terms of reference for the audits shall be agreed upon between the Parties.

CHAPTER VI

Suspension of Disbursements and Cancellations

ARTICLE 6.01. **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) Delay in the payment of any sums owed by the Beneficiary to the Bank as reimbursement of resources of the Contribution used for ineligible expenses, or otherwise, under the terms of this Contract or any other Contract between the Bank and the Beneficiary, including any other non-reimbursable financing Contracts.
- (b) Noncompliance by the Beneficiary, or the Executing Agency, as the case may be, of any other obligation set forth in any contract entered into with the Bank for the financing of the Project, including this Contract, as well as noncompliance by the Beneficiary or the Executing Agency, as the case may be, with any contract they enter into for the execution of the Project.
- (c) Withdrawal or suspension from membership in the Bank of the country in which the Project is to be executed.
- (d) When, in the opinion of the Bank, the objective of the Project or the Contribution may be adversely affected or the execution of the Project may be improbable owing to: (i) any restriction, modification, or alteration of the legal capacity, functions, or assets of the Beneficiary or the Executing Agency, as the case may be; or (ii) any modification or change made without the written concurrence of the Bank of any condition fulfilled before the approval of the Contribution by the Bank.
- (e) Any extraordinary circumstance which, in the opinion of the Bank: (i) makes it unlikely that the Beneficiary, the Executing Agency, as the case may be, will be able to fulfill the obligations established in this Contract or (ii) prevents the fulfillment of the Project's development objectives.

- (f) Whenever the Bank determines that an employee, agent, or representative of the Beneficiary, the Executing Agency, or the Contracting Agency, as the case may be, has engaged in a Prohibited Practice in connection with the Project.

ARTICLE 6.02. Early Termination and Cancellation of Undisbursed Balances. The Bank, by means of a written notification, may totally or partially cancel the undisbursed portion of the Contribution, if:

- (a) any of the circumstances set forth in paragraphs (a), (b), (c), and (d) of the preceding Article continues for more than sixty (60) days;
- (b) any of the circumstances set forth in paragraphs (e) and (f) of the previous article occurs and so long as it continues, and the Beneficiary or the Executing Agency, as the case may be, fails to provide to the Bank the clarifications or additional information that the Bank considers necessary;
- (c) the Bank, in accordance with its sanctions procedures, determines that any firm, entity, or individual bidding for or participating in a Bank-financed activity, including applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, subconsultants, providers of goods or services, concessionaires, financial intermediaries, or a Contracting Entity (including their respective officers, employees, and agents, irrespective of whether their authority has been expressly or implicitly granted), has engaged in a Prohibited Practice in connection with the Project; and that the Beneficiary, the Executing Agency, or the Contracting Agency, as the case may be, has not taken adequate remedial measures (including providing adequate notice to the Bank upon learning of the Prohibited Practice) within a period of time the Bank considers reasonable; and
- (d) the Bank determines at any time that a procurement of goods or the contracting of works or non-consulting services was carried out without following the procedures set forth in this Contract. In this case, the cancellation or early termination will apply to the portion of the Contribution used for such procurement or contracting and any amounts already used will be reimbursed to the Bank.

ARTICLE 6.03. Provisions Not Affected. The application of the measures provided in this Chapter shall not affect the obligations of the Beneficiary established in this Contract, which shall remain in full force and effect.

ARTICLE 6.04. Disbursements Not Affected. Notwithstanding the provisions of Articles 6.01 and 6.02 above, none of the measures set forth in this Chapter shall affect the disbursement by the Bank of any amounts of the resources of the Contribution: (a) subject to the guarantee of an irrevocable letter of credit; (b) which, by specific written agreement with the Beneficiary, the Executing Agency, or the Contracting Agency, as the case may be, the Bank has agreed to provide to pay Eligible Expenditures directly to the respective supplier; and (c) payable to Bank, pursuant to the Beneficiary's instructions.

CHAPTER VII

Prohibited Practices

ARTICLE 7.01. Prohibited Practices. (a) In addition to the provisions established in Articles 6.01(f) and 6.02(c) of these General Conditions, if the Bank determines, in accordance with its sanctions procedures, that a firm, entity, or individual bidding for or participating in a Bank-financed activity, including, among others, applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, subconsultants, providers of goods or services, concessionaires, financial intermediaries, or a Contracting Entity (including their respective officers, employees, and agents, irrespective of whether their authority has been expressly or implicitly granted) has engaged in a Prohibited Practice in connection with the execution of the Project, the Bank may take the actions provided for in its sanctions procedures in effect as of the date of this Contract or the amendments thereto that the Bank approves from time to time and makes known to the Beneficiary, including:

- (i) Denying financing of contracts for the procurement of goods or the contracting of works or consulting or non-consulting services;
- (ii) Declaring a contract ineligible for Bank financing whenever there is evidence that the agent of the Beneficiary, the Executing Agency, or the Contracting Entity, as the case may be, has not taken adequate remedial measures (including 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) Issuing the firm, entity, or individual determined to be responsible a reprimand in the form of a formal letter of censure for its behavior;
- (iii) Declaring a firm, entity, or individual determined to be responsible for engaging in the Prohibited Practice ineligible, either permanently or temporarily, to participate in Bank-financed activities, whether directly as a contractor or supplier, or indirectly as a subconsultant, subcontractor, or a supplier of goods, consulting services, or non-consulting services; and
- (v) Imposing fines representing reimbursement to the Bank of costs associated with investigations and proceedings in connection with the commission of the Prohibited Practice.

(b) The provisions of Article 6.01(g) and Article 7.01(a)(i) shall also apply in cases in which the Contracting Agency or any firm, entity, or individual bidding for or participating in a Bank-financed activity, including applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, subconsultants, providers of goods or services, concessionaires (including their respective officers, employees, and agents, irrespective of whether their authority has been expressly or implicitly granted) has been temporarily suspended from eligibility to take part in a bidding or other selection process for the awarding of new contracts pending the final outcome of an investigation into a Prohibited Practice.

(c) The imposition of any action to be taken by the Bank pursuant to the provisions referred to above will be made public, except in cases of private reprimand.

(d) Any firm, entity, or individual bidding for or participating in a Bank-financed activity, including applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, subconsultants, providers of goods or services, concessionaires, or a Contracting Entity (including their respective officers, employees, and agents, irrespective of whether their authority has been expressly or implicitly granted) may be sanctioned by the Bank pursuant to agreements the Bank may have with other international financial institutions regarding the mutual enforcement of debarment decisions. For purposes of this paragraph (d), the term “sanction” shall mean any permanent or temporary 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.

(e) When the Beneficiary procures goods or contracts works or non-consulting services directly from a specialized agency under an agreement between the Beneficiary and such specialized agency, all provisions under this Contract regarding sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, providers of goods and their agents, contractors, consultants, personnel, subcontractors, subconsultants, service providers, concessionaires (including their respective officers, employees, and agents, irrespective of whether their authority has been expressly or implicitly granted), or to any other entities that have signed contracts with such specialized agency, to supply goods, works, or non-consulting services in connection with Bank-financed activities. The Beneficiary or the Executing Agency, as the case may be, agrees to adopt, as may be required by the Bank, remedies such as suspension or termination of the corresponding contract. The Beneficiary agrees that the contracts it enters into 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 from participating in a procurement or contracting operation financed wholly or partially with resources of the Contribution. 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 as indicated in this article, the Bank will not finance such contracts or expenditures and will apply such other remedies as it deems appropriate.

CHAPTER VIII

Provision on Exemptions

ARTICLE 8.01. Tax exemption. The Beneficiary undertakes to ensure that any reimbursement of resources of the Contribution in light of particular circumstances established in this Contract shall be paid without any deduction or restriction, exempt from any tax, fee, duty, or charge established or that may be established by the laws of its country, and from any tax, fee, or duty applicable to the signing, recording, and execution of this Contract.

CHAPTER IX

Miscellaneous Provisions

ARTICLE 9.01. Modifications and Contractual Waivers. Any modification or waiver of the provisions of this Contract shall be agreed upon in writing by the Parties.

ARTICLE 9.02. Non-waiver of Rights. Any delay or failure by the Bank to exercise its rights pursuant to this Contract may not be construed as a waiver of such rights or as implied acceptance of events, actions, or circumstances that would have empowered it to exercise them.

ARTICLE 9.03. Validity. The rights and obligations established in this Contract are valid and enforceable in accordance with the terms agreed upon herein, regardless of the laws of any given country.

ARTICLE 9.04. Disclosure of Information. The Bank may disclose this Contract and any information related thereto, in accordance with its access to information policy in effect at the time of such disclosure.

CHAPTER X

Arbitration Procedure

ARTICLE 10.01. 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 the “President,” by direct agreement between the Parties or through their respective arbitrators. In all decisions, the President of the tribunal shall have the right to cast a double vote in the case of deadlock. If the Parties or the arbitrators fail to agree on who the President shall be, or if one of the Parties is unable to designate an arbitrator, the President 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 President. If either of the appointed arbitrators or the President is unwilling or unable to act or to continue to act, his or her successor shall be appointed in the same manner as for the original appointment. The successor shall have the same functions as his or her predecessor.

ARTICLE 10.02. Initiation of the Procedure. In order to submit the conflict to arbitration, the claimant shall address to the other party a written notification setting forth the nature of the claim, the satisfaction or compensation it seeks, and the name of the arbitrator it appoints. The party receiving such notification shall, within forty-five (45) days, notify the adverse party of the name of the person it appoints as arbitrator. If, within seventy-five (75) days as of the notification of the initiation of the arbitral proceeding, the Parties have not agreed upon the person who is to act as President, either party may request the Secretary General of the Organization of American States to make the appointment.

ARTICLE 10.03. 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 President, and, once convened, shall meet on the dates which the tribunal itself shall establish.

ARTICLE 10.04. Procedure. (a) The tribunal is specifically empowered to decide any matter under its jurisdiction and shall adopt its own procedures. In any case, it shall give the Parties the opportunity to make oral presentations. All decisions of the tribunal shall be made by majority vote.

(b) The Tribunal shall base its rulings on the terms of the Contract, and shall render its award even if one of the Parties fails to appear.

(c) The award shall be in writing and shall be adopted with the concurrent vote of at least two (2) members of the tribunal. It shall be handed down within approximately sixty (60) days from the date on which the President 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 notification signed by at least two (2) 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 10.05. Costs. The fees of each arbitrator and the costs of arbitration (with the exception of attorneys' fees and the fees of other experts, which shall be covered by the Parties that appointed them) shall be covered by both Parties in equal proportion. 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 10.06. Notification. All notifications relative to the arbitration or to the award shall be made in the manner provided in this Contract. The parties waive any other form of notification.

PART THREE. ANNEX A: DESCRIPTION OF THE PROJECT

EU-CIF Energy Management and Efficiency Non-Reimbursable Financing Operation

I. Objective

- 1.01** This EU-CIF Energy Management and Efficiency Non-Reimbursable Financing Operation (the “Project”) complements the EMEP Loan (together with the Project, the “Programme”) with the general objective of promoting a more efficient use of energy resources that would free up public funds through the reduction of oil imports. The specific objectives and expected results of the Project are: (i) reduced electricity consumption in public buildings resulting in avoided Green House Gas emissions; and (ii) support to capacity building for energy planning.

II. Description

- 2.01** To achieve the above-mentioned objectives, the Project will include the following components:

Component 1. Retrofitting of public buildings

- 2.02** This Component will finance: (i) the purchase and installation of Energy Efficiency and Conservation (EEC) technologies (such as more efficient air-conditioning units, lights, solar PV, upgrades to chiller fans and pumps and building envelope measures) in seven public hospitals covering the eastern through to central parishes in Jamaica. It will also provide funds for associated activities such as grid connection fees, equipment, clearance changes and advertising costs. The Component will also finance the implementation of the Communications and Visibility Plan for the EMEP Programme described in Article 8 of Annex B.

Component 2. Support to Capacity Building for Energy Planning

- 2.03** This Component will finance up to two technical studies that support strategic planning within the Ministry of Science, Energy and Technology (MSET), utilizing the Integrated Resource Plan (IRP) to affect sustainability of the electricity sector. The technical studies to be financed will be complementary to those that will be financed under the EMEP Loan to update MSET’s Integrated Resource Plan. The studies are intended to provide MSET with the evidence base for considering Liquefied Natural Gas (LNG) proposals or additional Energy Efficiency (EE), Renewable Energy (RE) initiative in sectors other than Health, Education and Public Agencies (HEPA) (such as industry, mining and transport) at the time of updating its IRP. These technical studies could focus on fuel switching options, RE/EE investment options, infrastructure, policy and regulation and

will complement the support provided under the loan, therefore, enhancing MSET's strategic planning capacity.

III. Cost of the Project

3.01 The Contribution is €9,170,000 (including fees), equivalent to approximately US\$10,000,000, in accordance with the following budget, and chargeable to the Contribution to be provided by the EU-CIF:

# Comp.	Output	Product/ Deliverable	Milestone Activity	JA-G1003	
				Eur €	US\$ Equivalent ¹
Component 1: Retrofitting of Public Buildings				€8,740,750.00	\$9,531,897.49
Output 1.1 Identified public sector facilities to be retrofitted with appropriate EE/RE technologies				€8,740,750.00	\$9,531,897.49
1.1	7 hospitals retrofitted with EE/RE	EE/RE building envelope equipment replaced and installed	Works completed in 7 hospitals	€8,557,350.00	\$9,331,897.49
			Communications and visibility Plan developed for raising awareness of EE/RE measures in targeted buildings (workshops and multimedia campaigns)	€183,400.00	\$200,000.00
Component 2: Support to Capacity Building for Energy Planning				€229,250.00	\$250,000.00
Output 2.1 Complementary technical studies				€229,250.00	\$250,000.00
2.1	MSET Capacity for planning and policy Management completed	Electricity and Energy Planning in MSET/Complementary Technical Studies	Complementary Technical Studies to support electricity and energy planning	€229,250.00	\$250,000.00
TOTAL				€8,970,000.00	\$9,781,897.49
EU-CIF FEES				€200,000.00	\$218,102.51
TOTAL+FEES				€9,170,000.00	\$10,000,000.00

¹ The estimated Dollar amount is based on the exchange rate as of May 1, 2017 (€0.917 to one Dollar). The amount of Dollars to be disbursed from the Contribution can be greater or smaller than the estimated amount depending on the exchange rate to be used when making the conversion. In no event will the Bank undertake any exchange rate risk related to the conversions made under this Non-Reimbursable Financing Agreement.

IV. Execution

- 4.01** The Executing Agency of the Project (and of the overall Programme) will be Petroleum Corporation of Jamaica (PCJ).

V. Environmental and Social Obligations

- 5.01** Regarding Article 4.06 of the General Conditions, the following obligations have been identified as necessary in order to meet the requirements of the Bank's Environmental and Social Safeguard Policies:
- 5.02** Prior to First Disbursement: (a) the project specific Environmental and Social Management Plan (ESMP) to assess and mitigate the negative impacts associated with the Project shall have been implemented, and all project contractors will be required to comply with the actions described in the ESMP, as applicable; (b) an Environmental and Social Specialist for the duration of the construction period to prevent and manage potential impacts and supervise and monitor mitigation measures of the Programme will be appointed; and (c) copies of relevant permits, contracts, and agreements will be submitted to the Bank, as applicable.
- 5.03** During the Life of the Project: All Project parties, including construction companies and operators, and any contractors and sub-contractors will, at all times, comply with the following requirements: (a) all applicable Environmental, Social, Health and Safety (ESHS) and labor regulatory requirements of Jamaica; (b) all requirements associated with any ESHS and labor related permits, authorizations, or licenses that apply to the Project, the Borrower or any party responsible for executing the Project or its mitigation measures; (c) all ESHS and labor requirements of the Project contracts and subsequent modifications; (d) all relevant Bank policies and their respective guidelines; (e) all the requirements indicated in the Environmental and Social Action Plan (ESAP), in the event an ESAP is required.
- 5.04** Prior to Each Disbursement: The Beneficiary through the Executing Agency, shall certify compliance with all ESHS and labor requirements, including any Corrective Action Plans if applicable.
- 5.05** Prior to Execution: The Bank or an Environmental and Social consultant appointed by the Bank shall certify compliance with all ESHS requirements, including any Corrective Action Plans if applicable.

PART FOUR: ANNEX B. SUPPLEMENTARY AGREEMENT

ADDITIONAL OBLIGATIONS RESULTING FROM THE FRAMEWORK AGREEMENT BETWEEN THE EUROPEAN UNION AND THE INTER-AMERICAN

CHAPTER I

Background, Purpose, Interpretation and Specific Definitions

ARTICLE 1.01. Background. (a) On June 10, 2015, the European Union (hereafter, the “EU”), represented by the European Commission and the Inter-American Development Bank (hereafter, the “Bank”) executed the *Framework Administrative Agreement between the European Union and the Inter-American Development Bank* (hereafter, the “Framework Agreement”) to amend and reformulate the existing framework agreement between both institutions dated July 19, 2011.

(b) The purpose of the Framework Agreement is to take into account the specificities of the Bank in the implementation of the EU standard contractual arrangements for managing EU funds (hereafter, the “EU General Conditions” or “PAGODA”) to simplify contractual negotiations of future contributions of the EU for the financing or co-financing of projects administered by the Bank.

(c) On December 20, 2017, the EU-CIF the Bank, executed a Specific Contribution Agreement (hereafter, the “Contribution Agreement”), whereby the EU agreed to contribute an amount of up to €9,170,000 (the “Contribution”) for the non-reimbursable financing of EU-CIF Energy Management and Efficiency Non-Reimbursable Financing Operation (hereafter, the “Project”), subject to the terms of such Contribution Agreement and to the Framework Agreement.

(d) On _____, 2018 the Bank and Beneficiary, executed a non-reimbursable investment financing agreement (hereafter the (“Non-Reimbursable Financing Agreement”) establishing the terms and conditions of the Contribution to be granted by the Bank with resources to be received from the EU under the Contribution Agreement.

ARTICLE 1.02. Purpose. Whereas: (i) the Bank has agreed under the Framework Agreement with the EU to comply with and enforce certain obligations, some of which are specific to its role of administrator of the EU funds while others are specific to the implementation of the Project (hereinafter, collectively, the “Obligations of the Bank to the EU”); and (ii) the Beneficiary, through the Executing Agency, will be in charge of the execution of the Project; therefore, the purpose of this Supplementary Agreement (hereinafter, the “Supplementary Agreement”) is to transfer to the Beneficiary the Obligations of the Bank to the EU that are related to Project execution.

ARTICLE 1.03. Interpretation. (a) This Non-Reimbursable Financing Agreement between the Bank and the Beneficiary includes the following parts: (i) the Special Conditions; (ii) the General Conditions; (iii) Annex A; and (iv) this Annex B, consisting of the Supplementary Agreement. Notwithstanding the provision included under Article 1 (b) of the General Conditions, in the event of contradiction or inconsistency between the provisions of the Special Conditions, the General Conditions and/or Annex A and the provisions of this Supplementary Agreement, the provisions of this Supplementary Agreement shall prevail. If the contradiction or inconsistency is between provisions in the same part of the Non-Reimbursable Financing Agreement, the specific provision shall prevail over the general provision.

(b) All the project execution obligations of the Beneficiary under this Supplementary Agreement will be transferred to the Executing Agency by means of the agreement referred to in Section 4.01(b) of the Special Conditions.

ARTICLE 1.04. Particular Definitions. (a) Any term capitalized in this Supplementary Agreement that is not specifically defined, shall have the meaning assigned to it in the other parts of the Non-Reimbursable Financing Agreement. Additionally, when the following terms are capitalized in this Supplementary Agreement, they shall have the meaning set forth hereafter. Any reference to the singular includes the plural and vice versa.

1. “Annexes of the Contribution Agreement” shall mean the Annexes of the Contribution Agreement, a list of which is set forth hereafter:
 - 1.1. Annex I: Description of the Project
 - 1.2. Annex II: EU General Conditions
 - 1.3. Annex III: Budget for the Action
 - 1.4. Annex IV: Financial Identification Form
 - 1.5. Annex V: Standard Request for Payment
 - 1.6. Annex VI: Communication and Visibility Plan
 - 1.7. Annex VII: Management Declaration template
2. “Budget for the Action” shall mean the budget included in Annex III of the Contribution Agreement, which shall consist of a budget itemized by component, by activity and by year of execution.
3. “Completion Date” shall have the meaning assigned to it under Article 13.02. hereof.
4. “Contracting Deadline” means the period to enter into implementing contracts referred to in Article 22.01 of this Annex and defined in Article 2.5 of the Contribution Agreement.
5. “Contribution” shall mean the total amount of EU resources committed under the Contribution Agreement, which can be adjusted pursuant to the provisions of Articles 20.01 and 20.02 hereof.
6. “Contribution Agreement” shall have the meaning assigned to it under Article 1.01(d) hereof.

7. “Description of the Action” shall mean the description of the Project included in Annex I of the Contribution Agreement.
8. “EU” means the European Union or, for purposes of this Non-Reimbursable Financing Agreement, the entity representing it in the Contribution Agreement.
9. “General Conditions” shall mean the standard contractual conditions of the EU known as “General Conditions for PA Grant or Delegation Agreements” or “PAGODA”, which are attached as Annex II to the Contribution Agreement.
10. “Executing Agency” shall mean Petroleum Corporation of Jamaica.
11. “Execution Period” shall mean the period of enforceability of the Contribution Agreement, which shall begin on the date provided in Article 2.1 of the same and shall expire on the Completion Date, as provided for in Article 13.02 hereof.
12. “Implementation Period” shall mean the period provided for the execution as defined in Article 2.3 of the Contribution Agreement. Upon adequate justification the Beneficiary may request the extension of the Implementation Period in accordance with Article 11 of this Non-Reimbursable Financing Agreement.
13. “Management Declaration” shall mean the declarations to be made annually by the Bank to the EU pursuant to the Contribution Agreement.
14. “Other Eligible Countries” shall have the meaning assigned to it under Article 22.01(c) hereof.
15. “Pillars Assessment” shall mean an institutional evaluation by pillars conducted by the EU to the Bank pursuant to terms of reference based on Article 60.2 of the EU Financial Regulations.
16. “PRAG” shall have the meaning assigned to it under Article 22.01(c) hereof.
17. “Reference Period” shall mean a twelve (12) month period to be covered in the progress reports to be prepared by the Executing Agency which, pursuant to the Contribution Agreement.
18. “Regulations and Rules” shall mean the regulations, rules, organizational directives, instructions and other parts of the regulatory framework of the Bank.

CHAPTER II

General Obligations

ARTICLE 2.01. **Execution.** The Beneficiary, acting through the Executing Agency, agrees to collaborate with the Bank in whatever may be reasonably necessary and/or advisable for the due compliance of the Obligations of the Bank to the EU. The Beneficiary, acting through the Executing Agency, agrees to comply, and to ensure that its contractors comply, with this Non-Reimbursable Financing Agreement.

ARTICLE 2.02. **Responsibility.** (a) The Bank shall have full financial responsibility to the European Commission for the use of the Contribution. If the resources of the Contribution have been unduly paid or incorrectly used by the Beneficiary, Executing Agency or their contractors, the Bank will take all the applicable measures pursuant to this Non-Reimbursable Financing Agreement and its Regulations and Rules to recover such funds, after prior non-binding consultation with the Beneficiary, in case such measures are taken with respect to the Beneficiary. The Beneficiary acknowledges and accepts the above and, as provided in greater detail in Articles 15.01 and 15.02 hereof, agrees to reimburse the Bank any amounts that the Bank is required to reimburse to the European Commission, except for the cases in which the reimbursement claimed by the EU is directly attributable to the Bank.

(b) The Beneficiary grants its full consent to the assignment by the Bank of any credit or any other rights the Bank may have against the Beneficiary in favor of the European Commission, so that the European Commission can exercise such rights to its discretion.

CHAPTER III

Obligations regarding Information and Reporting

ARTICLE 3.01. **General Matters.** (a) The Beneficiary, acting through the Executing Agency, will submit to the Bank the progress reports and final reports described below so that the Bank can send them to the European Commission. These reports will comprise a narrative part and a financial part.

(b) Each progress or final report must provide a complete account of all relevant aspects of the implementation of the Project during the period covered. The report shall describe the implementation of the Project according to the activities envisaged in Annex I of the Contribution Agreement, difficulties encountered and measures taken to overcome problems, eventual changes introduced and the degree of achievement of its results (impact, outcomes or outputs) as measured by the corresponding indicators. The report shall be laid out in such a way to allow monitoring of objectives, the means envisaged and employed. The final report, narrative and financial, shall cover the entire Implementation Period of the Project.

(c) In case of Multi-Donor Actions, and where the Bank Project lasts longer than the Implementation Period of the Contribution Agreement, the European Commission may require, in addition to the final reports submitted pursuant to Article 3.02(c), the final reports of the Project, once they become available, thus, the Beneficiary agrees to cooperate in all matters that

may be necessary and/or advisable in order for the Bank to meet this obligation. This is understood without prejudice of the completion of the Execution Period pursuant to Article 13.02 hereof.

(d) Any alternative or additional reporting requirement as set forth in the Contribution Agreement.

(e) Finally, the Beneficiary acknowledges and accepts that the European Commission reserves the right to request, at any time, additional information in relation to the execution of the Project, upon justification of its request. In that case, the information in question shall be provided to the Bank as soon as possible, so that the latter can, in turn, submit it to the European Commission within thirty (30) days from receipt of such request. The Bank, upon request of the Executing Agency, may submit to the European Commission a justifiable request to extend the thirty (30) days deadline.

ARTICLE 3.02. **Content of the Reports.** (a) The progress report(s) shall include, at least, the following:

- (i) A summary and context of the Project;
- (ii) Actual results: an updated table based on the Results Matrix of the Project, which includes reporting on results achieved by the Project (impact, outcomes or outputs) as measured by their corresponding indicators; agreed baselines and targets; and relevant data sources;
- (iii) The Project activities carried out during the period covered by the report (i.e. directly related to the Project and described in this Non-Reimbursable Financing Agreement);
- (iv) Information on the implementation of the Visibility and Communication Plan (Annex IV of the Contribution Agreement) and any additional measures taken to identify the EU as a source of financing;
- (v) Information on the implementation costs incurred, as well as the legal commitments entered into by the Executing Agency during the reporting period;
- (vi) The control and/or supervision measures that have been applied to its contractors, if applicable. In case weaknesses are detected, information about their nature and extent, as well as corrective measures planned or adopted;
- (vii) If applicable, a payment request; and
- (viii) The work plan for the following period.

- (b) The final report shall include, for the entire Implementation Period, the following:
- (i) All information requested in the preceding Article, from paragraph (i) to (viii);
 - (ii) A summary of the receipts, payments received and eligible costs incurred or acceptable expenditures of the Project;
 - (iii) Where applicable, an overview of any funds unduly paid or incorrectly used, that the Executing Agency could have or could have not recovered by itself;
 - (iv) The exact link to the web page where information about the beneficiaries and the contractors is available;
 - (v) Details of transfers of equipment, vehicles and remaining major supplies as provided under Article 9.03 hereof; and
 - (vi) A mention, if applicable, that costs that are not eligible for the European Commission are covered by the contributions of other donors that consider them eligible.

(c) **Term for Submitting the Reports.** The Beneficiary, acting through the Executing Agency, shall submit a report for each Reference Period. The information, both narrative and financial, shall cover the totality of the Programme, regardless of whether it is totally or partially financed with EU funds. The progress reports shall be submitted to the Bank within thirty (30) days from the close of the Reference Period, so that the Bank can forward it to the European Commission within sixty (60) calendar days therefrom. The final report shall be submitted to the Bank, at the latest, ninety (90) days following the close of the Implementation Period of the Project, so the latter can forward it to the European Commission within the agreed term.

ARTICLE 3.03. Audit Opinions. (a) The Beneficiary, acting through the Executing Agency, shall submit to the Bank the Audited Financial Statements (AFS) of the Project audited by an independent auditor acceptable to the Bank and hired in accordance with the Bank Regulations and Rules.

(b) The AFSs shall cover the resources of the Contribution as well as any other sources being used to finance the Programme.

(c) The AFSs shall be submitted within ninety (90) days from the closing date of the fiscal year of the Executing Agency, or from the date of the last disbursement, as may be applicable.

(d) The Beneficiary agrees to cooperate with the Bank as may be necessary so that the latter sends its own Management Declaration to the European Commission on a timely basis ,

providing factual, accurate and complete information which shall serve as the basis for the Management Declaration to be sent by the Bank.

ARTICLE 3.04. Currency used in the Preparation of the Reports and Breach of the Notice Obligations. (a) The currency used in the reports mentioned in Chapter III hereof shall be Dollars.

(b) To this effect, the Executing Agency shall convert the legal commitments, the receipts and costs incurred in currencies other than the accounting currency of the Project pursuant to Section 3.10(b)(iii) of the General Conditions.

(c) If the Beneficiary is unable to submit the progress or final reports and/or the opinions of independent auditors within the terms provided under Articles 3.02(c) and 3.03(c) above, the Beneficiary shall inform the Bank in writing of the reasons and shall provide a summary of the progress of the Programme and, if applicable, a provisional work plan for the next period. The Beneficiary shall comply with this obligation within thirty (30) days from the closing date set forth in Article 3.03(c), so that the Bank can send this information within a two (2) month period. Otherwise, the Beneficiary acknowledges and accepts that the European Commission may terminate the Contribution Agreement, refusing to pay any outstanding amounts and recovering any unduly paid amounts, without any liability for the Bank.

CHAPTER IV **Liability Against Third Parties**

ARTICLE 4.01. Liability Against Third Parties. (a) The Beneficiary acknowledges and accepts that the European Commission shall not be held liable for any damages or injuries sustained by the staff or property of the Beneficiary during the execution of the Project or as a result of the same.

(b) Further, the European Commission shall not be held liable with respect to any third parties including liability for any damages of any kind sustained by them in respect of or arising out of the implementation of the Project.

(c) The Beneficiary shall discharge the European Commission from any liability related to any claim or judicial action brought as a result of an infringement of any rule or as a result of a violation of the rights of any third parties in the context of the implementation of the Project.

CHAPTER V **Conflict of Interests**

ARTICLE 5.01. Conflict of Interests. (a) The Beneficiary and the Bank shall refrain from any action that could give rise to a conflict of interest, pursuant to the Bank Regulations and Rules.

CHAPTER VI

Confidentiality

ARTICLE 6.01. Confidentiality Agreement. The Beneficiary agrees to preserve the confidentiality of any document, information or other material designated as confidential in nature directly related to the implementation of the Project. The confidential nature of a document shall not prevent its communication to third parties on a confidential basis, whenever the rules binding upon the parties so require. Such disclosure shall not, under any circumstance, jeopardize the privileges and immunities of the Bank or the EU, or the safety and security of the Bank's staff, the EU, or the final beneficiaries of the Project.

ARTICLE 6.02. Requirement of Written Consent and Term. (a) The Beneficiary shall obtain the previous written consent of the Bank prior to disclosing such confidential information, unless:

- (i) the Bank, in consultation with the European Commission, agrees to release the Beneficiary from the above-mentioned confidentiality obligations;
- (ii) the confidential information has been made public by other means, and not due to the disclosure of confidential information by the Beneficiary in breach of its obligations; and
- (iii) the disclosure of the confidential information is required by law or by the regulations and rules governing the Beneficiary.

(b) The Beneficiary will remain bound by the confidentiality rules for the five (5) years following the termination date of the Contribution Agreement or longer, as specified by the party identifying the information as confidential.

(c) The Bank will also be bound by a confidentiality obligation whenever the Beneficiary identifies certain of its information as confidential, in accordance with and subject to the terms of its Access to Information Policy, as this may be amended or replaced from time to time.

CHAPTER VII

Data Protection

ARTICLE 7.01. Personal Data Protection. The Beneficiary agrees to comply with the requirements for the adequate protection of personal data provided under the Regulations and Rules of the Bank that may be relevant and under its own rules, if applicable.

CHAPTER VIII

Communication and Visibility

ARTICLE 8.01. Execution of the Communication and Visibility Plan. (a) The Beneficiary, acting through the Executing Agency, shall execute the Communication and Visibility Plan provided in Annex VI of the Contribution Agreement, prepared on the basis of the visibility guidelines to be provided by the Bank to the Executing Agency. The visibility obligations contained therein and below are without prejudice of the publicizing of other sources of funding for the Programme.

(b) Unless the European Commission requests or agrees otherwise, the Beneficiary, acting through the Executing Agency, shall take all the measures necessary to give publicity to the fact that the Programme has received funding from the EU. The information provided to the press and to the final beneficiaries, as well as all the publicity materials, official notices, reports and publications shall acknowledge that the Project has been carried out “with funding of the European Union” and shall display the EU logo (twelve yellow stars on a blue background) in an appropriate way. Publications of the Beneficiary and/or the Executing Agency pertaining to the Project, in any form and by any means, including the internet, shall include the following disclaimer: *“This document was produced with the financial assistance of the European Union. The views expressed herein shall in no way be taken to reflect the official opinion of the European Union”*.

(c) If during the execution of the Project, equipment, vehicles or major supplies are acquired using the Contribution, the Beneficiary and/ or the Executing Agency shall display appropriate recognition on such vehicles, equipment or major supplies, including the display of the EU logo (twelve yellow stars on a blue background). Where such display could jeopardize the privileges and immunities that the Beneficiary and/or the Executing Agency may have, or the safety of their personnel or of the final beneficiaries, the Beneficiary and/or the Executing Agency shall propose alternative arrangements. Both the acknowledgement and the EU logo shall be of such a size and prominence as to be clearly visible, in a manner that shall not create any confusion that the Project is part of the activities of the Beneficiary and/or the Executing Agency, or that the equipment, vehicles or important supplies are the property of the Beneficiary and/or the Executing Agency.

(d) If upon the application of Article 9.03(c), the equipment, vehicles or other major supplies acquired with EU funds have not been transferred to the local authorities, the local sub-delegatees, the local co-beneficiaries, local grant beneficiaries or final beneficiaries when submitting the final report, the visibility requirements regarding this equipment, vehicles, or major supplies (in particular display of the EU logo) shall continue to apply between submission of the final report and the end of the Project, if the latter is longer. Where the Beneficiary and/or the Executing Agency retains ownership pursuant to Article 9.03(d), the visibility requirements shall continue to apply for as long as the equipment, vehicles and remaining major supplies are used by the Beneficiary and/or the Executing Agency.

(e) Unless the Contribution Agreement provides otherwise or in case the disclosure threatens the Beneficiary and/or the Executing Agency’s safety or harms its interests, the

European Commission will publish, in any form and by any means, including on its internet sites, the name and address of the Beneficiary and/or the Executing Agency, as well as the purpose and the amount of the Contribution.

CHAPTER IX

Ownership, Right to Use Results and Transfer of Equipment

ARTICLE 9.01. Ownership. To the extent legally possible, ownership, title and industrial and intellectual property rights of the results of the Project, including the reports and other documents related to it shall vest in the Bank, or as otherwise agreed. The Bank hereby grants the Beneficiary a non-exclusive, free and perpetual license for the use and dissemination of those results, including reports and other documents of the Project.

ARTICLE 9.02. Right of Use. (a) Notwithstanding the provisions set forth in the preceding Article and without prejudice to Articles 6.01 and 6.02 above, the Bank will grant to the Beneficiary and to the European Commission, the right to use, free of charge, all the results provided under the preceding Article, subject to industrial and intellectual property rights. The Beneficiary, acting through the Executing Agency, shall supervise and make sure that the interested third parties (beneficiaries or contractors) hired by the Executing Agency grant to the Bank the ownership and/or the right to use, free of charge, all the results provided under the preceding Article, subject to industrial and intellectual property rights.

(b) Where the results above include any pre-existing rights and the Beneficiary and/or the Executing Agency cannot warrant to the Bank and/or the European Commission the right to use such results, the Beneficiary shall inform the Bank in writing so that the latter can promptly give written notice to the European Commission.

ARTICLE 9.03. Transfers. (a) The equipment, vehicles and remaining major supplies acquired with the Contribution, within the framework of the Project shall be transferred to the Executing Agency, local authorities, local sub-delegatees, local co-beneficiaries, local grant beneficiaries or to the final beneficiaries, as applicable, at the latest when submitting the final report.

(b) The documentary proof of those transfers shall not be presented with the final report, but shall be kept for its verification for the duration and along with the documents provided under Article 16.02.

(c) By way of derogation from Article 9.03(a) above, the equipment, vehicles and remaining major supplies acquired with the Contribution within the framework of a Project that continues after the end of the Implementation Period may be transferred at the end of the Project. The Executing Agency shall use the equipment, vehicles and remaining major supplies to the benefit of the final beneficiaries. The Executing Agency shall inform the Bank, so that it can promptly report to the European Commission, about the end use of the equipment, vehicles and remaining major supplies in the final report.

(d) In the event there are no local authorities, local sub-delegatees, local co-beneficiaries, local grant beneficiaries or final beneficiaries, to whom the equipment, vehicles and remaining major supplies can be transferred to at the time of submitting the final report, the Executing Agency may transfer them to another EU funded project or, alternately, retain ownership of the equipment, vehicles and remaining major supplies at the end of the Project. In such cases, the Executing Agency shall submit to the Bank a justified written request with an inventory listing the assets concerned, together with a proposal regarding their use in due course and, at the latest, with the submission of the final report. The Bank may conduct any consultations with the European Commission that it may deem necessary before responding in writing to the request of the Executing Agency. In no event may the end use jeopardize the sustainability of the Project.

CHAPTER X

Evaluation and monitoring

ARTICLE 10.01. Evaluation and Monitoring Missions. (a) the Bank, in consultation with the Beneficiary, shall invite representatives of the European Commission to participate, at their own costs, in the main monitoring and evaluation missions related to the performance of the Project. The Bank in consultation with the Beneficiary shall report the results of these missions to the European Commission.

(b) The preceding Article shall be understood without prejudice to the evaluation and monitoring missions that the European Commission, as donor, at its own cost, may wish to perform. The evaluation and monitoring missions by representatives of the European Commission shall be planned ahead and completed in a collaborative manner with the staff of the Bank, Beneficiary, the Executing Agency and representatives of the European Commission. The European Commission and the Bank shall agree on procedural matters in advance. The European Commission shall make available to the Bank the draft of the report of the evaluation or monitoring mission for comments prior to final issuance. The Bank shall share this document with the Executing Agency as early as possible, so that the Executing Agency may collaborate with any eventual observations. Upon completion, the European Commission shall send the final report to the Bank, who shall send it to the Executing Agency.

CHAPTER XI

Amendment to the Contribution Agreement

ARTICLE 11.01. Amendment Procedure. (a) The Beneficiary acknowledges and agrees that any amendments to the Contribution Agreement, including its annexes, shall be set out in writing. It can only be amended during the Execution Period, as provided in Article 2 of the Contribution Agreement and pursuant to the procedure provided in Articles 11.2 and 11.3 of the EU General Conditions.

(b) Notwithstanding the above, where an amendment to Annex I and/or Annex III of the Contribution Agreement does not affect the basic purpose of the Project and the financial impact is limited to a transfer within a single budget heading, including cancellation or

introduction of an item, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 25% or less of the amount originally entered (or as amended by a written amendment) with respect to each heading, the Bank and the Beneficiary and/or the Executing Agency may agree to unilaterally modify such Annexes, and the Bank shall inform this to the European Commission accordingly in writing, at the latest, in the next report. The indicators described in Annex I of the Contribution Agreement may be changed by decision of the Bank and the Beneficiary with the consent of the European Commission, without need for a formal amendment to the Contribution Agreement, provided the change does not affect the basic purpose of the Project. It shall be understood that the European Commission has agreed to such changes if the respective progress and final reports mentioning these changes have been approved by the European Commission.

CHAPTER XII

Suspension

ARTICLE 12.01. Suspension of the Time Limit for Payment. (a) the Beneficiary acknowledges and accepts that the European Commission may suspend the time limit for payment following a single payment request submitted by the Bank through notice that:

- (i) the amount is not due; or
- (ii) the appropriate supporting documents have not been provided and, therefore, the European Commission needs to request clarifications, modifications or additional information to the narrative or financial reports. Such clarifications or additional information may be requested by the EU if it has doubt about compliance by the Bank, the Beneficiary and/or the Executing Agency of their obligations with respect to the execution of the Project; or
- (iii) if credible information has come to the attention of the EU that create doubt about the eligibility of the reported costs or the acceptability of the reported expenditures; or
- (iv) if credible information has come to the attention of the EU about the existence of significant deficiencies in the functioning of the internal control system of the Bank, the Beneficiary or the Executing Agency, or in the sense that the expenditure reported are related to serious irregularities that have not been corrected. In this case, the EU may suspend the payment deadline, if necessary, to prevent significant damage to the EU's financial interests. If the Bank, in the observations provided under Article 12.01(b) below, confirms that measures are being taken to remedy the event and these are satisfactory to the EU, the suspension of the time limit for payment will be lifted.

(b) The term “payment period” shall be understood as the deadline in which the EU would contribute payments: (i) with respect to the Contribution provided in Article 4.2 of the Contribution Agreement, thirty (30) days from the receipt of the Contribution Agreement signed by both parties (Article 19.01(a)(i) of this Annex); and (ii) with respect to the following tranches and the balance, 90 days from the receipt of a payment request accompanied by a progress or final report (Article 19.01(a)(ii) to (iv) of this Annex.

(c) In the events provided under the preceding Article, the EU shall notify the Bank as soon as possible and in any case within thirty (30) days from the date on which the payment request was received, the reasons for the suspension, specifying, where applicable, the additional information required. The Bank shall notify immediately the Beneficiary. The suspension shall take effect on the date on which the EU sends the notification to the Bank stating the reasons for the suspension. The remaining payment period shall start to run from the date on which the requested information or revised documents are received, or the necessary further checks are carried out. If the requested information or documents are not provided within the deadline fixed or are incomplete, payment may be made on the basis of the partial information available.

ARTICLE 12.02. Suspension of Payments and the Contribution Agreement. (a) The Beneficiary acknowledges and agrees that the EU may suspend payments, fully or partially, if:

- (i) the EU, on the basis of credible information received, has serious concerns and needs to verify whether substantial errors, irregularities, fraud or breach of substantial obligations have been committed by the Bank, the Beneficiary and/or the Executing Agency and/or its contractors in the selection procedure, in the Pillar Assessment performed on the Bank or in the execution of the Project have occurred;
- (ii) the EU has proof that substantial errors, irregularities, fraud or breach of substantial obligations have been committed by the Bank, the Beneficiary and/or the Executing Agency and/or its contractors, in the procedure of their selection, in their Pillar Assessment performed on the Bank or in the execution of the Project;
- (iii) in the event that the EU has proof that systemic errors have occurred which call into question the reliability of the internal control system of the Bank, the Beneficiary and/or the Executing Agency and/or its contractors, or the legality and regularity of the underlying operations; and
- (iv) the EU has proof that the Bank, the Beneficiary and/or the Executing Agency and/or its contractors have committed systemic or recurrent errors, irregularities or fraud, or have breached their obligations under other agreements funded with EU funds, provided that those errors, irregularities, fraud or breach of obligations have a material impact in this Project.

(b) In the situations mentioned above, the EU shall immediately notify the Bank and the Bank, in turn, shall immediately notify the Beneficiary and the Executing Agency about the suspension of payments and the reasons for the same. The Beneficiary and/or the Executing Agency agree to collaborate in whatever may be necessary in order for the Bank to submit its observations within the thirty (30) day term. If no observations have been submitted, or if the EU, after examining the observations received, decides to pursue the suspension of payments, the EU shall formally notify the Bank, which shall, in turn, immediately notify the Beneficiary, specifying the reasons and the conditions for resuming the payments. The suspension shall take effect on the date on which the EU sends the notification and it will be lifted once the conditions for resuming payments are met. During the suspension of payments, no payment request may be submitted. The suspension of payments does not suspend the eligibility of costs; however, the Bank and the Beneficiary, in mutual agreement and in consultation with the EU, may decide to suspend the implementation of all or part of the Project in duly justified cases of cash flow shortage.

(c) In the situations provided in Article 13.01(a) of this Annex, the EU may suspend payments as a precautionary measure, giving immediate written notice thereof to the Bank, which shall immediately give notice to the Beneficiary. In these cases, the notice and presentation procedure described in Article 13.02(b) below shall be applied.

(d) The EU may suspend all or part of the application of the Contribution Agreement in the situations provided under Article 12.02(ii), (iii) and (iv) of this Annex. Before suspension, the EU shall formally notify the Bank, which shall, in turn, formally notify the Beneficiary of its intention to suspend payments, inviting it to make observations within ten (10) days from the receipt of the notification. The Beneficiary agrees to collaborate in whatever may be necessary and/or advisable in order for the Bank to make its observations within said term. If the Bank does not submit observations or if, after examination of the observations submitted by the Bank, the EU decides to pursue the suspension, the latter may suspend all or part of the implementation of the Contribution Agreement, serving seven (7) days prior notice. In the case of suspension of the application of the Contribution Agreement, by request of the Bank and in agreement with the Beneficiary, the EU and the Bank shall enter into discussions in order to find the arrangements necessary to continue the part of the implementation of the Project that is not suspended. Any expenditure or costs incurred during the suspension and related to the suspended part of the Contribution Agreement shall not be reimbursed or covered by the European Union. Following suspension of the implementation of the Contribution Agreement, the EU may terminate the Contribution Agreement pursuant to Article 13.01(b) of this Annex, recover the amounts unduly paid and, in agreement with the Bank and the Beneficiary, resume the application of the Contribution Agreement. In the latter case, the EU and the Bank shall modify the Contribution Agreement as may be necessary and the Bank and the Beneficiary shall modify this Non-Reimbursable Financing Agreement by means of an Amendatory Contract to be agreed accordingly.

(e) The EU may also notify the Bank about the suspension of the implementation of the Contribution Agreement if exceptional circumstances so require, particularly:

- (i) when a relevant EU Decision identifying a violation of human rights has been adopted;
- (ii) in cases such as a crisis which entails a change of EU policy.

(f) In the situations provided in the preceding subsections (e) (i) and (ii), after the written notice from the EU and upon prior consultation with the Bank, which shall act in consultation with the Beneficiary, the EU and the Bank shall resume the application of the Contribution Agreement when the conditions so allow and the Bank and the Executing Agency shall resume the execution of this Non-Reimbursable Financing Agreement. During the suspension period, the only right shall be to the reimbursement of minimal costs, including new legal commitments, necessary for a possible resumption of the execution of the Project. The EU and the Bank, which shall act in consultation with the Beneficiary and the Executing Agency, shall agree on such costs, including reimbursement of legal commitments entered into for implementing the Project prior to receiving notice of the suspension which the Bank and/or the Executing Agency cannot reasonably suspend, reallocate or terminate on legal grounds. This shall be understood without prejudice to the amendments to the Contribution Agreement that may be necessary to adapt the Project to the new execution conditions, including, if possible, the extension of the Implementation Period and the Contracting Deadline. In such cases, the Bank and the Beneficiary shall modify this Non-Reimbursable Financing Agreement accordingly.

ARTICLE 12.03. Suspension of the Project by the Bank and/or the Beneficiary. (a) The Beneficiary, in consultation with the Bank, may decide to suspend the implementation of all or part of the Project, if unforeseen and exceptional circumstances beyond the control of the Beneficiary make such implementation impossible or excessively difficult, such as in cases of force majeure. The Beneficiary shall inform the Bank immediately, which shall give immediate notice to the EU, providing all the necessary details, including the measures taken to minimize any possible damage, the foreseeable effect and the date of resumption.

(b) Neither the Bank nor the Beneficiary shall be held liable for breach of its obligations with respect to the Project if it is prevented from fulfilling them by force majeure or by exceptional circumstances mentioned in the previous Article, provided it takes any measure to minimize any possible damage.

(c) The Bank and the Beneficiary shall minimize the duration of the suspension. The Beneficiary, in consultation with the Bank and the EU, shall resume the implementation of the Project once the conditions allow. During the suspension period, the right to obtain the refund of minimum costs shall be applicable, including new legal commitments, necessary for a possible resumption of the implementation of the Project. The EU and the Bank, in consultation with the Beneficiary, shall agree on such costs, including the reimbursement of legal commitments incurred for implementing the Project before the EU received notice of the suspension that the Bank and/or the Beneficiary cannot reasonably suspend, reallocate or terminate on legal grounds. The Execution Period shall be automatically extended by an amount of time equivalent to the duration of the suspension. In case of suspension by force majeure or if the Project is a Multi-Donor Action, the Contracting Deadline under the Contribution Agreement shall be extended automatically by an amount of time equivalent to the duration of the suspension.

(d) The preceding paragraph shall be understood without prejudice to the amendments to the Contribution Agreement that may be necessary to adapt the Project to the new implementation conditions, or to the resolution of the Contribution Agreement pursuant to the provisions of the following Chapter XIII. In such cases, the Bank and the Beneficiary will modify this Non-Reimbursable Financing Agreement accordingly.

ARTICLE 12.04. Effect of the Suspension Situations on this Supplementary Agreement.

The Beneficiary acknowledges and accepts that the suspension situations described in the preceding Articles (Suspension of the Time Limit for Payment, Suspension of the Contribution Agreement and Suspension of the Project) are ultimately decided by the EU and remain outside of the control of the Bank. Therefore, the Beneficiary, the Executing Agency and their contractors release the Bank from any liability and waive any claim against the Bank related to such events and/or any damages that such suspension may generate to itself or its contractors, except the cases in which the suspension is directly attributable to the Bank. In the event of any of the three suspension situations, the same shall be automatically replicated herein. In addition, in the event that the suspensions are lifted pursuant to the preceding Articles, the time limit for payment shall be resumed, as well as the execution of the Project and the other obligations of the Beneficiary provided herein. Finally, such suspension situations are independent and shall not limit the right to suspension of disbursements and cancellations to which the Bank is entitled pursuant to Chapter VI of the General Conditions of this Non-Reimbursable Financing Agreement.

CHAPTER XIII

Termination and End Date of the Contribution Agreement

ARTICLE 13.01. Termination Events and Procedure. (a) The Beneficiary acknowledges and agrees that, without prejudice to any other provision herein and with due regard to the principle of proportionality, the EU may terminate the Contribution Agreement in the event that the Bank, the Beneficiary, Executing Agency and/or its contractors:

- (i) fail to fulfill a substantial obligation incumbent on them pursuant to the provisions of the Contribution Agreement and/or this Non-Reimbursable Financing Agreement;
- (ii) are guilty of misrepresentation or submit false or incomplete statements to obtain the Contribution, or provide reports that do not reflect reality to obtain or keep the Contribution without cause;
- (iii) are bankrupt or being wound up, or are subject to any other similar proceeding;
- (iv) are guilty of grave professional misconduct proven by any justified means;

- (v) have committed fraud, corruption or any other illegal activity to the detriment of the EU's financial interests on the basis of proof in the possession of the EU;
- (vi) fail to comply with the reporting obligations described in Articles 3.01, 3.02, 3.03 and 3.04 hereof; and
- (vii) have been found culpable of any of the activities described in Article 12.02 hereof on the basis of proof in the possession the EU.

(b) Before terminating the Contribution Agreement pursuant to the preceding Article, the EU shall formally notify the Bank of its intention to terminate, inviting it to make observations (including proposals for remedial measures) within thirty (30) days from receipt of the notice. The Bank shall give notice of the same to the Beneficiary and the Beneficiary shall collaborate in whatever may be necessary and/or advisable so the Bank can make such observations within the provided term. In the event that the Bank and the Beneficiary fail to submit observations or if, after examination of the observations submitted, the EU decides to pursue the termination, the EU may terminate the Contribution Agreement serving seven (7) days' prior notice. During that period, the Bank may refer the matter to the responsible Director in the EU. In such case, the termination will take effect if and when confirmed by the Director. The Bank shall immediately notify the Beneficiary. The EU may demand full repayment of any amounts paid in excess of the final amount established pursuant to Articles 20.01 and 20.02 hereof, after allowing the Bank to submit its observations, which the Bank will do in consultation with the Beneficiary. The Beneficiary and/or the Executing Agency shall not be entitled to claim indemnity from the Bank or the EU for the termination of the Contribution Agreement.

Termination by the Beneficiary

(c) If at any time the Beneficiary, in consultation with the Bank, considers that the Project can no longer be effectively or appropriately carried out, the Bank shall consult with the EU. Failing agreement on a solution, the Beneficiary, with previous written notification to the Bank, may terminate this Non-Reimbursable Financing Agreement upon a ninety (90) day written notice, in order for the Bank to give a sixty (60) day written notice to the EU to terminate the Contribution Agreement. In this case, the final amount shall cover:

- (i) payment for the part of the Project carried out, up to the date of termination;
- (ii) in the situations provided in Articles 12.02(f) and 12.03(a) hereof, to the unavoidable residual expenses incurred during the notice term (including costs necessary for the closure of the activities of the Project); and
- (iii) in the situations referred to Articles 12.02(f) and 12.03(a) hereof, the reimbursement of the legal commitments entered into for the implementation of the Project before the written notice on termination was

received and the Bank and/or the Beneficiary and/or the Executing Agency could not reasonably terminate on legal grounds.

(d) The Beneficiary acknowledges and agrees that the EU shall recover the remaining part pursuant to Article 15.01 hereof.

(e) In the event of termination, a final report and a request for payment of the balance should be submitted pursuant to Articles 3.02(b), 3.02(c) and 19.01(a) hereof. The Beneficiary accepts that the EU shall not reimburse or cover any expenditure or costs that are not included or justified in a report approved by it.

ARTICLE 13.02. End Date. The Contribution Agreement shall terminate on its End Date, which is the date of the payment of the balance by the EU pursuant to Articles 19.01 and 19.02 hereof, or when the Bank repays any amounts that have been paid in excess of the final amount due pursuant to Article 20.01 hereof. In the event that the Bank or the EU invoke a dispute settlement procedure pursuant to Article 14 of the EU General Conditions, the End Date shall be postponed until the completion of such procedure.

ARTICLE 13.03. Effect of the Termination of the Contribution Agreement. The Beneficiary acknowledges and agrees that the termination of the Contribution Agreement provided in Article 13.01 hereof results from the will of the EU and outside of the control of the Bank. Therefore, the Beneficiary and/or the Executing Agency releases the Bank from any liability associated with the termination and/or any damages that may result to the Bank or its contractors from such termination, and waives any claim against the Bank in this respect. In the event of termination of the Contribution Agreement, this Non-Reimbursable Financing Agreement including this Supplementary Agreement shall be automatically terminated.

CHAPTER XIV

Applicable Law and Settlement of Disputes

ARTICLE 14.01. Applicable Law and Settlement of Disputes. The Beneficiary acknowledges the dispute resolution mechanism agreed by the EU and the Bank is governed by Article 14 of the EU General Conditions.

CHAPTER XV

Recovery

ARTICLE 15.01. Recovery. When any amount is to be recovered under the Contribution Agreement, the Bank shall repay the EU the amount due. Unless the recovery in question is directly attributable to the Bank (see Section 2.02 above), the Beneficiary will repay the amount due to the Bank. The Bank shall not reimburse to the EU the amount claimed until it has received such amount from the Beneficiary.

ARTICLE 15.02. Recovery Procedure. (a) Before recovery, the EU shall formally notify the Bank of its intention to recover any amount unduly paid or incorrectly used, specifying the amount and the reasons for the recovery, and inviting the Bank to make any observations within thirty (30) days from the date of receipt of the notification. The Bank shall notify the Beneficiary, which agrees to cooperate with the Bank in whatever may be necessary and/or advisable in order for the Bank to make such comments within the provided term. If, after examination of the observations submitted by the Bank or if the Bank does not submit any observations, the EU decides to pursue the recovery procedure, the EU may confirm the recovery by giving notice to the Bank. If there is a disagreement between the Bank and the EU on the amount to be repaid, the Bank may refer the matter to the responsible Director of the EU within thirty (30) days. After the deadline or the Director's decision, as the case may be, the EU may issue a debit note that specifies the terms and date for payment. The Bank shall notify the same to the Beneficiary, which agrees to pay the totality of the amount owed, within a period of 30 days after the notification.

(b) In the event that the Bank fails to make payment by the date specified in the debit note, the EU may recover the amount due:

- (i) by offsetting it against any amounts owed by the EU to the Bank (including any undisbursed portion of the Contribution);
- (ii) by taking legal action pursuant to Article 14 of the EU General Conditions; and
- (iii) in exceptional circumstances, justified by the necessity to safeguard the financial interests of the EU, the EU may, when it has justified grounds to believe that the amount due would be lost, recover by offsetting before the deadline specified in the debit note without the prior agreement of the Bank.

(c) In the cases described in paragraphs (i), (ii) and (iii) above, the Beneficiary shall reimburse the Bank any amounts deducted or paid by the Bank to the EU, plus interest on late payments described below and/or any additional costs imposed by the EU, except in the cases where the late payment is directly attributable to the Bank.

(d) In the event that the Bank fails to repay by the due date, the amount due shall be increased by late payment interest, calculated at the rate provided in Article 19.02 hereof. The Beneficiary accepts that such interest shall be applied and will therefore repay the amount due plus any accrued interest, except in the cases where the late payment is directly attributable to the Bank. The interest shall be payable for the period between the day after the expiration of the time limit for payment up to and including the date when the Bank actually receives payment in full of the outstanding amount. Any partial payments shall first cover the interest.

(e) Bank charges incurred for recovery in accordance with this Article shall be borne entirely by the Beneficiary.

CHAPTER XVI

Accounts and Archiving

ARTICLE 16.01. Accounting. The Beneficiary, through the Executing Agency, shall keep accurate and regular records and accounts of the implementation of the Project. The applicable accounting Regulations and Rules of the Bank shall be complied with. Financial transactions and financial statements shall be subject to internal and external auditing procedures set forth in this Non-Reimbursable Financing Agreement.

ARTICLE 16.02. Archiving. For a period of five (5) years from the End Date (Article 13.02 hereof), or up to the date of the limitation period of any claim pursuant to the applicable laws governing the Contribution Agreement and any implementation contract or grant agreement executed within the frame of the Project if the latter last longer, the Beneficiary, through the Executing Agency, shall keep and make available all the relevant financial information in its original form (or electronic where the documentation was first received or created in electronic form), or, in exceptional and duly justified cases, certified copies of original documents related to the Project and to public contracts, grants and financial support agreements. The Document Retention Requirements for Verification and Audit Purposes, which is an annex to the Framework Agreement, attached to this Supplementary Agreement as Exhibit B.1, shall be used as guidelines to comply with this obligation. The obligation to keep the information herein set forth beyond five (5) years in case of claims shall be applicable only in cases in which the Bank has reliable knowledge that there are such claims, so the Beneficiary agrees to keep the Bank informed of any such fact.

CHAPTER XVII

Access and Financial Checks

ARTICLE 17.01. On-the-spot checks. The Beneficiary and/or the Executing Agency, shall allow the EU and the European Court of Auditors, or any another authorized representative to conduct desk reviews and on-the-spot checks on the use made of the Contribution (including the procedures for the award of public contracts and grants) on the basis of supporting accounting documents or of any other document related to the financing of the Project.

ARTICLE 17.02. European Anti-fraud Office (OLAF). The Beneficiary and/or the Executing Agency agree that OLAF may carry out investigations, including on-the-spot checks, pursuant to the EU rules and legislation for the protection of the financial interests of the EU against fraud, corruption and any other illegal activity and, where applicable, administrative cooperation arrangements concluded between OLAF and the Bank.

ARTICLE 17.03. Access. The Beneficiary and/or the Executing Agency agree to provide to the officers of the EU, OLAF and the European Court of Auditors, and to their authorized agents, upon their request, information and access to any documents and computerized data concerning the technical and financial management of the operations financed pursuant to this Non-Reimbursable Financing Agreement, as well as grant them access to sites and premises at which such operations are carried out. The Beneficiary and/or the Executing Agency shall take all the

necessary measures to facilitate these checks. The documents and computerized data may include confidential information pursuant to the applicable laws or on the basis of contractual agreements. Such information, once provided to EC, OLAF, and the European Court of Auditors or any other authorized representative, shall be treated pursuant to the EU confidentiality rules and legislation and pursuant to Articles 6.01 and 6.02 hereof. The documents shall be kept accessible and be classified in a manner permitting checks and the Beneficiary and/or the Executing Agency shall report to the Bank, to the EU, OLAF, the European Court of Auditors and to their authorized agents the exact location at which they are kept. The Bank may request that the Beneficiary and/or the Executing Agency sends copies of such documents for a desk review to the EU, OLAF and the European Court of Auditors and its authorized agents.

ARTICLE 17.04. Verifications. The verifications shall cover *on-the-spot checks* and desk reviews and shall follow all verification provisions agreed by the Bank with the EU.

ARTICLE 17.05. Agents. To the extent possible and provided that the Bank has received on a timely basis the corresponding information, the Bank shall inform the Beneficiary about any planned on-the-spot missions by the agents appointed by the EU, in order to ensure that adequate procedural matters are agreed upon in advance.

CHAPTER XVIII

Expenditures

ARTICLE 18.01. Eligible Expenditures. In addition to the requirements of Article 3.02 of the Special Conditions, the Beneficiary agrees that the expenditures of the Project shall meet the following criteria:

(a) Are necessary for the execution of the Project, directly attributable to it and arising as a direct consequence of its implementation. For that purpose, they shall be part of one of the following categories:

- (i) Costs of funding by the Beneficiary and/or the Executing Agency in the form of:
 - 1. Procurement contracts awarded for the benefit of the country or of the beneficiary population of the Project, pursuant to Annex I of the Contribution Agreement, including:
 - contracts for works, equipment (new or used) and assets, provided that ownership is transferred at the end of the Project when required pursuant to Article 9.03 hereof;
 - contracts for consumables and supplies, provided that, the ownership of the remaining major supplies is transferred at the end of the Project pursuant to Article 9.03 hereof;

– contracts for services.

2. Acceptable costs of procurement contracts may include duties, taxes and charges, including Value-Added Tax (VAT), if they are not recoverable by Beneficiary and/or the Executing Agency and unless otherwise specified in the Contribution Agreement executed between the EU and the Bank.
3. Grants to be paid to grant beneficiaries pursuant to Annex I of the Contribution Agreement.

(b) Are actually incurred by the Beneficiary and/or the Executing Agency, that is, represent real expenditures definitely and genuinely borne by the Beneficiary and/or the Executing Agency.

(c) Are reasonable, justified and comply with the principle of sound Financial Management.

(d) Refer to expenses incurred during the Implementation Period:

- (i) Grants to grant beneficiaries shall be acceptable when the financed activities occur during the Implementation Period;
- (ii) Costs of services, works and supplies are acceptable if the services, works and supplies are delivered during the Implementation Period.

(e) Are identifiable and verifiable pursuant to Articles 16.01 and 16.02 hereof and particularly:

- (i) Have been recorded in the accounting registries of the Beneficiary and/or the Executing Agency and are determined pursuant to the usual accounting practices of the Beneficiary and/or the Executing Agency;
- (ii) Are backed by effective supporting evidence (originals and, as the case may, be in electronic format).

(f) Are indicated under one of the categories of costs in the estimated budget of Annex III of the Contribution Agreement, distinguishing between the estimated costs of budget implementation tasks and the estimated cost of other tasks, if any.

(g) Comply with the applicable social and tax legislation, taking into account the privileges and immunities, if any, of the Beneficiary and/or the Executing Agency.

ARTICLE 18.02. Staff Costs. Notwithstanding the Procurement Policies of the Bank, the Beneficiary and/or the Executing Agency may declare its staff costs provided in Article 18.01(a)(ii) as actual costs or on the basis of unit costs (hourly or daily or half-daily rates)

determined by the Beneficiary and/or the Executing Agency pursuant to its usual cost accounting practices, provided that the following conditions are met:

(a) the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;

(b) the unit cost is calculated using the actual staff costs and as recorded in the Beneficiary and/or Executing Agency's accounts, excluding any ineligible cost, such as provisions or reserves, or costs included in other cost categories, such as indirect costs; and

(c) the unit cost (the hourly, daily or half-daily rate) is calculated using the number of annual productive units (respectively productive hours, days or half-days).

ARTICLE 18.03. Registration and Documentation. The Beneficiary and/or the Executing Agency shall keep adequate record and documentation to prove that the cost accounting practices used comply with the conditions provided in Article 18.02.

ARTICLE 18.04. Ineligible Expenses. Notwithstanding the provisions of the Bank procurement and fiduciary guidelines and policies, the following expenditures shall not be eligible, in addition to the expenditures that fail to meet the conditions provided in Article 18.01 hereof:

(a) return on capital;

(b) debt and debt service charges;

(c) provisions for losses, debts or potential future liabilities;

(d) banking charges for the transfers from the EU and/or the Bank;

(e) deductible value added tax;

(f) costs of purchase of land or buildings except where justified and necessary for the implementation of the Project and pursuant to the conditions provided in the Special Conditions; the ownership shall be transferred pursuant to Article 9.03 hereof at the end of the Project, at the latest;

(g) costs incurred during the suspension of the implementation of the Contribution Agreement, except for the minimum costs agreed pursuant to Article 12.02(f) and 12.03(e) hereof; and

(h) contributions in kind, with the exception that the costs of staff assigned to the Project and actually incurred by the Beneficiary and/or the Executing Agency do not constitute a contribution in kind and may be declared as Eligible Expenditure if it complies with the conditions provided in Article 18.01 hereof.

CHAPTER XIX
Payments (Disbursements from the EU to the IDB)

ARTICLE 19.01. Contribution Payment Procedures. (a) Payment procedures of the Contribution shall be as follows:

- (i) The EU shall provide to the Bank a first instalment of the Contribution within thirty (30) days from receipt of the Contribution Agreement signed by both parties;
- (ii) For each further instalment of the Contribution, the Bank shall submit, in consultation with the Beneficiary and/or the Executing Agency, a payment request and a progress report, excluding unauthorized contingencies, provided that at least 70% of the immediately preceding instalment (and 100% of the previous instalments, if any) has been the subject to a legal commitment between the Executing Agency and its contractors, as proven by the relevant report;
- (iii) Pursuant to the terms provided in Article 3.02(c) hereof, the Bank, in consultation with the Beneficiary and/or the Executing Agency, shall submit a payment request for the balance together with the final report. The amount of the balance shall be determined following approval of the request for payment of the balance and the final report.
- (iv) The EU shall pay the further Contribution instalments and the balance within ninety (90) days from receipt of a payment request accompanied by a progress or final report, unless the payment or the time limit for payment has been suspended pursuant to Article 12.01 and 12.02 hereof.

(b) The Contribution payment requests to be submitted by the Bank, in consultation with the Beneficiary and/or the Executing Agency, shall be accompanied by the descriptive and financial reports submitted pursuant to Articles 3.01, 3.02 and 3.03 and 3.04 hereof. Contribution payment requests shall be denominated in Euros. The Bank shall convert the balance recorded in its accounts into Euro using the market rate in effect at the time of the conversion by the Bank of the EU unspent funds. The rate shall be notified to the EU in the final report. With the exception of the first Contribution instalment, payments shall be made at the time of approval of the payment request accompanied by a progress or final report. The final amount shall be determined pursuant to Articles 20.01 and 20.02 hereof. If the balance is negative, any payment of balance shall become a recovery.

(c) Approval of Contribution payment requests and of the accompanying reports shall not imply recognition of regularity or of authenticity, completeness and correctness of the declarations or information included therein.

(d) The EU shall make the payments of the Contribution to the Bank in Euros into the Bank account referred to in the financial identification form included in Annex IV of the Contribution Agreement.

ARTICLE 19.02. Interests. In case of late payment the following conditions apply:

- (i) On expiration of the time limits for payments provided in Article 19.01 hereof, interest on late payment based on the rate applied by the European Central Bank for its main refinancing operations in Euros (Reference Rate), increased by three and a half percentage points shall be applied to the EU. The reference rate shall be the rate in force on the first day of the month in which the time limit for payments expires, as published in series C of the Official Journal of the European Union;
- (ii) The suspension of the time limit for payments or in accordance with Articles 12.01, 12.02, 12.03 and 12.04 hereof shall not be considered as late payment;
- (iii) Interest on late payment shall cover the period running from the day following the due date for the payment until and including the date of actual payment, according to Article 19.01 hereof. Any partial payment shall first cover interest;
- (iv) By way of exception to paragraph (iii) above, when the interest calculated pursuant hereto is lower than or equal to 200 Euros, the EU shall pay such interest to the Bank only upon request from the Bank, which shall act in consultation with the Beneficiary; such request shall be submitted within two (2) months of it receiving late payment;
- (v) Interest shall not be considered income for purposes of determining the final amount of the Contribution within the meaning provided by Articles 20.01 and 20.02 hereof; and
- (vi) The Beneficiary acknowledges that the EU could delay the payment of the Contribution to the Bank, which could, in turn, represent a delay in the disbursements of the Bank to the Beneficiary. In any event, the Beneficiary releases the Bank from any and all liability and waives any claim against the Bank with respect to any delay in the disbursement of resources due to delays in payment by the EU, except for the cases in which any such delay is directly attributable to the Bank.

CHAPTER XX

Final Amount of the Contribution

ARTICLE 20.01. Determination of the Final Amount. (a) The Beneficiary acknowledges and agrees that the EU shall determine the final amount of the Contribution when approving the final report. The EU shall then determine the balance:

- (i) to be paid to the Bank pursuant to Articles 19.01 and 19.02 hereof, for its payment to the Beneficiary, where the final amount of the Contribution was greater than the total amounts already paid; or
 - (ii) to be recovered from the Bank, which shall, in turn, recover from the Beneficiary pursuant to Articles 15.01 and 15.02 hereof (except when the recovery is directly attributable to the Bank (see Section 2.02 above)), where the final amount of the Contribution was lower than the total amounts already paid.
- (b) In addition, the Beneficiary acknowledges and agrees that the final amount shall be the lower of the following two amounts:
- (i) the sum of acceptable expenditures approved by the EU and of the administration fee paid to the Bank, after any reduction pursuant to Article 20.02 hereof;
 - (ii) the maximum Contribution provided in Article 3.1 of the Contribution Agreement.

ARTICLE 20.02. Reduction of the Final Amount. If the Project is not implemented or if it is not implemented in accordance with the Contribution Agreement, or is implemented beyond the agreed Implementation Period or partially, or if the Bank, the Beneficiary, the Executing Agency and/or its contractors have substantially breached an obligation pursuant to the Contribution Agreement and/or this Non-Reimbursable Financing Agreement, the EU may, after allowing the Bank to submit its observations, reduce the Contribution in proportion to the seriousness of the above mentioned situations. The Bank shall promptly notify the Beneficiary in order for the latter to cooperate with the Bank in the submission of observations. The Bank, in consultation with the Beneficiary, may request from the EU an extension of the term to submit observations which shall not be unreasonably withheld. If there is a disagreement between the Bank and the EU on the reduction, the Bank may refer the matter to the responsible Director of the EU.

CHAPTER XXI

Hiring and Central Exclusion Database

ARTICLE 21.01. Contracts. (a) The Beneficiary acknowledges and accepts that the following provisions regarding Project implementation:

- (i) Contracts to be signed for the implementation of the Contribution shall be signed by the Contracting Deadline provided in Article 2.5 of the Contribution Agreement. After the Contracting Deadline, and until the submission of the final report, only contracts following early termination of an existing contract, amendments to the existing contracts and contracts concerning to audits and final evaluations may be signed.

- (ii) Procedures to award contracts may have been initiated and contracts may be signed by the Beneficiary before the start of the Implementation Period, according to the Bank Rules and Regulations.
- (iii) Unless otherwise provided for the Contribution Agreement, the origin of the goods and the nationality of the organizations, companies and experts selected to carry out the activities of the Project, shall be determined pursuant to the Bank Rules and Regulations, in particular, the Policies for Procurement of Works, Goods and Non-Consulting Services, and Bank Policies for Selection and Contracting Consulting Services as set forth in Article 4.04 of the General Conditions. Without limiting the generality of the foregoing, it is specifically agreed that any procedure for the procurement and grant award procedure of works and services shall be open to individuals and legal entities of any member country of the Bank, any member country of the European Union and any non-member country of the European Union, but eligible under the EU applicable regulations ("Other Eligible Countries"). The EU publishes the list (or any updates thereto) as Annex II of the document "Practical Guide of the Contract Procedures for External Actions of the European Union" ("PRAG"), which is available on its web site or which shall be provided by the EU upon request of the Bank.

(b) The Beneficiary, acting through the Executing Agency, shall require a sworn declaration from all the candidates or tenderers and applicants, whereby it is certified that:

- (i) they are not subject to bankruptcy or winding up, have their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters or are in any analogous situation arising from a similar procedure provided for in national legislation and regulations;
- (ii) the persons having powers of representation, decision making or control over them have not been convicted of an offence concerning their professional conduct by judgment of a competent authority which has the force of res judicata;
- (iii) the persons having powers of representation, decision making or control over them have not been convicted for fraud, corruption, involvement in a criminal organization, money laundering or any other illegal activity detrimental to the EU financial interests; and
- (iv) the persons having powers of representation, decision making or control over them are not guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or fail to provide such information and are not subject to a conflict of interest situation.

(c) The Beneficiary, acting through the Executing Agency, agrees to inform the Bank of any candidates, tenderers or applicants that fail to submit the sworn declaration or that, according to the sworn declaration, are within any of the situations set forth above, and acknowledges that they shall be excluded from participation in contract award procedures funded with the Contribution. The Beneficiary and/or the Executing Agency shall also inform the Bank when the Executing Agency has unilaterally terminated an agreement financed with the Contribution on the grounds that the contractor has made substantial errors, irregularities or has seriously breached its contractual obligations.

ARTICLE 21.02. Central Exclusion Database. (a) In the event that the Beneficiary and/or the Executing Agency discovers that, in relation to the implementation of the Project, a third party is in one of the situations described in Article 21.01(d)(iii) hereof, the Beneficiary and/or the Executing Agency shall communicate this circumstance to the Bank, which shall communicate it to the EU.

(b) The Bank maintains an updated list of all the entities declared ineligible by the Bank for having been involved in sanctionable practices related to coercive, collusive, corrupt, fraudulent and/or obstructive activities. If entity is declared ineligible as a result of sanctionable practices in the Project, the Bank shall notify the Beneficiary and/or the Executing Agency and the EU, in accordance with their procedures to keep its donors informed of issues related to fraud and corruption in projects financed with donor funds.

(c) Without prejudice to the power of the EU to exclude an entity from future public contracts and grants funded by the EU, the Bank, the Beneficiary and/or the Executing Agency may impose economic sanctions to contractors and grant beneficiaries according to its own regulations and rules, ensuring, when appropriate, the right of defense of the contractor or grant beneficiary.

(d) At the time of awarding contracts, the Beneficiary and/or the Executing Agency may take into account, as appropriate and on their own responsibility, the information contained in the central exclusion database.

(e) In the event of failure to comply with this Article, the Beneficiary acknowledges and accepts that the EU may declare that the corresponding costs are ineligible for funding by the EU.

Schedule 1:

Document Retention Requirements for Verification and Audit Purposes

In accordance with Article 16.02 of this Supplementary Agreement, the following information and documentation shall be retained and be kept until five years after the End Date:

- The financial information of the Beneficiary and/or the Executing Agency respect of the EU funds deposited and the disbursements made therefrom, complemented by:

- Evidence that the grants and contracts were awarded in accordance with Bank policies and the provisions of this Non-Reimbursable Financing Agreement.
- For the Contribution:
 - the agreements between the Beneficiary and/or the Executing Agency providing for the Contribution, and all addenda thereof;
 - the Executing Agency's financial and narrative progress reports that were submitted to the Bank;
 - the Bank's monitoring of reports of the Beneficiary and/or Executing Agency actions and expenditures (including procurement and financial management assessments);
 - the Beneficiary's and/or Executing Agency's financial information related to the Contribution, including audit reports, invoices and payroll records;
 - the Executing Agency's implementation documentation (including sub-agreements, procurement files, contracts and purchase orders).
- For contracts for services, goods or works by the Executing Agency, if any:
 - The contracts between the Executing Agency and the Contractors or the order forms placed by the Executing Agency, including invoices and payments;
 - Evidence that the services/goods/works were procured by the Executing Agency in accordance with Bank policies and this Non-Reimbursable Financing Agreement, including the deliverables associated with these contracts.
 - The invoices paid by the Executing Agency or the receipts;
 - Evidence that the services were provided, that the goods were supplied (such as delivery slips) or that the works were completed (such as acceptance certificates) as required by Bank policies and this Non-Reimbursable Financing Agreement;
 - Evidence of payment to service providers, suppliers or contractors (including bank advice or bank statements).