

**NON-REIMBURSABLE FINANCING AGREEMENT  
No. GRT/ER-19124-JA**

between

JAMAICA

and the

**INTER-AMERICAN DEVELOPMENT BANK  
Acting as Administrator of a European Union Specific EU Contribution**

**Boosting Innovation, Growth and Entrepreneurship Ecosystems in Jamaica**

## **PART ONE: SPECIAL CONDITIONS**

This Non-Reimbursable Financing Agreement (this “Contract”) is entered into between JAMAICA (the “Beneficiary”) and the INTER-AMERICAN DEVELOPMENT BANK (the “Bank” and, together with the Beneficiary, the “Parties”) acting as administrator under the Financial Framework Partnership Agreement between the European Union (“EU”) and the Bank dated September 29, 2020, and pursuant to a specific EU Contribution Agreement (the “Contribution Agreement”) entered into between the same parties dated February 2, 2022. The additional requirements and obligations resulting from the Financial Framework Partnership Agreement and the Contribution Agreement are included in the Supplementary Agreement attached hereto as Annex B.

### **CHAPTER I**

#### **Purpose and Constituent Elements of the Contract**

**SECTION 1.01.** **Purpose of the Contract.** Under the Contribution Agreement the EU agreed to contribute to the Bank, as administrator, non-reimbursable resources for the execution of the “Boosting Innovation, Growth and Entrepreneurship Ecosystems in Jamaica” (the “Programme”). The main aspects of the Programme are set forth in Annex A.

**SECTION 1.02.** **Constituent Elements of the Contract.** This Contract is composed of these Special Conditions, the General Conditions, Annex A (Description of the Programme) and Annex B (Supplementary Agreement).

### **CHAPTER II**

#### **The EU Contribution**

**SECTION 2.01.** **Amount and Approval Currency of the EU Contribution.** In accordance with the terms and conditions stated herein, the Bank agrees to provide to the Beneficiary non-reimbursable resources for up to the amount of seven million Euros (€7,000,000) (the “EU Contribution”), chargeable to the resources to be received by the Bank from the EU under the Contribution Agreement, complementing the objectives of the Bank’s loan 4860/OC-JA (the “BIGEE Loan” or the “Loan 4860/OC-JA”). The final amount of EU resources to be contributed will be determined by the EU as set forth in Chapter XX of Annex B.

### **CHAPTER III**

#### **Disbursements and Utilization of the Resources of the EU 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 EU Contribution shall be subject to the compliance, to the satisfaction of the Bank, of the following requirements:

- (i) Evidence that the Technical Unit (TU) of the Loan 4860/OC-JA, as well as the Programme Manager, Financial Specialist and Procurement Specialist, have the authority to execute this Programme;
- (ii) Approval and entry into effect of the Operating Manual (OM) of the BIGEE Loan, updated to include the execution of this Programme, including the Environmental and Social Strategy (E&S Strategy), in accordance with the terms and conditions previously agreed with the Bank; and
- (iii) Signing and entry into effect of an Agreement between the Beneficiary and the Executing Agency for the transfer of the resources of this operation together with project implementation obligations.

**SECTION 3.02. Disbursement Requests and Disbursement Currency.** (a) The Beneficiary, through the Bank, may request disbursements of the EU Contribution in accordance with Chapter III of the General Conditions and Chapter XIX of Annex B. Any such disbursements are subject to the condition that the Bank has previously received the corresponding resources from the EU.

(b) All disbursements shall be denominated and made in Dollars. The exchange rate used to determine the equivalent in Euros of the amount disbursed will be established by the Bank on the disbursement date.

**SECTION 3.03. Currency Availability.** If the Bank is unable to obtain access to Dollars, the Bank, in consultation with the Beneficiary, shall disburse the EU Contribution in another currency of its choice.

**SECTION 3.04. Disbursement Period.** The Original Disbursement Period for the EU Contribution will be five (5) years commencing from the date of signature of this Agreement, as specified in 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. Utilization of the Resources of the EU Contribution.** The resources of the EU Contribution shall be used to pay expenses that: (i) are necessary for the Programme and that are in accordance with its objectives; (ii) are carried out in accordance with the provisions of this Contract, Bank policies and Chapter XVIII of Annex B; (iii) are adequately recorded and documented in the Beneficiary's or Executing Agency's system and in accordance with Chapter XVI 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 3.06. 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.

**SECTION 3.07. Other Requirements for Utilizing Resources of the EU Contribution.** The resources of the EU Contribution shall be utilized in accordance with the following conditions:

- (a) The beneficiaries of the grants, vouchers and equity investments, shall be obligated to use the Programme resources exclusively for the purposes agreed upon with the Executing Agency and shall be obligated to comply with the terms and conditions described in the OM and this Contract, including the provisions on procurement, prohibited practices and environmental and social conditions;
- (b) The Executing Agency and the Bank shall have the right to inspect the records, goods, installations, works and constructions, as applicable, related to the activities financed by the Programme;
- (c) The Executing Agency and the Bank shall have the right to request from the beneficiaries of the grants, vouchers and equity investments all information with respect to the activities financed with Programme resources; and
- (d) The Executing Agency shall have the right to suspend disbursements to the beneficiaries of the grants, vouchers and equity investments, if any, if they do not fulfill their obligations under the corresponding agreements with the Executing Agency.

#### **CHAPTER IV** **Execution of the Programme**

**SECTION 4.01. Executing Agency.** (a) The Development Bank of Jamaica Limited, hereinafter referred to as the “Executing Agency” or “DBJ”, shall be the Executing Agency of the Programme. The Beneficiary hereby certifies the legal and financial capacity of the Executing Agency to act as such.

(b) The Beneficiary undertakes that the Executing Agency will carry out the activities of the Programme in accordance with the provisions set forth in this Contract. The Beneficiary shall assign and transfer the resources of the EU Contribution to the Executing Agency for the due execution of the Programme.

**SECTION 4.02. Conditions concerning Procurement.** The procurement of goods, works and services with the EU Contribution resources will be carried out in accordance with the Procurement and Consultant Policies of the Bank, with the following three (3) exceptions:

- (a) Expanded List of Eligible Countries to include Other Eligible Countries: as provided for in Article 22.01 of Annex B;

- (b) Archiving of relevant Programme related information for at least five (5) years after the End Date: as provided for in Article 16.02 of Annex B; and
- (c) Recognition of EU Restrictive Measures as an eligibility requirement to prevent awarding contracts to entities, individuals or groups of individuals subject to restrictive measures and identified in the list available at [www.sanctionsmpa.eu](http://www.sanctionsmpa.eu): as provided for in Article 22.02(b) of Annex B.

**SECTION 4.03. Procurement of Goods, Works, and Non-Consulting Services.** (a) For purposes of Article 2.01(24) of the General Conditions, the Parties agree that the Procurement Policies are those dated May 2019, which are contained in document GN-2349-15, approved by the Bank on July 2, 2019. If the Procurement Policies are amended by the Bank, the procurement of goods, works, and non-consulting services shall be carried out in accordance with the provisions of the modified Procurement Policies, once they are made known to the Beneficiary and the Beneficiary agrees in writing to their application.

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

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

(d) Regarding the use of the national competitive bidding method, this may be used provided that the contracting or procurement is carried out in accordance with the bidding document or documents agreed to between the Beneficiary and the Bank.

**SECTION 4.04. Selection and Contracting of Consulting Services.** (a) For purposes of Article 2.01(9) of the General Conditions, the Parties agree that the Consultant Policies are those dated May 2019, which are contained in document GN-2350-15, approved by the Bank on July 2, 2019. If the Consultant Policies are amended by the Bank, the selection and contracting of consulting services shall be carried out in accordance with the provisions of the modified Consultant Policies, once they are made known to the Beneficiary and the Beneficiary agrees in writing to their application.

(b) For the selection and contracting of consulting services, any of the methods described in the Consultant Policies may be used, provided that such method for the respective procurement has been identified in the Procurement Plan approved by the Bank. The application of the procurement rules, procedures and systems of the Beneficiary or an entity of the Beneficiary will be subject to the provisions of paragraph 3.2 of the Consultant Policies and the provisions of Article 4.04(b) of the General Conditions.

(c) The threshold for determining the shortlist of international consultants will be made available to the Beneficiary or the Executing Agency, as the case may be, at <https://projectprocurement.iadb.org/en>. Below that threshold, the shortlist may be composed entirely of national consultants of the Beneficiary's country.

**SECTION 4.05. Procurement Plan Update.** In order to update the Procurement Plan in accordance with the provisions of Article 4.04(c) of the General Conditions, the Beneficiary or the Executing Agency, as the case may be, shall use the procurement plan execution and monitoring system determined by the Bank.

**SECTION 4.06. Programme Operation Manual.** The Parties agree that the execution of the Programme shall be governed by the terms and conditions set forth in this Contract and in the Operating Manual (OM), referred to in Section 3.01 of these Special Conditions, on the understanding that any changes to the OM will require the prior written non-objection of the Bank. The overall need to update the OM will be assessed yearly during Programme implementation. If any provision of the OM should present any inconsistency or contradiction with the terms and conditions set forth in this Contract, the provisions of this Contract shall prevail.

**SECTION 4.07. 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 Programme 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 Executing Agency shall comply with the environmental and social conditions set forth in the OM of the Programme, including its E&S Strategy. For avoidance of doubt, the Programme will not finance activities that have significant negative environmental and social impacts that could be classified as Category A or B, nor any activities which fall under the exclusion list, as indicated in the E&S Strategy.

## **CHAPTER V**

### **Supervision and Evaluation of the Programme**

**SECTION 5.01. Supervision of Programme Execution.** (a) For purposes of Article 5.02 of the General Conditions, the documents that, as of the date of signature of this Contract, have been identified as necessary to supervise progress in the execution of the Programme are: the Results Matrix, the Pluriannual Execution Plan, the Monitoring and Evaluation Plan, and the Procurement Plan.

(b) The Beneficiary, directly or through the Executing Agency, as the case may be, shall submit the following reports:

- (i) Semi-annual progress reports, which will be prepared by the Executing Agency, through the TU, and submitted to the Bank no later than thirty (30) days after the end of each Reporting Period during Programme execution.

The semi-annual report will present to the Bank the degree of fulfillment of the output indicators and progress toward the outcomes of the Results Matrix;

- (ii) Annual Progress reports, which will be prepared by the Executing Agency, through the TU, and submitted to the Bank no later than thirty (30) days after the end of each Reporting Period during Programme execution, on the basis of the semi-annual reports, consolidating all information collected during the year for this Programme and for Loan 4860/OC-JA, detailing a narrative and a financial section, among others;
- (iii) A Final Report, which will cover the entire Implementation Period of the Programme and include information on the issues mentioned in (i) above, submitted not later than ninety (90) days following the end of the Implementation Period. It will include activities under Loan 4860/OC-JA. Additionally, it shall provide a summary of the Programme receipts, payments received and of the acceptable expenditure or eligible costs incurred. It shall include details of transfer of equipment, vehicles, and other major supplies, if applicable; and
- (iv) If the end of the implementation period of the Loan 4860/OC-JA occurs earlier than the end of the Implementation Period of the Programme then, at the end of this Programme, the Beneficiary will submit the corresponding final report to the EU through the Bank.

(c) The reports referred to in (b)(ii) and (iii) above shall be provided in Euros and Dollars and comply with the additional requirements and conditions set forth in Chapter III of Annex B.

**SECTION 5.02. Supervision of the Financial Management of the Programme.** (a) For purposes of Article 5.03 of the General Conditions, as of the date of signature of this Contract, the following external audit financial reports and other reports have been identified as necessary to supervise the financial management of the Programme:

- (i) Annual Audited Financial Statements of the Programme, which include an assurance report with respect to the internal controls of the Executing Agency, within ninety (90) days of the closing of each fiscal year; and
- (ii) A final Audited Financial Statement of the Programme, within ninety (90) days of the closing (i.e. last disbursement date) of the Programme or after the end of the Implementation Period, whatever occurs first.

(b) The statements referred to in (a) above shall include any additional information needed by the Bank as provided in Article 3.03 of Annex B.

(c) For purposes of Article 5.03(a) of the General Conditions, the fiscal year of the Programme is the period between April 1 and March 31 of each year.

**SECTION 5.03.** **Evaluation of Results.** In order to determine the degree of compliance with the Programme's objective and its results, the Beneficiary or the Executing Agency, as the case may be, shall provide the Bank with the following information: (a) an intermediate evaluation, which will be presented to the Bank within six (6) months, no later than two (2) years from the date of the first disbursement or once fifty percent (50%) of the Loan 4860/OC-JA resources have been disbursed and justified, whichever comes first; and (b) a final evaluation, which will be presented to the Bank no later than ninety (90) days once one hundred percent (100%) of the Loan 4860/OC-JA resources have been disbursed and will have the following objectives: (i) verify the degree to which the indicators specified for the Programme and Loan 4860/OC-JA general objectives have been attained; (ii) evaluate the implementation of the different components and instruments relative to the targets specified in the Results Matrix; and (iii) identify lessons learned for application in future projects.

## **CHAPTER VI**

### **Miscellaneous Provisions**

**SECTION 6.01.** **Entry into Effect of the Contract.** This Contract shall enter into effect on the signature date by the Beneficiary.

**SECTION 6.02.** **Communications and Notices.** (a) Any notice, request, communication, or report from one Party to another by virtue of this Contract related to the execution of the Programme, 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](mailto:finsec@mof.gov.jm)



For the Executing Agency:

Mailing address:

Development Bank of Jamaica Limited  
11A – 15 Oxford Road  
Kingston 5  
Jamaica, West Indies

Facsimile: (876) 929-6055

Email address: [bigeeproject@dbankjm.com](mailto:bigeeproject@dbankjm.com)

For the Bank:

Mailing address:

Inter-American Development Bank  
Country Office in Jamaica  
6 Montrose Road  
Kingston 6  
Jamaica, West Indies

Facsimile: (876) 764-0852/(876) 764-0853

Email address: [idbjamaica@iadb.org](mailto:idbjamaica@iadb.org)

(b) Any notice from one party to another by virtue of this Contract regarding matters other than those related to the execution of the Programme, 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 Beneficiary:

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](mailto: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 Contract 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 Contract in Kingston, Jamaica.

JAMAICA

INTER-AMERICAN DEVELOPMENT  
BANK



The Hon. Nigel Clarke, DPhil., MP  
Minister of Finance and the Public Service



Lorenzo Escondeur  
Representative a.i. of the Bank in Jamaica

Date: February 22, 2022

Date: February 6, 2022

## **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. "Approval Currency" means the currency in which the Bank approves the Contribution.

4. "Bank" shall have the meaning assigned to it in the Special Conditions.
5. "Board" means the Board of Executive Directors of the Bank.
6. "Beneficiary" means the party to which the financing is made available.
7. "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.
8. "Closing Period" means a period of up to ninety (90) days from the expiration date of the Original Disbursement Period, or any extension thereof.
9. "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.
10. "Contract" means this non-reimbursable financing contract.
11. "Contracting Agency" means the entity specialized in managing procurement, and which, in agreement with the Beneficiary or the Executing Agency, as the case may be, may be employed to carry out, partially or in full, the procurement of goods or works, consulting services or non-consulting services for the Project.
12. "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.
13. "Contribution" means the funds disbursed from the Financing.
14. "Core Procurement Principles" means the principles that guide the procurement activities and the selection processes pursuant to the Procurement Policies and the Consultant Policies, being the following: value for money, economy, efficiency, equality, transparency, and integrity.
15. "Dollar" means the legal tender of the United States of America.
16. "Eligible Expenditure" shall have the meaning assigned to it in the Special Conditions.
17. "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."

18. "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.
19. "General Conditions" mean the entirety of articles which comprise Part Two of this Contract.
20. "Local Currency" means any currency other than the Dollar that is legal tender in the countries of Latin America and the Caribbean.
21. "Original Disbursement Period" means the original period for disbursements of the Contribution, which is set forth in the Special Conditions.
22. "Parties" shall have the meaning assigned to it in the introduction to the Special Conditions.
23. "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.
24. "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.
25. "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, among others: corrupt practice, fraudulent practice, coercive practice, collusive practice, obstructive practice, and misappropriation.
26. "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.
27. "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.
28. "Semester" means the first or second six (6) months of a calendar year.
29. "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.

(c) Notwithstanding paragraph (a) above and Article 6.04(b) of these General Conditions, whenever the Bank so determines, it may, by written notice to the Beneficiary or the Executing Agency, as appropriate, render void the request for direct payment submitted by the Beneficiary or the Executing Agency, as the case may be.

**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, and the Contracting Agency, as the case may be, of these Policies.

(b) When the Bank has satisfactorily assessed and deemed acceptable the procurement rules, procedures and systems of the Beneficiary or an entity of the Beneficiary, 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 procurement rules, procedures and systems, in accordance with the terms of the acceptance of the Bank and applicable accepted legislation and processes. The terms of such acceptance shall be notified in writing by the Bank to the Beneficiary and the Executing Agency. Use of procurement rules, procedures and systems of the Beneficiary or an entity of the Beneficiary 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 acceptance, 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 accepted. The use of procurement rules, procedures and systems of the Beneficiary or an entity of the Beneficiary 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 Management.** (a) The Beneficiary, directly or through the Executing Agency, agrees to carry out the execution (preparation, construction, and operation) of the activities included in the Project in accordance with the Environmental and Social Policy Framework of the Bank, its Environmental and Social Performance Standards, as well as with their respective Guidelines, 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 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 (c) 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 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 unless the Bank has provided a notification to the Borrower or the Executing Agency in accordance with Article 4.08(c) of these General Conditions; 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, 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 following actions, 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.

- (iv) Referring the matter to appropriate law enforcement authorities.
- (vi) Imposing fines representing reimbursement to the Bank of costs associated with investigations and proceedings.

(b) The provisions of Article 6.01(f) 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.

(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 whatsoever, 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.

## ANNEX A

### THE PROGRAMME

#### **Boosting Innovation, Growth and Entrepreneurship Ecosystems in Jamaica**

#### **I. Objective**

- 1.01** The Programme complements the Bank's loan 4860/OC-JA (the "BIGEE Loan" or the "Loan 4860/OC-JA")<sup>1</sup> with the general objective to promote sustainable and robust growth among startups and Micro, Small and Medium Enterprises (MSMEs) in Jamaica. The specific objectives are to: (i) promote innovation and productivity among established MSMEs with high growth potential; (ii) promote sustainable growth in scalable startups; and (iii) create a sustainable pipeline of high-growth potential startups.

#### **II. Description**

- 2.01** To achieve the objective indicated in paragraph 1.01 above, the Programme will include the following components:

##### **Component 1. Innovation and Growth for Established MSMEs**

- 2.02** This component will target established MSMEs and is geared to promote efficiency and growth through development and adoption of innovation. It will allow participant MSMEs to use inputs and factors in more productive and sustainable ways by improving productive processes, creating new products, and adopting more efficient technologies and services, therefore enabling low-carbon and climate resilient growth.

##### **Subcomponent 1.1. Investment in Innovation in MSMEs<sup>2</sup>**

- 2.03** This subcomponent will promote the increase of inputs for innovation among firms by: (i) supporting innovation in established MSMEs<sup>3</sup> through matching grants for investments in innovation in either processes or products; and (ii) financing public and club goods for clusters of collective use that would allow MSMEs to increase their efficiency, as well as economies of scale and scope. This subcomponent will include activities to provide innovation grants and to finance public goods to: (i) women-led firms/clusters; (ii) COVID-19 responses with climate focus; and (iii) open collaboration initiatives to

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<sup>1</sup> This Program has the same objective of the Loan 4860/OC-JA, and complements it by providing additional resources for the loan targeted at addressing gender, climate change, and COVID-19 impact for established MSMEs, scalable startups and high potential startups. Therefore, the Results Matrix (RM) is the same for both.

<sup>2</sup> Under this subcomponent, 12% of the US\$8,217,891.52 (EU grant amount exclusive of IDB lead fees) will finance climate change related eligible activities listed in section IV of the Environmental and Social Strategy.

<sup>3</sup> Private sector firms legally established in Jamaica with at least three years of financial audited statements.

accelerate the development of innovative and gender responsive climate solutions. It will also provide for targeted communication and specialized advisory services<sup>4</sup> focused on supporting women entrepreneurs to propose and participate in innovative climate solutions resulting in a target percentage of women beneficiaries and climate financed projects accessing grants. Maximum grant size will be US\$100,000 with a counterpart requirement of 15% as Development Bank of Jamaica's (DBJ) experience shows this is the optimum size for firms in Jamaica.

## **Component 2. Facilitating Innovation and Growth for Scalable Startups**

- 2.04** This component targets scalable startups, defined as MSMEs that have proven the concept of their business model and commercial viability and need support for acceleration given their potential for scaling up. It focuses on gender perspectives and climate change solutions.

### **Subcomponent 2.1. Stimulating Deal Flow**

- 2.05** The objective of this subcomponent is to stimulate deal flow by providing vouchers for acceleration services for scalable startups with a gender-responsive approach to COVID-19 responses that focus on circular economy and climate resilient products and initiatives that include climate eligible activities and projects listed in section IV of the Environmental and Social Strategy, which will be attached to the OM<sup>5</sup>. The voucher Programme will: (i) support accelerator institutions in designing and implementing business continuity pilots which address gender specific issues of firms impacted by COVID-19; (ii) promote local Jamaican technology firms to develop and offer digital and/or green technological solutions to climate change; and (iii) strengthen Business Support Intermediaries (BSIs) to provide Programmes to create digital capacity of MSMEs, with particular support to women-led firms and/or firms addressing gender issues. Grants for acceleration services are provided to BSIs through a Call for Proposals managed by the Technical Unit (TU) at the DBJ for a maximum of US\$200,000.

### **Subcomponent 2.2. Facilitating Access to Capital for Scalable Startups**

- 2.06** This subcomponent will allocate resources to capitalize a Sidecar Fund (SF) for women-led startups. A SF is an investment vehicle available to investor through angel investment groups (further details in the OM's Annex 14b). The DBJ will provide equity financing to startup companies that have been selected by angel investors and that follow an established set of criteria that includes gender perspective, climate change support and responses to COVID-19 issues. The angel investors will also provide equity funding to the startup companies. They will be guided by Jamaica's existing Venture Capital and Private Equity Policy (VDPEP) (approved in 2015 and updated in 2018) which defines as risk

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<sup>4</sup> The developing of business plans supports the technical feasibility of the proposals, as well as on the legal, technical, and financial aspects, and the hiring of the required experts.

<sup>5</sup> 4% of the US\$8,217,891.52 (IDU grant amount exclusive of IDB lead fees) of this activity will finance climate change related eligible activities.

management practices, investment constraints and monitoring and evaluation. The invested amount will be a maximum US\$100,000 with a counterpart of 50%.

### **Component 3. Facilitating Innovation and Growth for High Potential Early-Stage Startups**

- 2.07** This component will serve entrepreneurs or MSMEs at an early stage of development that have potentially successful value propositions and that could become scalable startups, with a gender perspective and focus on climate change issues<sup>6</sup>.

#### **Subcomponent 3.1. Technological Transfer**

- 2.08** This subcomponent will foster the capabilities of the innovation ecosystem<sup>7</sup> to assist entrepreneurs in valuing, transferring and commercializing technology<sup>8</sup> they have developed. This will be done by providing grants dedicated for open innovation<sup>9</sup> activities that propose solutions to identified gender issues and climate change related challenges with a focus on COVID-19 issues. Corporates will be required to undertake a gender audit. Grants for open innovation has a maximum of US\$50,000.

#### **Subcomponent 3.2. Incubator Support**

- 2.09** The grant programme for incubators will strengthen women-focused incubators and provide women-led firms with incubation support services. Specifically, it will: (i) support incubator institutions in designing and implementing business continuity pilots which address issues of women-led firms impacted by COVID-19; (ii) promote local Jamaican technology firms to develop and offer digital and/or technological solutions; and (iii) strengthen BSIs to provide programs to create digital capacity of startups with high potential, with particular support to women-led startups and/or startups addressing gender issues. The grants for incubation support will be up to US\$80,000 with a 10% counterpart in cash.

#### **Subcomponent 3.3 Deal Flow Generation**

- 2.10** This subcomponent includes: (i) the strengthening of research institutions; (ii) the provision of vouchers for Research and Development (R&D) (mission related research, including specific support for women-led research initiatives); (iii) support for academic institutions on entrepreneurship; (iv) training and skills for entrepreneurship which seeks to build soft skills in gender (i.e. promoting gender equality in the workplace, innovative product design that accounts for gender and diversity) and climate change perspectives (i.e. developing

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<sup>6</sup> 7% of the US\$8,217,891.52 (EU grant amount exclusive of IDB lead fees) of this component will finance climate change related eligible activities.

<sup>7</sup> An innovation and entrepreneurship ecosystem is composed of: (i) the private, public and academic sectors and intermediary institutions (business incubators and accelerators); (ii) technology transfer offices; and (iii) investors networks that encourage the development and scale-up of high growth, opportunity-based business ventures, whether from new entrants to the market (entrepreneurs), young, innovative firms (scalable startups), or existing businesses.

<sup>8</sup> Technology includes technological developments (i.e., the application of tools to solve challenges) in any sector.

<sup>9</sup> Open innovation, corporate entrepreneurship, is an organization that goes beyond their own internal knowledge, sources and resources for innovation.

innovative climate change mitigation and adaptation products and services); and (v) implementation of digital bootcamps<sup>10</sup> targeted at women (which includes scholarships and curriculums). The vouchers will range from US\$10,000 to US\$80,000 with a 30% counterpart.

### Other Costs and IDB Lead Fees

- 2.11** The Programme will allocate resources for the procurement of a gender specialist and a climate advisor to the Programme and the Loan 4860/OC-JA, technical capacity strengthening of the DBJ in the areas of managing climate change financed projects, gender responsive design (including training in gender auditing, implementation, and management of Programmes), and gender and climate specific sensitization and preparation for take up under the components. €400,000 (US\$469,593.80 equivalent) will be allocated from the EU-CIF for the IDB lead fees.

## III. Financing Plan

- 3.01** The Programme consists of the following non-reimbursable investment financing:

### Cost and Financing (in US\$ and €)

Components	Total Investment in Euros (€)	Total Investment in US Dollars (US\$)
Component 1. Innovation and Growth for Established MSMEs	1,900,000.00	2,230,570.56
Subcomponent 1.1. Investment in Innovation in MSMEs	1,900,000.00	2,230,570.56
Component 2. Facilitating Innovation and Growth for Scalable Startups	940,000.00	1,103,545.43
Subcomponent 2.1: Stimulating Deal Flow	300,000.00	352,195.35
Subcomponent 2.2: Facilitating Access to Capital for Scalable Startups	640,000.00	751,350.08
Component 3: Facilitating Innovation and Growth for High Potential Early-Stage Startups	3,340,000.00	3,921,108.24
Subcomponent 3.1. Technological Transfer	600,000.00	704,390.70
Subcomponent 3.2. Incubator Support	1,600,000.00	1,878,375.21
Subcomponent 3.3. Deal Flow Generation	1,140,000.00	1,338,342.33
Programme Administration and Management	820,000.00	962,667.29
<b>TOTAL</b>	<b>7,000,000.00</b>	<b>8,217,891.52</b>
<b>EU-CIF Fees</b>	<b>400,000.00</b>	<b>469,593.80</b>
<b>TOTAL + Fees</b>	<b>7,400,000.00</b>	<b>8,687,485.33</b>

<sup>10</sup> Digital bootcamps build in demand technological skills (such as data analytics, coding, etc.)



#### **IV. Execution and Administration**

- 4.01** The Executing Agency (EA) of the Programme will be the Development Bank of Jamaica Limited (DBJ).
- 4.02** The Technical Unit (TU) of the EA will be in charge of coordinating this operation's activities with participating government ministries/agencies, procurement execution (including the hiring of external auditors), contract supervision, internal control and financial management, including the submission of disbursement requests, preparation and submission of audited financial statements, and compliance with local and IDB and EU environmental requirements.
- 4.03** In addition to the existing Programme Steering Committee (PSC), the IDB and the EU will establish a participation mechanism to oversee the strategic development of the Programme and the Loan 4860/OC-JA: a Strategic Monitoring Committee (SMC), in which the IDB, the DBJ and the EU will meet at least twice a year (or more as deemed necessary) to discuss the Programme and the Loan 4860/OC-JA progress and to ensure compliance with the EU and IDB's fiduciary obligations. The DBJ's TU will act as a secretary to the SMC and is responsible for coordinating the operation of the SMC; generating all required reports to report on the progress of activities, Programme allocation, and annual plans; distributing invitations to SMC members indicating the issues to be addressed during the meeting; and drafting minutes, which must contain all of the agreements reached during the session, their contents, the opinions presented. The SMC takes decisions by consensus.
- 4.04** Among other aspects, the Operating Manual will describe the type and general eligibility criteria of beneficiaries of the Programme.
- 4.05** The activities of Component 1, 2, and 3 will be carried under the call for proposals modality<sup>11</sup> as well as through an Open Window Panel (OWP) at the DBJ. An independent Technical Expert Panel (TEP) comprised by experts with technical knowledge related to the nature of call for proposals will carry out the selection process under an established set of criteria. The TEP will review and make recommendations on matching grants above US\$50,000. The OWP will review matching grants below US\$50,000 that are submitted on a rolling call basis (with the exception of the SME Innovation Fund despite providing grants higher than US\$50,000) and will be comprised of two members of the public sector and one from the private sector. The roles and responsibilities of the TEP and the OWP are described in the OM.

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<sup>11</sup> The calls for proposals modality will have to comply with the applicable Call for Proposals Regulations of the EU.

## **ANNEX B: SUPPLEMENTARY AGREEMENT**

### ***ADDITIONAL OBLIGATIONS RESULTING FROM THE FINANCIAL FRAMEWORK PARTNERSHIP AGREEMENT AND THE CONTRIBUTION AGREEMENT BETWEEN THE EUROPEAN COMMISSION AND THE INTER-AMERICAN DEVELOPMENT BANK***

#### **CHAPTER I**

#### **Background, Purpose, Interpretation and Specific Definitions**

**ARTICLE 1.01. Background.** (a) On September 29, 2020, the European Union (“EU”), represented by the European Commission (“EC” or “European Commission”), and the Inter-American Development Bank (“Bank”) entered into a Financial Framework Partnership Agreement (“FFPA”), the purpose of which is to take into account the specificities of the Bank in the implementation of the EC’s standard contractual arrangements (the “EU General Conditions”) in relation to projects financed or co-financed with European Union (“EU”) funds.

(b) On February 2, 2022, the EU, represented by the EC, and the Bank executed a Contribution Agreement (the “Contribution Agreement”), whereby the EU agreed to contribute an amount of up to seven million Euros (€7.000.000) (the “EU Contribution”) for the financing of “Boosting Innovation, Growth and Entrepreneurship Ecosystems in Jamaica” (the “Programme”). The Programme complements the objectives of the loan “Boosting Innovation, Growth and Entrepreneurship Ecosystems (BIGEE) Loan” (the “Loan 4860/OC-JA”) granted by the Bank (altogether, the “Overall Programme” or the “Programmes”).

(c) On this date, the Bank and the Beneficiary have entered into a Non-Reimbursable Financing Agreement (the “Contract”) with the purpose of setting out the terms and conditions for the Bank to transfer the EU Contribution to the Beneficiary. The Contract is comprised of the Special Conditions, the General Conditions, Annex A (Description of the Programme) and this Annex B (Supplementary Agreement).

**ARTICLE 1.02. Specific purpose of this Supplementary Agreement.** (a) Whereas: (i) the Bank has agreed under the FFPA 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 Programme (hereinafter, collectively, the “Obligations of the Bank to the EU”); and (ii) the Beneficiary, directly or through the Executing Agency, as the case may be, will be in charge of the execution of the Programme, therefore, in addition to the general purpose of the Contract set forth in Article 1.01(c) above, the specific purpose of this Supplementary Agreement is to transfer to the Beneficiary the Obligations of the Bank to the EU that are related to Programme execution.

**ARTICLE 1.03. 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 Contract. 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. “Action” shall mean that part of the Programme that is wholly or partially financed with EU funds, as described Annex I of the Contribution Agreement.
2. “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 Programme
  - 1.2. Annex II: EU General Conditions for Contribution Agreements
  - 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
3. “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.
4. “Contribution Agreement” shall have the meaning assigned to it under Article 1.01(b) hereof.
5. “End Date” shall mean the date by which the Contribution Agreement ends, *i.e.* the moment of the payment of the balance by the EU Contribution or when the Bank repays any amounts paid in excess of the final amount due pursuant to Article 20 of the General Conditions of the Contribution Agreement (and Chapter XX hereof). If the Bank or the EU invoke a dispute settlement procedure in accordance with Article 14 of the General Conditions of the Contribution Agreement, the End Date shall be postponed until the completion of such procedure.
6. “EU” means the European Union or, for purposes of this Contract, the entity representing it in the Contribution Agreement, including the EC.
7. “EU Contribution” shall mean the total amount of EU resources committed under the Contribution Agreement, which can be adjusted pursuant to the provisions of Chapter XX hereof, minus the Bank’s administrative fees.

8. “EU General Conditions” shall mean the standard contractual arrangements of the European Commission reflected in their template Contribution Agreement which, among other annexes, include the template General Conditions for Contribution Agreements as Annex II.
9. “EU Restrictive Measures” shall have the meaning assigned to it under Article 22.02(b).
10. “Executing Agency” shall mean the Development Bank of Jamaica Limited (DBJ).
11. “Implementation Period” shall mean the period provided for the execution of the EU Contribution specified in the Contribution Agreement. Upon adequate justification, the Beneficiary may request the extension of the Implementation Period.
12. “Loan 4860/OC-JA” shall have the meaning assigned to it under Article 1.01(b).
13. “Multi-Donor Action” means an Action the financing of which is complemented with additional resources from other donors, including the Bank, whether provided on a reimbursable or non-reimbursable basis. This Action is a Multi-Donor Action.
14. “Management Declaration” shall mean the declarations to be made annually by the Bank to the EU pursuant to the Contribution Agreement.
15. “Overall Programme” shall have the meaning assigned to it under Article 1.01(b).
16. “Personal Data” means any information relating to an identified or identifiable individual. An identifiable individual can be identified by reasonable means, directly or indirectly, by reference to an attribute or combination of attributes within the data, or combination of the data with other available information. Examples of attributes that can be used to identify an identifiable Data Subject include, without limitation, their name, identification number, location data, online identifier, metadata, and factors specific to their physical, physiological, genetic, mental, economic, cultural or social identity.
17. “Pillar Assessment” shall mean an institutional evaluation by pillars conducted by the EU to the Bank pursuant to terms of reference based on the EU Financial Regulations.
18. “PRAG” shall have the meaning assigned to it under Article 22.01(a) hereof.
19. “Programme” shall have the meaning assigned to it in Article 1.01(b) above. References to Programme shall be deemed to be made to the Action and, in the context of reporting, to the Overall Programme.
20. “Reporting Period” shall mean a twelve (12) month period to be covered in the progress reports and will coincide with the calendar year. The first and last Reporting Period may be longer or shorter than twelve (12) months.

21. “Sound Financial Management” means a EU principle overarching the implementation of the Contribution Agreement (and, by extension, to this Supplementary Agreement), namely economy, effectiveness and efficiency (including all aspects of internal control). The principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results. The principle of efficiency concerns the best relationship between resources employed and results achieved.
22. “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 directly or through the Executing Agency, as the case may be, 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 under the Programme. The Beneficiary, directly or through the Executing Agency, as the case may be, agrees to comply, and to ensure that its contractors are obligated to comply, with the terms of this Supplementary Agreement.

**ARTICLE 2.02.     Responsibility.** (a) Under the Contribution Agreement, the Bank is fully liable for the use of the EU Contribution funds which are subject to recovery from the EU (as set forth in Chapter XV hereof). Therefore, if the resources of the EU Contribution have been unduly paid or incorrectly used by the Beneficiary, the Executing Agency or their contractors, as applicable, the Bank will take all the applicable measures pursuant to this Contract and its Regulations and Rules to recover such funds. The Beneficiary acknowledges and accepts the above and, as provided in greater detail in Chapter XV hereof, agrees to reimburse the Bank any amounts that the Bank is required to reimburse to the EU.

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

## **CHAPTER III**

### **Obligations regarding Information and Reporting**

**ARTICLE 3.01.     Reporting.** (a) The Beneficiary, directly or through the Executing Agency, as the case may be, will submit to the Bank the progress reports and final reports described below so that the Bank can submit them to the EU. These reports will comprise a narrative section and a financial section.

(b) Each progress (annual) or final report must provide a complete account of all relevant aspects of the implementation of the Overall Programme during the period covered. The report shall describe the implementation of the Overall Programme according to the activities envisaged in the Contribution Agreement (and or the loan agreement, as applicable) as well as the degree of achievement of its results (outcomes or outputs) as measured by the corresponding indicators. The report shall be drafted in such a way as to allow monitoring of objectives, the means envisaged and employed. The final report, narrative and financial, shall cover the entire Implementation Period of the Overall Programme.

(c) In case of a Multi-Donor Action, such as this case, where the disbursement of other donors' funds lasts longer than the Implementation Period of the Contribution Agreement, the EU may require, in addition to the final reports submitted pursuant to Article 3.02(c), the final report of the Overall Programme, once they become available, in which case the Beneficiary, through the Executing Agency, agrees to cooperate in all matters that may be necessary and/or advisable in order for the Bank to meet this obligation.

(d) The Beneficiary acknowledges and accepts that the EU reserves the right to request, at any time, additional information in relation to the execution of the Overall Programme, upon justification of its request. In that case, such information shall be provided to the Bank as soon as possible, so that the latter can submit it to the EU within thirty (30) days from receipt of such request. The Bank, upon request of the Beneficiary, directly or through the Executing Agency, as the case may be, may submit to the EU a 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 Overall Programme;
- (ii) Actual results: an updated table based on the Results Matrix of the Programme, including reporting of results achieved by the Programme (outcomes or outputs) as measured by their corresponding indicators; agreed baselines and targets; and relevant data sources;
- (iii) Information on the activities directly related to the Overall Programme as described in Annex I of the Contribution Agreement and carried out during the Reporting Period;
- (iv) Information on the difficulties encountered and measures taken to overcome problems and eventual changes introduced;
- (v) The Overall Programme activities carried out during the period covered by the report;
- (vi) 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;

- (vii) A breakdown of the total costs, following the structure set out in Annex III of the Contribution Agreement, incurred from the beginning of the Overall Programme as well as the legal commitments entered into by the Beneficiary, directly or through the Executing Agency, as the case may be, during the Reporting Period;
  - (viii) A summary of controls carried out and available final audit reports in line with the Beneficiary's (and/or Executing Agency's) policy on disclosure of such controls and audit reports. Where errors and weaknesses in systems were identified, an analysis of their nature and extent, as well as information on corrective measures taken or planned, shall also be provided;
  - (ix) If applicable, a payment request; and
  - (x) The work plan and budget forecast for the following Reporting 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 (ix);
  - (ii) A summary of the receipts, payments received, and eligible costs incurred or acceptable expenditures of the Programme;
  - (iii) Where applicable, an overview of any funds unduly paid or incorrectly used, that the Beneficiary, directly or through the Executing Agency, as the case may be, 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) If relevant, details of transfers of equipment, vehicles and remaining major supplies as provided under Article 9.03 hereof;
  - (vi) Where the Action is Multi-Donor Action and the EU Contribution is not earmarked (as is this case), a confirmation that the EU Contribution has been used in accordance with the rules set forth in this Supplementary Agreement and that costs that were not eligible for EU financing have been covered by other donors' contributions, including loan resources from the Bank; and
  - (vii) Where applicable, a request for payment.
- (c) Deadline for Submitting the Reports. The Beneficiary, directly or through the Executing Agency, as the case may be, shall submit a report for every Reporting Period, starting

from the commencement of the Implementation period. The information, both narrative and financial, shall cover the totality of the Overall 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 Reporting Period, so that the Bank can forward it to the EU 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 Programme, so the latter can forward it to the EU within the agreed term.

**ARTICLE 3.03. Audit Opinions.** (a) The Beneficiary, directly or through the Executing Agency, as the case may be, shall submit to the Bank the Audited Financial Statements (AFS) of the Overall Programme audited by an independent auditor (recognized as the Borrower's Auditor General's Department), based on internationally accepted audit standards, acceptable to the Bank and hired in accordance with the Bank's Regulations and Rules, with an internal control opinion.

(b) The AFSs shall cover the use of resources of the EU 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 EU on a timely basis, providing factual, accurate and complete information which shall serve as the basis for the Management Declaration to be submitted to the EU by the Bank.

**ARTICLE 3.04. Currency for Reporting and Failure to Comply with Reporting Obligations.** (a) The reports shall be submitted in Euros and in the currency agreed to in the Contract for the annual progress and final reports (AFS will be in Dollars).

(b) If the Beneficiary, directly or through the Executing Agency, as the case may be, 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, it shall inform the Bank in writing of the reasons and shall provide a summary of the progress of the Overall Programme and, if applicable, a provisional work plan for the next period. The Beneficiary, directly or through the Executing Agency, 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 submit this information within a two (2) month period. Otherwise, the Beneficiary acknowledges and accepts that the EU may terminate the Contribution Agreement, refusing to pay any outstanding amounts and recovering any amounts unduly paid, 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 EU shall not be held liable for any damages or injuries sustained by the staff or property of the Beneficiary, the Executing Agency or any of its contractors during the execution of the Programme or as a result of the same. Further, the EU shall not be held liable towards 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 Programme.

(b) The Beneficiary shall discharge the EU 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 Programme.

## **CHAPTER V**

### **Conflict of Interests**

**ARTICLE 5.01. Conflict of Interests.** The Beneficiary and the Bank shall refrain from any action that could give rise to a conflict of interest, pursuant to the Bank's Regulations and Rules. A conflict of interest shall be deemed to arise where the impartial and objective exercise of the functions of any person implementing this Supplementary Agreement is compromised.

## **CHAPTER VI**

### **Confidentiality**

**ARTICLE 6.01. Confidentiality Agreement.** The Beneficiary, directly or through the Executing Agency, as the case may be, agrees to preserve the confidentiality of any document, information or other material designated as confidential in nature, or that which ought to be reasonably understood as being confidential in nature, directly related to the implementation of the Programme that is communicate as confidential. 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. In no case can disclosure put in jeopardy 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 Programme.

**ARTICLE 6.02. Requirement of Written Consent and Term.** (a) The Beneficiary, directly or through the Executing Agency, as the case may be, shall obtain the previous written consent of the Bank prior to disclosing such confidential information, unless:

- (i) the Bank, in consultation with the EU, agrees to release the Beneficiary from the above-mentioned confidentiality obligations;

- (ii) the confidential information has been made public through other means than in breach of the confidentiality obligation of the Beneficiary bound by that obligation; 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 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.** Any processing of Personal Data by the Beneficiary, either directly or through the Executing Agency, shall comply with the applicable data privacy, protection, security, and related laws and regulations.

## **CHAPTER VIII**

### **Communication and Visibility**

**ARTICLE 8.01. Execution of the Communication and Visibility Plan.** (a) The Beneficiary, directly or through the Executing Agency, as the case may be, 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 EU requests or agrees otherwise, the Beneficiary, directly or through the Executing Agency, as the case may be, shall take all appropriate measures necessary according to the Communication and Visibility Plan to publicize 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 Programme 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, as the case may be, pertaining to the Programme, 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 can in no way be taken to reflect the official opinion of the European Union”*.

(c) If during the execution of the Programme, equipment, vehicles or major supplies are acquired using the EU Contribution, the Beneficiary and/or the Executing Agency, as the case may be, shall display appropriate acknowledgment 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, as the case may be, shall propose appropriate 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 regarding the identification of the Programme as an activity of the Beneficiary and/or the Executing Agency, as the case may be, nor the ownership of the equipment, vehicles or major supplies by the Beneficiary and/or the Executing Agency, as the case may be.

(d) If, pursuant to Article 9.03(c), the equipment, vehicles or remaining major supplies purchased with the EU Contribution have not been transferred to the local authorities, the local grant beneficiaries, final recipients 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 overall Programme, if the latter is longer. Where the Beneficiary and/or the Executing Agency, as the case may be, 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, as the case may be.

(e) The Beneficiary, directly or through the Executing Agency, as the case may be, shall ensure that reports, publications, press releases and updates relevant to the Programme are communicated to the addresses stated in the Special Conditions upon their issuance.

(f) The Beneficiary agrees to consult immediately and endeavor to remedy any detected shortcoming in implementing the visibility requirements set out in this Article. This is without prejudice to measures the EU may take in case of substantial breach of an obligation.

## **CHAPTER IX**

### **Ownership, Right to Use Results and Transfer of Equipment**

**ARTICLE 9.01.** **Ownership.** Ownership of the results of the Programme shall not vest in the EU. Subject to Chapter VI hereof (Confidentiality), the Beneficiary, directly or through the Executing Agency, as the case may be, shall grant, and shall act to ensure that any third party concerned grants the EU the right to use free of charge the results of the Programme, including the reports and other documents relating to it, which are subject to industrial or intellectual property rights.

**ARTICLE 9.02.** **Right of Use.** Where the results mentioned in Article 9.01 above include pre-existing rights and the Beneficiary cannot warrant the EU the right to use such results, the Beneficiary, directly or through the Executing Agency, as the case may be, shall inform in writing the Bank, so that the Bank can inform the EU accordingly.

**ARTICLE 9.03. Transfers.** (a) The equipment, vehicles and remaining major supplies purchased with the EU Contribution shall be transferred to or remain with the Executing Agency, local authorities, local grant beneficiaries or 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 purchased with the EU Contribution within the framework of a Programme that continues after the end of the Implementation Period may be transferred at the end of the overall Programme. The Beneficiary, directly or through the Executing Agency, as the case may be, shall use the equipment, vehicles and remaining major supplies for the benefit of the final beneficiaries. The Beneficiary, directly or through the Executing Agency, as the case may be, shall inform the Bank, so that it can promptly report to the EU, about the end use of the equipment, vehicles and remaining major supplies in the final report. Through the Bank, the EU may request the Beneficiary and/or the Executing Agency, as the case may be, to submit a form specifying the transfer of ownership of such assets.

(d) In the event there are no local authorities, local grant beneficiaries or final beneficiaries, to whom the equipment, vehicles and remaining major supplies could be transferred, the Beneficiary, directly or through the Executing Agency, as the case may be, may transfer them to another EU funded Programme or, alternately, retain ownership of the equipment, vehicles and remaining major supplies at the end of the Programme. In such cases, it shall submit to the Bank a justified written request with an inventory listing the items 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 EU that it may deem necessary before responding in writing to the request of the Beneficiary or Executing Agency, as the case may be. In no event may the end use jeopardize the sustainability of the Programme.

## **CHAPTER X**

### **Monitoring and Evaluation of the Programme**

**ARTICLE 10.01. Monitoring and Evaluation Missions.** (a) The Beneficiary acknowledges and agrees that the Bank, in consultation and in agreement with the Beneficiary, shall invite representatives of the EU to participate, at their own costs, in the main monitoring and evaluation missions related to the performance of the Programme. The Bank, in consultation with the Beneficiary, directly or through the Executing Agency, as the case may be, shall report the results of these missions to the EU.

(b) The preceding Article 10.01(a) shall be understood without prejudice to any monitoring mission or evaluation exercise that the EU, as donor, at its own cost, may wish to perform, in accordance with Chapter XVII hereof.

## **CHAPTER XI**

### **Amendment to the Contribution Agreement**

**ARTICLE 11.01. Amendment Procedure.** Any amendment to the Contract and/or this Supplementary Agreement, as applicable, shall be consistent with a corresponding amendment to the Contribution Agreement. Amendments to the Contribution Agreement shall be in writing, before its End Date and will comply with other requirements set forth in Article 11 of the Contribution Agreement's General Conditions. The Beneficiary acknowledges that when an amendment to the Contribution Agreement does not affect the basic purpose of the Programme 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) in relation to each concerned heading, the Bank and the Beneficiary and/or the Executing Agency may joint agree to make such amendment, and the Bank shall inform this to the EU accordingly in writing, at the latest, in the next report. This methodology shall not apply to the amendment of the contingency reserve, if any. The outputs, indicators and their related targets, baselines and sources of verification described in Annex I of the Contribution Agreement, the logical framework described in such Contribution Agreement, as well as Annex VI of same Contribution Agreement may be changed by joint decision of the Bank and the Beneficiary with the consent of the EU, without need for a formal amendment to the Contribution Agreement, provided the change does not affect the basic purpose of the Programme. Where applicable, amendments to the Contribution Agreement may be reflected in an amendment to the Contract and/or this Supplementary Agreement, as the case may be.

## **CHAPTER XII**

### **Suspension**

**ARTICLE 12.01. Suspension of the Time Limit for Payment by the EU.** (a) The Beneficiary acknowledges and accepts that the EU may suspend the time limit for payment under the Contribution Agreement 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 EU 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 Programme; 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 period, if necessary, to prevent significant damage to the EU's financial interests.

(b) In the events provided under Article 12.01(a) hereof, 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 promptly notify 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. Payments will be resumed on the date on which the requested information or revised documents are received by the Bank, 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 the Contribution Agreement by the EU.** (a) The Beneficiary acknowledges and agrees that the EU may suspend the implementation of the Contribution Agreement, fully or partially, if:

- (i) the EU has proof that irregularities, fraud or breach of substantial obligations have been committed by the Bank, the Beneficiary, 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 Programme;
- (ii) in the event that the EU has proof that irregularities, fraud or breach of obligations have occurred which call into question the reliability or effectiveness 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
- (iii) the EU has proof that the Bank, the Beneficiary, the Executing Agency and/or its contractors have committed irregularities, fraud or breaches of obligations under other agreements funded with EU funds, provided that those irregularities, fraud or breaches of obligations have a material impact in the Contribution Agreement.

(b) Before suspension, the EU shall formally notify the Bank of its intention to suspend payments, inviting it to make observations within ten (10) days from the receipt of the notification. The Bank will pass-along such notification to the Beneficiary. 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 partial suspension of the Contribution Agreement, by request of the Bank and in agreement with the Beneficiary, the EU and the Bank shall enter into discussions to find the arrangements necessary to continue the part of the implementation of the Programme 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 EU. Following suspension of the implementation of the Contribution Agreement, the EU may terminate the Contribution Agreement, 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 amend this Supplementary Agreement accordingly.

**ARTICLE 12.03. Suspension for Exceptional Circumstances.** (a) The Bank, in consultation with the Beneficiary, may decide to suspend the implementation of all or part of the Programme, if unforeseen and exceptional circumstances beyond the control of the Bank and/or the Beneficiary make such implementation impossible or excessively difficult, such as in cases of force majeure. In coordination with the Beneficiary, the Bank 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) 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.

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

(d) The Bank and the Beneficiary, as applicable, shall minimize the duration of the suspension. The Beneficiary, in consultation with the Bank and the EU, shall resume the implementation of the Programme 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 Programme. 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 Programme before the notification of the suspension was received which the Bank and/or the Beneficiary cannot reasonably suspend, reallocate or terminate on legal grounds. This is without prejudice to any amendments to the Contribution Agreement (and, by extension, to this Supplementary Agreement) that may be necessary to adapt the Programme to the new implementing conditions, including, if possible, the extension of the Implementation Period or to the termination of the Contribution Agreement in accordance with Chapter XIII below. In case of suspension due to force majeure or if the Action

is a Multi-Donor Action (such as this case), the Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension. In such cases, the Bank and the Beneficiary will modify this Supplementary 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 are 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. In the event of these suspension situations, the same shall be automatically replicated herein. In addition, in the event the suspensions are lifted pursuant to the preceding Articles, the time limit for payment shall be resumed, as well as the execution of the Programme 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 the General Conditions of this Contract.

**CHAPTER XIII**

**Termination 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 or penalties foreseen in the EU Financial Regulation, where applicable, 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 material (substantial) obligation incumbent on them pursuant to the provisions of the Contribution Agreement and/or this Supplementary Agreement;
- (ii) are guilty of misrepresentation or submit false or incomplete statements to obtain the EU Contribution, or provide reports that do not reflect reality to obtain or keep the EU 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 Chapter III hereof;  
and



- (vii) have committed any of the failings 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 European Commission. In such case, the termination will take effect if and when confirmed by the Director. The Bank shall notify the Beneficiary promptly. 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.

(c) If at any time the Beneficiary, in consultation with the Bank, considers that the Programme 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 Contract 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 Programme carried out, up to the date of termination;
- (ii) in the situations provided in Articles 12.03(a) and 12.03(b) hereof, to the unavoidable residual expenses incurred during the notice term; and
- (iii) in the situations referred to Articles 12.03(a) and 12.03(b) hereof, the reimbursement of the legal commitments entered into for the implementation of the Programme before the written notice on termination was received and the Bank and/or the Beneficiary and/or the Executing Agency, as applicable, could not reasonably terminate on legal grounds.

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

(e) In the event of termination, a final report and a request for payment of the balance should be submitted pursuant to Chapters III and XIX 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. 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 will be decided by the EU and remains outside of the control of the Bank. Therefore, the Beneficiary and/or the Executing Agency, as applicable, release 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, the implementation of the Action under 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 that the dispute resolution mechanism agreed by the EU and the Bank is governed by Article 14 of the General Conditions of the Contribution Agreement.

#### **CHAPTER XV** **Recovery**

**ARTICLE 15.01. Recovery.** When any amount is to be recovered under the Contribution Agreement, the Bank shall repay the amount due to the EU in the terms and deadlines notified by the EU. Unless the recovery in question is directly attributable to the Bank, the Beneficiary will promptly pay any such recovered amount to the Bank, as set forth below.

**ARTICLE 15.02. Recovery Procedure.** (a) Before recovery, the EU shall formally notify the Bank of its intention to recover any undue amount, specifying the amount and the reasons for 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 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, at least five (5) working days in advance of the payment date established by the EU, in order for the Bank to timely and properly deliver such payment to the EU.

(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 EU 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.

(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 19.6(a) of Annex II of the Contribution Agreement. The Beneficiary accepts that such interest shall be applied and will therefore repay the amount due plus any accrued interest. 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, directly or through the Executing Agency, as the case may be, shall keep accurate, complete, reliable and regular records and accounts of the implementation of the Programme. 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 the Bank's Regulations and Rules, as set forth in this Contract.

**ARTICLE 16.02. Archiving.** For a period of five (5) years from the End Date, and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the European Anti- Fraud Office (OLAF), if notified to the Bank, has been disposed of, the Beneficiary, directly or through the Executing Agency, as the case may be, shall keep and make available all relevant financial information (originals or copies) related to the Supplementary Agreement and to any procurement contracts and grant agreements financed by the EU Contribution. The Document Retention Requirements for Verification and Audit Purposes, which is an annex to the Framework Agreement, attached to this Supplementary Agreement as Schedule I, shall be used as guidelines to comply with this obligation. The obligation to keep the

information herein 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 and vice-versa.

## **CHAPTER XVII**

### **Access and Financial Checks**

**ARTICLE 17.01. Verifications.** The Beneficiary and/or the Executing Agency, as the case may be, shall allow the EU, OLAF, the European Court of Auditors, or any another authorized representative to conduct verifications, including desk reviews and/or on-the-spot checks, on the use made of the EU Contribution (including the procedures for the award of public contracts and grants) and will have the right to request all relevant financial information (drawn from accounts, records and/or other supporting accounting documents) or of any other document related to the financing of the Programme, seek clarifications of information and verify underlying documents.

**ARTICLE 17.02. Procedural Matters.** (a) Where applicable, the desk reviews, investigations, on-the-spot checks and inspections referred to above shall refer to a verification that shall be performed in accordance with the verification clauses agreed between the Bank and the European Commission under the FFPA. This is without prejudice to any cooperation arrangement between OLAF and the Bank's anti-fraud bodies, where applicable, as stated below.

(b) Verifications will be conducted in a collaborative manner, without creating an undue burden and in good faith. The EU has agreed to prepare them carefully, to give sufficient notice and to inform the Bank of its terms of reference in advance. To the extent possible, and provided that the Bank has received these communications from the EU in a timely manner, the Bank will notify and coordinate with the Beneficiary accordingly.

(c) The EU has undertaken to conduct initial and final meetings with the verification team at the start and end of the mission. The EU has agreed to share a draft verification report, allowing sufficient time for comments prior to final issuance. The Bank and the Beneficiary will coordinate and consult with each other in order to make submit any such comments in a timely manner.

**ARTICLE 17.03. European Anti-fraud Office (OLAF).** Any verification agreement in accordance with the above shall not affect the powers of OLAF and the Bank's obligations regarding OLAF in accordance with their Administrative Cooperation Agreement dated June 23, 2015. The Beneficiary and/or the Executing Agency, as the case may be, agree that OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions laid down by EU law for the protection of the financial interests of the EU against fraud, corruption and any other illegal activity. OLAF has undertaken to inform the Bank of any suspected prohibited practice without undue delay.

**ARTICLE 17.04. European Court of Auditors.** The Beneficiary and/or the Executing Agency, as the case may be, agree that the execution of the Contribution Agreement may be subject to scrutiny by the Court of Auditors when the Court of Auditors audits the European Commission's

implementation of EU expenditure. In such case the Bank, the Beneficiary and/or the Executing Agency, as the case may be, shall provide to the Court of Auditors access to the information that is required for the European Court of Auditors to perform its duties.

**ARTICLE 17.05. Access.** To implement the verification prerogatives stated above, the Beneficiary shall keep (or ensure that the Executing Agency or its contractors keep) financial and accounting documents concerning the activities financed by the EU in accordance with document retention standards (see Chapter XVI hereof). They agree to make all relevant financial information available to the competent bodies of the EU upon request, including the EC, OLAF and the European Court of Auditors. This includes access to any documents and computerized data concerning the technical and financial management of the operations financed or co-financed with EU funds, as well to as grant them access to sites and premises at which such operations are carried out. The Beneficiary and/or the Executing Agency, as the case may be, 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 to Chapter VI hereof. The documents shall be kept accessible and be classified in a manner permitting checks and the Beneficiary and/or the Executing Agency, as the case may be, shall report to the Bank, to the EC, 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 EC, OLAF and the European Court of Auditors and its authorized agents.

## **CHAPTER XVIII**

### **Expenditures**

**ARTICLE 18.01. Eligible Expenditures.** In addition to the requirements of the Special Conditions of the Contract, the Beneficiary agrees that the expenditures of the Programme financed or co-financed with EU resources (see definition of Action) shall meet the following criteria:

- (a) they are necessary for carrying out the Action, directly attributable to it, arising as a direct consequence of its implementation and charged in proportion to the actual use;
- (b) they are incurred in accordance with the provisions of the Contribution Agreement, as applicable in accordance with this Supplementary Agreement;
- (c) they are actually incurred by the Beneficiary and/or the Executing Agency, i.e. they represent real expenditure definitely and genuinely borne by the Beneficiary and/or the Executing Agency, as the case may be;

- (d) they are reasonable, justified, comply with the EU principle of Sound Financial Management and are in line with the usual practices of the Bank regardless of their source of funding;
- (e) they are incurred during the Implementation Period with the exception of costs related to final report, final evaluation, audit and other costs linked to the closure of the Action which may be incurred after the Implementation Period;
- (f) they are identifiable and backed by supporting documents, in particular determined and recorded in accordance with the accounting practices of the Bank;
- (g) they are covered by one of the sub-headings indicated in the estimated budget in Annex III and by the activities described in Annex I of the Contribution Agreement; and
- (h) they comply with the applicable tax and social legislation taking into account the Bank or the Beneficiary's privileges and immunities, if applicable.

**ARTICLE 18.02. Ineligible Expenses.** Notwithstanding the provisions of the Bank procurement and fiduciary guidelines and policies, the following expenditures shall not be eligible for EU financing:

- (a) bonuses, provisions, reserves or non-remuneration related costs. Employers' contributions to pension or other insurance funds run by the Beneficiary or the Executing Agency, as the case may be, may only be eligible to the extent they do not exceed the actual payments made by these schemes and that the amount provisioned does not exceed the contribution that could have been made to an external fund;
- (b) full-purchase cost of equipment and assets unless the asset or equipment is specifically purchased for the Action and ownership is transferred in accordance with Chapter IX hereof;
- (c) duties, taxes and charges, including VAT, that are recoverable/deductible by the Beneficiary and/or the Executing Agency, as the case may be;
- (d) return of capital;
- (e) debts and debt service charges;
- (f) provision for losses, debts or potential future liabilities;
- (g) banking charges for the transfers from and to the Bank;
- (h) costs incurred during the suspension of the implementation of the Contribution Agreement except the minimum costs agreed on in accordance with Article 12.03(d) hereof;

- (i) costs declared by the Beneficiary or the Executing Agency, as the case may be, under another agreement financed by the European Union budget (including through the European Development Fund);
- (j) contributions in kind. The cost of staff assigned to the Action and actually incurred by the Beneficiary and/or the Executing Agency, as the case may be, is not a contribution in kind and may be declared as a direct eligible cost if it complies with the conditions set out in Article 18.01; and
- (k) costs of purchase of land or buildings.

**ARTICLE 18.03. Simplified Cost Options.** (a) If stated in the Special Conditions of the Contribution Agreement, direct eligible costs may also be declared by using any or a combination of unit costs, lump sums and flat-rate financing.

(b) The methods used by the Beneficiary and/or the Executing agency, as the case may be, to determine unit costs, lump sums or flat-rates shall comply with the principles provided in this Article 18.03, be clearly described and substantiated in Annex III of the Contribution Agreement, shall avoid double funding of costs and shall respect the EU principle of Sound Financial Management. These methods shall be based on the Beneficiary and/or Executing Agency historical or actual accounting data, its usual accounting practices, an expert judgment or on statistical or other objective information where available and appropriate.

(c) Costs declared under simplified cost options do not need to be backed by accounting or supporting documents except if they are necessary to demonstrate that the costs have been declared according to the declared method or cost accounting practices and that the qualitative and quantitative conditions defined in Annex I and III of the Contribution Agreement have been respected.

(d) Simplified cost options not linked to the achievement of concrete results shall only be eligible if they have been ex ante-assessed by the EU.

(e) If a verification reveals that the methods used by the Beneficiary and/or the Executing Agency to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Supplementary Agreement, the Beneficiary and/or Executing Agency, as the case may be, shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat-rate financing.

## **CHAPTER XIX**

### **Payments (Disbursements from the EU to the IDB)**

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

- (i) The EU shall provide to the Bank a first pre-financing instalment of the EU Contribution within thirty (30) days from receipt of the Contribution Agreement signed by both parties (i.e., the EC and the Bank);
- (ii) For each further instalment of the EU Contribution, the Bank, in coordination with the Beneficiary and/or the Executing Agency, may submit a request for further pre-financing instalment for the following Reporting Period in accordance with the Special Conditions of the Contribution Agreement, in which case the following provisions apply:
  - the Reporting Period is intended to be a twelve (12) month period which will coincide with the Beneficiary or Executing Agency's calendar year, as applicable, unless otherwise provided for in the Special Conditions of the Contribution Agreement. When the remaining period to the end of the Action is up to eighteen (18) months, the Reporting Period shall cover it entirely;
  - if at the end of the Reporting Period less than 70% of the last payment (and 100% of previous payments, if any) has been paid by the Beneficiary and/or the Executing Agency to its staff or is otherwise subject to a legal commitment with a third party, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70% of the immediately pre-financing payment (and 100% of previous payments, if any) and the part of the previous pre-financing payments which has been paid by the Beneficiary to its staff or has been subject to a legal commitment with a third party;
  - the Bank, in coordination with the Beneficiary and/or the Executing Agency, may submit a request for further pre-financing payment before the end of the Reporting Period, once more than 70 % of the immediately preceding payment (and 100% of previous payments, if any) has been paid by the Beneficiary and/or the Executing Agency to its staff or otherwise subject to a legal commitment with a third party. In this case, the following Reporting Period starts anew from the end date of the period covered by this payment request
- (iii) At the end of the Implementation Period, the Bank, in coordination with the Beneficiary and/or the Executing Agency, may submit a payment request for the balance, where applicable, 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. In case of a Multi-Donor Action (such as this case), then this last payment shall not be contingent on the submission of the final report for the overall Programme.



- (iv) The EU shall pay the further EU 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 or 13 of the Contribution Agreement (as stated in Chapters XII and XIII hereof).

(b) The EU Contribution payment requests to be submitted by the Bank, in coordination with the Beneficiary and/or the Executing Agency, shall be accompanied by the descriptive and financial reports submitted pursuant to Chapter III hereof. EU Contribution payment requests shall be drafted in the currency specified in the Special Conditions of the Contribution Agreement. With the exception of the first EU 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 Chapter XX hereof. If the balance is negative, any payment of balance shall become a recovery (Chapter XV hereof).

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

(d) The EU shall make the payments of the EU Contribution to the Bank in the currency specified in the Contribution Agreement. Upon receipt, and if applicable, the Bank will convert any EU funds to Dollars using the market rate in effect at the time of the conversion. Once converted, the Bank will transfer such Dollars to the Beneficiary in accordance with this Contract. The Bank will not be responsible for any exchange rate loss.

**ARTICLE 19.02. Late Payments.** The Beneficiary acknowledges that the Bank can only transfer EU funds to the Beneficiary if it has received them and that the EU could delay the payment of the EU 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.

## **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 EU Contribution when approving the final report. The EU shall then determine the balance:

- (i) to be paid pursuant to Chapter XIX hereof to the Bank, which will in turn pay such amount to the Beneficiary, where the final amount of the EU 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 Chapter XV 15 hereof, where the final amount of the EU 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 amount obtained after reduction of the EU Contribution pursuant to Article 20.02 hereof;
- (ii) the maximum EU Contribution referred to in Article 3.1 of the Special Conditions of the Contribution Agreement in terms of absolute value.

**ARTICLE 20.02. Reduction of the Final Amount.** If the Action: (i) is not implemented; (ii) is not implemented in accordance with the Contribution Agreement; or (iii) is implemented partially or late, the EU may, after allowing the Bank to submit its observations, reduce the EU 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. 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**

### **Performance Based Financing**

**ARTICLE 21.01. Performance-based Financing.** (a) If stated in the Special Conditions of the Contribution Agreement, the payment of the EU Contribution may be partly or entirely linked to the achievement of Results measured by reference to previously set milestones or through performance Indicators. Such performance-based financing is not subject to Article 18 of the Contribution Agreement. The relevant Results and the means to measure their achievement shall be clearly described in Annex I of the Contribution Agreement.

(b) The amount to be paid per achieved Result shall be set out in Annex III of the Contribution Agreement. The method to determine the amount to be paid per achieved Result shall be clearly described in Annex I the Contribution Agreement and take into account the EU principle of Sound Financial Management.

(c) The Beneficiary and/or the Executing Agency, as the case may be, shall not be obliged to report on costs linked to the achievement of Results. However, the Beneficiary and/or the Executing Agency, as the case may be, shall submit any necessary supporting documents, including, where relevant, accounting documents to prove that the Results triggering the payment as defined in Annex I and III of the Contribution Agreement have been achieved.

(d) Articles 3.02(a)(vii), 3.02(b)(ii) and 3.02(b)(vi) do not apply to the part of the Action supported by way of performance-based financing.

## CHAPTER XXII

### **Contracting, Early Detection and Exclusion System**

**ARTICLE 22.01. Contracting.** (a) 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 Programme, 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 the General Conditions of the Contract. 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. 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 adopt reasonable measures to exclude potential candidates or tenderers and applicants from the participation in a procurement grant or grant award process and from the award of a procurement contract or grant financed by EU funds that fall within the situations described in (i) to (iv) below. Among other measures that the Beneficiary and/or Executing Agency may apply, 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, or persons having representation, decision making or control over them, have not been the subject of a final judgment or of a final administrative decision for fraud, corruption, involvement in a criminal organization, money laundering, terrorist-related offences, child labour or trafficking in human beings;
- (ii) They, or persons having powers of representation, decision making or control over them have not been the subject of a final judgement or of a final administrative decision for an irregularity affecting the EU's financial interest;
- (iii) They are not guilty of misrepresentation in supplying the information (required as a condition of participation in the procedure or if they fail to supply this information);
- (iv) They have not been the subject of a final judgement or of a final administrative decision establishing that the entities have created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration, or principal place of business;

- (v) They have not been created with the intention described in point (iv) above as established by a final judgment or a final administrative decision.

(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 EU 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 EU Contribution on the grounds that the contractor has made substantial errors, irregularities or has seriously breached its contractual obligations.

**ARTICLE 22.02. Early Detection and Exclusion System.** (a) The Beneficiary and/or the Executing Agency, as the case may be, shall not support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

(b) The Beneficiary and/or the Executing Agency shall be responsible for ensuring that no support or economic resources shall be made available to, or for the benefit of, third parties - whether entities, individuals or groups of individuals - designated by the EU as subject to such restrictive measures in the lists provided at [www.sanctionsmap.eu](http://www.sanctionsmap.eu) (the “EU Restrictive Measures”). The Beneficiary and/or the Executing Agency shall cooperate with the Bank and the EU in assessing if any third recipients of funds in connection with the implementation of the Contribution Agreement fall under the scope of EU restrictive measures. The Beneficiary and/or the Executing Agency shall promptly inform the Bank in the event such recipients would fall under the scope of the EU Restrictive Measures. The Bank will in turn notify the EU with a view to jointly determining remedial measures in accordance with their respective applicable legal framework. Such measures may include, but shall not be limited to, the reallocation of the remaining EU Contribution, net of any costs incurred for undertaking any procurement or award procedure. Where such remedial measures are not feasible, the corresponding amount shall not be charged to the Action or, in case of Multi-Donor Action (such as this case), to the EU Contribution. This is without prejudice to the suspension or termination of the respective Contribution Agreement by the EU, together with the recovery of any unspent funds contributed by the EU under the Contribution Agreement.

(c) Without prejudice to the right of the Bank and the EU to exclude an entity from future procurement 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 third party.

(d) At the time of awarding contracts, the Bank may instruct the Beneficiary and/or the Executing Agency to take into account, the information contained in the EU’s Early Detection and Exclusion System.

(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 Contract.
- 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 Contract, 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 Contract;
  - Evidence of payment to service providers, suppliers or contractors (including bank advice or bank statements).