

Mrs. Ingrid White-Wilson
Secretary
The Cropper Foundation (TCF)
Building 7, Fernandes Industrial Centre
Laventille, Trinidad and Tobago

Mr. Mark Thomas
Chief Executive Officer
The Cropper Foundation (TCF)
Building 7, Fernandes Industrial Centre
Laventille, Trinidad and Tobago

Ref: Trinidad and Tobago. Nonreimbursable Technical Cooperation No. ATN/MC-15236-TT. Pilot an innovative approach to adaptation in Tobago Project.

Dear Mrs. White-Wilson and Mr. Thomas:

The purpose of this letter of agreement, hereinafter referred to as the “Agreement”, between The Cropper Foundation (TCF), a non-for profit company organized and existing under the laws of Trinidad and Tobago (hereinafter referred to as either the “Beneficiary” and/or the “Executing Agency”), and the Inter-American Development Bank, acting in its capacity as Administrator of the Sustainable Energy and Climate Change Multi-donor Fund (SECCI-MSC), (hereinafter referred to as the “Bank”), which we are submitting for your consideration, is to formalize the terms and conditions of a grant for a nonreimbursable technical cooperation to the Executing Agency, up to the amount of five hundred fifty-five thousand dollars of the United States of America (US\$555,000), which shall be chargeable to the resources of the Sustainable Energy and Climate Change Multi-donor Fund (SECCI-MSC), hereinafter referred to as the “Contribution”, to finance the procurement of works, goods and non-consulting services and the selection and contracting of consultants necessary for the execution of a technical cooperation project to pilot an innovative approach to climate change adaptation and to support sustainable and environmentally friendly development for Tobago’s economy, hereinafter referred to as the “Project”, which is described in the Annex to this Agreement. Unless otherwise stated in this Agreement, the term “dollars” shall hereinafter refer to the currency of legal tender in the United States of America.

This Agreement is entered into pursuant to the Sustainable Energy and Climate Change Multi-donor Fund, established on August 8, 2008 as a multi-donor trust fund administered by the Bank in accordance with IDB document GN-2435-6 and its amendments.

The Bank and the Beneficiary agree upon the following:

First. Components of the Agreement. This Agreement consists of this part one, referred to as the “Special Conditions”, part two, referred to as the “General Conditions”, and the Annex attached hereto. The prevalence between the aforesaid parts and the Annex is established in Article 1 of the General Conditions.

Second. Executing Agency. (a) The execution of the Project and the utilization of the resources of the Contribution will be carried out by TCF as Executing Agency.

(b) The Executing Agency represents and warrants, as of the date hereof and as of the date of submission of each disbursement request, that: (i) it is financially capable of carrying out the Project; (ii) it has the power to assume and perform the obligations set out in this Agreement, and that those obligations constitute its legal, valid, binding and enforceable obligations; (iii) it is legally established and has all necessary approvals to conduct its business, to receive the Contribution and to carry out the Project, the most recent copies of which have been submitted to the Bank; (iv) it has complied with all its obligations due at such time under this Agreement and under any other contract with the Bank; (v) neither it nor any person or entity acting on its behalf has, with respect to the Project or any transaction contemplated by this Agreement, committed or engaged in any activity that would constitute a Prohibited Practice (as defined in the General Conditions); and (vi) it has submitted all relevant documents and information for a true and fair view of the Executing Agency’s capacity for institutional, financial and operational management, and there have not been any material adverse changes thereto since such submissions.

(c) The Executing Agency agrees that, in addition to its obligations set forth in Article 12 of the General Conditions, it will (i) use the proceeds of any such disbursement exclusively for financing the Project and in accordance with all terms and conditions set out in this Agreement; (ii) carry out the Project diligently and in compliance with all applicable laws; (iii) exercise a standard of care consistent with sound professional practices; and (iv) achieve the Project goals established in this Agreement. The Executing Agency agrees that it shall not change the nature or scope of the Project without the Bank’s prior written consent.

Third. Conditions Precedent to First Disbursement. The first disbursement of the resources of the Contribution shall be subject to the fulfillment, to the satisfaction of the Bank: (a) of the conditions precedent stipulated in Article 2 of the General Conditions; and (b) of the requirement that the Executing Agency has presented evidence (i) that it has an effective financial reporting system and internal control structure as referred to in Article 12 of the General Conditions, and (ii) that it has established, and agrees to maintain, a separate and specific bank account to manage the resources of this Project.

Fourth. Reimbursement of Expenditures Chargeable to the Contribution. With the consent of the Bank, resources of the Contribution may be used to reimburse expenditures incurred or to finance those that may be incurred in the Project on or after October

23, 2015, and up to the effective date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Fifth. Deadlines. (a) The period for execution of the Project shall be fourteen (14) months, from the effective date of this Agreement.

(b) The period for disbursement of the resources of the Contribution shall be eighteen (18) months from said date. Any part of the Contribution which has not been utilized within this period shall be canceled.

(c) The aforementioned deadlines and any others that may be stipulated in this Agreement may be extended only when duly justified, and with the written consent of the Bank.

Sixth. Total Cost of the Project and Additional Resources. (a) The Executing Agency undertakes to make timely provision of the resources required, in addition to the Contribution, for the complete and uninterrupted execution of the Project (hereinafter referred to as the "Additional Resources"). The total amount of Additional Resources required is estimated to be the equivalent of one hundred and thirty seven thousand dollars (US\$137,000), to make up a sum equivalent to six hundred ninety two thousand dollars (US\$692,000), which is estimated to be the total cost of the Project. These estimates do not reduce the obligation of the Executing Agency to provide any additional resources required to complete the Project.

(b) The Additional Resources provided by the Beneficiary may be in kind and shall be used to finance the cost categories which are chargeable to it, as established in the Project's budget set forth in the Annex.

Seventh. Recognition of Expenses Chargeable to the Additional Resources. The Bank may recognize as part of the Additional Resources for the Project expenditures incurred or which may be incurred in the Project on or after October 23, 2015, and up to the effective date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Eighth. Disbursement Currency. The Bank shall disburse the Contribution in dollars.

Ninth. Exchange Rate for Expenditures Incurred in Local Currency. For purposes of Article 9 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 effective date on which the Beneficiary, the Executing Agency, 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.

Tenth. Selection and contracting non-consulting services and procurement of works, goods and contracting of consulting services. For purposes of Article 10 of the General Conditions, the Parties agree that the Executing Agency shall utilize the Bank Procurement Policies and the Consultant Policies dated March 2011 (which are described in documents GN-2349-9 and GN-2350-9 approved by the Bank on April 19, 2011), in accordance with established

private sector or commercial practices that are acceptable to the Bank in order to secure competitive market prices for the goods and services necessary to carry out the Project (more specifically described in Appendix 4 of said documents). Except as otherwise required by the Bank, contracts for the procurement of works, goods and consulting and other services shall be subject to *ex post* review and supervision in accordance with the aforementioned policies. Further, such contracting shall be negotiated on an arm's-length basis, taking into account the financial interests of the Executing Agency (and more specifically, the financial interests of this Project) rather than the interests of an affiliate of the Executing Agency. When a shareholder or affiliate of the Executing Agency also acts as a contractor to the Executing Agency, the Executing Agency shall demonstrate, to the satisfaction of the Bank, that the costs of the contract are approximately equivalent to budget estimates and market prices, and that the conditions of the contract are equitable and reasonable. The Bank will not finance acquisitions that exceed market prices.

Eleventh. Procurement Plan update. In order to update the Procurement Plan in accordance with the provisions of Article 10(c) of the General Conditions, the Beneficiary must use or, where appropriate, cause the Executing Agency to use, the implementation and monitoring system of procurement plans as determined by the Bank.

Twelfth. Special Conditions of Execution. The completion, to the Bank's satisfaction, of all activities and products listed below (and/or set forth in subsections (i), (ii) and (iii) of Component I of the Annex), will be a condition precedent for the execution of the production/construction and deployment of the pilot sculptures (set forth in subsection (iv) of Component I of the Annex):

(a) the Final identification of the project site, based on the environmental and aesthetic assessment of at least 3 potential project sites in Tobago, evaluated in terms of their environmental capacity to support the establishment of the water park as well as their appropriateness from an attraction and business point of view;

(b) the Environmental Assessment (EA);

(c) the Environmental and Social Management Plan (ESMP) for the selected project site approved by the relevant authorities (including a Biodiversity Management Plan (BMP) defining how impacts of natural habitat loss will be mitigated (roles and responsibilities, monitoring, budget, etc.));

(d) the Management Plan (MP) for the pilot attraction;

(e) any environmental or social requirements, permits and/or governmental approvals related to the Project or necessary to carry out the Project, each of which has been validly issued and obtained and is in full force and effect; and

(f) evidence of an irrevocable and legally binding instrument under applicable local laws whereby artist Peter Minshall assigns and transfers all intellectual property rights pertaining to the pilot art sculptures and/or installations produced for and/or funded by this pilot project (as described in subsection (iv) of Component I of the Annex), including, but not limited to, the right

to publicly display such pilot art sculptures, to the Executing Agency, as trustee, and the Executing Agency, agrees to act as such trustee until a trust fund or similar legal entity is created specifically for the *Tobago Water Colors initiative* to collect any and all revenue resulting from the commercial exploitation of the water park attraction (including but not limited to, tickets and memorabilia sales) and administer its funds to ensure its sustainability and to finance the management and activities required for climate change adaptation projects at Buccoo Reef. Notwithstanding the foregoing, such instrument shall provide that: (i) the Executing Agency, while acting as trustee, shall not be allowed to commercially exploit either of the pilot art sculptures; (ii) the parties agree and understand that their intention is for the aforementioned trust fund or similar legal entity to own all rights, title and interests in the two pilot art sculptures and to exercise the right to display them publicly, including for commercial purposes; and (iii) in the event that the aforementioned trust fund or similar legal entity has not been created and/or is not fully operational by December 16, 2017, all rights, title and interests in the two pilot art sculptures shall immediately revert back to Mr. Minshall. Additionally, such instrument shall provide full disclaimers from Mr. Minshall of any and all liability of the Bank, including but not limited to the following activities: (1) the construction of the sculptures; (2) any transportation, maintenance, installation, storage and/or safe-keeping that such sculptures may require while in possession of the Executing Agency; (3) any transportation, maintenance, installation, storage and/or safe-keeping that such sculptures may require once in possession of the aforementioned trust fund or similar legal entity; and (4) the re-assignment and re-transfer of all intellectual property rights arising from the two pilot sculptures from the Executing Agency to Mr. Minshall in the event described in subsection (iii) above.

Thirteenth. Intellectual Property. (a) Any use of the name or logos of the Inter-American Development Bank by the Executing Agency for any purpose whatsoever requires approval in advance by the Bank, in writing, which may be revoked at any time by the Bank.

(b) The Bank shall own any and all intellectual property rights, including but not limited to copyright, in relation to and/or arising out of the following deliverables to be produced by the Executing Agency and approved by the Bank under this Agreement (the “Deliverables”): (i) Component 2: (1) Feasibility study for water pollution control in the Buccoo Reef area; (2) Hydrological study; (3) Nutrient study; (4) Audit/cadaster; (5) Treatment level study; and (6) Cost study; and (b) Component 3: (1) Economic and financial feasibility study for the larger art installation; (2) Market study to identify the optimal financial conditions for the success of the attraction, including forecast of annual income; (3) Communications & marketing plan/campaign (including marketing materials); and (4) Analysis to determine tourism, cultural and creative products and services that could complement the park’s merchandise.

(c) For the avoidance of doubt, the Parties hereby agree and understand that the Bank shall have the right to use, copy, distribute, reproduce, publicly display and perform the Deliverables as well as to create any derivative works (including without limitation translations) thereto.

(d) The Bank’s intellectual property rights shall not extend to any of the two pilot sculptures described in Component I, subsection (iv) of the Annex. The Executing Agency hereby releases the Bank from any and all liabilities, claims, damages, judgments, costs or expenses that may arise in relation to (i) the construction of the sculptures; (ii) any

transportation, installation, maintenance, storage and/or safe-keeping that such sculptures may require while in possession of the Executing Agency; (iii) any transportation, installation, maintenance, storage and/or safe-keeping that such sculptures may require once in possession of the aforementioned trust fund or similar legal entity; and (iv) the assignment and transfer of all intellectual property rights arising from the two sculptures from the Executing Agency to Mr. Minshall in the event described in section 12(f)(iii) above.

(e) The Bank may, at its discretion, license the Deliverables under the terms and conditions of the Creative Commons IGO 3.0 BY-NC-ND (<http://creativecommons.org/licenses/by-nc-sa/3.0/igo/legalcode>) license, in which case the Deliverables would display the following disclaimers:

“Copyright © [year of first publication] Inter-American Development Bank. This work is licensed under a Creative Commons IGO 3.0 Attribution-NonCommercial-NoDerivatives (CC-IGO BY-NC-ND 3.0 IGO) license (<http://creativecommons.org/licenses/by-nc-nd/3.0/igo/legalcode>) and may be reproduced with attribution to the IDB and for any non-commercial purpose. No derivative work is allowed.

Any dispute related to the use of the works of the IDB that cannot be settled amicably shall be submitted to arbitration pursuant to the UNCITRAL rules. The use of the IDB’s name for any purpose other than for attribution, and the use of IDB’s logo shall be subject to a separate written license agreement between the IDB and the user and is not authorized as part of this CC-IGO license.

Note that link provided above includes additional terms and conditions of the license.

The opinions expressed in this publication are those of the authors and do not necessarily reflect the views of the Inter-American Development Bank, its Board of Directors, or the countries they represent.”

(f) The Executing Agency hereby agrees to undertake any and all activities, including without limitation execution of documents and consultations with legal experts, if applicable, to ensure the transfer of any and all intellectual property rights, including without limitation copyright, associated with or in relation to the Deliverables so as for ownership, right and title of said Deliverables to vest solely in the Bank. The Executing Agency shall also ensure that all contracts entered into with consultants under the Project include an express assignment to the Bank of all copyright and any other intellectual property rights. The Executing Agency shall be responsible for obtaining any and all transfer of rights and authorizations from other parties (including without limitation consultants with whom the Executing Agency will enter into agreements with for the purposes of developing the Deliverables), as may be applicable, in order for the Bank to exercise the rights provided herein without limitations and/or infringing the rights of third parties.

(g) Notwithstanding anything to the contrary herein, the Executing Agency shall retain ownership and/or control, as applicable, of all proprietary data, software, concepts, methods, techniques, processes, protocols, adaptations, ideas, formulas, databases, knowhow, tools and trade secrets owned by or licensed to the Executing Agency prior to this Agreement ("Executing Agency IP").

(h) To the extent that any Executing Agency IP becomes incorporated into the Deliverables or is otherwise provided to the Bank in the performance of this Agreement, the Bank shall have a royalty-free, irrevocable, non-exclusive, worldwide license to (i) use, copy, distribute, reproduce and publicly display, publish and perform such Executing Agency IP; and (ii) modify and create derivative works, including without limitation adaptations and translations, of such Executing Agency IP.

(i) The Executing Agency hereby authorizes the Bank to incorporate the Executing Agency's name and logo in any Bank work that seeks to disseminate knowledge and/or best practices related to or associated with the Project.

Fourteenth. Monitoring and Evaluation. The Executing Agency shall prepare on a timely basis and submit the following reports to the Bank:

(a) (i) semi-annual progress reports by January 1st and July 1st of each operational year, which will include, among others, at least: (i) descriptions of the executed activities per component; (ii) description of the procurement processes carried out during the reported period; (iii) updated schedule of progress and disbursements; (iv) level of compliance with the performance indicators; (v) identification of new risks/ events that may potentially affect the future implementation of the project; and (vi) execution plan to be completed in the following two six-month periods;

(b) a mid-term evaluation, when fifty percent (50%) of the project's resources have been disbursed, which shall include: (i) the results achieved in comparison with the objectives established in the results matrix; (ii) status and effectiveness of the Procurement Plan and Project execution; (iii) adequacy of the Project baseline; (iv) difficulties, risks and challenges in Project execution and recommended solutions; (v) progress of the Project activities; and (vi) lessons learned and recommendations for Project improvement and replicability. Based on the recommendations of the mid-term evaluation, the Executing Agency shall take any corrective actions reasonably proposed by the Bank in order to secure a satisfactory Project execution; and

(c) a final report, when ninety percent (90%) of the Project's resources have been disbursed, which, in addition to those issues covered in the mid-term evaluation, shall include parameters reasonably requested by the Bank and at a minimum: (i) an evaluation considering the execution of the Project from a technical, institutional and financial point of view; (ii) the impact of the Project; (iii) the results achieved in comparison with the objectives established in the results matrix; (iv) lessons learned; and (v) sustainability of the Project.

Fifteenth. Supervision of the Financial Management of the Project. (a) For purposes of Article 13 of the General Conditions, as of the date of signature of this Agreement,

the following external financial audit reports and other financial reports have been identified as necessary to supervise the financial management of the Project: (i) A single audited financial statement of the Project due within ninety (90) days of the Last Disbursement Date or extensions thereof; and, (ii) In-house financial statements, in IDB format, due within thirty (30) days of the end of each fiscal year. The financial statement of the project will be prepared pursuant to standard international accounting norms and reporting, and will be audited by an independent accounting firm acceptable to the Bank, pursuant to standard procedures for auditing and based on terms of reference agreed to by the Bank.

(b) For purposes of Article 13(a) of the General Conditions, the fiscal year of the Project August 21 and August 20 of each year.

Sixteenth. Access to Information. (a) The Executing Agency undertakes to notify the Bank, in writing, within a maximum period of ten (10) working days from the date of signature of this Agreement, whether it considers this Agreement to contain information that may qualify as an exception to the principle of disclosure of information under the Access to Information Policy of the Bank, in which case the Executing Agency undertakes to identify such information in the relevant provisions of the Agreement. In accordance with the aforementioned policy, the Bank will make available on its "Web" page the text of this Agreement once it has entered into effect and the aforementioned period has expired, excluding only that information which the Beneficiary has identified as an exception to the principle of disclosure of information under this policy.

(b) In accordance with the Access to Information Policy referred to above, and subject to the provisions thereof, the Bank will disclose to the public the Audited Financial Statements ("AFSs") it receives from the Executing Agency in accordance with Paragraph Fifteenth.

(c) In cases where the Executing Agency identifies information contained in the AFSs that it considers confidential under the exceptions provided in the Access to Information Policy, it shall prepare an abridged version of the AFSs, acceptable to the Bank, for public disclosure.

Seventeenth. Notice. Any notice, request, or communication from one party to another by virtue of this Agreement shall be made in writing and shall be considered to have been made when the corresponding document is delivered to the addressee at the address indicated below, unless otherwise agreed by the parties in writing.

To the Executing Agency:

Ingrid White-Wilson
Secretary
The Cropper Foundation (TCF)
Building 7, Fernandes Industrial Centre
Laventille, Trinidad and Tobago

Facsimile: 868-626-2564

To the Bank:

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

Facsimile: (202) 623-3096

Please confirm your acceptance of the terms and conditions of this Agreement, in representation of the Executing Agency, by signing and returning one of the originals to the Bank's Country Office in Trinidad and Tobago.

This Agreement shall be signed in two (2) equally authentic originals by the Executing Agency and the Bank, each, acting through its duly authorized representative, and will enter into force on the date of its signature by the Executing Agency.

Yours faithfully,

/f/

Tomás Bermúdez
Representative of the Bank
in Trinidad and Tobago

Agreed:

/f/

Ingrid White-Wilson
Secretary
The Cropper Foundation

Date: 15/12/15

/f/

Mark Thomas
Chief Executive Officer
The Cropper Foundation

Date: 15/12/15

**GENERAL CONDITIONS APPLICABLE TO NONREIMBURSABLE
TECHNICAL COOPERATIONS**

Article 1. Application and scope of General Conditions. (a) These General Conditions set forth terms and conditions generally applicable to all nonreimbursable technical cooperations granted by the Bank, and their provisions form an integral part of this Agreement. Any exception to these General Conditions shall be expressly stated in the text of the Special Conditions.

(b) If any provision of the Special Conditions or of the Annex should present any inconsistency or contradiction with these General Conditions, the provisions of the Special Conditions or the corresponding Annex shall prevail. In case of inconsistencies or contradictions between the Special Conditions and the corresponding Annex, specific provisions shall prevail over general provisions.

Article 2. Conditions prior to first disbursement. (a) The first disbursement of the Contribution shall be subject to the fulfillment of the following requirements by the Beneficiary, directly or through the Executing Agency:

- (i) Designation of the person or persons authorized to represent it in all acts relating to the execution of this Agreement, and submission to the Bank of authenticated specimen signatures of such persons. If two or more officials are designated, the designation shall indicate whether they may act severally or jointly; and
- (ii) Presentation to the Bank of a timetable for the use of the Additional Resources.

(b) If within one hundred eighty (180) days from the date of entry into effect of this Agreement, or within such longer period as the parties may agree in writing, the conditions precedent to the first disbursement established in this Article and in the Special Conditions have not been fulfilled, the Bank may terminate this Agreement by giving notice to the Beneficiary or to the Executing Agency, as the case may be.

Article 3. Requisites for all disbursements. 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 2 of these General Conditions and/or in the Special Conditions, if any, the Beneficiary or the Executing Agency, as the case may be, undertakes to: (a) 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; and (b) open and maintain one or more bank accounts in a financial institution in which the Bank shall make the disbursements of the Contribution. In addition to the

above requirements, none of the circumstances described in Article 7 of these General Conditions shall have occurred. Unless the Bank otherwise agrees, disbursement requests must be presented no later than thirty (30) calendar days prior to the expiration date of the period for disbursement of the resources or of any extension thereof which the Beneficiary or the Executing Agency, as the case may be, and the Bank may have agreed to in writing.

Article 4. Disbursement procedures of the Contribution. (a) 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: (i) reimbursement of expenditures; (ii) advance of funds; (iii) direct payments to third parties; and (iv) reimbursement under a letter of credit guarantee.

(b) **Reimbursement of Expenditures.** 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. 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.

(c) **Advance of Funds.** The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the advance of funds method, chargeable to the resources of the Contribution, in order to cover eligible expenditures of the Project.

- (i) The amount of the advance of funds shall be set by the Bank on the basis of:
 - (aa) 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
 - (bb) 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.
- (ii) Each advance of funds shall be subject to: (aa) the request for advance of funds being presented in a manner acceptable to the Bank; and (bb) 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%).
- (iii) 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.

- (iv) 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 disbursement period established in the Special Conditions 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 as established in Article 5 of the General Conditions. The Bank shall not disburse resources subsequent to the expiration of the disbursement period or any extension thereof.
- (v) 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. 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 disbursement currency, using the exchange rate established in this Agreement. 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.
- (vi) The Bank may reduce or cancel the total aggregate balance of any advance of funds should the Bank determine that the disbursed resources of the Contribution have not been duly and timely used or justified, to the Bank's satisfaction, in accordance with the provisions established in this Agreement.

(d) **Direct payments to third parties.** 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. 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.

(e) **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 5. 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 within a ninety (90)-day

period from the date stipulated for the final disbursement of the Contribution: (i) finalize pending payments to third parties, if any; (ii) reconcile its books 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 Agreement 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 Agreement, 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 Article 7 of this Agreement.

Article 6. Expenditures chargeable to the Contribution. The Contribution shall exclusively finance the eligible expenditures included in the categories of expenditures which are set forth as chargeable to the Contribution in the budget contained in the Annex that describes the Project. Only direct and actual expenditures made for the execution of the Project may be charged to the Contribution. Indirect or general operating expenses, which are not included in the Project budget, cannot be charged to the Contribution.

Article 7. Suspension and cancellation of disbursements. (a) The Bank, by means of a notice to the Beneficiary, may suspend disbursements or cancel the undisbursed portion of the Contribution if any of the following circumstances occurs: (i) the failure of the Beneficiary or the Executing Agency, as the case may be, to fulfill any obligation stipulated in this Agreement; or (ii) any circumstance which, in the Bank's opinion, may render unlikely the attainment of the objectives of the Project. Under these circumstances, the Bank shall notify in writing the Beneficiary or the Executing Agency, as the case may be, so that it may present its points of view, and after thirty (30) days from the date of the Bank's notice, it may suspend the disbursement or cancel the undisbursed portion of the Contribution.

(b) Pursuant to paragraph (a) above, the parties agree that upon the occurrence of institutional or organizational changes within the Beneficiary or the Executing Agency, which, in the Bank's opinion, might affect the timely attainment of the Project's objectives, the Bank shall review and evaluate the likely attainment of the objectives and may at its discretion, suspend, condition or cancel the disbursements of the Contribution.

(c) In addition to the provisions of paragraph (a) above, the Bank may: (i) suspend disbursements if, in accordance with the Bank's sanctions procedures, it is determined at any stage that an employee, agent or representative of the Beneficiary or the Executing Agency has committed a prohibited practice, as defined in Article 8 of these General Conditions (hereinafter "Prohibited Practices") during the procurement process or during the execution of a contract; and (ii) cancel the

undisbursed portion of the Contribution pertaining unequivocally to the procurement of certain goods, works or related services, or consulting services, if (aa) it determines at any time that the procurement was carried out without following the procedures set forth in this Agreement; or (bb) in accordance with the Bank's sanctions procedures, it is determined that any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, providers of goods or services, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees and representatives, irrespective of whether the agency is express or implied) has committed a Prohibited Practice during any stage of procurement or during the execution of a contract, when there is evidence that the representative of the Beneficiary or the Executing Agency has not taken the appropriate corrective action (including, among other things, adequate notice to the Bank upon learning of the Prohibited Practice) within a time period which the Bank considers reasonable.

Article 8. Prohibited Practices. (a) For the purposes of this Agreement, a Prohibited Practice shall be understood to include the following practices: (i) a “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; (ii) a “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; (iii) a “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; (iv) a “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and (v) an “obstructive practice” is: (aa) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided in this Agreement.

(b) In addition to the provisions in Articles 7(c)(i) and 7(c)(ii)(bb) of these General Conditions, if it is demonstrated that in accordance with the sanctions procedures of the Bank any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, sub-contractors, sub-consultants, goods and service providers, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied) has engaged in a Prohibited Practice, during any stage of the procurement process or during the execution of a contract, the Bank may:

- (i) decline to finance any proposal to award a contract for the procurement of works, goods, related services and the contracting of consultant services;
- (ii) declare a procurement ineligible for Bank financing, when there is evidence that the representative of the Beneficiary or the Executing has not taken the

adequate remedial measures (including, among other things, adequate notice to the Bank upon learning of the Prohibited Practice) within a time period which the Bank considers reasonable;

- (iii) issue a reprimand in the form of a formal letter of censure of the firm's, entity's or individual's behavior;
- (iv) declare that a firm, entity, or individual is ineligible, either permanently or for a stated period of time, to (aa) be awarded or participate in Bank-financed activities, and (bb) be designated sub-consultant, sub-contractor, or goods and services supplier of an otherwise eligible firm being awarded a contract to execute Bank-financed activities;
- (v) refer the matter to appropriate law enforcement authorities; and/or
- (vi) impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement of the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of the sanctions mentioned in Article 7(c)(i), in Article 7(c)(ii)(bb) and in this Article 8(b), numerals (i) through (v).

(c) The provisions of Article 7(c)(i) and Article 8(b)(i) shall be applicable in cases where the parties have been declared temporarily ineligible for the award of new contracts pending a final decision of a sanction proceeding, or otherwise.

(d) The imposition of any measure to be taken by the Bank pursuant to the provisions referred to above may be public.

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

(f) When a Beneficiary procures goods, works or services other than consulting services directly from a specialized agency or hires a specialized agency to provide technical assistance under an agreement between the Beneficiary and such specialized agency, all provisions contained in this Agreement regarding sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, contractors, consulting firms or individual consultants, personnel, sub-contractors, sub-

consultants, suppliers of goods and services (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied), or any other entity that has signed contracts with such specialized agency to supply such goods, works or services other than consulting services in connection with Bank-financed activities. The Bank retains the right to require the Beneficiary to invoke remedies such as suspension or termination. The Beneficiary agrees that contracts with specialized agencies shall include provisions requiring said agencies to consult the Bank's list of firms and individuals declared ineligible temporarily or permanently by the Bank. In the event that a specialized agency signs a contract or purchase order with a firm or an individual declared ineligible either temporarily or permanently by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

Article 9. 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 the currency of denomination of the respective disbursement.

(b) To determine the equivalence of an eligible expenditure incurred in the local currency of the Beneficiary's country in relation to the currency in which the disbursements are made, 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 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 10. Selection and contracting of non-consulting services and procurement of goods and contracting of consulting services. (a) Subject to the provisions of paragraph (b) of this Article, the Beneficiary undertakes to carry out or, where appropriate, cause the Executing Agency or the contracting agency, if any, to carry out the procurement of 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 Borrower represents that it is aware of the Procurement Policies and Consultant Policies and undertakes to inform the Executing Agency, the Contracting Agency, and the specialized agency, as the case may be, of these policies.

(b) When the Bank has validated a system or subsystem of the member country of the Bank where the Project will be executed, the Beneficiary or the Executing Agency, as the case may be, may carry out the procurement and contracting financed wholly or partially with resources of the Contribution using such systems or subsystem, in accordance with the terms of the validation of the Bank and applicable validated legislation and processes. The terms of such validation shall be notified in writing by the Bank to the Beneficiary and the Executing Agency. Use of the country system or subsystem may be suspended by the Bank when, in its opinion, changes have occurred in the parameters or practices the Bank used as the basis for its validation, until such time as the Bank determines whether such changes are compatible with international best practices. During such suspension, the Procurement Policies and Consultant Policies of the Bank will apply. The Beneficiary, directly or through the Executing Agency, as the case may be, undertakes to notify the Bank of any change in the applicable legislation or processes that have been so validated. The use of country systems or subsystems does not constitute a waiver of the application of the provisions set forth in Section I of the Procurement Policies and Consultant Policies, including the requirement that the respective procurement and contracting of services be contained in the Procurement Plan and is subject to the remaining provisions of this Agreement. 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, directly or via the Executing Agency as the case may be, undertakes to update the Procurement Plan at least annually or more frequently, depending on the Project needs. Each updated version of the Procurement Plan shall be submitted for review and approval of the Bank.

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

(e) For purposes of this Article: (i) "Contracting Agency" means the entity with legal capacity to enter into contracts and, as agreed with the Beneficiary or the Executing Agency, as the case may be, assumes all or part of the responsibility of carrying out the procurement of goods and works, consulting services or non-consulting services for the Project; (ii) "Procurement Plan" means a tool for programming and monitoring the procurement related to the Project, in the terms described in the Procurement Policies and Consultant Policies; (iii) "Procurement Policies" means 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 Project by the Bank; (iv) "Consultant Policies" means the Policies for the selection and contracting of consultants financed by the Inter-American Development Bank, which are in force at the time of the approval of the Project by the Bank.

(f) With resources of the Contribution and up to the amount allocated for that purpose in the budget set forth in the Annex that describes the Project, the Beneficiary or the Executing Agency, as the case may be, may procure the goods and contract the consulting services and non-consulting services required for the execution of the Project.

(g) When the goods and services procured for the Project are financed entirely with Additional Resources, the Beneficiary or the Executing Agency, as the case may be, shall, whenever possible, follow procedures that allow for the participation of several bidders or proponents, and shall take into account principles of economy, efficiency and reasonability of price.

(h) When sources of financing other than resources of the Contribution or of the Additional Resources are used, the Beneficiary or the Executing Agency, as the case may be, may agree with the financing entity the procedure to be followed for the procurement of goods and related services and the contracting of consultants. Notwithstanding, at the Bank's request, the Beneficiary or the Executing Agency, as the case may be, shall demonstrate the reasonability of both the price agreed upon or paid for the procurement of such goods and related services or the contracting of consultants. The Beneficiary or the Executing Agency, as the case may be, shall likewise demonstrate that the quality of the goods and related services and of the consultants meets the technical requirements of the Project.

(i) During the execution of the Project, the goods referred to in subsection (f) above shall be used exclusively for the execution of the Project. Following the completion of the execution of the Project, such goods may be used for other purposes.

(j) The goods included in the Project shall be adequately maintained according to generally accepted technical standards, at a level compatible with the services that they should provide.

Article 11. Other contractual obligations of consultants. (a) In addition to the special requirements included in Article 12(d), Article 13(g) and Article 14(e) of these General Conditions, in the Special Conditions, in the Annex or Annexes and in the respective terms of reference, the Beneficiary or the Executing Agency, as the case may be, agrees that contracts signed with consultants shall also specify the consultants' obligations to:

- (i) Provide any clarifications or additional information that the Beneficiary, Executing Agency or the Bank consider necessary with respect to the consultants' reports required under the terms of reference set forth in their respective contracts;
- (ii) Provide the Beneficiary or the Executing Agency and the Bank with any additional information they may reasonably request concerning the performance of their work;
- (iii) In the case of international consultants, perform their work in an integrated manner with the local professional staff assigned or contracted by the

Beneficiary or the Executing Agency to participate in the execution of the Project, with a view to carrying out technical and operational training of such staff by the conclusion of the work;

- (iv) Comply with the obligations set forth in Article 13 of the Special Conditions.

Article 12. Financial information and internal control systems. (a) The Beneficiary shall maintain, or cause the Executing Agency 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 Agreement, 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 Agreement 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, 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; and (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, 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 disbursement period of the resources 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 chargeable to the Contribution with 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 13. 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, during the 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 external 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 external 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 Agreement, the Beneficiary or the Executing Agency, as the case may be, shall select and contract the services of external 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 external auditors to audit the financial audit reports and other reports as provided in this Agreement 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.

(h) Bidding documents and contracts that the Beneficiary or the Executing Agency enter into with a supplier of goods or services, contractor, sub-contractor, consultant, sub-consultant, personnel or concessionaire shall include a provision allowing the Bank to inspect any accounts, records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the Bank.

Article 14. Inspections. (a) The Bank may establish such inspection procedures as it deems necessary to ensure the satisfactory development of the Project.

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

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

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

(e) The Beneficiary agrees that bidding documents, requests for proposals and contracts financed with resources of the Contribution that the Beneficiary or the Executing Agency enter into shall include a provision that requires applicants, bidders, providers of goods or services and their representatives, contractors, sub-contractors, consultants and their representatives, sub-consultants, service providers and concessionaires to: (i) permit the Bank to inspect any and all accounts, records, and other documents relating to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank; (ii) assist the Bank with its investigation; and (iii) deliver any document necessary for the investigation of allegations of Prohibited Practices and make available their employees or agents with knowledge of the Bank-financed activities to respond to questions from Bank personnel or any properly designated investigator, agent, auditor or consultant relating to the investigation. If the applicant, bidder, supplier and its agent, contractor, consultant, personnel, subcontractor, sub-consultant, service provider or concessionaire fails to cooperate and/or comply with the Bank's request, or otherwise obstructs the investigation, the Bank, in its sole discretion, may take appropriate action against the applicant, bidder, supplier and its agent, contractor, consultant, personnel, sub-contractor, subconsultant, service provider or concessionaire.

Article 15. Other Commitments. The Beneficiary, either directly or through the Executing Agency shall also:

- (a) Provide the consultants and local experts with administrative support, offices, office supplies, communication services, transport and any other logistical support required for the execution of their work;
- (b) Present to the Bank a copy of the consultants' reports and their comments thereon;
- (c) Provide the Bank with any other additional information or legal reports as it may reasonably request concerning the execution of the Project and the use of the Contribution and the Additional Resources; and
- (d) Keep the Bank's Representative in the respective country or countries informed of all aspects of the Project.

Article 16. Publication of Documents. Any document issued under the Bank's name or logotype, which is intended for publication as part of a special project, joint program, research initiative or any other activity financed with the resources of the Project, shall be previously approved by the Bank.

Article 17. Supervision in the Field. Without prejudice to the supervision of the Project activities performed by the Beneficiary or the Executing Agency, as the case may be, the Bank may supervise the Project in the field.

Article 18. Limitation of the Bank's Obligation. It is understood that the granting of the Contribution by the Bank does not constitute any obligation whatsoever on its behalf to totally or partially finance any project or program that may directly or indirectly result from the execution of the Project.

Article 19. Arbitration. For the solution of any controversy which may arise hereunder and which is not resolved by agreement of the parties, said parties shall unconditionally and irrevocably submit to the following arbitration procedure and award:

(a) **Composition of the Tribunal.** The Arbitration Tribunal shall be composed of three (3) members, to be appointed in the following manner: one by the Bank, another by the Beneficiary, and a third, hereinafter called the "Referee", by direct agreement between the parties or through their respective arbitrators. If the parties or the arbitrators fail to agree on who shall be the Referee, or if one of the parties fails to appoint the arbitrator, the Referee shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, he or she shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his or her successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his or her predecessor.

(b) **Initiation of the Procedure.** In order to submit the controversy to arbitration, the claimant shall address to the other party a written communication setting forth the nature of the claim, the satisfaction or compensation sought, and the name of the arbitrator it has appointed. The party receiving such communication shall, within forty-five (45) days, notify the adverse party of the

name of the person it has appointed as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the parties have not agreed upon the person who is to act as Referee, either party may request the Secretary General of the Organization of American States to make the appointment.

(c) **Convening of the Tribunal.** The Arbitration Tribunal shall be convened in Washington, District of Columbia, on the date designated by the Referee and, once convened, the Tribunal itself shall decide when it shall meet.

(d) **Procedure.**

- (i) The Tribunal shall be competent only to hear the matter in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity to make oral presentations.
- (ii) The Tribunal shall proceed *ex aequo et bono*, basing itself on the terms of this Agreement, and shall issue an award even if either party should fail to appear or to present its case.
- (iii) The award shall be in writing and shall be adopted with the concurrent vote of at least two of the members of the Tribunal. It shall be handed down within sixty (60) days from the date on which the Referee has been appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The parties shall be notified of the award by means of a communication signed by at least two members of the Tribunal. The parties agree that any award of the Tribunal shall be complied with within thirty (30) days from the date of notification and it shall be final and not be subject to any appeal.

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

(f) **Notification.** All notifications regarding the arbitration proceeding or the award shall be made in the manner provided in this Article. The parties expressly waive any other form of notification.

REVISED ANNEX NO.1

THE PROJECT

Piloting an innovative approach to adaptation in Tobago

I. Objective

- 1.01** The objective of this Project is to pilot an innovative approach to climate change adaptation and to support sustainable and environmentally friendly development for Tobago's economy. Specifically, this Project will undertake a feasibility assessment for the implementation of a large underwater art installation to facilitate the natural recovery of the Buccoo Reef and provide a new source of income for the tourism and cultural and creative industries. The park will also serve as a rival attraction reducing the number of visitors to the reef thereby facilitating its natural recovery.

II. Description

Component I. Piloting of an underwater installation for adaptation.

- 2.01** This component will finance: (i) the final identification of the project site, based on environmental and aesthetic assessment of at least 3 potential project sites in Tobago, that will be evaluated in terms of their environmental capacity to support the establishment of the water park as well as their appropriateness from an attraction and business point of view; (ii) an Environmental and Social Management Plan for the selected project site; (iii) a Management Plan for the pilot attraction; and (iv) the production and deployment of two pilot sculptures. All of these activities will generate information for the design and management of the bigger art installation in order to select appropriate materials for the marine environment, construction and deployment methodologies/techniques, among others. The expected results of this component are: (i) the selection of the final project site as well as appropriate environmental and operations and management plans; and (ii) the determination of the feasibility and potential for scaling-up of the pilot activities.

Component II. Study on water pollution mitigation.

- 2.02** This component will finance a feasibility study for water pollution control in the Buccoo Reef area by undertaking a hydrological study, nutrient study, discharge audit/cadaster, treatment level study and a cost study. The result of this component is the assessment of current pollution levels and the identification of interventions and infrastructure needs that could be implemented to improve water quality in Buccoo Reef.

Component III. Market, feasibility and communications & marketing.

- 2.03** This component will finance: (i) an economic and financial feasibility study for the larger art installation; (ii) a market study to identify the optimal financial conditions for the success of the attraction, such as willingness of visitors and private stakeholders to respectively visit the new attraction and include it in the current tourist supply portfolio, forecast of annual income, and identify ways to attract sponsors and private sector involvement; and (iii) a communications & marketing plan/campaign to determine the best channels and ways (including marketing materials) to promote the attraction to its target audience. As part of the communications plan, an analysis will be conducted to determine tourism, cultural and creative products and services that could complement the park's merchandise. The activities under this component will provide inputs to design the "Water Colors Trust Fund" which is of utmost importance for the sustainability of the project. The results of this component are: (i) the generation of key information to ensure sound economic and financial basis; and (ii) a communications campaign to reach the target audience and promote this unique attraction and the industries around it.

III. Total Cost of the Project

- 3.01** The estimated cost of the Project is the equivalent of US\$692,000, in accordance with the following Budget:

Budget

(in US\$)

<u>ACTIVITIES</u>	<u>BANK</u>	<u>COUNTERPART IN CASH</u>	<u>COUNTERPART IN KIND</u>	<u>TOTAL</u>
Final selection of project site	7,000	7,000	0	14,000
Environmental and Social Management Plan for project site	13,000	10,000	0	23,000
Management plan for pilot attraction	20,000	10,000	5,000	35,000
Production and deployment of two underwater sculptures	190,000	0	0	190,000
Feasibility study for water pollution control	170,000	12,000	8,000	190,000
Market study	30,000	3,000	2,000	35,000
Economic and financial feasibility study	30,000	3,000	2,000	35,000
Communication and Marketing plan/campaign	30,000	0	5,000	35,000
Project administration	40,000	40,000	0	80,000
M&E	15,000	10,000	20,000	45,000
Auditing	10,000	0	0	10,000
TOTAL	555,000	95,000	42,000	692,000

IV. Execution

4.01 Executing Agency (EA): This TC will be executed by The Cropper Foundation (TCF).

4.02 Executing mechanism: A Project Coordinator with technical knowledge and project management skills will be hired as a consultant to oversee all Project activities. TCF will coordinate all activities with the different stakeholders and will select and hire the consultants for the Project's activities. TCF will provide the overall oversight of the Project but will liaise with the Bank's team when necessary or appropriate.