

NON-REIMBURSABLE FINANCING AGREEMENT
No. GRT/EX-14519-GY

between the

CO-OPERATIVE REPUBLIC OF GUYANA

and the

INTER-AMERICAN DEVELOPMENT BANK

Acting as Administrator of the European Union's Contribution for the
Power Utility Upgrade Program

October 10, 2014

SPECIAL CONDITIONS

INTRODUCTION

Parties, Purpose, Constituent Elements, and Executing Agency

1. PARTIES AND PURPOSE OF THE AGREEMENT

AGREEMENT entered into on October 10, 2014, between the CO-OPERATIVE REPUBLIC OF GUYANA (hereinafter referred to as the “Beneficiary”) and the INTER-AMERICAN DEVELOPMENT BANK (hereinafter referred to as the “Bank”) acting as Administrator of the European Union’s contribution to cooperate in the financing and execution of a Power Utility Upgrade Program (hereinafter referred to as the “Program”).

This Agreement is entered into pursuant to the Contribution Agreement signed between the Bank and the European Union, hereinafter referred to as the “Donor”, on July 30, 2014 and the provisions set forth in Document GN-2605 “Proposal for the Establishment of a Framework Agreement between the European Commission and the Inter-American Development Bank” approved by the Bank’s Board of Executive Directors on March 9th, 2011.

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

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

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

3. EXECUTING AGENCY

The parties agree that the execution of the Program and the utilization of the resources of the financing granted by the Bank shall be carried out in their entirety by the Beneficiary through the Guyana Power and Light, Inc., (GPL), hereinafter referred to as the “Executing Agency”, as to the legal and financial capacity of which to function as such the Beneficiary gives its assurance.

CHAPTER I

Costs, Financing and Additional Resources

SECTION 1.01 **Cost of the Program.** The total cost of the Program is estimated to be the equivalent sixty four million five hundred seventy three thousand Dollars of the United States of America (US\$64,573,000). This cost includes, in addition to the resources mentioned in Section 1.02, thirty-seven million six hundred forty-one thousand seven hundred fifty Dollars (US\$37,641,750), chargeable to the resources of Loans 3238/OC-GY and 3239/BL-GY. Unless otherwise stated in this Contract, the term “Dollars” hereinafter signifies the currency of legal tender in the United States of America.

SECTION 1.02 **Amount of the Non-reimbursable Financing.** (a) In accordance with this Agreement, the Bank agrees to grant to the Beneficiary, and the Beneficiary accepts, a non-reimbursable financing, hereinafter refer to as the “Contribution” chargeable to the resources of the Contribution Agreement, referred in the Introduction of these Special Conditions, up to the amount of nineteen million three hundred seventy five thousand Euros (€19,375,000). The Beneficiary agrees to use the resources for the execution of the Program in accordance with the term and conditions set forth in this Agreement.

(b) The parties agree that of the total amount of the Contribution, up to an amount equivalent to twenty-two million five hundred thousand dollars (US\$22,500,000) shall be used for purposes of matching the portion of the financing referred to in subsection (a)(i) of Section 1.02 of the Special Conditions of Loan Contract Nos. 3238/OC-GY and 3239/BL-GY.

SECTION 1.03 **Administration commission.** An administration commission equivalent to two per cent (2%) of the Contribution will be deducted from this amount to cover Bank’s expenses as Administrator of the European Union contribution for the Program.

SECTION 1.04 **Additional Resources.** Pursuant to the provisions set forth in Article 6.04 of the General Conditions, the Beneficiary undertakes to contribute in a timely manner all of the resources in addition to those of the Contribution which may be necessary for the complete and uninterrupted execution of the Program. To compute the equivalency in Dollars, the rules set forth in Section 2.07 of these Special Conditions shall be followed.

CHAPTER II

Disbursements

SECTION 2.01 **Disbursement currency, and availability of resources.** (a) The amount of the Financing shall be disbursed in Euros, which will be converted in Dollars and should only be used to pay for goods and services acquired in accordance with the provisions of this Agreement.

(b) In the event of any return of funds from the Beneficiary to the Bank, which under the terms of the Contribution Agreement must be returned to the Donor, such funds will be converted back into Euros for the Bank to return them to the Donor. If necessary, the Beneficiary shall provide any additional resources that may be required to refund the appropriate amount of Euros to the Donor.

SECTION 2.02 Special Conditions Prior to First Disbursement. In addition to the conditions precedent stipulated in Article 3.01 of the General Conditions, the first disbursement of the Contribution shall be subject to the fulfillment, to the satisfaction of the Bank, of the following requirements: (i) a subsidiary agreement executed between the Ministry of Finance and GPL, which establishes the manner in which the resources shall be used and the obligations of GPL to execute the Program in accordance with the contract and the Program Operations Manual (POM); (ii) the establishment of a Program Coordinating Unit (PCU) within GPL, composed of the following full-time team: (a) a Program coordinator, (b) a loss reduction specialist, (c) an electricity distribution network design specialist, (d) an information technology specialist; (e) a procurement specialist with experience in contract management, and (f) a finance comptroller; (iii) the approval by the Executing Agency (EA), in accordance with the terms and conditions previously agreed with the Bank, of the following planning documents: (a) the (POM), (b) the first Procurement Plan, and (c) the first Annual Operating Plan; and (iv) a Project Steering Committee (PSC) has been established.

SECTION 2.03 Special requirements for disbursements. (a) In addition to the provisions of Article 3.03 of the General Conditions of this Contract, the parties agree that of the total amount of the Contribution, up to an amount equivalent to Twenty-two million five hundred thousand dollars (US\$22,500,000) shall be disbursed on a *pari-passu* basis with the ordinary capital resources referred to in Section 1.02(a)(i) of the Special Conditions of the Loan Contract 3238/OC-GY.

(b) The parties agree that any portion of the amount referred to in subparagraph (a) above, which is not needed for purposes of the “*pari passu*” will not be subject to such requirement and may be used for financing of the activities of the Program subject to the prior approval by the Bank.

SECTION 2.04 Advance of Funds. Notwithstanding the provision set forth in Article 3.06 of the General Conditions, the parties agree that a new Advance of Funds could be granted by the Bank on the basis of the provisions contained in paragraph (b) of Article 3.06 of the General Conditions, and provided that at least seventy percent (70%) of the total amount of resources disbursed as an Advance of Funds has been justified.

SECTION 2.05 Reimbursement of Expenditures Chargeable to the Financing. With the consent of the Bank, , up to the equivalent of one hundred thousand Dollars (US\$100,000.00) of the resources of the Contribution may be used to reimburse expenditures incurred in the Program to cover the costs of the following consulting services: (i) the consulting services recruited to assist the Executing Agency in conducting the large and complex procurement processes foreseen for the execution of Component I and Component III; (ii) consulting services to assist the EA in the procurement of the Supervision Firm; (iii) recruitment of the PCU personnel. Said expenditures shall have been incurred before October 11, 2014 but after December 20, 2013, provided that requirements substantially similar to those set forth in this Contract have been fulfilled. It is

understood that, with the consent of the Bank, the resources of the Contribution may also be used to reimburse expenditures incurred or to finance those that may be incurred in the Program on or after October 11, 2014 and up to the effective date of this Agreement, provided that the requirements set forth above have been substantially fulfilled.

SECTION 2.06 **Disbursement Period.** The period for disbursement of the resources of the Financing shall expire five (5) years from the effective date of this Agreement.

SECTION 2.07 **Exchange Rate.** For the purposes of the provisions set forth in Article 4.01(a) of the General Conditions of this Contract, the parties agree that the applicable exchange rate shall be that which is indicated in subsection b (ii) of said Article. For this purpose, the exchange rate to be applied will be that in effect on the day on which the Beneficiary, the Executing Agency or any natural or juridical person in whom the power to incur expenditures has been vested makes the related payments to the contractor or supplier.

CHAPTER III

Execution of the Program

SECTION 3.01 **Procurement of goods and works and non-consulting services.** (a) The Parties agree that the Procurement Policies are those dated March 2011, which are contained in document GN-2349-9, approved by the Bank on April 19, 2011. If the Procurement Policies are amended by the Bank, the procurement of goods and 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 apply them.

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

(c) The threshold for determining the use of international competitive bidding will be made available to the Beneficiary or the Executing Agency, as the case may be, at www.iadb.org/procurement. 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 International Competitive Bidding method, the Bank and the Beneficiary agree that the provisions of Appendix 2 to the Procurement Policies regarding domestic margin of preference when comparing bids for the procurement of goods, shall apply to goods manufactured in the country of the Beneficiary, as specified in the respective bidding document.

(e) Regarding the use of the National Competitive Bidding method, the respective national competitive bidding procedures may be used provided that, in the opinion of the Bank, these procedures ensure economy, efficiency, transparency and general consistency with the provisions of

Section I of the Procurement Policies and taking into account the provisions of paragraph 3.4 of said Policies, among others.

(f) Notwithstanding the provisions of this Section 4.2 and Article 6.02 of the General Conditions, the parties agree that firms and individuals from non-member countries of the Bank shall be eligible in procurement processes for the contracting of goods, works, related services financed with resources of the Program, provided that the country of origin of such goods, works, related services is recognized as eligible by the European Union under its applicable regulations on procurement.

SECTION 3.02 Maintenance of Equipment and Works. The Beneficiary and the Executing Agency undertake to: (a) ensure that the works be adequately maintained, according to generally accepted technical standards; (b) present to the Bank an annual maintenance report within the first quarter of each calendar year up to and including the fifth year after the last disbursement of the Financing. If from the inspections conducted by the Bank or from the reports it receives it is determined that maintenance does not meet the levels agreed upon, the Beneficiary and the Executing Agency shall undertake the necessary measures to correct these shortcomings.

SECTION 3.03 Selection and Contracting of Consultant Services. (a) The parties agree that the Consultant Policies are those dated March 2011, which are contained in document GN-2350-9, approved by the Bank on April 19, 2011. If the Consultant Policies are amended by the Bank, the selection and contracting of consulting services will be carried out in accordance with the provisions of the amended Consultant Policies, once they are made known to the Beneficiary and the Beneficiary agrees in writing to apply them.

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

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

(d) The parties agree that consultants and providers originating from non-Bank member countries may participate in procurement processes provided that their nationality is recognized as eligible by the European Commission under its applicable regulations.

(e) Notwithstanding the provisions of this Section 3.04 and Article 6.02 of the General Conditions, the parties agree that firms and individuals from non-member countries of the Bank shall be eligible in procurement processes for the contracting of consultancy services financed with resources of the Program, provided that the nationality of such firms and individuals is recognized as eligible by the European Union under its applicable regulations on procurement.

SECTION 3.04 Use of Country Systems. In accordance with the provisions of Article 6.02(b) of the General Conditions, the parties agree that as of signature date of this Contract, the use of country systems is not foreseen for the procurement of works and goods, consulting services or non-consulting services.

SECTION 3.05 Procurement Plan update. In order to update the Procurement Plan in accordance with the provisions of Article 6.02(c) of the General Conditions, the Beneficiary must use or, where appropriate, cause the Executing Agency to use, the implementation and monitoring system of procurement plans as determined by the Bank

SECTION 3.06 Evaluations. The Beneficiary through the Executing Agency, will be responsible for the following evaluations: (i) a mid-term evaluation once half of the execution period has elapsed or once fifty per cent (50%) of the resources of the Contribution have been disbursed, whichever occurs first; and (ii) a final evaluation once ninety per cent (90%) of the resources of the Contribution have been disbursed. These evaluations will be carried out by consultancy services, in accordance with terms of reference previously approved by the Bank.

SECTION 3.07 Special Execution Conditions. The Executing Agency must provide evidence that: (i) before initiating the procurement activities for the areas to be rehabilitated under Component III, the eligibility criteria, as set forth in the POM, should be met; (ii) previously to implement the SMP, the social-sector teams should have been appointed; (iii) before signing any contract related to works for Component III, an independent firm to supervise such works should have been hired; and (iv) two years after the first disbursement, or when the Program reaches 50% of disbursement (whichever occurs first), the Oversight Mechanism should have been implemented.

CHAPTER IV

Supervision

SECTION 4.01 Records, Inspections and Reports. The Beneficiary agrees to directly or through the Executing Agency: maintain records; permit inspections; submit reports; maintain a management, accounting and financial administration system acceptable to the Bank; and submit financial statements and financial reports to the Bank in accordance with the provisions established in this Chapter and in Chapter VII of the General Conditions.

SECTION 4.02 Supervision of Program Execution. (a) The Bank shall use the Program implementation plan referred to in Article 3.01(c)(i) of the General Conditions as an instrument to supervise Program execution. The Program implementation plan shall be based on the procurement plan referred to in Sections 3.06 of these Special Conditions, and shall include a complete planning of the Program, with the critical path of actions to be implemented in order to disburse the resources of the Financing before the expiration of the disbursement period set forth in Section 2.05 of these Special Conditions.

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

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

CHAPTER V

Miscellaneous Provisions

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

SECTION 5.02 Termination of the European Union Specific Contribution Agreement. In the event that the grounds indicated in Article 5.01(d) of the General Conditions of this Agreement are invoked, all the rights and obligations referring to the Bank will be transferred to the European Union thereby releasing the Bank of all responsibility *vis-à-vis* the Executing Agency.

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

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

For the Beneficiary:

Mailing address:

Ministry of Finance
Main and Urquhart Streets
Georgetown, Guyana

Facsimile: (592) 227-3931

For matters related to execution of the Program:

Mailing address:

Guyana Power & Light Inc.
91 Duke Street
Kingston, Georgetown
Guyana

Facsimile: (592) 227 1978

For the Bank:

Mailing address:

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

Facsimile: (202) 623-3096

CHAPTER VI

Arbitration

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

IN WITNESS WHEREOF, the Beneficiary and the Bank, each acting through its authorized representative, have signed this Agreement, in two (2) equally authentic copies in Washington, District of Columbia, United States of America, on the date above written.

THE CO-OPERATIVE REPUBLIC OF
GUYANA

INTER-AMERICAN DEVELOPMENT
BANK

/s/ Ashni Singh

/s/ Luis Alberto Moreno

Dr. Ashni Singh
Minister of Finance

Luis Alberto Moreno
President

GENERAL CONDITIONS

CHAPTER I

Application of General Conditions

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

CHAPTER II

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER III

Conditions Relating to Disbursements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IV

Exchange Rate, Renunciation and Cancellation

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

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

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

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

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

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

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

CHAPTER V

Suspension of Disbursements and Accelerated Maturity

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

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

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

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

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

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

(f) In the event of suspension and/or termination of the Contribution Agreement entered into Between the Bank and the European Union referred to in the Special Conditions of this Agreement.

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

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

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

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

(d) The Bank could terminate this Agreement in the event of termination of the Contribution Agreement entered into Between the Bank and the European Union referred to in the Special Conditions of this Agreement.

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

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

- (i) not finance any proposal to award a contract for works, goods, and related services or for consultant services;
- (ii) determine that a contract will not be eligible for Bank financing whenever there is evidence that the Beneficiary, the Executing Agency or the

Contracting Agency has not taken adequate remedial measures (including, *inter alia*, providing adequate notice to the Bank upon learning of the commission of the Prohibited Practice) within a period of time the Bank considers reasonable;

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

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

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

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

(f) When a Beneficiary procures works, goods or related services directly from a specialized agency or hires a specialized agency to provide consulting services using resources of the Financing, under an agreement between the Beneficiary and such specialized agency, all provisions under this Agreement regarding sanctions and Prohibited Practices shall apply in

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

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

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

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

CHAPTER VI

Execution of the Project

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

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

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

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

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

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

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

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

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

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

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

CHAPTER VII

Records, Inspections and Reports

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

(b) The Beneficiary or the Executing Agency, or the Contracting Agency, as the case may be, shall preserve the original records of the Project for a minimum period of three (3) years after the expiration date of the Disbursement Period or any extension thereof, in such a way as to: (i) make possible the identification of the sums received from the different sources; (ii) show, in accordance with the financial information system approved by the Bank, the investments in the Project, financed both with the resources of the Contribution and with the other funds to be provided for its complete execution; (iii) include sufficient detail to show the works performed, goods procured and services contracted, as well as the utilization of such works, goods and services; (iv) provide evidence as to conformity in the acceptance, authorization and payments

for the purchased or contracted works, goods and services; (v) maintain documentation relating to the bidding process and the execution of the contracts financed by the Bank and other financial sources, including, but not limited to, bid requests, bid packages, summaries, bid evaluations, contracts, correspondence, work product and drafts, invoices, certificates and acceptance reports, and receipts, including documents relating to the payment of commissions, and payments to agents, consultants and contractors; and (vi) show the cost of the investments in each category and the physical and financial progress of the works, goods and services. With respect to credit programs, the records shall also detail the credits granted, the recoveries obtained, and the utilization of the funds recovered.

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

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

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

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

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

(e) The Beneficiary agrees that all bidding documents, requests for proposals and contracts financed by the Bank that are entered into by the Beneficiary, the Executing Agency or the Contracting Agency shall include a provision that requires applicants, bidders, suppliers and their agents, contractors, consultants, personnel, sub-contractors, sub-consultants, service

providers and concessionaires to: (i) allow the Bank to inspect any and all accounts, records and other documents relating to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank; (ii) provide full assistance to the Bank in the case of an investigation; and (iii) deliver to the Bank any document deemed necessary for the investigation of allegations of Prohibited Practices and ensure that those employees or agents who are responsible for Bank-financed activities will be available to respond to inquiries within the context of an investigation, be it from Bank personnel or from any investigator, agent, auditor or consultant duly assigned to the investigation. If any applicant, bidder, supplier or its agent, contractor, consulting firm or individual consultant, personnel, subcontractor, sub-consultant, service provider, or concessionaire refuses to cooperate or fails to comply with the Bank's request or otherwise obstructs an investigation carried out by the Bank, the Bank, in its sole discretion, may take appropriate action against said applicant, bidder, supplier and its agent, contractor, consultant, personnel, subcontractors, sub-consultants, service provider, or concessionaire.

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

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

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

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

(d) In cases in which the audit is to be performed by an official auditing agency and such agency is unable to perform the audit in accordance with requirements satisfactory to the

Bank or within the deadlines, for the period of duration or with the frequency mentioned in this Contract, the Beneficiary or the Executing Agency, as the case may be, shall select and contract the services of independent auditors acceptable to the Bank, as provided under section (c) above.

(e) Notwithstanding the provisions above, the Bank may, on an exceptional basis and subject to prior agreement between the parties, select and hire the services of independent auditors to prepare the financial statements of the Project and other audited reports as provided in this Contract when: (i) the benefits of the selection and hiring of such services by the Bank outweigh the costs of doing so; (ii) there is limited access to auditing services within the country; or (iii) special circumstances warrant the selecting and hiring of such services by the Bank.

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

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

CHAPTER VIII

Provision on Taxes

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

CHAPTER IX

Arbitration Procedure

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

the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his successor shall be appointed in the same manner as for the original appointment. The successor shall have the same functions and faculties as his predecessor.

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

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

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

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

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

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

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

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

ANNEX

THE PROGRAM

Power Utility Upgrade Program

I. Objective

- 1.01** The general objective of the Program is to enhance Guyana Power and Light's (GPL) operational efficiency and corporate performance, in order to prepare the organization to supply electricity in a sustainable manner over the long-term.
- 1.02** The specific objectives are improving GPL's: (i) management and administration; (ii) system planning and design; (iii) information technology; (iv) infrastructure requirements; (v) commercial operations; and (vi) infrastructure to allow for loss reduction, consistent with GPL's Development and Expansion Programme (D&E).

II. Description

- 2.01** In order to achieve the Program objective described in Section I above, the Program contemplates the following three (3) components:

Component 1: Strengthening GPL's Management Capabilities

- 2.02** The objective of Component I, as part of the Corporate Development Plan (CDP), is to strengthen the utility's managerial capabilities by implementing a Management Strengthening Program (MSP) to support its senior management in the following areas: (i) operations and execution of projects; (ii) commercial services and information technology; (iii) finance and procurement; (iv) human resources; and (v) loss reduction.
- 2.03** This Component will contribute to set in place a capacity building and cost-effective oversight mechanism to help improve, monitor and evaluate GPL's performance on a permanent basis. This mechanism will comprise the following key elements: (i) an Outsourced Technical Support (OTS) firm to provide capacity building to the Senior Management Team (SMT) in the areas defined in article 2.02; (ii) a performance agreement between the Government of Guyana (GOG) and GPL; and (iii) standardized performance contracts between GPL and its SMT, consistent with GPL's commitments to GOG. A Monitoring Unit (MU) will support the Ministry of Finance and the Office of the Prime Minister in tracking and measuring progress against the Performance Targets; for which the hiring of an international expert will contribute to the generation of regular, standard reports on the achievements of the CDP's targets. The proposed mechanism will allow for quality communication between all stakeholders and the swift adoption of strategic decisions on a routine basis.

Component 2: Operational Efficiency

- 2.04** This component will support strengthening of GPL's capabilities in planning, design, commercial operation, power & network operations and demand-side management.
- 2.05** This Component will finance the following activities: (i) provision of services from experienced power system planners and design advisers; (ii) modernization and strengthening of the Planning and Design department; (iii) advanced training for the use of the SCADA, Procurement Inventory Control and Management Information Software, which will facilitate follow up on service orders and requests for new connections, among others; (iv) implementation of the Management Information Software; (v) design of a system to automate the detection of distribution faults and improving the quality of power supply; and (vi) strengthening of the design and construction departments including data integration for new demand planning, training, development of technical standards and tools.

Component 3: Infrastructure Investments for Loss Reduction

- 2.06** This component will finance the rehabilitation of approximately 830-km of the distribution network with focus on the reduction of overall electricity losses and the improvement of safety and reliability of the system. This infrastructure will be planned and executed with a comprehensive and consistent approach to tackle technical and commercial losses, while building upon experience obtained from the ongoing loss reduction efforts.
- 2.07** The scope of works included in this component consists of both technical and non-technical loss reduction measures, including: (i) network investments, comprising interventions to pursue the reduction of technical losses, such as replacement of conductors, relocation and incorporation of transformers, distribution boxes and accessories; (ii) upgrading customer interface, namely service line, meters, enclosures and related accessories, among others; and (iii) the implementation of social management campaigns.
- 2.08** To be eligible, each potential area of intervention must: (i) be an existing area of GPL's current distribution network; (ii) be prioritized by GPL using the Selection Methodology for Loss Reduction Areas (SMLRA), (iii) have detailed designs, bills of quantity and estimated cost, and (iv) have met the threshold for an attractive Financial Internal Rate of Return (IRR). Additionally, in selected areas for rehabilitation, a Social Management Plan (SMP) will be adopted and implemented, in order to: (i) improve trust between GPL and its customers; (ii) improve collection rates; (iii) reduce the incidence of theft of electricity; and (iv) educate users in the efficient and safe use of energy. To this end, GPL will assign social-sector teams to work on the implementation of the SMP, which will be carried out in three phases: (i) prior to any intervention; (ii) during works; and (iii) after works are formally completed. The social-sector teams will work directly with users of the service and will employ participatory methods to conduct socioeconomic assessments

of the identified areas, and evaluate electricity service and the levels of payment and fraud.

III. Cost and Financing

3.01 The total cost of the Program is estimated in the equivalent of US\$64,573,000. The following table contains a summary of the costs by component disaggregated by source of funding:

Total Program Costs
(in US\$)

Components	Financing			
	IDB (US\$)	EU*		Total (US\$)
		Euros	(US\$ equiv.)	
Component I. Strengthening GPL’s Management Capabilities	3,672,000	2,641,726	3,672,000	7,344,000
Component II. Operational Efficiency	2,176,000	1,565,468	2,176,000	4,352,000
Component III. Infrastructure Investments for Loss Reduction**	24,775,000	13,111,511	18,225,000	43,000,000
Administration, Monitoring and Auditing	2,319,625	2,056,295	2,858,250	5,177,875
Financial and technical auditing, monitoring and evaluation***	1,319,625	949,371	1,319,625	2,639,250
Administration****	1,000,000	719,424	1,000,000	2,000,000
Administrative Fee (2%)	-	387,500	538,625	538,625
Contingencies	4,699,125	-	-	4,699,125
TOTAL	37,641,750	19,375,000	26,931,250	64,573,000

* EU's contribution of €19,375,000 is equivalent to 26,931,250 US Dollars, based on the exchange rate of 1.39 US\$/€ as of March 18th, 2014. Any amount of the EU of the resources not subject to the *pari-passu* disbursement requirement under the GLM will also be used for activities of the Program, provided that the total amount of the EU resources used for the Program shall be matched with no less than the same amount of Bank resources by the end of the execution period

** Includes financing for the execution of a Social Management Plan for US\$1,500,000.

*** Includes financing of external supervision of works during execution of Component III.

**** Includes the financing of the Program Coordinating Unit (PCU) during the executing period.

IV. Execution

4.01 The Executing Agency will be GLP through a Program Coordinating Unit (PCU), which will follow the strategic directions from GPL's CEO. A Project Steering Committee (PSC) will be established to provide guidance on strategic and policy issues related to the Program. The PSC will be composed of the Minister responsible for the electricity sector (as Chairperson), representatives of the Ministry of Finance, the Guyana Energy Agency, GPL and the Program Coordinator (PC) as its Secretary. The Bank and the European Union will participate in the PSC as observers. The PSC will meet at least twice per year.

4.02 In order to execute the Program, a PCU will be established and will follow the strategic directions from GPL's CEO. The specific function of the PCU will be, *inter-alia*: (i) technical execution of the Program; (ii) selecting and hiring consulting services; (iii) reviewing consulting products; (iv) managing contracts and processing payments; (v) reporting periodically to GPL's CEO and the Bank on the activities of the Program;

and (vi) preparing progress reports, in addition to supervising the administration of the Program.

- 4.03** The PCU will be composed of the following full-time team: (a) a Program Coordinator (PC); (b) a loss reduction specialist; (c) an electricity distribution network design specialist; (d) an information technology specialist; (e) a procurement specialist with experience in contract management; and (f) a finance comptroller.
- 4.04** The PC will be responsible for the preparation of technical specifications and support for the selection of consulting firms, review of products prepared by consulting firms, budget administration, logistics, local technical support and coordination among key stake holders. The PC will report to GPL's CEO and the PSC.
- 4.05** GLP will hire an independent firm to inspect the contracted works for Component III which will report on work quality and execution timetable. Such reports must be approved by GPL as a precondition for notification to the Bank of its instructions for payments to the respective contractors.