

NON-REIMBURSABLE FINANCING AGREEMENT

No. GRT/EX-14238-JA

between

JAMAICA

and the

INTER-AMERICAN DEVELOPMENT BANK
Acting as Administrator of a Contribution by the European Commission

Public Sector Efficiency (PSE) Programme

February 18, 2014

Non-reimbursable Financing Agreement

SPECIAL CONDITIONS

INTRODUCTION

Parties, Purpose, Constituent Elements, and Executing Agency

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

AGREEMENT entered into on February 18, 2014 between JAMAICA (hereinafter referred to as the “Beneficiary”), and the INTER-AMERICAN DEVELOPMENT BANK (hereinafter referred to as the “Bank”), acting as Administrator of a contribution by the European Commission, to cooperate in the partial financing and execution of a public sector efficiency Program (hereinafter referred to as the “Programme”). The major aspects of the Programme are described in detail in the Annex, hereinafter referred to as the “Annex”. The Programme is co-financed with resources from the Loan Contracts 3121/OC-JA and 3122/CH-JA.

This Agreement is entered into pursuant to the Specific Contribution Agreement signed between the Bank and the European Commission on December 23, 2013 (hereinafter referred to as the Specific Contribution Agreement), 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 9, 2013 and the Framework Agreement signed between the European Commission and the Bank on June 19, 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 Programme 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 Programme and the utilization of the resources of the nonreimbursable financing from the Bank shall be carried out by the Beneficiary, through the Public Sector Modernization Division (PSMD) of the Office of the Cabinet, which, for the purposes of this Agreement, shall be referred to as the “Executing Agency”.

CHAPTER I

Costs, Nonreimbursable Financing and Additional Resources

SECTION 1.01 **Cost of the Programme.** (a) The total cost of the Programme is estimated to be the equivalent of thirty-one million six-hundred and fifty thousand Dollars of the United States of America (US\$31,650,000). Unless otherwise stated in this Agreement, the term “Dollars” hereinafter signifies the currency of legal tender in the United States of America.

(b) The total cost of the Programme indicated in the paragraph (a) above includes, in addition to the resources of the non-reimbursable financing mentioned in Section 1.02 below, fourteen million Dollars (US\$14,000,000) from the resources of the Ordinary Capital of the Bank pursuant to Loan Contract No. 3121/OC-JA, and eleven million Dollars (US\$11,000,000) from the resources of the China Co-financing Fund for Latin America and the Caribbean pursuant to Loan Contract No. 3122/CH-JA.

(c) Pursuant to Article 6.04 of the General Conditions, the Beneficiary undertakes to make timely provision of the resources required, in addition to the Contribution, including technical, logistical and secretarial support necessary for the execution of the Programme, as well as any other resources required for the complete and uninterrupted execution of the Programme.

SECTION 1.02 **Amount of the non-reimbursable financing for the Programme.** In accordance with this Agreement, the Bank agrees to grant to the Beneficiary, and the Beneficiary accepts, a non-reimbursable financing, hereinafter referred to as the “Contribution”, of up to the amount equivalent of five million Euros (€5,000,000), chargeable to the resources administered by the Bank under the Specific Contribution Agreement, referred to in Section 1 “Parties and Purpose of the Agreement” hereinabove. The Beneficiary agrees to use the resources for the execution of the Programme as foreseen in this Agreement.

SECTION 1.03 **Administrative Commission.** An administration commission equivalent to five percent (5%) will be deducted from the Contribution to cover all the expenses related to the administration of the funds, as provided in the Specific Contribution Agreement between the European Commission and the Bank.

CHAPTER II

Disbursements

SECTION 2.01 **Disbursement currency, availability of resources, and use of funds.** (a) The amount of the Contribution will be disbursed in Euros, to the extent that the European Commission makes the resources of the Contribution available to the Bank in the corresponding European Commission/Bank account, in accordance with the Specific Contribution Agreement signed between the European Commission and the Bank.

(b) The resources of the Contribution will be used to pay for goods and services procured and contracted in accordance with and for the purposes indicated in this Agreement. The Beneficiary, directly or through the Executing Agency, as the case may be, agrees to undertake reasonable efforts to ensure that the resources of the Contribution are used for their intended purpose and are not diverted to terrorist, drug traffickers or money laundering activities.

(c) The resources of the Contribution shall only be used for payments of goods and services originating in the member countries of the Bank, and for payment of goods and services originating in non-Bank member countries provided that the country of origin of the goods and the nationality of such suppliers, contractors and service providers is recognized as eligible by the European Union under its applicable regulations.

SECTION 2.02 **Special conditions prior to the 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:

(a) The Executing Agency shall have created the Programme Coordination Unit and shall have appointed a Programme Coordinator, a Programme Procurement Specialist, and a Programme Financial Specialist.

(b) The Steering Committee of the Programme has been created.

(c) The Executing Agency has approved the Programme's Operations Manual (POM), according to the terms previously approved by the Bank.

SECTION 2.03 **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 Programme after the date of signature of the Specific Contribution Agreement between the Bank and the European Commission and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

SECTION 2.04 **Disbursement period.** (a) The period for disbursement of the resources of the Contribution shall be five (5) years, from the effective date of this Agreement. Any part of the Contribution which has not been utilized within this period shall be canceled.

(b) The aforementioned deadline 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.

SECTION 2.05 **Exchange rate.** For the purposes of the provisions set forth in Article 4.02(b) of the General Conditions of this Agreement, the parties agree that the applicable exchange rate shall be that which is indicated in subsection (b)(i) of said Article.

CHAPTER III

Execution of the Programme

SECTION 3.01 **Procurement of goods and works and non-consulting services.** (a) For purposes of Article 2.01(16) of the General Conditions, 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 procured 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 the Bank.

(c) The threshold for determining the use of international competitive bidding will be made available to the Beneficiary or the Executing Agency, as the case may be, at 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 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 the Policy, among others.

(e) Regarding the use of the National Competitive Bidding method, this may be used provided that the contracting or procurement is carried out in accordance with the bidding document or documents agreed to between the Borrower and the Bank.

SECTION 3.02 **Selection and contracting of consultant services.** (a) For purposes of the provisions of Article 2.01(8) of the General Conditions, 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 Borrower and the Borrower 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.

SECTION 3.03 Use of Country Systems. In accordance with the provisions of Article 6.02(b) of the General Conditions, the parties agree that as of the signature date of this Agreement, the use of country systems is not yet available for the procurement of goods, consulting services or non-consulting services for the Programme.

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

SECTION 3.05 Maintenance. The Beneficiary undertakes to ensure that the works and equipment included in the Programme shall be adequately maintained according to generally accepted technical standards. 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 Executing Agency shall undertake the necessary measures to correct these shortcomings.

SECTION 3.06 Programme's Operations Manual. In addition to the provisions of Article 6.01(b) of the General Conditions, the parties agree that the Bank's written consent will be required in order to make any changes to the Programme's Operations Manual referred to in Section 2.02 (c) of these Special Conditions.

SECTION 3.08 Additional obligations. (a) With the purpose of recognizing the European Union as the source of the financing of the Contribution, the Beneficiary undertakes to: (a) insert the European logo in all the documents and publications related to the Programme and in all the vehicles, equipment, and major supplies financed with resources of the Contribution; and (b) acknowledge that the Programme was carried out with funding from the European Union in any event, publication, meeting, press conference or communications or web site in which reference is made to the Programme.

(b) The Beneficiary shall publish, on an annual basis, on its website, the following information regarding the procurement contracts exceeding the amount of fifteen thousand Euros (€15,000) financed with resources of the Contribution: title of the contract, nature and purpose of the contract, name and address of the contractor and amount of the contract.

CHAPTER IV

Supervision

SECTION 4.01 Records, inspections, and reports. (a) 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 Programme execution. (a) The Bank shall use the Programme implementation plan referred to in Article 3.01(d)(i) of the General Conditions as a

tool to supervise Programme execution. The Programme implementation plan shall include a complete planning of the Programme, with the critical path of actions to be implemented in order to disburse the resources of the Contribution before the expiration of the disbursement period set forth in Section 2.04 of these Special Conditions.

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

(c) The Programme implementation plan will set the basis to prepare the Annual Operating Plans (AOP), which will be presented to the Bank for its non-objection before November 30th of each year. The AOP will detail the Programme execution activities for the year, and it will specify the annual goals, budget, and implementation schedule for each programmed activity.

(d) For the purpose of Article 7.03 of the General Conditions, the Executing Agency shall present to the satisfaction of the Bank semiannual progress reports on the execution of the Programme, within sixty (60) days following the end of each semester, and a final report within sixty (60) days following the end of the disbursement period. The progress reports shall include all the information agreed between the Beneficiary and the Bank in order to comply with the reporting obligations with the European Commission, and at least, the following elements: (i) narrative description of activities executed under each component, including a description of the procurement processes carried out and issues affecting implementation during the reported period; (ii) update on attainment of Result Matrix indicators; (iii) statement of costs incurred by component activities; and (iv) identification of risks/events that may potentially affect the future implementation of the Programme and mitigation measures. The Beneficiary undertakes to participate in semiannual meetings with the Bank in order to review the progress achieved in the implementation of the Programme based on the information on the progress reports submitted to the Bank and in any other meetings organized by the Bank with the participation of representatives from the European Commission to monitor and evaluate the execution of the Programme.

(e) The Beneficiary undertakes to hire with resources of the Contribution an evaluation specialist to conduct the impact evaluation of the Programme, which will be carried out in accordance with the monitoring and evaluation plan prepared for the Programme and agreed with the Bank.

SECTION 4.03 **Financial statements.** The Beneficiary agrees to submit, within one hundred and twenty (120) days following the closing of each fiscal year of the Executing Agency and within the disbursement period of the Contribution, or any extensions thereof, the Programme's audited financial statements, duly audited by a firm of independent public accountants acceptable to the Bank, selected and hired by the Executing Agency. The last of these reports shall be submitted within one hundred and twenty (120) days following the expiration of the disbursement period of the Contribution or any extensions thereof.

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 **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 5.03 **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:

Minister of Finance and Planning
Ministry of Finance and Planning
30 National Heroes Circle
Kingston 4
Jamaica, West Indies

Facsimile: (876) 924-9291

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, the parties 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 Kingston, Jamaica on the date above written.

JAMAICA

INTER-AMERICAN DEVELOPMENT
BANK

/s/ Peter D. Phillips

/s/ Therese Turner Jones

Peter D. Phillips, PhD, M.P.
Minister of Finance and Planning

Therese Turner Jones
Representative in Jamaica

PART TWO

GENERAL CONDITIONS

CHAPTER I

Application of the General Conditions

ARTICLE 1.01. **Application of the General Conditions.** These General Conditions apply to the non-reimbursable investment financing agreements entered into by the Inter-American Development Bank with its Beneficiaries, and accordingly the provisions hereof 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:

1. “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.
2. “Agreement” means the entirety of the Special Conditions, the General Conditions and the Annexes.
3. “Bank” means the Inter-American Development Bank.
4. “Bank Group” means the Bank, the Inter-American Investment Corporation and the Multilateral Investment Fund.
5. “Beneficiary” means the party to which the Financing is made available.
6. “Board” means the Board of Executive Directors of the Bank.
7. “Closing Period” means a ninety (90)-day period from the expiration date of the Disbursement Period, or any extension thereof, 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.

8. “Consultant Policies” means the Policies for the selection and contracting of consultants financed by the Inter-American Development Bank in force at the time of the approval of the Project by the Bank.
9. “Contracting Agency” means the entity with the legal capacity to enter into the Contract for the Procurement of Works and Goods and the Selection and Contracting of Consultants with the Contractor, Supplier, Consulting Firm or Individual Consultant, as the case may be.
10. “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.
11. “Dollar” means the legal tender of the United States of America.
12. “Executing Agency/Agencies” means the entity/entities responsible for executing all or part of the Project.
13. “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 investment financing agreements.
14. “Parties” means the Bank and the Beneficiary and each of them, indistinctively, a Party.
15. “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.
16. “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.
17. “Prohibited Practices” means the act(s) defined in Article 5.03 of these General Conditions.
18. “Project” means the Program or Project for which the Contribution has been approved by the Bank.
19. “Semester” means the first or second six months of a calendar year.
20. “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 Precedent to First Disbursement. The first disbursement of the resources of the Contribution shall be subject to the fulfillment of the following requirements to the satisfaction of the Bank:

(a) The Bank shall have received one or more well-founded legal opinions which establish, with citations of the pertinent constitutional, legal, and regulatory provisions, that the obligations undertaken by the Beneficiary in this 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, either directly or through the Executing Agency, if any, shall have designated one or more officials to represent it in all acts relating to the implementation of this Agreement and shall have furnished the Bank with authentic copies of the signatures of said representatives. Should two or more officials be designated, the designation shall indicate whether such officials may act separately or must act jointly.

(c) The Beneficiary, 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 the Contribution finances a continuation of the same financing 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, as the case may be, 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, 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 Project, 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 or Executing Agency 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 of the Contribution; (c) unless the Bank otherwise agrees, disbursement requests must be presented no later than thirty (30) days in advance of the date of expiration of the disbursement period or 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: (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 Advance 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) 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 from the Contribution to reimburse the Beneficiary and/or the Executing Agency, as the case may be, 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 and/or Executing Agency, as the case may be, 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 as an Advance of Funds to the Beneficiary or the Executing Agency, as the case may be, to cover eligible expenditures with resources of the Contribution, 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, 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 to the Bank by the Beneficiary or the Executing Agency, as the case may be, 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 Articles 3.01 and 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 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 the Closing Period, 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 that has not been duly justified. 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 for Projects financed with Funds Expressed in Dollars of the United States of America. (a) Disbursements: (i) the equivalence in Dollars of other convertible currencies in which the disbursements of the Contribution might be made, shall be calculated applying the exchange rate in effect in the market on the date of the disbursement; and

(ii) the equivalence in Dollars of the local currency, or other non-convertible currencies, in the case of regional Projects, in which the disbursements of the Contribution might be made, shall be calculated applying, on the date of the disbursement, the exchange rate established pursuant to the understanding in force between the Bank and the respective country for the purpose of maintaining the value of its currency, or other non-convertible currencies, in the case of regional Projects, held by the Bank.

(b) Expenditures: the equivalence in the currency of the Contribution of an expenditure made in the currency of the country of the Beneficiary or the Executing Agency, as the case may be, shall be calculated using one of the following exchange rates in accordance with the provisions set forth in the Special Conditions of this Agreement: (i) the same exchange rate used in the conversion of the resources disbursed in the currency of the Contribution to the currency of the country of the Beneficiary or the Executing Agency. In this case, for purposes of 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 reimbursement request is presented to the Bank; or (ii) the prevailing exchange rate in the country of the Beneficiary or the Executing Agency, as the case may be, on the actual date of the payment of the expenditure in the currency of the country of the Beneficiary or the Executing Agency.

ARTICLE 4.02. Exchange Rate for Projects Financed with Funds Constituted in Convertible Currencies Other than Dollars of the United States of America. (a) Disbursements. The Bank may convert the disbursed currency chargeable to the resources of the trust fund indicated in the Special Conditions in:

- (i) Other convertible currencies applying the exchange rate in effect in the market on the date of the disbursement; or
- (ii) The local currency or other non-convertible currencies, in the case of regional Projects, applying, on the date of the disbursement, the following procedure: (A) the equivalence of the currency of the trust fund indicated in the Special Conditions shall be calculated in dollars of the United States of America, applying the exchange rate in effect in the market; (B) next, the equivalence of these dollars of the United States of America shall be calculated in local currency or other non-convertible currencies, in the case of regional Projects, applying the exchange rate established pursuant to the understanding in force between the Bank and the respective country for the purpose of maintaining the value of its currency held by the Bank.

(b) Expenditures: the equivalence in the currency of the Contribution of an expenditure incurred in the currency of the country of the Beneficiary or the Executing Agency, as the case may be, shall be calculated using one of the following exchange rates in accordance with the provisions set forth in the Special Conditions of this Agreement: (i) the same exchange rate used in the conversion of the resources disbursed in the currency of the Contribution to the currency of the country of the Beneficiary or the Executing Agency. In this case, for purposes of reimbursement of expenditures chargeable to the Contribution and recognition of expenditures

chargeable to the local counterpart, the applicable exchange rate shall be the prevailing exchange rate on the date on which the reimbursement request is presented to the Bank; or (ii) the prevailing exchange rate in force in the country of the Beneficiary or Executing Agency, as the case may be, on the actual date of the payment of the expenditure in the currency of the country of the Beneficiary or the Executing Agency, as the case may be.

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 5.04 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 of the disbursement period, that portion of the Contribution not committed or disbursed, as the case may be, at the expiration of said period or extensions thereof, shall automatically be canceled.

CHAPTER V

Suspension of Disbursements, Accelerated Maturity and other Dispositions

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) Nonfulfillment by the Beneficiary of any obligation set forth in this Agreement or in any other agreement 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) A lag, delay, or failure by the European Commission in complying with the obligations set forth in the Specific Contribution Agreement for the transfer of the resources of the Contribution to the Bank.

(d) Termination of the Specific Contribution Agreement referred to in (c) above or the Framework Agreement between the European Commission and the Bank, which establishes the administrative and financial arrangements for their cooperation.

(e) 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 the Agreement. In such cases, the Bank will have the right to require the Beneficiary and the Executing Agency to provide reasoned and detailed information. Only after hearing the Beneficiary or the Executing Agency and weighing the

information or clarification received, or if the Beneficiary and the Executing Agency 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.

(f) 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.

(g) 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.

ARTICLE 5.02. Termination, Accelerated Maturity 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 (e) of the preceding article, or the clarifications or additional information presented by the Beneficiary or the Executing Agency, if any, are not satisfactory to the Bank.

(b) The Bank may cancel the undisbursed portion of the Contribution earmarked for a contract or request the repayment of the amounts disbursed, 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, or request the full or partial repayment of the amounts disbursed, pertaining to the procurement of certain goods, works or related services, or consulting services, if it determines at any time that the procurement was carried out without following the procedures set forth in this Agreement.

ARTICLE 5.03. Prohibited Practices. (a) For the purposes of this Agreement, 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 Article 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(g) 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 full or partial repayment to the Bank of any amount of the Contribution unduly paid, or 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(g), Article 5.02(b) and Article 5.03(b)(i) to (v).

(c) The provisions of Article 5.01(g) 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 to a supplier of goods and related services or consultant services. The exceptions set forth in subparagraph (b) shall not apply if the Bank determines that Prohibited Practices 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 for 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 has approved, as well as any substantial change in the contracts financed with resources of the Contribution shall require the written consent of the Bank.

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

(b) When the Bank has validated the systems of the member country of the Bank where the Project will be executed, the Beneficiary or the Executing Agency, as the case may be,

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

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

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

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

(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 are procured for the Project are financed entirely with Counterpart 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.

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

ARTICLE 6.04. Additional Resources. (a) The Beneficiary shall 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 Project, the estimated amount of which is specified in the Special Conditions. If during the process of disbursement an increase in the estimated cost of the Project takes place, the Bank may require the modification of the investment schedule referred to in Article 3.01(d) of these General Conditions such 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 within 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.

ARTICLE 6.05. Other Contractual Obligations of Consultants. (a) In addition to the special requirements included in Article 7.01(c), Article 7.02(e) and Article 7.04(g) 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) assign copyrights, patents and any other form of industrial property right to the Bank in cases where such rights result from the work and documents carried out or produced by the consultants under the consulting contracts financed with resources of the Project; and

(b) notwithstanding paragraph (a)(iv) above, in order to obtain a timely dissemination of the results of the Project, the Bank authorizes the Beneficiary, or the Executing Agency, to make use of the products resulting from the consulting services financed with the resources of the Project, with the understanding that the Beneficiary or the Executing Agency shall utilize such consulting products under the terms set forth in Article 8.02 of these General Conditions.

CHAPTER VII

Financial Information and Internal Control Systems, Inspections, Reports and External Audits

ARTICLE 7.01. Financial Information and Internal Control Systems. (a) The Beneficiary or the Executing Agency, 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 five (5) 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.

(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, the Executing Agency 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, the Executing Agency 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, the Executing Agency and the Contracting Agency 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, the Executing Agency 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, the Executing Agency 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, Executing Agency 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 use of goods acquired with the Contribution, 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 Agreement, 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 Agreement 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 Agreement, 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.

ARTICLE 7.05. Other Commitments. The Beneficiary, either directly or through the Executing Agency shall also:

(a) provide the consultants and local experts with secretarial services, 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 Counterpart Resources; and

(d) keep the Bank's Representative in the respective country or countries informed of all aspects of the Project.

CHAPTER VIII

Tax Exemptions and other Provisions

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

ARTICLE 8.02. 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 initiatives or any other activity financed with the resources of the Project, shall be previously approved by the Bank.

ARTICLE 8.03. 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 8.04. 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.

CHAPTER IX

Arbitration Procedure

ARTICLE 9.01. Composition of the Tribunal. 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.

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 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.

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 Contract, 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 Contract. The parties waive any other form of notification.

ANNEX

THE PROGRAMME

Public Sector Efficiency (PSE) Program

I. Objectives

- 1.01** The overall objective of the Programme is to improve the efficiency of the Jamaican public sector by strengthening government capacity in: (i) Human Resource Management (HRM); (ii) Information and Communication Technologies Management (ICTM); and (iii) control systems and accountability mechanisms.

II. Description

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

Component 1: Human Resources Management (HRM)

- 2.02** This component will finance activities aimed at improving efficiency of personnel expenditures and strengthening the government's capacity for more efficient HRM. These will include:

- (i) **Implementation of a Human Capital Management System (HCMS)** covering the entire public sector. The HCMS refers to an Information Technology (IT) solution that can scale up and automate and integrate processes like payroll, performance reviews, and employee information such as professional experience, academic background, as well as demographic features in a single database for the entire public sector. The HCMS will include a payroll solution that will allow employees' salary and salary-related data to be entered and maintained within the system. The Programme will finance: (a) the procurement of the HCMS; (b) the implementation and roll out of the system across the public sector, including a dedicated technical team; (c) Information and Communication Technologies (ICT) infrastructure; and (d) training for administrators and users.
- (ii) **Strengthening the capacity of the Strategic Human Resources Management Division (SHRMD)** within the Ministry of Finance and Planning (MOFP) for: (a) strategic HRM planning; (b) policy formulation, coordination and implementation within HRM units in Ministries, Departments and Agencies (MDAs) and public bodies; (c) adaptation of key HRM processes to the HCMS in coordination with HRM units in MDAs and public bodies; and (d) quantitative and qualitative analysis of HCMS data.

Component 2: Information and Communication Technologies Management (ICTM)

- 2.03** This component will finance activities aimed at: (i) strengthening the government's capacity to lead and implement ICT policy, and (ii) improve efficiency in public service delivery by adopting innovative citizen-centered e-government solutions. These will include:
- (i) **Institutional strengthening of the new ICT governance framework.** The Programme will finance: (a) the establishment and organization of the office of the Chief Information Officer¹; (b) the design of an e-Government framework and strategy; (c) the development of key instruments and policies to support the new e-government framework; and (d) capacity building and training on key ICT policy areas and subjects to support the new e-Government mandate.
 - (ii) **Streamlining the processes of the GEI.** The Programme will finance process reengineering and automation to reduce the time associated with the application and delivery of electricity permits through: (a) process reengineering for administrative simplification and increased transparency; (b) adoption of the web-based Application Management and Data Analysis (AMANDA) system; (c) change management; and (d) ICT infrastructure.
 - (iii) **Establishment of a one-stop shop for business registration.** The objective is to reduce the time required to register a business by simplifying and automating the process with the aid of a digital solution. The Programme will finance: (a) the implementation of the online processing of a single Business Registration Form; and the electronic approval and data sharing among the government agencies involved in business start-up; (b) ICT infrastructure; (c) training of the Tax Office staff so they can offer support to citizens on using the online filing service; (d) implementation of kiosks equipped with computer workstations and digital signing pads that customers with no internet access may use at the Tax Office in each parish; (e) a communication strategy to promote the new online service and (f) supporting documentation (process manual, etc.)
 - (iv) **Introduction of Shared Corporate Services.** As the first step to reduce the costs of providing corporate services over time, the Programme will support the introduction of shared services by financing: (a) the design and initial implementation of the Operating Model for the HR Shared Service Centre (HRSSC), including the governance framework and the organizational arrangement²; (b) the definition of technical specifications for the facility that will host the HRSSC; (c) the acquisition of workstations for the HRSSC agents;

¹ The Chief Information Officer will be the government official responsible for ICT policy.

² The Operating Model for the HRSSC will comprise a definition of policy and strategy, scope of services, processes, systems, volumes, operating hours, accountabilities and responsibilities, facilities and locations, structures and organizations, service performance standards and levels, funding, pricing and charging mechanisms.

(d) the training of HRSSC agents; (e) the acquisition of ICT solution (hardware and software) to operate HRSSC; and (f) a study to prepare the framework for implementing shared legal services.

Component 3: Control systems and accountability mechanisms³

2.04 This component will contribute to the Government of Jamaica's Public Financial Management Reform Action Plan (PFM-RAP) objectives on modernization of procurement processes and improvement of the budget control and oversight. These interventions will contribute to improvement in the efficiency of public spending. These will include:

- (i) **Strengthening the Auditor General's Department (AGD) capacity for performance audits (PA) and information technology (IT) audits** through: (a) external auditors' in-country training and overseas attachments on IT audits; (b) external auditors' in-country training on PA⁴; and (c) IT solution (hardware and software) for the use of computer assisted audit techniques (CAAT) software for external audit.
- (ii) **Strengthening the Internal Audit System's (IAS)**⁵ **capacity**, especially for payroll and procurement audits, through: (a) internal auditors' in-country training on PA; (b) capacity building for the adoption of modern audit techniques for internal auditors, and (c) adoption of a commercial off-the-shelf system for the automation of the audit process in the Internal Audit Units (IAUs).
- (iii) **Improving transparency and value for money of public procurement** through: (a) training and certification courses for procurement staff; (b) technical assistance to produce a new Procurement Handbook following enactment of the Procurement Law; (c) implementation of e-tendering, including IT equipment; (d) communication and awareness of new Procurement Law, Handbook and e-tendering system among Government and Contractors; and (e) new contractor registration system as a module of the e-tendering system.
- (iv) **Enhancing Parliament's oversight role**, through: (a) the design of a Management Accountability Framework for the Parliament; (b) design and establishment of a Technical Office for fiscal and budget analysis; and (c) training for the members of Parliaments in relation to macro-fiscal management, public finances and fiscal responsibility, particularly with respect to optimizing spending choices, to enhance efficiency and effectiveness.

³ The activities in this component will be financed with resources from a Project Specific Grant provided by the European Commission (EC).

⁴ This will be provided jointly for external and internal auditors, as well as Parliament's technical staff.

⁵ It includes the Internal Audit Directorate at the Ministry of Finance and the Internal Audit Units of Ministries and Departments.

III. Total Cost of the Programme and Financing Plan

3.01 The total cost of the Programme is estimated to be thirty-one million six-hundred and fifty thousand Dollars (US\$31,650,000), which will be distributed among the following categories of expenditures:

Table of Costs

Component/Subcomponents	IDB/CTF*	EC**		Total	%
	US\$	Euros		US\$***	
1. Human Resources Management (HRM).				18,578,535	58.70
1.1 Implementation of HCMES	17,578,535			17,578,535	
1.2 Strengthening of SHRMD	1,000,000			1,000,000	
2. Information and communication technologies management (ICTM)				4,060,000	12.84
2.1 Strengthening of the new ICT governance.	1,600,000			1,600,000	
2.2 Streamlining the processes of the GEI	500,000			500,000	
2.3 One-stop shop for business registration.	300,000			300,000	
2.4 Introduction of SCSs	1,660,000			1,660,000	
3. Control systems and accountability mechanisms				5,923,900	18.72
3.1 Strengthening the AGD's capacity		500,526.30	665,700	665,700	
3.2 Strengthening the IAS capacity.		812,180.50	1,080,200	1,080,200	
3.3 Improving public procurement		2,571,428.60	3,420,000	3,420,000	
3.4 Enhancing Parliament's oversight role.		569,924.80	758,000	758,000	
4. Administrative Costs				1,324,600	4.19
4.1 Programme management.	776,100			776,100	
4.2 Audit, Monitoring and Evaluation.	216,000			216,000	
4.4 Administrative Fee (5%)		250,000	332,500	332,500	
5. Other Costs				1,762,965	5.55
5.1 Contingency	1,369,365	295,939.80	393,600	1,762,965	
Total	25,000,000	5,000,000	6,650,000	31,650,000	100

*This column reflects the aggregated amount of the loan resources chargeable to the Ordinary Capital of the Bank and the China Co-Financing Fund for Latin America and the Caribbean. The resources from these two sources will be disbursed on a pari-passu basis.

**Resources to be provided by the European Commission (EC), pursuant to the terms of the Contribution Agreement to be entered into between the EC and the Bank. EC resources will be available only after the Contribution Agreement is signed between the Bank and the EC and the funds are received by the Bank.

***The total amount indicated in US Dollars related to the EC Contribution is for reference purposes only and may vary due to exchange rate fluctuations.

IV. Execution

4.01 The Cabinet Office, through its Public Sector Modernization Division (PSMD), will be the Executing Agency of the Programme. The PSMD will be responsible for the overall administration of the Programme, including planning, budgeting, implementation, and monitoring.

4.02 The Programme will have a Programme Coordination Unit (PCU). This PCU will coordinate and monitor the execution of the Programme, and will have, at least, the

following members: a Programme Coordinator (PC), a Financial Specialist and a Procurement Specialist. All procurement and accounting activities, including financial monitoring and reporting will be carried out by the PCU. Specific responsibilities of PCU will include: (i) preparation, implementation and coordination of the Annual Operating Plans (AOP); (ii) financial administration, Programme accounting and preparation of budgets and disbursement requests; (iii) preparation of the Programme's annual Procurement Plan, and the procurement of works, goods and services; (iv) coordination of the preparation of technical reports and financial statements; (v) monitoring of the progress of Programme activities, environmental and social safeguards compliance, and analysis of variances of actual results against plans; (vi) selection and hiring of the external audit and ensuring that the relevant recommendations are implemented; (vii) hiring of the evaluation specialist; and (viii) serving as a liaison for the Programme implementation with the Bank.

- 4.03** Each year, the Executing Agency will present an Annual Operating Plan (AOP) to the Bank for its non-objection. The AOP will detail Programme execution activities and associated implementation plans for the year, and will include for each programmed activity: annual goals, budget, and implementation schedule. The AOP for the first year will be contained in the Programme Execution Plan. For subsequent years, the AOP will be submitted to the Bank for its non-objection before November 30th of each year, and will cover the activities that will be carried out in the following year.
- 4.04** In order to monitor and review the progress achieved in the implementation of the Programme, semiannual meetings will be held with the participation of representatives of the Executing Agency, the Bank, and, with regard to the activities in Component 3, the European Commission. For these meetings, the Executing Agency will furnish, prior to each meeting, information and documentation requested by the Bank regarding the Programme's advancement. Programme monitoring will be based on the Results Matrix, the Monitoring and Evaluation Plan, the Procurement Plan, and the Annual Operating Plans.