

Hon. Peter D. Phillips, Ph.D., M.P.
Minister of Finance and Planning
Ministry of Finance and Planning
30 National Heroes Circle
Kingston 4
Jamaica, West Indies

Ref: Jamaica. Non-reimbursable Technical Cooperation
No. ATN/KF-13733-JA. Enhancing the Information
and Communication Technologies (ICTs)
Regulatory Environment in Jamaica.

Dear Minister Phillips,

The purpose of this letter of agreement, hereinafter referred to as the “Agreement”, between Jamaica, hereinafter referred to as the “Beneficiary”, and the Inter-American Development Bank, acting in its capacity of Administrator of the Knowledge Economy Fund, hereinafter referred to as the “Bank”, which we are submitting for your consideration, is to formalize the terms and conditions of a grant for a non-reimbursable technical cooperation to the Beneficiary, up to the amount of three hundred and fifteen thousand dollars of the United States of America (US\$315,000) or its equivalent in other convertible currencies, which shall be chargeable to the resources of the Knowledge Economy Multi-donor Fund, hereinafter referred to as the “Contribution”, to finance the procurement of goods and related services and the selection and contracting of consultants necessary for the execution of a technical cooperation project to enhance the ICT Regulatory Environment in Jamaica, hereinafter referred to as the “Project”, which is described in the Annex to this Agreement. Unless otherwise stated in this Agreement, the term “dollars” shall hereinafter refer to the currency of legal tender in the United States of America.

The Bank and the Beneficiary agree upon the following:

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

Second. Executing Agency. The execution of the Project and the utilization of the resources of the Bank’s Contribution shall be carried out by the Ministry of Science, Technology, Energy and Mining, hereinafter referred to as the “Executing Agency” or “MSTEM”. The Beneficiary gives its assurance of the legal and financial capacity of the Executing Agency to function as such.

Third. Conditions Precedent to First Disbursement. The first disbursement of the resources of the Contribution shall be subject to the fulfillment, to the satisfaction of the Bank of the conditions precedent stipulated in Article 2 of the General Conditions.

Fourth. Reimbursement of Expenditures Chargeable to the Contribution. With the consent of the Bank, resources of the Contribution may be used to reimburse expenditures incurred or to finance those that may be incurred in the Project on or after March 7, 2013, and up to the effective date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Fifth. Deadlines. (a) The period for execution of the Project shall be eighteen (18) months, from the effective date of this Agreement.

(b) The period for disbursement of the resources of the Contribution shall be twenty four (24) months from said date. Any part of the Contribution which has not been utilized within this period shall be canceled.

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

Sixth. Total Cost of the Project and Additional Resources. (a) The Beneficiary undertakes, either directly or through the Executing Agency, as applicable, to make timely provision of the resources required, in addition to the Contribution, for the complete and uninterrupted execution of the Project (hereinafter referred to as the "Counterpart Resources"). The total amount of Counterpart Resources required is estimated to be the equivalent of one hundred thousand dollars (US\$100,000), to make up a sum equivalent to four hundred fifteen thousand dollars (US\$415,000), which is estimated to be the total cost of the Project. These estimates do not reduce the obligation of the Beneficiary to provide any additional resources required to complete the Project.

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

Seventh. Recognition of Expenses Chargeable to the Counterpart Resources. The Bank may recognize as part of the Counterpart Resources for the Project expenditures incurred or which may be incurred in the Project on or after March 7, 2013, and up to the effective date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Eighth. Currencies for Disbursements. The Bank shall disburse the Contribution in dollars. The Bank may convert these convertible currencies into other currencies, including the local currency, by applying the exchange rate indicated in Article 9 of the General Conditions.

Ninth. Exchange Rate. For the purposes of Article 9 of the General Conditions of this Agreement, the parties agree that the applicable exchange rate shall be as stated in

paragraph (b) (ii) of said Article. In this case, the applicable rate shall be the rate in effect on the date on which the Beneficiary, the Executing Agency, or any other person or entity with delegated authority to incur expenditures, makes the respective payments to the contractor or supplier.

Tenth. Use of the Contribution. The resources of the Contribution may be used only for the procurement of goods and related services and the selection and contracting of consultants of the member countries of the Bank. Consequently, the procedures and specific bidding documents for bidding processes or other forms of contracting financed with the resources of the Contribution shall allow free competition of providers of goods and related services and of consultants of said countries.

Eleventh. Procurement of goods and related services. Goods and related services shall be procured in accordance with document GN-2349-9 (“Policies for the Procurement of Works and Goods financed by the Inter-American Development Bank”) dated March 2011, hereinafter referred to as the “Procurement Policies”, of which the Beneficiary confirms its knowledge and undertakes to make known to the Executing Agency.

Twelfth. Contracting of Consultants. The selection and contracting of consultants shall be carried out in accordance with the provisions of document GN-2350-9 (“Policies for selection and contracting of consultants financed by the Inter-American Development Bank”) dated March 2011, (hereinafter referred to as the “Consultants Policies”), of which the Beneficiary confirms its knowledge, and in accordance with the following provision(s):

(a) The Executing Agency may use the method established in Section II and in paragraphs 3.16 to 3.20 of the Consultants Policies to select consultants based on quality and cost as well as any of the methods established in Sections III and V of the Consultants Policies to select consulting firms and individual consultants, respectively. For purposes of paragraph 2.7 of the Consultants Policies, the short list of consultants whose estimated cost is less than the equivalent of two hundred thousand Dollars (US\$200,000) per contract may comprise entirely national consultants.

Thirteenth. Procurement Plan. Prior to commencing any selection and contracting of consultants the Executing Agency shall submit, for review and approval by the Bank, the proposed Procurement Plan for the Project, (hereinafter referred to as the “Procurement Plan”), which shall include the estimated cost of each contract, the contract grouping, and applicable methods of selection, pursuant to paragraph 1 of Appendix 1 of the Consultants Policies. This Procurement Plan shall be updated six (6) months or as needed during Project execution, and each updated version shall be submitted to the Bank for review and approval. The selection and contracting of consultants shall be conducted in accordance with the Procurement Plan approved by the Bank and amendments thereto.

Fourteenth. Review of Contracts. Except as the Bank may otherwise determine in writing, each contract for procurement of goods and related services and selection and contracting of consultants shall be subject to ex ante review, in accordance with the procedures

established in Appendix 1, paragraphs 2 and 3 of the Procurement Policies and Consultants Policies.

Fifteenth. Monitoring and Evaluation. The Beneficiary shall present the following reports to the Bank: (i) semi-annual progress reports, within thirty (30) days after the end of each calendar semester; (ii) a final report, within six (6) months after completion of the last activity of the Project, which will include at least the following information: (i) the degree of compliance with the indicators for the program and the different components; (ii) successes and shortcomings of program design and execution and its effectiveness in working toward the objectives; and (iii) recommendations for corrective or monitoring measures for future programs of this kind.

Sixteenth. Financial statements and other reports. (a) The Beneficiary agrees to present to the satisfaction of the Bank, directly or through the Executing Agency, within ninety (90) days after the last disbursement, the audited financial statements for the Project.

(b) For purposes of the provisions of Article 14(e) of the General Conditions of this Agreement, the Executing Agency shall select and contract the services of independent public accountants, prior non-objection of the Bank, chargeable to the resources of the Contribution, to carry out the audit of the financial statements described above in subparagraph (a) of this paragraph. The Executing Agency agrees to facilitate, allow access to, and provide the information requested by the external auditors for such purposes.

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

Eighteenth. Notice. Any notice, request, or communication from one party to another by virtue of this Agreement shall be made in writing and shall be considered to have been made when the corresponding document is delivered to the addressee at the address indicated on the first page of this agreement and to facsimile (876) 922-7097, unless otherwise agreed by the parties in writing.

To the Bank:

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

Facsimile: (202) 623-3096

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

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

Yours Faithfully,

/s/ Therese Turner Jones

Therese Turner Jones
Representative of the Bank in Jamaica

Agreed:

/s/ Peter D. Phillips,

Peter D. Phillips, PhD, MP
Minister of Finance and Planning

May 31, 2013

**GENERAL CONDITIONS APPLICABLE TO NONREIMBURSABLE
TECHNICAL COOPERATIONS**

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

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

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

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

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

Article 3. Requisites for all disbursements. In order 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 in 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)

calendar days prior to the expiration date of the period for disbursement or of any extension thereof which the Beneficiary or the Executing Agency, as the case may be, and the Bank may have agreed to in writing; and (d) none of the circumstances described in Article 7 of these General Conditions shall have occurred.

Article 4. Disbursement procedures of the Contribution. (a) The Bank shall make disbursements of the Contribution as follows: (i) by transferring to the Beneficiary or the Executing Agency, as the case may be, the sums to which it is entitled under this Agreement, by means of reimbursement of expenditures or advance of funds¹; (ii) by making payments on behalf of and in agreement with the Beneficiary or the Executing Agency, as the case may be, to third parties or other banking institutions; and (iii) by utilizing such other modality as the parties may agree upon in writing. Any banking expenses that may be charged by any third party in connection with disbursements shall be borne by the Beneficiary or the Executing Agency, as the case may be.

(b) With resources of the Contribution and upon fulfillment of the requirements set forth in Articles 2 and 3 of these General Conditions and the pertinent requirements established in the Special Conditions, the Bank may disburse resources of the Contribution in order to:

- (i) Reimburse the Beneficiary or the Executing Agency, as the case may be, for expenditures related to the execution of the Project that have been financed with its own resources or with other sources of financing and that are eligible to be financed with resources of the Contribution, pursuant to the provisions of this Agreement. Except by express agreement between the parties, the disbursement requests for reimbursing expenditures financed by the Beneficiary or Executing Agency, as the case may be, shall be made promptly following the incurrence of such expenses, or no later than sixty (60) days following the conclusion of each calendar semester or within such other term as the parties may agree; and
- (ii) Advance resources to the Beneficiary or the Executing Agency, as the case may be, based on the liquidity needs of the Project, to cover 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. The maximum amount of each advance of funds shall be set by the Bank and will consist of a defined amount based on the liquidity needs of the Project to cover periodic projected expenditures that are eligible to be financed by the Contribution. At no time may the maximum amount of an advance of funds exceed the amount required to finance such expenditures during a period of 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 efficiently manage the resources of the Contribution.

¹ “Advance of Funds” means the amount of resources advanced by the Bank to the Beneficiary or the Executing Agency, as the case may be, chargeable to the resources of the Contribution, to cover eligible expenditures of the Project.

(c) The Bank may: (i) increase the maximum amount of an Advance of Funds when, in the opinion of the Bank, 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 based on the provisions of paragraph (b)(ii) above, provided that at least eighty percent (80%) of the total amount of resources disbursed as an advance of funds has been justified.

(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 or justified to the Bank sufficiently and on a timely basis, to the Bank's satisfaction, in accordance with the provisions established in this Agreement.

Article 5. Closing Period². 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 date of expiration of the Closing Period, the balance of the disbursed resources of the Contribution that have not been utilized or not been duly justified. If audit services are to be financed with resources of the Contribution, and such services will not be concluded and paid for 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 other audited reports within the periods stipulated in this Agreement.

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

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

² "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 utilized and justified.

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

(c) In addition to the provisions of paragraph (a) above, the Bank may: (i) suspend disbursement if, in accordance with the Bank's sanctions procedures, it is determined at any stage that an employee, agent or representative of the Beneficiary or the Executing Agency has committed a prohibited practice, as defined in Article 8 of these General Conditions (hereinafter "Prohibited Practices") during the procurement process or during the execution of a contract; and (ii) cancel the undisbursed portion of the Contribution pertaining unequivocally to the procurement of certain goods, works or related services, or consulting services, if (A) it determines at any time that the procurement was carried out without following the procedures set forth in this Agreement; or (B) in accordance with the Bank's sanctions procedures, it is determined that any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, providers of goods or services, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees and representatives, irrespective of whether the agency is express or implied) has committed a Prohibited Practice during any stage of procurement or during the execution of a contract, when there is evidence that the representative of the Beneficiary or the Executing Agency has not taken the appropriate corrective action (including, among other things, adequate notice to the Bank upon learning of the Prohibited Practice) within a time period which the Bank considers reasonable..

Article 8. Prohibited Practices. (a) For the purposes of this Agreement, a Prohibited Practice shall be understood to include the following practices: (i) a "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; (ii) a "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; (iii) a "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; (iv) a "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and (v) an "obstructive practice" is: (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 in Articles 13(c), 14(g) and 15(e) of these General Conditions.

(b) In addition to the provisions in Articles 7(c)(i) and 7(c)(ii)(B) of these General Conditions, if it is demonstrated that in accordance with the sanctions procedures of the Bank any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia,

applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, sub-contractors, sub-consultants, goods and service providers, concessionaires, the Beneficiary or the Executing Agencies (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied) has engaged in a Prohibited Practice, during any stage of the procurement process or during the execution of a contract, the Bank may:

- (i) decline to finance any proposal to award a contract for the procurement of works, goods, related services and the contracting of consultant services;
- (ii) declare a procurement ineligible for Bank financing, when there is evidence that the representative of the Beneficiary or the Executing has not taken the adequate remedial measures (including, among other things, adequate notice to the Bank upon learning of the Prohibited Practice) within a time period which the Bank considers reasonable;
- (iii) issue a reprimand in the form of a formal letter of censure of the firm's, entity's or individual's behavior;
- (iv) declare that a firm, entity, or individual is ineligible, either permanently or for a stated period of time, to (A) be awarded or participate in Bank-financed activities, and (B) be designated sub-consultant, sub-contractor, or goods and services supplier of an otherwise eligible firm being awarded a contract to execute Bank-financed activities;
- (v) refer the matter to appropriate law enforcement authorities; and/or
- (vi) impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement of the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of the sanctions mentioned in Article 7(c)(i), in Article 7(c)(ii)(B) and in this Article 8(b), numerals (1) through (v).

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

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

(e) Any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants, personnel, sub-contractors, sub-consultants, providers of goods or services, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied) may be subject to sanctions pursuant to

agreements that the Bank may have with other international financing institutions regarding the mutual enforcement of debarment decisions. For purposes of this sub-paragraph (e) the term “sanction” shall mean any debarment, conditions on future contracting or any publicly-disclosed action taken in response to a violation of an international financing institution applicable framework for addressing allegations of Prohibited Practices.

(f) When a Beneficiary procures goods, works or services other than consulting services directly from a specialized agency or hires a specialized agency to provide technical assistance under an agreement between the Beneficiary and such specialized agency, all provisions contained in this Agreement regarding sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, contractors, consulting firms or individual consultants, personnel, sub-contractors, sub-consultants, suppliers of goods and services (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied), or any other entity that has signed contracts with such specialized agency to supply such goods, works or services other than consulting services in connection with Bank-financed activities. The Bank retains the right to require the Beneficiary to invoke remedies such as suspension or termination. The Beneficiary agrees that contracts with specialized agencies shall include provisions requiring said agencies to consult the Bank’s list of firms and individuals declared ineligible temporarily or permanently by the Bank. In the event that a specialized agency signs a contract or purchase order with a firm or an individual declared ineligible either temporarily or permanently by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

Article 9. Exchange rate for Projects financed with funds expressed in dollars of the United States of America.

(a) Disbursements:

- (i) The equivalence in dollars of the United States of America of other convertible currencies in which the disbursements of the Contribution may 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 United States of America of the local currency, or other non-convertible currencies, in the case of regional Projects, in which the disbursements of the Contribution may 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 10. Exchange rate for Project 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 11. Procurement of goods and related services and contracting of consultants. (a)

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 related services and contract the consulting services required for the execution of the Program.

(b) When the goods and related services procured and the consulting services contracted 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.

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

(d) During the execution of the Program, the goods referred to in subsection (a) above shall be used exclusively for the execution of the Program.

(e) 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 12. Other contractual obligations of consultants. (a) In addition to the special requirements included in Article 13(c), Article 14(g) and Article 15(e) of these General Conditions, of 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 Program, 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 Program, with the understanding that the Beneficiary or the Executing Agency shall utilize such consulting products under the terms set forth in Article 17 of these General Conditions.

Article 13. Financial information and internal control systems. (a) The Beneficiary or the Executing 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, as the case may be, shall preserve the original records of the Project for a minimum period of three (3) years after the date agreed upon for the final disbursement of the Contribution, 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 expenditures made for the Project, both with the resources of the Contribution and with the other funds to be provided for its complete execution; (iii) include sufficient detail to identify the services contracted and the goods procured, as the case may be, as well as the utilization of such services and goods; (iv) provide evidence as to conformity in the acceptance, authorization and payments for the contracted services or purchased goods, as the case may be; (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 and 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 Project in relation to each category in the Project's budget.

(c) The Beneficiary agrees that bidding documents, requests for proposals and contracts financed with resources of the Contribution that the Beneficiary or the Executing Agency celebrate, shall include a provision that requires providers of goods or services, contractors, subcontractors, consultants and representatives, personnel, sub-consultants, subcontractors, or concessionaires retain all documents and records relating to Bank-financed activities for a period of seven (7) years after completion of the work referred to in the respective contract.

Article 14. External audit. (a) The Beneficiary or the Executing Agency, as the case may be, shall present to the Bank, during the period of Project execution and within the deadlines and with the frequency provided in the Special Conditions of this Agreement, the Project's financial statements and other reports, and any additional financial information relating thereto 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 Agreement, 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, 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 country 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 auditors to provide the Bank with any additional information it may reasonably request with respect to the audited financial statements and other audited 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 and other audited reports required pursuant to this Agreement 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 the services of qualified private firms and independent public accountants within the country; or (iii) special circumstances warrant the selection 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) Bidding documents and contracts that the Beneficiary or the Executing Agency enter into with a supplier of goods or services, contractor, sub-contractor, consultant, sub-consultant, personnel or concessionaire shall include a provision allowing the Bank to inspect any accounts, records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the Bank.

Article 15. Inspections. (a) The Bank may establish such inspection procedures as it deems necessary to ensure the satisfactory development of the Project.

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

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

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

(e) The Beneficiary agrees that bidding documents, requests for proposals and contracts financed with resources of the Contribution that the Beneficiary or the Executing Agency enter into shall include a provision that requires applicants, bidders, providers of goods or services and their representative, contractors, sub-contractors, consultants and their representatives, sub-consultants, service providers and concessionaires to: (i) permit the Bank to inspect any and all accounts, records, and other documents relating to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank; (ii) assist the Bank with its investigation; and (iii) deliver any document necessary for the investigation of allegations of Prohibited Practices and make

available their employees or agents with knowledge of the Bank-financed activities to respond to questions from Bank personnel or any properly designated investigator, agent, auditor or consultant relating to the investigation. If the applicant, bidder, supplier and its agent, contractor, consultant, personnel, subcontractor, sub-consultant, service provider or concessionaire fails to cooperate and/or comply with the Bank's request, or otherwise obstructs the investigation, the Bank, in its sole discretion, may take appropriate action against the applicant, bidder, supplier and its agent, contractor, consultant, personnel, sub-contractor, subconsultant, service provider or concessionaire.

Article 16. 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.

Article 17. 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 18. 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 19. Limitation of the Bank's Obligation. It is understood that the granting of the Contribution by the Bank does not constitute any obligation whatsoever on its behalf to totally or partially finance any project or program that may directly or indirectly result from the execution of the Project.

Article 20. Arbitration. For the solution of any controversy which may arise hereunder and which is not resolved by agreement of the parties, said parties shall unconditionally and irrevocably submit to the following arbitration procedure and award:

(a) **Composition of the Tribunal.** The Arbitration Tribunal shall be composed of three (3) members, to be appointed in the following manner: one by the Bank, another by the Beneficiary, and a third, hereinafter called the "Referee", by direct agreement between the parties or through their respective arbitrators. If the parties or the arbitrators fail to agree on who shall be the

Referee, or if one of the parties fails to appoint the arbitrator, the Referee shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, he or she shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his or her successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his or her predecessor.

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

In cases of agreements with Argentina, the parties agree that in paragraphs (a) and (b), above, where it reads: “Secretary General of the Organization of American States”, it shall read instead: “President of the International Court of Justice.”

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

In cases of agreements with Argentina, the parties agree that this paragraph (c) shall read instead: “The Arbitration Tribunal shall be convened at the place and date it designates and, once convened, it shall meet on the date decided by the Tribunal.”

(d) **Procedure.**

- (i) The Tribunal shall be competent only to hear the matter in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity to make oral presentations.
- (ii) The Tribunal shall proceed *ex aequo et bono*, basing itself on the terms of this Agreement, and shall issue an award even if either party should fail to appear or to present its case.
- (iii) The award shall be in writing and shall be adopted with the concurrent vote of at least two of the members of the Tribunal. It shall be handed down within sixty (60) days from the date on which the Referee has been appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The parties shall be notified of the award by means of a communication signed by at least two members of the Tribunal.

The parties agree that any award of the Tribunal shall be complied with within thirty (30) days from the date of notification and it shall be final and not be subject to any appeal.

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

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

In cases of Agreements with Ecuador, the parties agree that, for the purposes of notification, this paragraph (f) shall read: "All notifications regarding the arbitration proceeding or to the award shall be made in the manner provided in the Agreement. The parties expressly waive any other form of notification. Notwithstanding the foregoing, any party delivering a notification hereunder must also notify the Attorney General (Procurador General del Estado) of Ecuador."

ANNEX

THE PROJECT

Enhancing the ICT Regulatory Environment in Jamaica

I. Objective

- 1.01** The Project seeks to support the Government of Jamaica (GOJ) in the process of updating and enhancing its ICT regulatory environment and its governance model through a detailed review of its current status and a set of proposed recommendations aimed at promoting a more efficient implementation, oversight and monitoring of the new ICT Policy. In addition, the project contemplates an assessment of the current capabilities in the GOJ to develop information tools on the current status of broadband in Jamaica, in an effort to contribute to improving policymakers', regulators' and operators' understanding of the sector, thereby strengthening their capacity to implement and monitor public policies for increased broadband development.

II. Description

- 2.01** The activities of the Project are comprised in two components: (i) review of the current regulatory framework and governance model; and (ii) assessment of existing GIS capabilities and additional requirements within the GOJ.

Component 1. Legal and Regulatory Environment.

- 2.02** The objective of this component is to review the current administrative and regulatory framework of the ICT sector. The activities include: (i) review the current regulatory framework for the ICT sector and provide specific recommendations for drafting appropriate strategic legislation for the establishment of a converged stand-alone ICT regulator; and (ii) review the governance model of the existing regulators and propose an organizational structure for the establishment and implementation of a converged stand-alone ICT regulator. The results of these reviews will be included in a report and presented in a workshop.
- 2.03** The report should:
- (i) Propose an organizational structure for a single stand-alone ICT Regulator, and a road map to facilitate its establishment, identifying the particular functions in each of the existing regulatory bodies that must be transferred to facilitate such establishment;

- (ii) Estimate the cost of the establishment of the ICT Regulator and the mechanisms required to implement its mandate; and
- (iii) Include drafting instructions for the establishment of the converged stand-alone ICT regulator.

Component 2. Assessment of existing geographic information system (GIS)¹ capabilities within the GOJ.

2.04 The purpose of this component is to assess GIS capabilities already available within the GOJ. Such assessment will enable GOJ to prepare and plan for the development and hosting of an interactive broadband coverage map and dashboard which will be based on the data gathered from the broadband diagnosis undertaken in the framework of the Regional Caribbean project. The assessment will enable GOJ to identify any datasets and technical capabilities that may be required to implement, operationalize and maintain the system.

III. Total Cost of the Project

3.01 The estimated cost of the Project is the equivalent of US\$415,000. The resources of the Contribution and the Local Counterpart shall be used to finance the categories in accordance with the following Budget:

Budget
(in US\$)

Categories	Bank	Local Counterpart	Total Funding
Component 1	285,000	80,000	365,000
Review of the current regulatory framework and governance model	270,000	60,000	330,000
	-	10,000 (in-kind)	10,000
Workshop with stakeholders	15,000	10,000	25,000
Component 2	10,000	5,000	15,000
Assessment of existing GIS capabilities to facilitate the development and maintenance of an interactive Broadband coverage map and Dashboard	10,000	5,000 (in-kind)	15,000
Others	20,000	15,000	35,000
External audit and other miscellaneous costs	20,000	-	20,000
Administration costs ²	-	15,000 (in-kind)	15,000
Total cash contribution	315,000	70,000	385,000
Total in-kind contribution	-	30,000	30,000
Total	315,000	100,000	415,000

¹ Geographic information system (GIS) is a system designed to capture, store, manipulate, analyze, manage, and present all types of geographical data in web-based formats.

² Estimated local in-kind counterpart funding corresponds to office space and man-hours of two GOJ officers to supervise the work to be undertaken by the consultants.

IV. Execution

- 4.01** The Project will be executed by the Ministry of Science, Technology, Energy & Mining (MSTEM) with the support of the Office of Utilities Regulation (OUR), and with the support of the Competitiveness and Innovation Division (IFD/CTI) of the Bank, which is currently leading the Bank's Broadband Platform.
- 4.02** With respect to component 1, MSTEM, through its Information and Communications Technology (ICT) Division, will carry out the oversight and management of the activities comprised in this component. For that purpose one (1) officer in particular will be assigned to work with the consultant hired to perform the activities and the ICT Division in general will, inter alia, provide:
- (i) guidance and advice to the consultant, particularly with respect to the Governmental and parliamentary approval processes;
 - (ii) access to key officials within the relevant Ministries, Agencies and Departments and other relevant entities, including operator companies as applicable;
 - (iii) access to information within the context of the work to be provided;
 - (iv) office space and facilities for the consultant; and
 - (v) feedback to the consultant on draft reports within agreed timeframes.
- 4.03** With respect to component 2, MSTEM will execute the activities comprised in the component with the support of the Office of Utilities Regulation (OUR). MSTEM will enter into a Memorandum of Understanding with the OUR in which the roles and responsibilities of the entities will be clearly identified. The OUR will also provide technical assistance to the project and all related premises, communications facilities and stationery needs.