

LOAN CONTRACT No. 3381/SX-JA

between

JAMAICA

and the

INTER-AMERICAN DEVELOPMENT BANK

in its capacity as Implementing Agency for the Strategic Climate Fund

Adaptation Program and Financing Mechanism for the
Pilot Program for Climate Resilience (PPCR) Jamaica

February 4, 2015

LOAN CONTRACT

SPECIAL CONDITIONS

INTRODUCTION

Parties, Objective, Constituent Elements and Executing Agency

1. PARTIES AND OBJECTIVE OF THE CONTRACT

CONTRACT entered into on February 4, 2015, between JAMAICA (hereinafter referred to as the “Borrower”) and the INTER-AMERICAN DEVELOPMENT BANK (hereinafter referred to as the “Bank”), acting in its capacity as implementing agency for the Strategic Climate Fund (hereinafter referred to as the “Strategic Climate Fund” or “SCX”), to cooperate in the execution of an adaptation program and financing mechanism for the Pilot Program for Climate Resilience (hereinafter referred to as the “Programme” or “PPCR”). The major aspects of the Programme are described in detail in the Annex.

This Agreement is entered into pursuant to the Financial Procedures Agreement dated February 17, 2011, between the Bank and the International Bank for Reconstruction and Development, as Trustee of Trust Fund for the Strategic Climate Fund (hereinafter referred to as the “Financial Procedures Agreement”).

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

(a) This Contract consists of these Special Conditions, the General Conditions, and the Annex, which is 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 the case of inconsistencies or contradictions between the Special Conditions or the Annex, specific provisions shall prevail over general provisions.

(b) Procedural provisions relating to amortization, interest, credit fee, inspection and supervision, conversions and disbursements, as well as other conditions related to Programme execution, are established in detail in the General Conditions. The General Conditions also include general definitions applicable to this Contract.

3. EXECUTING AGENCY

The parties agree that the execution of the Programme and the utilization of the resources of the loan provided by the Bank shall be carried out in their entirety by the Borrower, through its Ministry of Water, Land, Environment and Climate Change, which for the purposes of this Agreement, shall be referred to as the “Executing Agency” or “MWLECC”, with coordination by the Planning Institute of Jamaica (“PIOJ”) in accordance with its role as focal point for the PPCR.

CHAPTER I

The Loan

SECTION 1.01. Amount and Approval Currency of the Loan. In accordance with this Contract, the Bank agrees to lend to the Borrower, and the Borrower accepts, a loan of up to the amount of ten million dollars of the United States of America (US\$10,000,000), hereinafter the “Loan”, chargeable to the resources of the Strategic Climate Fund/ Pilot Program for Climate Resilience to contribute to the financing of the Programme. Unless otherwise stated in this Agreement, the term “dollars” hereinafter signifies the currency of legal tender in the United States of America.

SECTION 1.02. Disbursement requests and Disbursement currency. (a) The Borrower may request of the Bank Loan disbursements pursuant to Article 4.03 of the General Conditions.

(b) All disbursements shall be denominated and made in dollars that form part of the Strategic Climate Fund.

SECTION 1.03. Disbursement Period. The disbursement period will be five (5) years from the effective date of this Contract.

SECTION 1.04. Amortization. The Loan shall be repaid by the Borrower in semiannual, consecutive and as far as possible, equal installments. The first installment shall be due on the expiration date of the ten (10) year period after the date of entry into effect of this Contract, and the last installment shall be paid no later than forty (40) years after such date. The amount of each amortization installment of the Loan shall be as follows: (i) the first twenty amortization installments of the Loan shall each be for an amount equivalent to 1% of the Outstanding Loan Balance; and (ii) the next forty amortization installments of the Loan shall each be for an amount equivalent to 2% of the Outstanding Loan Balance. If the expiration date of the period for the payment of the first amortization installment does not fall on the 15th day of the month, the payment of the first amortization installment shall be made on that date which is the 15th day of the month, which date most immediately precedes the expiration date of such period (in the same month or the prior month, as the case may be.)

SECTION 1.05. Service Fee. The Borrower shall pay to the Bank semiannually, on the outstanding daily amounts of the Loan, a service fee of 0.10% per year, which shall accrue as of the respective disbursement dates. The first such service fee payment shall be due on the expiration date of the six-month (6-month) period after the date of entry into effect of this Contract. If the expiration date of the period for the first service fee payment does not fall on the fifteenth (15th) day of the month, the first such payment shall be made on that date which is the fifteenth (15th) day of the month, which date most immediately precedes the expiration date of such period (in the same month or the prior month, as the case may be).

CHAPTER II

Cost of the Programme, Parallel Financing and Additional Resources

SECTION 2.01. **Cost of the Programme.** The total cost of the Programme is estimated to be the equivalent of nineteen million eight hundred sixty-nine thousand nine hundred and sixty-three dollars of the United States of America (US\$19,869,963).

SECTION 2.02. **Parallel Non-Reimbursable Financing.** Up to the equivalent of seven million eight hundred ninety-five thousand nine hundred and seventy dollars (US\$7,895,970) is contemplated as financing for the Programme under the terms of Non-Reimbursable Financing Agreement GRT/SX-14793-JA (the “Non-Reimbursable Financing”). In addition, under the terms of that Agreement, the Borrower has committed to providing up to one million nine hundred seventy-three thousand nine hundred and ninety-three dollars (US\$1,973,993) in counterpart resources, which may be provided wholly or partly in-kind.

SECTION 2.03. **Additional Resources.** Pursuant to Article 6.04 of the General Conditions, the Borrower shall undertake to contribute in a timely manner any additional resources required for the complete and uninterrupted execution of the Programme.

CHAPTER III

Use of Loan Resources

SECTION 3.01. **Utilization of resources of the Loan.** (a) The Borrower may use resources of the Loan to pay for goods, works and services acquired in accordance with and for the purposes indicated in this Loan Contract.

(b) The resources of the Loan shall only be used for payments of goods, works and services originating in the member countries of the Bank.

SECTION 3.02. **Special Conditions Precedent to First Disbursement.** In addition to the conditions precedent stipulated in Article 4.01 of the General Conditions, the first disbursement of the Loan shall be subject to the fulfillment, to the satisfaction of the Bank, of the following requirements:

(a) The Project Execution Unit (PEU) described in paragraph 4.01 of the Annex has been established by the Executing Agency, and the following staff for the PEU have been hired and/or designated: Project Manager and Financial Specialist;

(b) The MWLECC has approved the terms of reference for the establishment of the Project Steering Committee described in paragraph 4.04 of the Annex, and the representatives to such committee have been nominated; and

(c) The Project Operating Manual (POM) referred to in Section 4.05 of these Special Conditions has been approved by the Executing Agency, in accordance with terms previously agreed upon with the Bank, and the corresponding non-objection issued by the Bank.

SECTION 3.03. Special Conditions for Execution. In addition to the conditions precedent stipulated in Article 4.01 of the General Conditions and Section 3.02 of these Special Conditions, the first disbursement of the Loan related to the Line of Credit under Component II of the Programme (as described in paragraph 2.04 of the Annex) shall be subject to the fulfillment, to the satisfaction of the Bank, of the following requirements:

(a) The Borrower has selected the financial institution to administer the Adaptation Line of Credit under Component II of the Program, based on a viability analysis of said institution; and

(b) The Borrower has entered into an appropriate agreement or agreements with said institution to administer the Adaptation Line of Credit.

SECTION 3.04. Reimbursement of Expenditures Chargeable to the Loan. With the consent of the Bank, resources of the Loan may be used to reimburse expenditures incurred or to finance those that may be incurred in the Programme on or after December 11, 2014 and up to the effective date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

SECTION 3.05. Exchange Rate. For the purposes of the provisions set forth in Article 4.09(a) of the General Conditions of this Contract, the parties agree that the applicable exchange rate shall be that which is indicated in subsection (a)(i) of said Article.

CHAPTER IV

Execution of the Programme

SECTION 4.01. Procurement of goods and works and non-consulting services. (a) For purposes of Article 2.01(22) 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 in writing to the Borrower and the Borrower 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 Borrower or the Executing Agency, as the case may be, at www.iadb.org/procurement. Below that threshold, the selection method shall be determined according to the complexity and characteristics of the procurement, which should be reflected in the Procurement Plan approved by the Bank.

(d) Regarding the use of the International Competitive Bidding method, the Bank and the Borrower agree that the provisions of Appendix 2 to the Procurement Policies regarding domestic margin of preference when comparing bids for the procurement of goods, shall apply to goods manufactured in the country of the Borrower, as specified in the respective bidding document.

(e) Regarding the use of the National Competitive Bidding method, the respective national competitive bidding procedures may be used provided that, in the opinion of the Bank, these procedures ensure economy, efficiency, transparency and general consistency with the provisions of Section I of the Procurement Policies and taking into account the provisions of paragraph 3.4 of the Policy, among others.

(f) 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 4.02. Selection and Contracting of Consultant Services. (a) For purposes of the provisions of Article 2.01(15) 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 in writing 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 when to include international consultants in the short list will be made available to the Borrower 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 Borrower's country.

SECTION 4.03. Use of Country Systems. (a) In accordance with the provisions set forth in Article 6.02 (b) of the General Conditions, the parties agree that, as of the date of this Contract and subject to the provisions of subparagraph (b) of this Section 4.03, the Borrower or the Executing Agency, as the case may be, may use the limited tender subsystem of the Jamaican procurement system in accordance with the requirements set forth in the Jamaican Handbook of Public Sector Procurement Procedures, dated March 2014, as amended from time to time, subject to the following conditions:

- (i) Procurement of works: for all contracts, in an amount below the Bank's threshold applicable for the shopping of works method; and
- (ii) Procurement of goods and non-consulting services: for all contracts, in an amount below the Bank's threshold applicable for the shopping of goods and non-consulting services method.

(b) The use of the subsystem referred to in this Section shall be subject to the provisions of this Contract and the fulfillment to the Bank's satisfaction of the following conditions:

- (i) the Borrower has entered into an agreement with the Bank for the implementation of the use of the subsystem of limited tender; and
- (ii) the Borrower has fulfilled to the Bank's satisfaction the implementation and monitoring provisions set forth in the agreement referred to in subparagraph (b)(i) of this Section 4.03.

(c) Contracts for works, goods and non-consulting services for an amount equal or above the thresholds referred to in subparagraphs (a)(i) and (a)(ii) of this Section 4.03, shall be subject to the Procurement Policies. Those thresholds will be made available to the Borrower or the Executing Agency, as the case may be, at www.iadb.org/procurement.

(d) The provisions set forth in Section I of the Procurement Policies shall apply to all contracts, regardless of its amount and procurement method. The Borrower, through the Executing Agency, undertakes to include in the bidding documents, contracts and instruments used in the electronic and information systems (physical or electronic versions), the provisions set forth in Section I of the Procurement Policies.

(e) The Borrower may use other subsystems contemplated in its procurement country system, which are not included in this Section 4.03, provided that the Bank has approved the use of the subsystem pursuant to its policies and procedures and has notified the Borrower in writing to that end. In such cases, the corresponding subsystem shall be identified in the Program's Procurement Plan.

SECTION 4.04. 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 Borrower 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 4.05. Project Operating Manual. The parties agree that the execution of the Programme shall be governed by the terms and conditions set forth in this Contract and in the Project Operating Manual (POM), referred to in Section 3.02(c) of these Special Conditions, on the understanding that any changes to the POM will require the prior written non-objection of the Bank. The POM will include, among others, the Monitoring and Evaluation Plan of the Programme. The overall need to update the POM will be assessed yearly during Programme implementation. If any provision of the POM should present any inconsistency or contradiction with the terms and conditions set forth in this Contract, the provisions of this Contract shall prevail.

CHAPTER V

Supervision

SECTION 5.01. Records, Inspections and Reports. The Borrower 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 VIII of the General Conditions.

SECTION 5.02. Supervision of Programme Execution. (a) The Bank shall use the Programme implementation plan referred to in Article 4.01(d)(i) of the General Conditions as an instrument 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 Loan in the Original Disbursement Period.

(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 Borrower shall inform the Bank of any change in the Programme implementation plan no later than upon presentation of the respective semiannual Programme execution report.

(c) The Programme implementation plan will set the basis to prepare the Annual Operating Plans (AOP). Every year during the implementation of the project, the Executing Agency will present an AOP to the Bank for its non-objection. The AOP will detail the project's progress and execution activities including goals, results, budget and implementation schedule. This document shall include at least: (i) the estimated budget, (ii) the expected indicators for the results matrix, (iii) the planned activities; and (iv) the schedule of implementation.

(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. The progress reports shall include all the information agreed between the Borrower and the Bank in writing, 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 Borrower 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 to monitor and evaluate the execution of the Programme.

SECTION 5.03. Financial Statements. An external audit of the financial statements of the project will be performed by a firm of independent auditors acceptable to the Bank. The cost of the audits will be financed with the resources of the Non-Reimbursable Financing. The Executing Agency will submit: (i) the annual financial audit report within 120 days following the close of each fiscal year; (ii) a semi-annual financial report within 60 days of the end of each first semester of the calendar year; and (iii) a final financial audit report of the project within 120 days after the date of the last disbursement of the Loan. The Borrower agrees to submit the following periodic reports: (i) Within one hundred twenty (120) days following the closing of each of its fiscal years and during the disbursement period of the Loan, the Programme's audited financial statements; and (ii) a semi-annual unaudited financial report within sixty (60) days following the end of each semester of the calendar year, during the disbursement period of the Loan. In addition, the last of the Programme's financial statements, duly audited by a firm of independent public accountants acceptable to the Bank shall be submitted within one hundred twenty (120) days from the last disbursement of the Loan.

CHAPTER VI

Miscellaneous Provisions

SECTION 6.01. Entry into Effect. The parties agree that this Contract shall enter into effect on the date of its signature.

SECTION 6.02. Termination. The Loan and all the obligations that derive thereof shall be deemed terminated upon full payment of the Loan and all interest and fees, together with other expenses, premiums, and costs arising out of this Contract.

SECTION 6.03. Validity. The rights and obligations established in this Contract are valid and enforceable in accordance with its terms, regardless of the laws of any given country.

SECTION 6.04. Communications. Any notice, request, or communication from one party to another by virtue of this Contract 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 Borrower:

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 Executing Agency:

Mailing address:

Permanent Secretary
Ministry of Water, Land, Environment and Climate Change
The Towers
25 Dominica Drive,
Kingston 5

Facsimile: (876) 754 0975

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 VII

Arbitration

SECTION 7.01. **Commitment to Arbitrate.** For the solution of any controversy which may arise out of this Contract 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 Borrower and the Bank, each acting through its authorized representative, have signed this Contract, in two (2) equally authentic copies in Kingston, Jamaica on the date above written.

JAMAICA

INTER-AMERICAN DEVELOPMENT
BANK

/s/

/s/

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

Therese Turner-Jones
Representative of the Bank in Jamaica

PART TWO

GENERAL CONDITIONS

April 2014

CHAPTER I

Application of the General Conditions

ARTICLE 1.01. **Application of the General Conditions.** These General Conditions apply to the Loan Contracts financed with resources of the Strategic Climate Fund entered into by the Inter-American Development Bank with its Borrowers, and accordingly the provisions hereof form an integral part of this Contract.

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 Borrower, chargeable to the resources of the Loan, to cover eligible expenditures of the Project, as provided in Article 4.07 of these General Conditions.
2. “Bank” means the Inter-American Development Bank.
3. “Bank Group” means the Bank, the Inter-American Investment Corporation and the Multilateral Investment Fund.
4. “Board” means the Board of Executive Directors of the Bank.
5. “Borrower” shall have the meaning assigned to it in the Special Conditions.
6. “Business Day” means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York.
7. “Closing Period” means a ninety (90)-day period from the expiration date of the disbursement period of the Financing, 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 Loan but not used and/or justified, as provided in Article 4.08 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 Loan by the Bank.
9. “Contract” means this loan contract.
10. “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.
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 Contract and reflect the basic policies of the Bank uniformly applicable to its loan contracts.
14. “Guarantor” means the party which guarantees the fulfillment of the obligations contracted by the Borrower and which assumes other obligations for which it is liable under the Guarantee Contract.
15. “Loan” shall have the meaning assigned to it in the Special Conditions.
16. “Local Currency” means a currency that is legal tender in any of the Bank’s borrowing members.
17. “Non-Borrowing Member Country Currency” means a currency that is legal tender in any of the Bank’s non-borrowing member countries.
18. “Outstanding Loan Balance” means the amount that the Borrower owes the Bank for the portion of the Loan that has been disbursed.
19. “Parties” means the Bank and the Borrower and each of them, indistinctively, a Party.
20. “Procurement Agents” means the entity with legal capacity to enter into contracts, and in agreement with the Borrower or the Executing Agency, as the case may be, assumes all or part of the responsibility of the procurement of goods or works, consultancy services or non-consulting services for the Project.

21. “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.
22. “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 Loan by the Bank.
23. “Prohibited Practices” means the act(s) defined in Article 6.03 of these General Conditions.
24. “Project” means the program or project for which the Loan has been approved by the Bank.
25. “Quarter” means each of the following three-month (3-month) periods of the calendar year: the period beginning on January 1st and ending on March 31st; the period beginning on April 1st and ending on June 30th; the period beginning on July 1st and ending on September 30th and the period beginning on October 1st and ending on December 31st.
26. “Semester” means the first or second six months of a calendar year.
27. “Special Conditions” means the entirety of the provisions which comprise Part One of this Contract and contain the particular terms of the operation.

CHAPTER III

Amortization, Interest, Credit Fee, Inspection and Supervision, and Prepayments

ARTICLE 3.01. **Dates of Payment of Amortization and Service Fee.** The Loan will be amortized in accordance with the terms set forth in the Special Conditions of this Contract. The service fee and amortization installments will be paid on the fifteenth (15th) day of the respective month, as set forth in the Special Conditions of this Contract. The amortization payment dates shall always coincide with an interest payment date.

ARTICLE 3.02. **Calculation of the service fee.** The service fee shall be calculated based on the exact number of days in the corresponding Semester, on an annual basis, on the Outstanding Loan Balance.

ARTICLE 3.03. **Service fee.** The service fee for the Loan financed with resources of the Strategic Climate Fund shall be 0.10% per year.

ARTICLE 3.04. Currency of disbursement. All disbursements shall be denominated and made in Dollars that form part of the Strategic Climate Fund

ARTICLE 3.05. Prepayments. (a) **Prepayment of Outstanding Loan Balances.** The Borrower may prepay all or part of the Outstanding Loan Balances on any amortization payment date, provided that it delivers to the Bank a written irrevocable request, with the consent of the Guarantor, if any, at least thirty (30) days in advance. Any such prepayment shall be applied as set forth in Article 3.07 of these General Conditions. In the event that the prepayment does not cover the entire Outstanding Loan Balance, the prepayment shall be applied proportionately to the remaining amortization installments.

(b) For purposes of paragraph (a) above, payments resulting from all or a part of the Loan being declared immediately due and payable, pursuant to Article 5.02 of these General Conditions, shall be considered as prepayments.

ARTICLE 3.06. Application of Payments. All payments shall be applied first to returns of Advances of Funds which have not been justified upon expiration of the Closing Period, then to fees and interest due on the payment date, and if a balance exists, to the amortization of installments of principal due.

ARTICLE 3.07. Transactions Falling Due on Non-Business Days. Any payment or other transaction which, pursuant to this Contract, should be effected on a day other than a Business Day, shall be considered validly effected if made on the first Business Day immediately thereafter, and in such case no penalty whatsoever shall apply.

ARTICLE 3.08. Place of Payments. All payments shall be made at the principal office of the Bank in Washington, District of Columbia, United States of America, unless the Bank designates another place or places for this purpose by written notification to the Borrower.

ARTICLE 3.09. Participations. (a) The Bank may assign to other public or private institutions, in the form of participations, the rights corresponding to the Borrower's pecuniary obligations under this Contract. The Bank shall promptly notify the Borrower of each such assignment.

(b) Participations may be granted in respect of either Outstanding Loan Balances or amounts of the Loan which are still undisbursed at the time of entering into the participation agreement.

(c) With the prior written consent of the Borrower, and of the Guarantor, if any, the Bank may assign all or part of the undisbursed amount of the Loan to other public or private institutions. To that end, the portion subject to assignment shall be denominated in terms of a fixed number of units of either the Approval Currency or Dollars. Likewise, with the prior consent of the Borrower and of the Guarantor, if any, the Bank may set, for the portion subject to assignment, an interest rate other than that established in this Contract.

CHAPTER IV

Conditions Relating to Disbursements, Renunciation and Automatic Cancellation of the Loan

ARTICLE 4.01. Conditions Precedent to First Disbursement. The first disbursement of the resources of the Loan 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 Borrower in this Contract, and those of the Guarantor, if any, in the Guarantee Contract, are valid and enforceable. Such opinions shall also refer to any other legal question that the Bank may reasonably deem relevant.

(b) The Borrower, 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 Contract 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 Borrower, 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 Loan finances a continuation of the same lending 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 Borrower, 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 Contract, shall set forth: (i) a plan for implementation of the Project including the plans and specifications deemed necessary by the Bank, except with respect to a program for the granting of credits; (ii) a calendar or schedule of work or granting of credits, as the case may be; (iii) a table of the source and use of funds setting forth a detailed schedule of investments in accordance with the categories of investment established in this Contract 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 8.03 of these General Conditions shall have. If this Contract 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 Borrower 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 Contract.

ARTICLE 4.02. Period for Fulfilling the Conditions Precedent to First Disbursement. If within one hundred eighty (180) days from the effective date of this Contract, or within such longer period as the parties may agree in writing, the conditions precedent to the first disbursement established in Article 4.01 of these General Conditions and in the Special Conditions have not been fulfilled, the Bank may terminate this Contract by giving notice to the Borrower.

ARTICLE 4.03. Requisites for All Disbursements. For the Bank to make any disbursement, it shall be necessary that: (a) the Borrower 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 Borrower or the Executing Agency, as the case may be, shall have opened and maintains one or more bank accounts in a financial institution to which the Bank shall make the disbursements; (c) unless the Bank otherwise agrees, disbursement requests must be presented no later than thirty (30) days in advance of the date of expiration of the disbursement period of the Loan or any extension thereof; (d) none of the circumstances described in Article 6.01 of these General Conditions shall have occurred; and (e) the Guarantor, if any, shall not be in non-compliance for more than one hundred twenty (120) days with any obligation to make payments to the Bank on any loan or Guarantee.

ARTICLE 4.04. Disbursements for Technical Cooperation. If the Special Conditions contemplate the financing of expenses for technical cooperation, the disbursements therefore may be made once the conditions established in Article 4.01(a) and (b) and in Article 4.03 of these General Conditions have been fulfilled.

ARTICLE 4.05. Disbursement Procedures. The Bank may make disbursements: (a) by transferring to the Borrower the sums to which it is entitled under this Contract, under the modality of reimbursement of expenses and/or Advance of Funds; (b) by making payments on behalf of and in agreement with the Borrower 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 Borrower. Unless the parties agree otherwise, disbursements shall be made only in amounts of not less than the equivalent of one hundred thousand Dollars (US\$100,000) each.

ARTICLE 4.06. Reimbursement of Expenditures. (a) Upon fulfillment of the requirements set forth in Articles 4.01 and 4.03 of these General Conditions and the pertinent requirements established in the Special Conditions, the Bank may disburse to reimburse the Borrower 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 Loan, pursuant to the provisions of this Contract.

(b) Except by express agreement between the parties, the disbursement requests for reimbursing expenditures financed by the Borrower 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 4.07. Advance of Funds. (a) Provided that the requirements of Articles 4.01 and 4.03 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 Borrower or the Executing Agency, as the case may be, to cover eligible expenditures with resources of the Loan, in accordance with the provisions of this Contract.

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

(c) The Bank may: (i) increase the maximum amount of an Advance of Funds when immediate cash flow needs that merit such increase arise, upon presentation of a request duly justified and accompanied by a statement of projected expenditures for the execution of the Project during the corresponding Advance of Funds period in effect; or (ii) make a new Advance of Funds on the basis of the provisions contained in paragraph (b) above, provided that at least eighty percent (80%) of the total amount of resources disbursed as an Advance of Funds has been justified. The Bank may take any of the above-mentioned actions, provided that the requirements of Articles 4.01 and 4.03 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 Contract.

ARTICLE 4.08. Closing Period. The Borrower 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 Loan, and such services will not be concluded or billed prior to the expiration of the Closing Period referred to in section (a) above, the Borrower 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 Loan allotted for such purpose, should the Bank not receive the audited financial statements and/or audited financial reports within the periods stipulated in this Contract.

ARTICLE 4.09. Exchange Rate. (a) To determine the equivalency in Dollars of an expenditure incurred in the currency of the Borrower, one of the following rates of exchange shall be used, in accordance with the provisions set forth in the Special Conditions of this Contract:

- (i) The same exchange rate used in the conversion of resources disbursed in Dollars to the currency of the Borrower's country. In this case, for purposes of the reimbursement of expenditures chargeable to the Loan and the recognition of expenditures chargeable to the Local Counterpart, the applicable exchange rate shall be the prevailing exchange rate on the date on which the request is presented to the Bank; or
 - (ii) The prevailing exchange rate in force in the Borrower's country on the effective date of payment of the expenditure in the currency of the Borrower's country.
- (b) The rate of exchange referred to in sections (a)(i) and (a)(ii) above, shall be the following:
- (i) The rate of exchange pursuant to the understanding in force between the Bank and the respective member country for the purposes of maintaining the value of the currency in conformity with the provisions of Article V, Section 3 of the Agreement Establishing the Bank.
 - (ii) Should there be no agreement in force, the rate of exchange to be applied shall be that which on the due date is utilized by the Central Bank of the Borrower country or by the corresponding monetary authority to sell Dollars to residents of such country, other than government agencies, for the following transactions: (a) payment of principal and interest due; (b) remittance of dividends or other income from capital investments in the respective country; and (c) remittance of investment capital. In the event that there is no uniform rate of exchange for these three types of operations, the highest rate shall be applied, i.e., the rate representing the highest number of units of the currency of such country per Dollar.
 - (iii) If, on the date of the presentation of the request to the Bank referred to in section (a)(i) above, or if on the date on which the payment of an expenditure is due as referred to in section (a)(ii) above, the foregoing rule cannot be applied because the operations referred to do not exist, payment shall be made on the basis of the most recent rate of exchange used for such operations within the thirty (30) days preceding the date of presentation of the request to the Bank referred to in section (a)(i) above, or to the effective date of the payment of the expense incurred referred to in section (a)(ii) above, as the case may be.
 - (iv) If, notwithstanding the application of the foregoing rules, the effective rate of exchange cannot be ascertained, or if discrepancies arise in the determination thereof, the determination of the Bank shall prevail, taking into consideration the realities of the foreign exchange market of the country of the Borrower.

ARTICLE 4.10. Valuation of Non-Borrowing Member Country Currencies. Whenever it shall be necessary, during the execution of this Contract, to determine the value of a currency in terms of another currency, such value shall be as reasonably determined by the Bank, unless Article 4.09 or the provisions of Chapters III and V of these General Conditions explicitly express otherwise.

ARTICLE 4.11. Receipts. At the request of the Bank, the Borrower shall sign and deliver to the Bank, upon the completion of disbursements, a receipt or receipts for the amounts disbursed.

ARTICLE 4.12. Renunciation of Part of the Loan. The Borrower, with the concurrence of the Guarantor, if any, may renounce, by written notice to the Bank, its right to utilize any part of the Loan 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 4.13 Automatic Cancellation of Part of the Loan. Unless the Bank and the Borrower and the Guarantor, if any, expressly agree in writing to extend the term of the disbursement period of the Loan, that portion of the Loan 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 Borrower, may suspend disbursements if any of the following circumstances occurs and so long as it continues:

(a) Delay in the payment of any sums owed by the Borrower to the Bank for principal, fees, interest, return of Advances of Funds or for any other reason, under this Contract or any other contract entered into between the Bank and the Borrower, including another Loan Contract.

(b) Nonfulfillment by the Borrower of any other obligation set forth in this Contract or in any other contract entered into with the Bank for the financing of the Project.

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

(d) The Project or the purposes of the Loan may be affected by: (i) any restriction, modification or alteration of the legal capacity, functions or assets of the Borrower 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 Loan or the signature of the Contract. In such cases, the Bank will have the right to require the Borrower and the Executing Agency to provide reasoned and detailed information. Only after hearing the Borrower or the Executing Agency and weighing the information or clarification received, or if the Borrower 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.

(e) The non-compliance on the part of the Guarantor, if any, of any obligation set forth in the Guarantee Contract.

(f) When the Borrower is not a member country, any extraordinary circumstance which, in the opinion of the Bank, makes it unlikely that the Borrower will be able to comply with the obligations established in this Contract 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 Borrower, Executing Agency or Contracting Agency, has engaged in a Prohibited Practice during the procurement process or during the execution of a contract.

(h) Any lag, delay, or failure by the International Bank for Reconstruction and Development, in its capacity as Trustee of the Trust Fund for the Strategic Climate Fund, in complying with the obligations set forth in the Financial Procedures Agreement dated February 17, 2011 for the transfer of the resources of the Loan to the Bank.

ARTICLE 5.02. Termination, Accelerated Maturity or Partial Cancellation of Undisbursed Balances.

(a) The Bank may terminate this Contract with respect to the part of the Loan not yet disbursed or may declare the entire Outstanding Loan Balance or a portion thereof immediately due and payable, together with interest and fees accrued up to the date of payment if: (i) any of the circumstances set forth in paragraphs (a), (b), (c), (e) and (h) of the preceding Article continues for more than sixty (60) days; (ii) the information referred to in paragraph (d) of the preceding Article, or the clarifications or additional information presented by the Borrower or the Executing Agency, if any, are not satisfactory to the Bank; or (iii) the Financial Procedures Agreement dated February 17, 2011, between the Bank and the International Bank for Reconstruction and Development, as Trustee of the Trust Fund for the Strategic Climate Fund, is terminated.

(b) The Bank may cancel the undisbursed portion of the Loan or accelerate repayment of that part of the Loan earmarked for a contract, when it is determined in accordance with the sanctions procedures of the Bank, that a firm, entity or individual bidding for or participating in an activity financed by the Bank, including, *inter alia*, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers or suppliers, concessionaires, the Borrower, 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 Borrower, 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 Loan or accelerate the maturity of that part of the Loan 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 Contract.

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

(b) In addition to the provisions established in Articles 5.01(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 Borrower, 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 Borrower, the Executing Agency or the Contracting Agency has not taken adequate remedial measures (including, *inter alia*, providing adequate notice to the Bank upon learning of the commission of the Prohibited Practice) within a period of time the Bank considers reasonable;
- (iii) issue the firm, entity or individual a reprimand in the form of a formal letter of censure for its behavior;
- (iv) declare that a firm, entity or individual is ineligible, either permanently or for a stated period of time, to (A) be awarded or participate in contracts under

activities financed by the Bank; and (B) be a nominated sub-consultant, sub-contractor, supplier or service provider of an otherwise eligible firm being awarded a Bank-financed contract;

- (v) refer the matter to appropriate law enforcement authorities; and/or
- (vi) impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement to the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions set forth in Article 5.01(g), Article 6.02(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 Borrower, 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 Borrower 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 Borrower and such specialized agency, all provisions under this Contract 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 Borrower to invoke remedies such as suspension or termination. The Borrower 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 Borrower or the Executing Agency, or the Contracting Agency, if any, has agreed to provide from the resources of the Loan 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 Contract, 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 Borrower established in this Contract, which shall remain in full force and effect, except that in case the entire Loan has been declared due and payable, only the pecuniary obligations of the Borrower shall continue in force.

CHAPTER VI

Execution of the Project

ARTICLE 6.01. General Provisions for Execution of the Project. (a) The Borrower 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 Contract and the plans, specifications, investment schedule, budgets, regulations, and other relevant documents of the Project approved by the Bank. The Borrower further agrees that its obligations or those of the Executing Agency, shall be fulfilled to the satisfaction of the Bank.

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

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

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

(c) The Borrower, 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 Borrower or the Executing Agency. The changes approved by the Bank shall be reflected in the Procurement Plan.

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

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

ARTICLE 6.04. Additional Resources. (a) The Borrower shall contribute in a timely manner all of the resources in addition to those of the Loan 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 4.01(d) of these General Conditions such that the Borrower shall meet such increase.

(b) Beginning with the calendar year following the initiation of the Project and during the period of its execution, the Borrower 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.

CHAPTER VII

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

ARTICLE 7.01. Financial Information and Internal Control Systems. (a) The Borrower 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 Loan 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 Contract.

(b) The Borrower or the Executing Agency, or the Contracting Agency, as the case may be, shall preserve the original records of the Project for a minimum period of three (3) years after the expiration date of the disbursement period of the Loan 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 Loan and with the other funds to be provided for its complete execution; (iii) include sufficient detail to show the works performed, goods procured and services contracted, as well as the utilization of such works, goods and services; (iv) provide evidence as to conformity in the acceptance, authorization and payments for the purchased or contracted works, goods and services; (v) maintain documentation relating to the bidding process and the execution of the contracts financed by the Bank and other financial sources, including, but not limited to, bid requests, bid packages, summaries, bid evaluations, contracts, correspondence, work product and drafts, invoices, certificates and acceptance reports, and receipts, including documents relating to the payment of commissions, and payments to agents, consultants and contractors; and (vi) show the cost of the investments in each category and the physical and financial progress of the works, goods and services. With respect to credit programs, the records shall also detail the credits granted, the recoveries obtained, and the utilization of the funds recovered.

(c) The Borrower agrees that all bidding documents, requests for proposals and contracts financed with a Bank loan that are entered into by the Borrower, 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 Borrower, 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 Borrower, 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 Borrower, 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 Borrower, 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 Borrower, 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 Borrower, Executing Agency or Contracting Agency, as the case may be.

(e) The Borrower agrees that all bidding documents, requests for proposals and contracts financed by the Bank that are entered into by the Borrower, 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 Borrower or the Executing Agency, as appropriate, shall present to the Bank's satisfaction the reports on the execution of the Project, within sixty (60) days following the end of each Semester, or within such other period as the parties may agree, prepared in accordance with the relevant rules agreed to with the Bank; and such other reports as the Bank may

reasonably request regarding the investment of the sums lent, the use of goods acquired with such sums, and the progress of the Project.

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

(b) The Borrower 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 Borrower 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 Borrower, beginning on the date on which this Contract enters into effect, or such other time as may be agreed upon between the parties, in accordance with procedures and terms of reference previously agreed upon with the Bank. The Borrower or the Executing Agency, as the case may be, shall authorize the external auditors to provide the Bank with any additional information it may reasonably request with respect to the audited financial statements and/or audited financial reports.

(d) In cases in which the audit is to be performed by an official auditing agency and such agency is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the deadlines, for the period of duration or with the frequency mentioned in this Contract, the Borrower 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 Borrower 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 Borrower, the Executing Agency or the Contracting Agency with a provider of goods or services, contractor, subcontractor, consultant, sub-consultant, personnel or concessionaire shall include a provision allowing the Bank to inspect any and all accounts, records and other documents related to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank.

CHAPTER VIII

Provision on Encumbrances and Exemptions

ARTICLE 8.01. Commitment on Encumbrances. If the Borrower should agree to create any specific encumbrance on all or part of its assets or revenues to secure an external debt, it shall at the same time create an encumbrance guaranteeing to the Bank, equally and proportionally, the fulfillment of the pecuniary obligations arising from this Contract. However, the foregoing shall not apply: (a) to encumbrances on goods used as security for payment of the unpaid balance of the purchase price; and (b) to encumbrances created in banking operations to secure payment of debts with maturities of not more than one year. In the event that the Borrower is a member country, the term “assets or revenues” shall mean all types of assets or revenues which belong to the Borrower or any of its dependent agencies which are not autonomous entities with their own separate capital.

ARTICLE 8.02. Tax exemption. The Borrower undertakes to ensure that principal, interest, premiums, and any other payment for expenses or costs that may be imputed to this Contract shall be paid without any deduction or restriction whatsoever, exempt from any tax, fee, duty or charge established or that may be established by the laws of its country, and to pay any tax, fee, or duty applicable to the signing, negotiation, and execution of this Contract.

CHAPTER IX

Arbitration Procedure

ARTICLE 9.01. Composition of the Tribunal. (a) The Arbitration Tribunal shall be composed of three members to be appointed in the following manner: one by the Bank, another by the Borrower, and a third, hereinafter called the “Referee”, by direct agreement between the parties or through their respective arbitrators. If the parties or the arbitrators fail to agree on who the Referee shall be, or if one of the parties should not designate an arbitrator, the Referee shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, one shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his successor shall be appointed in the same manner as for the original appointment. The successor shall have the same functions and faculties as his predecessor.

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

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

Adaptation Program and Financing Mechanism for the Pilot Program for Climate Resilience (PPCR) Jamaica

I. Objective

- 1.01** The overall objective of the Project is to increase Jamaica's resilience to climate change, through enhancing adaptive capacity across priority sectors. For this purpose, the Project will focus on: (i) mainstreaming climate change into development planning; (ii) providing information on novel approaches, including climate financing, to overcome the challenges of climate change; and (iii) disseminating lessons learned from adaptation interventions.

II. Description

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

Component 1. Mainstreaming Climate Change Adaptation Measures

- 2.02** The objective of this component is two-fold: (i) assist the mainstreaming of climate change into development plans and planning processes and, (ii) implement adaptation measures in a vulnerable watershed and evaluate the effectiveness of the proposed activities in creating climate resilience. The component will finance the following:
- a. Mainstreaming of climate change in local, sectoral and national plans. The activities to be supported under this component are: (i) the development of climate change sector strategies and actions plans for the sectors of water, health, tourism, coastal resources and human settlements; and (ii) strengthening of the institutional framework for climate change in Jamaica that will focus on institutional and regulatory capacity building including a training programme for the national climate change focal points within government ministries and agencies, implementation of an awareness programme for policy makers (e.g. training workshop on climate change governance and a Cabinet level retreat on climate change), a public/civil society training programme on climate change negotiations, and climate change inputs into national spatial plan. These interventions will be carried out across the key sectors of water, energy, health, tourism, coastal resources and human settlements and agriculture.
 - b. Adaptation measures that represent novel approaches prioritized by communities in the Upper Rio Minho Sub-Watershed (URMW) of the Rio Minho Watershed Management Unit (RMWMU) as core components of a basin-wide adaptation

management plan for the Rio Minho Watershed. Given the vulnerability in this area, adaptation actions will focus on watershed management and agriculture including: (i) implementation of land management and soil conservation measures such as: (a) the construction of 1800 check dams with associated live vegetation barriers (e.g. use of pineapples); (b) establishment of rainwater harvesting infrastructure (250 communal rainwater harvesting water systems and rehabilitation of three rainwater ponds); (c) implementation of an agro-forestry programme (50 hectares to be planted); (d) implementation of a community reforestation programme using timber forest (15 hectares); (e) establishment of grass barriers using Vetiver (from the establishment of a Vetiver nursery) and live vegetation barriers (6,400 meters of live vegetation using pineapples or other suitable crops); and (f) sediment budget monitoring (2 sites); and (ii) implementation of livelihood and resilience building activities that are distinctly additional to commonly established practices and that will generate publically available information such as: (a) 15 vulnerability assessments and Climate Change Adaptation and Disaster Risk Reduction (CCA/DRR) plans for priority communities; (b) development of a crop suitability model and testing of climate resilient crop varieties based on such modelling; (c) implementation of farmer field school programme focusing on climate smart agriculture—use of climate change resilient crops and practices; (d) establishment of five aquaponic systems for women farmers and vulnerable groups; (e) creation of a community operated greenhouse/shade-house; and (f) a climate proofed post-harvest storage and processing facility.

Component 2. Creation of Financial Mechanisms

- 2.03** The objective of this component is to create innovative climate financing mechanisms to help support implementation of climate resilience within Micro, Small and Medium Size Enterprises (MSMEs), Non-Governmental Organizations (NGO) and Community Based Organizations for the tourism and agri-businesses across all of Jamaica. The component will finance: (i) the establishment of an adaptation line of credit for MSMEs made available through an approved financial institution; and (ii) the establishment of a special climate change adaptation fund to be available to non-government organizations, community based organizations and selected public sector entities. The information and experience obtained will be useful to design and develop future approaches to the financing of climate change projects related to agriculture, water management and tourism.

Component 3. Knowledge Management

- 2.04** The objective of this component is to develop a knowledge management programme for the entire Jamaica PPCR. This will consist of the development of a PPCR webpage, a communication strategy developed and the documentation of methodologies and techniques, dissemination of lessons learned and good practices in order to help the scaling up of initiatives to other communities/areas in Jamaica. These activities are to be

coordinated with knowledge management activities under the Investment Projects of the SPCR Investment Program.

III. Total Cost of the Project and Financing Plan

3.01 The estimated cost of the Project is the equivalent of nineteen million eight hundred sixty-nine thousand nine hundred and sixty-three dollars of the United States of America (US\$19,869,963) distributed in accordance with the following investment categories:

Category	SCX Loan (JA-L1048)	SCX Grant (JA-G1002)	GOJ Contribution	Total	Approx. %
Component I: Mainstreaming Climate Change Adaptation Measures	1,480,000	5,120,885	986,997	7,587,882	38.19
Component II: Creation of Financial Mechanisms ^a	8,520,000	0	789,597	9,309,597	46.85
Component III: Knowledge Management	0	200,000	0	200,000	1.01
Programme Management and Administration	0	1,500,000	197,399	1,697,399	8.54
Monitoring and Evaluation	0	765,200	0	765,200	3.85
Contingencies (1.8% of SCX programme total)	0	309,885	0	309,885	1.56
Programme Total	10,000,000	7,895,970	1,973,993	19,869,963	100%
Administrative Fee ^b		400,000			

^a The adaptation line of credit will be of the order of US\$2.5 million and the Special Climate Change Adaptation Fund is US\$4.7 million).

^b These resources are provided by the Climate Investment Funds.

IV. Execution

4.01 The Executing Agency (EA) of the Project will be the Ministry of Water, Land, Environment and Climate Change (MWLECC) given the thematic area of climate change of the Project, with overall coordination by the Planning Institute of Jamaica (PIOJ) in accordance with its role as focal point for the Climate Investment Funds (CIF) programme. A Project Execution Unit (PEU) will be established within the MWLECC and will be located under the office of the Chief Technical Director (CTD) of the Ministry.

4.02 The EA will be responsible for the execution of the Project through the PEU and the CTD, who will oversee the operation and its components. The EA will also be responsible for the achievement of targets and objectives of the components together with other functions including the appointment and management of the PEU.

4.03 The PIOJ in collaboration with MWLECC will be responsible for the monitoring and evaluation of the Project, in accordance with its role as focal point to coordinate PPCR

related activities. The PIOJ will be responsible for: (i) monitoring and evaluation of the socio-impact of the Project; and (ii) reporting on the implementation of the PPCR project to the CIF Administrative Unit.

- 4.04** Governance structure. The PEU will report to the CTD of the MWLECC and will be comprised of at least a programme manager, a procurement specialist, a monitoring and evaluation specialist, a financial and accounting specialist and an administrative assistant. A Project Steering Committee (PSC) will be set up by the MWLECC to provide a governance framework for the Project and to support project execution. In particular the PSC will: (i) monitor the overall direction and implementation of the project; (ii) facilitate the necessary inter-institutional coordination and collaboration; (iii) foster the effective participation of the various public sector actors directly involved in the project, including agencies and beneficiaries; and (iv) monitor compliance with the strategic objectives of the project. MWLECC will chair the PSC and the PIOJ will act as the Deputy Chair. Members of the committee include officials from the Ministry of Finance and Planning (MOFP), the Ministry of Agriculture and Fisheries (MOAF), the Rural Agricultural Development Authority (RADA), the Ministry of Local Government and Community Development (MLGCD), the Office of Disaster Preparedness and Emergency Management (ODPEM), the National Environment and Planning Agency (NEPA), the IDB, as well as community, NGO and private sector representatives.
- 4.05** Annual Operating Plans (AOP). Every year during the implementation of the Project, the PEU will present an AOP to the Bank for its non-objection. The AOP will detail the project's progress and execution activities including goals, results, budget and implementation schedule.

Summary of Arrangements for Monitoring Results

- 4.06** Monitoring and reporting. The PIOJ will be in charge of monitoring the project performance and progress throughout the execution period, as described in the Monitoring and Evaluation Arrangements. It will submit two semi-annual progress reports throughout project execution, within 60 days after the respective period has concluded. The monitoring activities will be part of regular project management, and activities in each of the three components will generate data for monitoring purposes. Budget allocations have been set aside for these tasks. In addition, as part of the participation in the global PPCR, the PEU is required to monitor and report on the progress of the project regarding the five core indicators of the PPCR Results Framework, which are mandatory under the programme. There are also six optional indicators, the PIOJ can report on based on pilot countries' own programme specific indicators.
- 4.07** Evaluation. The Project will fund a mid-term evaluation (once 50% of the funds have been disbursed, or after 30 months), a final evaluation (performed at 80% of the disbursements, or after 56 months), and a process evaluation carried out by external evaluation teams. In addition, an impact evaluation utilizing a simple random sample design with households benefiting from the check-dams as the treatment group will be

performed. The objective of this evaluation is to collect evidence about the effectiveness of the proposed adaptation measures aimed at increasing climate resilience. For this purpose, information –including household level data–will be collected during Project execution and finalized within 12 months of the Project completion.

- 4.08** The Project’s outputs and outcomes will be monitored and reported on a regular basis using key indicators established in an approved PPCR Results Framework. This framework contains five core indicators: (i) degree of integration of climate change into national planning; (ii) evidence of strengthened government capacity and coordination mechanism to mainstream climate resilience; (iii) quality and extent to which climate responsive instruments/investment models are developed and tested; (iv) extent to which vulnerable household, communities, businesses, and public sector services use improved PPCR supported tools, instruments, strategies, and activities to respond to climate variability or climate change; and (v) number of people supported by the PPCR to cope with the effects of climate change. As part of the monitoring and evaluation of the Project, an impact evaluation will be built into the design and execution of the operation.