
FOREST CONSERVATION AGREEMENT

AMONG

THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA,

THE NATURE CONSERVANCY

AND

CONSERVATION INTERNATIONAL FOUNDATION

September 8, 2006

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This **FOREST CONSERVATION AGREEMENT** is made and entered into as of September 8, 2006 by and among:

(1) **THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA** (the "**GOG**"), represented by the Ministry of Public Finance with the participation of the National Council for Protected Areas; and

(2) **THE FOLLOWING NON-GOVERNMENTAL ORGANIZATIONS:**

(a) **THE NATURE CONSERVANCY**, a non-profit corporation organized under the laws of the District of Columbia in the United States of America ("**TNC**"), and

(b) **CONSERVATION INTERNATIONAL FOUNDATION**, a non-profit corporation organized under the laws of the State of California in the United States of America ("**CI**", and together with TNC, the "**NGOs**").

WHEREAS:

(A) The Government of the United States of America ("**USG**"), GOG and the NGOs desire to facilitate the conservation, protection, Restoration, and Sustainable Use of tropical forests in Guatemala;

(B) USG, the GOG and the NGOs recognize that a reduction of GOG's external debt would make additional resources available for tropical forest conservation in Guatemala;

(C) The GOG and the NGOs have acknowledged the importance of the principles of sustainable development and the need to promote conservation, local development and the sound use of natural resources for the benefit of local communities;

(D) In order to facilitate such a debt reduction, USG, GOG and the NGOs have agreed to engage in a debt-for-nature swap under the United States Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended ("**TFCA**").

(E) The GOG and USG have entered into a certain Debt Swap Agreement (as defined below) pursuant to which (i) USG has agreed to prepay and cancel certain external debt owed by GOG to USG, and (ii) GOG has agreed to fund eligible tropical forest conservation activities in Guatemala pursuant to the terms and subject to the conditions of this Agreement and the other Transaction Documents (as defined below);

(F) The NGOs have agreed to enter into a Swap Fee Contractual Agreement (as defined below) under which the NGOs shall contribute a total of Two Million and Three Dollars (US \$2,000,003.00) towards the reduction of the GOG's external debt by replacement of the Outstanding Obligations with the New Obligations; and

(G) In exchange for the commitment of USG and the NGOs under the Debt Swap Agreement and the Swap Fee Contractual Agreement, GOG has agreed to, among

other things, make the Payments referred to herein and in the Debt Swap Agreement toward the conservation, protection, Restoration and Sustainable Use of tropical forests in Guatemala.

NOW, THEREFORE, in consideration of the mutual promises, obligations and undertakings set forth herein, it is agreed by and among the parties as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** Capitalized terms contained and used in this Agreement shall have the respective meanings ascribed to them in this Section 1.1 and elsewhere in this Agreement.

“Acceptable Financial Institution” means a Guatemalan and internationally recognized private commercial bank, financial trust company or investment management company with a permanent branch or subsidiary in Guatemala, as selected by the Oversight Committee.

“Acceptance Instrument” means a document, substantially in the form of Schedule 4 (*Form of Acceptance Instrument*) to be executed and delivered by the Administrator and by any New Administrator.

“Accounting Principles” means the generally accepted accounting principles in the United States, as in effect from time to time, or any other internationally accepted accounting principles, standards and practices satisfactory to the Oversight Committee.

“Accounts” means, together, the Debt Service Account, the FCA Grants Account and the FCA Endowment Account.

“Administrator” means the Person, organized and validly existing under the laws of Guatemala, from time to time designated by the Oversight Committee pursuant to Section 6.7(m) to undertake the rights, duties and responsibilities corresponding to the Administrator under this Agreement; provided that such Person shall only become the Administrator upon execution of an Acceptance Instrument. The initial Administrator shall be Fundación para la Conservación de los Recursos Naturales y Ambiente en Guatemala or such other entity as may be unanimously selected by the Parties hereto and USG prior to the Closing Date.

“Advisory Committee” has the meaning set forth in Section 6.9.

“Agreement” means this Forest Conservation Agreement, as it may be amended from time to time.

“Approved Budget” has the meaning set forth in Section 5.2.7.

“Authorized Purpose” has the meaning set forth in Section 5.2.8.

“Authorized Representative” means, as to any Person, any natural person who is duly authorized by such Person to act on its behalf.

“Biodiversity” means the variability among living organisms from all sources in tropical forests and their surrounding areas that collectively or singularly are essential to healthy and sustainable tropical forests, including, *inter alia*, terrestrial, coastal marine, tidal water and freshwater aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species and between species and ecosystems.

“Buffer Zones” means an area of land, continuous or discontinuous, along the perimeter of a Protected Area, where environmental management strategies are required to minimize pressure or threats to conservation objectives for the Protected Area.

“Business Day” means any day on which both the Federal Reserve Bank of New York and the Bank of Guatemala are open for business.

“Chairperson” has the meaning set forth in Section 6.5.

“CI” has the meaning assigned to that term in the introductory paragraph hereto.

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” means the date on which the Closing occurs.

“CONAP” means the National Council for Protected Areas.

“Conflict of Interest” means a transaction in which the interests of any Person or agent, employee or representative of a Person conflict with, or appear to conflict with, his or her official responsibility, including transactions with or involving the business partner(s) of a Person’s project director, project co-director or other project team member or the members of their respective immediate families with respect to salaries, expense reimbursement or any other type of compensation, or payments to organizations in which a Person’s project director, project co-director or other project team member or the members of their respective immediate families have a financial interest.

“Cure Period” has the meaning set forth in Section 9.5.2.

“Debt Reduction Payment” has the meaning assigned to that term in the Debt Swap Agreement.

“Debt Service Account” means the account of such name that:

(a) is opened and maintained by the Trustee in accordance with the Trust Agreement;

(b) serves as the master account, receiving all Payments from GOG and any amounts paid by USG pursuant to Section 3.2 of the Debt Swap Agreement, and making transfers to the FCA Grants Account and/or the FCA Endowment Account, as the case may be; and

(c) is operated by the Trustee in accordance with the instructions of the Oversight Committee;

provided that prior to the execution and delivery of the Trust Agreement, “Debt Service Account” shall mean the FCA Escrow Account.

“**Debt Swap Agreement**” means the Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Regarding a Debt-for-Nature Swap to Pre-Pay and Cancel Certain Debt Owed by the Government of the Republic of Guatemala to the Government of the United States of America, dated as of even date herewith, as it may be amended from time to time.

“**Decision Criteria**” means the criteria to be observed by the Oversight Committee with respect to the awarding of Grants, which shall be set out in Schedule 7 (*Decision Criteria*) to this Agreement.

“**Deficiency Notice**” has the meaning set forth in Section 9.4.

“**Dollar**” and “**US\$**” means the lawful currency of the United States of America.

“**Effective Date**” means the date on which this Agreement becomes effective in accordance with Section 3.1 hereof.

“**Eligible Entity**” means (a) a nongovernmental environmental, forestry, conservation, indigenous peoples and community-based organization established and operating in Guatemala, other than a Non-Eligible Entity; or (b) any other appropriate regional or local entity of, or active in Guatemala, which is not a Non-Eligible Entity.

“**Endowment**” means an endowment to be set up under the Trust Agreement, pursuant to which all amounts transferred to the FCA Endowment Account shall be:

(a) held in trust for a minimum period of ninety (90) years; and

(b) invested and distributed in accordance with the instructions to be given by the Oversight Committee under this Agreement and the Trust Agreement.

“**Endowment Annual Gross Interest**” means, for a certain year, any income generated by the Endowment over that year, including interest, capital gains, and dividends.

“**Endowment Annual Net Interest**” means, for a certain year:

(a) the Endowment Annual Gross Interest;

less

(b) Trustee Management Expenses and any Investment Manager Fees related to the FCA Endowment Account, and applicable taxes on interest earned on amounts on deposit in the FCA Endowment Account, if any; and

less

(c) an amount, if any, which the Oversight Committee may instruct the Trustee to retain in the FCA Endowment Account to preserve the value of the Endowment in light of prevailing and/or historical inflation rates, which shall be reinvested into the Endowment.

“Evaluation Committee” has the meaning set forth in Section 6.10.

“Event of Default” has the meaning set forth in Section 9.2.

“FCA Endowment Account” means the account of such name that:

(a) is opened and maintained in Dollars with the Trustee or with another Acceptable Financial Institution;

(b) receives transfers from the Debt Service Account, as set forth in Section 5.1.1; and

(c) is operated by the Trustee in accordance with the instructions of the Oversight Committee and in accordance with the limitations set forth in Schedule 7, as such limitations may be modified from time to time.

“FCA Escrow Account” has the meaning set forth in Section 3.2.6.

“FCA Grants Account” means the account of such name that:

(a) is opened and maintained by the Administrator with an Acceptable Financial Institution;

(b) receives transfers from the Debt Service Account in accordance with Section 5.1.1 and from the FCA Endowment Account in accordance with Section 5.1.2;

(c) holds funds available for disbursement to Grant Recipients; and

(d) is operated by the Administrator in accordance with the instructions of the Oversight Committee.

“FCG” means the Fundación para la Conservación de los Recursos Naturales y Ambiente en Guatemala.

“Forest Land” means the portion of land described in the legal description and maps in Schedule 2 (*Description of Forest Land*).

“**GOG**” has the meaning assigned to that term in the introductory paragraph hereto.

“**Grant**” means the transfer of funds to an Eligible Entity from the funds deposited in the FCA Grants Account following the instructions of the Oversight Committee.

“**Grant Recipient**” means an Eligible Entity that has been awarded a Grant by the Oversight Committee.

“**Grant Recipient Agreement**” means an agreement, substantially in the form of Schedule 5 (*Form of Grant Recipient Agreement*), to be entered into by and between the Administrator and each Grant Recipient.

“**Guatemala**” means the Republic of Guatemala.

“**Initial Endowment Disbursement Date**” means the first date when the aggregate amount on deposit in the FCA Endowment Account shall equal Four Million Nine Hundred Thousand Dollars (US\$4,900,000).

“**Investment Manager**” has the meaning assigned to that term in the Trust Agreement.

“**Investment Manager Fees**” has the meaning assigned to that term in the Trust Agreement.

“**Local Currency**” means the lawful currency of Guatemala.

“**Management Expenses**” means such reasonable costs and expenses incurred in the ordinary course by the Administrator in connection with the management, review, technical assistance, oversight and administration of the FCA Grants Account.

“**Ministry of Public Finance**” means the Guatemalan Ministerio de Finanzas Públicas.

“**Ministry of Foreign Affairs**” means the Guatemalan Ministerio de Relaciones Exteriores.

“**New Administrator**” has the meaning set forth in Section 10.2.1(a).

“**New FCA Obligations**” means GOG’s new undertakings pursuant to this Agreement and the Debt Swap Agreement that shall replace, in part, the Outstanding Obligations and obligate GOG to make the Payments to the Trustee in accordance with the terms and conditions set forth in this Agreement.

“**New Obligations**” means, collectively, the New FCA Obligations and the New USAID Obligations, which together shall replace in their entirety the Outstanding Obligations.

“New USAID Obligations” means GOG’s new undertakings pursuant to the Debt Swap Agreement that shall replace, in part, the Outstanding Obligations and obligate GOG to make payments to USAID in accordance with Schedule A.1 of the Debt Swap Agreement and the terms and conditions governing payments under the Outstanding Obligations as well as the other terms and conditions set forth in the Debt Swap Agreement.

“NGOs” has the meaning assigned to that term in the introductory paragraph hereto.

“Non-Eligible Entities” means:

- (a) the Administrator;
- (b) the Trustee;
- (c) any government;
- (d) TNC;
- (e) CI;
- (f) any Person that (i) is named on any Prohibited Persons List; or (ii) is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the Persons referred to or described in the Prohibited Persons Lists; or
- (g) any other entities that the Oversight Committee may from time to time designate.

“Non-Performance” has the meaning set forth in Section 9.3.

“Non-Performing Person” has the meaning set forth in Section 9.4.

“Outstanding Obligations” has the meaning assigned to that term in the Debt Swap Agreement.

“Oversight Committee” has the meaning set forth in Section 6.1.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“OFAC Lists” means the list of persons, entities, and governments listed on the “Specially Designated Nationals and Blocked Persons List” issued by OFAC or otherwise subject to economic sanctions applicable to a particular country, as in effect from time to time, or any similar list issued by OFAC or any other department or agency of the United States of America.

“Party” means any Person who is a party to this Agreement.

“Payment Date” means each of the dates identified as such in the Payment Schedule.

“Payment Default” has the meaning set forth in Section 9.1.

“Payment Due Date” has the meaning assigned to that term in the Debt Swap Agreement.

“Payments” means the amounts payable by GOG pursuant to Section 4.1.

“Payment Schedule” means the schedule for the Payments set out in Schedule 1 (Payment Schedule) to this Agreement.

“Permanent Member” has the meaning set forth in Section 6.2.1.

“Person” means any natural person or any company, partnership, joint venture, firm, corporation, voluntary association, trust, enterprise, unincorporated organization or other body corporate or any authority or any other entity whether acting in an individual, fiduciary or other capacity.

“Prohibited Persons Lists” means the OFAC Lists and any list of persons, entities, and governments (a) issued by the United Nations pursuant to U.N. Security Council Resolutions 1267 and 1390, and any similar subsequent resolutions relating to anti-terrorism, including anti-terrorism financing; and Decree Number 67-2001, Anti Money Laundering Law, and Decree Number 58-2005, Law to Prevent and Repress Terrorism Financing, both approved by the Congress of Guatemala.

“Prohibited Purpose” has the meaning set forth in Section 5.2.9.

“Protected Area” means an area of land and/or coastal sea specially dedicated to the protection and maintenance of Biodiversity, and of associated natural and cultural resources, and managed through legal or other effective means, which includes any applicable categories defined under the laws of Guatemala.

“Remaining FCA Obligations” has the meaning set forth in Section 9.5.1.

“Restoration” means the activities to improve and accelerate the natural reestablishment of an ecosystem’s health, which is achieved whenever the composition of species, the forest structure, Biodiversity, and processes of the restored ecosystem are as close as possible to the ecosystem’s original state.

“Sustainable Use” means the use of biological diversity components in a way that does not cause a long-term reduction of such diversity, conserving its potential to satisfy the needs and aspirations of present and future generations.

“Swap Fee” has the meaning assigned to that term in the Swap Fee Contractual Agreement.

“Swap Fee Contractual Agreement” means the Swap Fee Contractual Agreement Among the Government of the United States of America, The Nature Conservancy and Conservation International Foundation, dated as of even date herewith, as may be amended from time to time.

“Term Member” has the meaning set forth in Section 6.2.1.

“TFCA” has the meaning assigned to that term in the introductory paragraph hereto.

“TFCA Evaluation Sheet” means an evaluation sheet in the form attached hereto as Schedule 8, as such form may be modified from time to time by the USG as specified in a written notice to the Parties hereto; provided that no such modification by the USG shall unreasonably increase the obligations or duties of any Party hereto.

“TNC” has the meaning assigned to that term in the introductory paragraph hereto.

“Transaction Documents” means, together:

- (a) this Agreement;
- (b) the Debt Swap Agreement;
- (c) the Swap Fee Contractual Agreement;
- (d) each Acceptance Instrument; and
- (e) the Trust Agreement.

“Trust Agreement” means the Trust Agreement to be entered into by and among certain of the Parties hereto and the initial Trustee, in such form as may be approved by the Parties and USG.

“Trustee” means the Acceptable Financial Institution serving as trustee under the Trust Agreement from time to time, as appointed by the Oversight Committee pursuant to Section 6.7(r) hereof; provided that the initial Trustee shall be agreed upon by USG, GOG and the NGOs within six months after the Closing.

“Trustee Management Expenses” has the meaning assigned to that term in the Trust Agreement.

“Unclaimed Arrears” has the meaning set forth in Section 9.5.1.

“USG” has the meaning assigned to that term in the introductory paragraph hereto.

“Voting Member” has the meaning set forth in Section 6.2.1.

- 1.2. Interpretation. In this Agreement, unless the context otherwise requires:
- 1.2.1 headings and the rendering of text in bold and italics are for convenience only and do not affect the interpretation of this Agreement;
- 1.2.2 words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- 1.2.3 the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- 1.2.4 a reference to a Section, paragraph, party or Schedule is a reference to that Section or paragraph of, or that party or Schedule to, this Agreement unless otherwise specified;
- 1.2.5 a reference to this Agreement or any other Transaction Document shall mean such document including any amendment or supplement to, or replacement, novation or modification of, that document but disregarding any amendment, supplement, replacement, novation or modification made in breach of this Agreement or such Transaction Document;
- 1.2.6 a reference to a Person includes that Person's successors;
- 1.2.7 all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto;
- 1.2.8 the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.9 phrases such as "satisfactory to", "approved by", "acceptable to", "sole discretion", and phrases of similar import, authorize and permit each Party to which such phrase refers to approve, disapprove, act or decline to act in its sole discretion; and
- 1.2.10 references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

1.3. Conflicts. In the case of any conflict between the provisions of this Agreement and the provisions of the Trust Agreement, the provisions of this Agreement shall prevail.

2. REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of GOG. GOG represents and warrants to the other parties hereto, as of the date hereof, the Effective Date and each Payment Date, as follows:

- 2.1.1 The execution and delivery of this Agreement and all other Transaction Documents, the performance by GOG of its obligations hereunder and thereunder and the compliance by GOG with the terms hereof and thereof, have been duly authorized under the laws of Guatemala and do not and will not conflict with or result in a breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, any agreement or other instrument which conflict, breach or default will be likely to impair the performance by GOG of its obligations under this Agreement or any other Transaction Document.
- 2.1.2 This Agreement and all other Transaction Documents constitute legal, valid and binding obligations of GOG, enforceable in accordance with the respective terms and conditions hereof and thereof.
- 2.1.3 The execution and delivery of this Agreement and all other Transaction Documents, the transfers of funds from or into the Accounts, and the making of Grants to Grant Recipients that are registered non-profit associations or foundations are not currently taxed or are exempt under the laws of Guatemala from any taxes, duties, fees, levies or other assessments or charges (including but not limited to income, use, excise, *ad valorem*, value added, land, property, real estate, sale, transfer and franchise taxes) imposed by GOG or any other local government, taxing authority, or subdivision thereof located in Guatemala (collectively, "Taxes"), other than the following Taxes, to the extent applicable under current law: (a) a twelve percent (12%) Value Added Tax, which is payable on the purchase of goods and services, it being understood that Grants to Grant Recipients are not considered to be taxable purchases of goods or services, and (b) a ten percent (10%) financial products withholding tax on the interest earned on funds in the Accounts. The Payments cannot be used for any payment of Taxes in the territory of Guatemala. Therefore, an Event of Default shall be deemed to have occurred if any Taxes are imposed on execution and delivery of this Agreement or any other Transaction Documents, on any transfers from the GOG to the Trustee or Administrator under this Agreement or any other Transaction Document, on any transfers pursuant to this Agreement or any other Transaction Document from or into any of the Accounts, or on the making of Grants to Grant Recipients, other than the Taxes described in clause (a) or (b) of the first sentence of this paragraph, and if the Administrator, the Trustee, either NGO or any Grant Recipient pays such Taxes. Such Event of Default shall be deemed remedied

should the GOG promptly pay such Taxes or reimburse the Accounts in full for such Taxes, if already paid.

- 2.1.4 All acts and conditions required to be done or satisfied by GOG, and all consents, approvals, exemptions and other requirements of any governmental authorities in Guatemala required to be obtained or satisfied, for the execution and performance of this Agreement and all other Transaction Documents in order to make the obligations of GOG hereunder and thereunder valid, binding and enforceable in accordance with the respective terms hereof and thereof have been done, performed, obtained and satisfied in compliance with the laws of Guatemala.
- 2.1.5 It is not necessary or advisable in order to ensure the legality, validity, enforceability, or admissibility in evidence of this Agreement and all other Transaction Documents in Guatemala that this Agreement, any Transaction Document or any other agreement, document, notice or instrument be filed, recorded, registered, authenticated, legalized or enrolled with any court or authority in Guatemala or that any stamp, registration, or similar tax be paid on or in relation to the same.
- 2.1.6 There is no statute, law, rule, regulation, ordinance, code, decree, order, decision, injunction, judgment, award or decree currently in effect which could reasonably be expected to limit the power, authority or independence of the Oversight Committee or otherwise frustrate the purposes of the TFCA, this Agreement or any other Transaction Document.
- 2.1.7 The payment obligations of GOG hereunder and under the Debt Swap Agreement constitute the direct, unconditional and general obligations of GOG backed by the full faith and credit of GOG, and rank *pari passu* in right of payment with all other unsecured and unsubordinated indebtedness of GOG.

2.2. Representations and Warranties of each NGO. Each of the NGOs represents and warrants to the other Parties hereto, as of the date hereof and the Effective Date, as follows:

- 2.2.1 It is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation.
- 2.2.2 The execution and performance of its obligations under this Agreement or any other Transaction Documents to which it is a party do not and will not constitute a breach of, or conflict with, any other material agreement or arrangement, whether written or oral, by which it is bound.
- 2.2.3 This Agreement and all other Transaction Documents to which it is a party constitute its legal, valid and binding obligation, enforceable in accordance with the respective terms and conditions hereof and thereof.

3. EFFECTIVENESS; CONDITIONS PRECEDENT

3.1. Effectiveness. This Agreement shall enter into force as of the date hereof (the “**Effective Date**”), provided that the obligations of the Parties hereunder shall be subject to, and conditioned upon, the simultaneous consummation of the closings under each of the Debt Swap Agreement and the Swap Fee Contractual Agreement and upon the satisfaction or waiver of the conditions contained in Section 3.2 hereof (the “**Closing**”).

3.2. Conditions Precedent. The obligations of the NGOs hereunder shall be subject to, and conditioned upon the satisfaction or waiver of the following conditions:

3.2.1 Opinion of the GOG

The NGOs and USG shall have received a legal opinion from the Attorney General of Guatemala, dated as of Closing Date, addressed to USG and the NGOs, which shall be satisfactory to the NGOs and USG and substantially in the form attached hereto as Schedule 9 (*Form of Legal Opinion*).

3.2.2 Opinion of Guatemalan Counsel

The NGOs shall have received a legal opinion from their Guatemalan counsel, dated as of the Closing Date, addressed to USG and the NGOs, in form and substance satisfactory to the NGOs.

3.2.3 Consents and Approvals of GOG

The NGOs shall have received evidence that the delivery and execution of this Agreement and the Transaction Documents to which GOG is a party have been duly approved and authorized by GOG in accordance with the laws of Guatemala, including the authorization required for the execution of this Agreement and the Transaction Documents to which GOG is a party and for the disbursement of funds by GOG as contemplated under this Agreement and the Transaction Documents.

3.2.4 Swap Fee Contractual Agreement

- (a) The Swap Fee Contractual Agreement shall have been executed and delivered by the parties thereto; and
- (b) The closing under the Swap Fee Contractual Agreement shall have been effected (concurrently with the Closing under this Agreement).

3.2.5 Debt Swap Agreement

- (a) The Debt Swap Agreement shall have been executed and delivered by the parties thereto; and

- (b) The closing under the Debt Swap Agreement shall have been effected (concurrently with the Closing under this Agreement).

3.2.6 Establishment of the Accounts

The Accounts shall have been established; provided that if the Trust Agreement has not been entered into on or prior to the Closing Date, this condition precedent shall not apply so long as the Administrator shall have opened an escrow account (the “**FCA Escrow Account**”) at an Acceptable Financial Institution, which Escrow Account shall serve as the “Debt Service Account” for purposes hereof and the other Transaction Documents until the Trust Agreement is entered into, whereupon such Escrow Account shall be closed, and, as soon as practicable but in any case within thirty (30) days thereafter, all amounts on deposit therein shall be transferred to the Debt Service Account opened by the Trustee.

3.2.7 [INTENTIONALLY OMITTED.]

3.2.8 Administrator

The initial Administrator, selected by TNC, CI, GOG (through CONAP) and USG, shall have executed and delivered an Acceptance Instrument.

3.2.9 Other Documents

The NGOs shall have received from the Administrator, the Trustee and GOG such further documents, opinions and/or certificates as they may reasonably request.

3.3. Conditions for the Benefit of the NGOs. Except for the conditions set forth in Sections 3.2.1 and 3.2.2 which shall not be waived, the conditions set forth in Section 3.2 are for the benefit of the NGOs and may be waived only by the NGOs, acting in their sole discretion.

4. PAYMENT PROCEDURE

4.1. Payment Obligations under New FCA Obligations. GOG promises to pay, in accordance with the terms and subject to the conditions hereof, into the Debt Service Account the Local Currency equivalent of the U.S. Dollar denominated amounts set forth in Schedule 1, as converted at the rate of exchange determined in accordance with Section 4.4. The first such payment shall be made on the first Payment Date following the Closing Date and thereafter payments shall be made on each Payment Date as specified in Schedule 1. Whenever any payment required to be made under the New FCA Obligations falls due on a day which is not a Business Day, the payment shall be considered to be paid on the due date if the payment is received in the Debt Service Account on the next succeeding day which is a Business Day. The obligation to make payments pursuant to this Section 4.1 shall not require bonds, notes, coupons or other instruments to be issued.

4.2. Voluntary Prepayments. GOG may prepay without any cost, premium or penalty all or any portion of the New FCA Obligations on not less than thirty (30) days' prior written notice to the Oversight Committee. Any such prepayment shall be made at face value, with no discount for early payment.

4.3. Payment Terms. GOG shall pay all amounts due under the New FCA Obligations by wire transfer of immediately available funds to the Debt Service Account in accordance with the terms provided in Section 4.1.

4.4. Rate of Exchange. For purposes of any payment due under the New FCA Obligations in accordance with the terms provided above (including any amounts prepaid pursuant to Section 4.2), the rate of exchange used to convert U.S. Dollars into Local Currency shall be the rate quoted by the Bank of Guatemala, based on Article 4 of Decree 94-2000 (Law for the Free Negotiation of Foreign Currency) one (1) Business Day prior to the date such conversion is required. The calculation of any rate of exchange determined pursuant to this Section 4.4 shall be made by GOG and GOG shall notify the Administrator and the Chairman of the Oversight Committee in writing of such exchange rate on each such Payment Date.

4.5. Interest on Overdue Amounts. If any amount payable by GOG hereunder is not paid when due, interest shall accrue thereon during the period from and including the applicable due date to but excluding the date the overdue amount is paid in full, at a rate that is three percent (3%) per annum, except that an interest rate of five percent (5.0%) per annum shall apply to the New FCA Obligation that corresponds to, and has replaced in part, the Outstanding Obligation that was Loan 520 T044B.

4.6. Application of Payments. Payments shall be:

- (a) received and managed by the Trustee in accordance with the Trust Agreement; and
- (b) held in the Debt Service Account and periodically transferred to the FCA Endowment Account and FCA Grants Account in accordance with Section 5.1.

5. RECEIPT AND USE OF FUNDS

5.1. Accounts. Pursuant to this Agreement and the Trust Agreement, three (3) interest-bearing accounts shall be established for purposes of administering and distributing the Payments:

- 5.1.1 a Debt Service Account, which shall be administered by the Trustee and the purpose of which shall be to receive the Payments and any amounts paid by USG pursuant to Sections 3.2 and 3.3 of the Debt Swap Agreement. Transfers shall be made (a) from the Debt Service Account into the FCA Grants Account as instructed by the Oversight Committee in accordance with the Trust Agreement, and (b) from the Debt Service Account into the FCA Endowment Account as set forth in Schedule 1 (*Payment Schedule*); provided, that (i) the Oversight

Committee may direct the Trustee to transfer amounts into the FCA Endowment Account in excess of the amounts specified in Schedule 1 (*Payment Schedule*) to the extent of amounts on deposit in the Debt Service Account that are not allocated to Grants previously approved by the Oversight Committee; (ii) the Oversight Committee shall direct the Trustee to transfer amounts into the FCA Endowment Account pursuant to clause (i) in such amounts and at such times as may be necessary so as to cause the amount of Four Million Nine Hundred Thousand Dollars (US \$4,900,000) to be on deposit in the FCA Endowment Account prior to December 31, 2016; and (iii) from and after the Initial Endowment Disbursement Date, unless otherwise instructed by the Oversight Committee, no further transfers shall be made from the Debt Service Account into the FCA Endowment Account.

- 5.1.2 a FCA Endowment Account, which shall be administered by the Trustee and the purpose of which shall be to receive the transfers from the Debt Service Account and to apply such amounts to the setting up of the Endowment. Until the Initial Endowment Disbursement Date, except for (a) the payment of Trustee Management Expenses in relation to its administration of the FCA Endowment Account; (b) the payment of applicable taxes on the interest earned on amounts on deposit in the FCA Endowment Account; and (c) the amounts, if any, that the Oversight Committee may direct the Trustee to transfer into the FCA Grants Account after the first date when the aggregate amount on deposit in the FCA Endowment Account shall equal Two Million One Hundred Thousand Dollars (US\$2,100,000), all Endowment Annual Gross Interest shall be reinvested in the FCA Endowment Account. After the Initial Endowment Disbursement Date, all Endowment Annual Net Interest shall be transferred to the FCA Grants Account in accordance with the instructions of the Oversight Committee; and
- 5.1.3 a FCA Grants Account, which shall be administered by the Administrator and the purpose of which shall be to receive certain transfers from the Debt Service Account and from the FCA Endowment Account. Funds held in the FCA Grants Account shall be applied to the making of Grants in accordance with this Agreement.

5.2. Establishment and Operation of the FCA Grants Account. The FCA Grants Account shall be established and operated by the Administrator in accordance with the following provisions, as supplemented or modified by the instructions given by the Oversight Committee to the Administrator from time to time:

5.2.1 Establishment of the FCA Grants Account

- (a) Within thirty (30) days after the execution and delivery of the Trust Agreement, the Administrator shall establish the FCA Grants Account with an Acceptable Financial Institution designated by the Oversight Committee in accordance with Section 6.7(f) hereof, which account shall require the joint signature of at least two Authorized Representatives of the Administrator for withdrawals,

transfers to other bank accounts, payment of checks or other any payment orders; provided that the appointment of such Authorized Representatives of the Administrator must be approved by the Oversight Committee. The Administrator shall not commingle any amounts received from any other Account hereunder with other funds of the Administrator or any other Person.

- (b) The Administrator shall not draw funds from the FCA Grants Account without the specific written instructions of the Oversight Committee, which instructions shall be in the form attached hereto in Schedule 6 (*Form of Instructions to the Administrator*).

5.2.2 Application of Funds

All funds in the FCA Grants Account shall, upon the instructions of the Oversight Committee (as provided for in Section 6.7(c) hereof), be distributed by the Administrator in the form of Grants to Eligible Entities; provided that the Administrator shall be entitled to receive Management Expenses in accordance with Section 5.2.10 hereof; and provided further that funds in the FCA Grants Account shall be transferred into the Debt Service Account upon the instructions of the Oversight Committee.

5.2.3 Grant Recipients

Only Eligible Entities shall be allowed to be Grant Recipients and the Administrator shall be responsible for confirming each grant applicant's status as an Eligible Entity.

5.2.4 Grant Recipient Agreement

It shall be a condition precedent to any Grant to a Grant Recipient that such Grant Recipient enter into a Grant Recipient Agreement with the Administrator, substantially in the form set forth in Schedule 5 (*Grant Recipient Agreement*), and the Administrator shall have delivered to the Chairperson of the Oversight Committee a copy of such written agreement. The Administrator shall not be allowed to charge any fees or other charges to any Grant Recipient.

5.2.5 Payment of Grants

Payment of Grants by the Administrator to the Grant Recipients shall be made by wire transfer or check, at the times and in the amounts approved by the Oversight Committee.

5.2.6 Use of Grants

The Administrator shall be responsible for ensuring that all Grants received by Grant Recipients are used in accordance with the Grant

Recipient Agreement, for Authorized Purposes and not for Prohibited Purposes.

5.2.7 Approval of Budgets

On or before the date that is thirty (30) days prior to the date on which a Grant Recipient is to receive a Grant, the Administrator shall obtain from such Grant Recipient, and submit to the Oversight Committee for approval, a budget and project plan which shall detail the proposed application of the amounts received as such Grant (any such budget and project plan, as approved by the Oversight Committee, an “**Approved Budget**”).

5.2.8 Authorized Purposes

Grants shall be applied by Grant Recipients to the following activities provided that such activities are undertaken in, or directly benefit, Forest Land and conform as well to the additional limitations set forth in Schedule 7 (*Decision Criteria*), as such additional limitations may be modified by the unanimous vote of the Oversight Committee from time to time (each, an “**Authorized Purpose**”):

- (a) the establishment, Restoration, protection, and maintenance of parks, Protected Areas, and reserves;
- (b) the development and implementation of scientifically sound systems of natural resource management, including land and ecosystem management practices;
- (c) training programs to increase the scientific, technical and managerial capacities of individuals and organizations involved in conservation efforts;
- (d) the Restoration, protection, or Sustainable Use of diverse animal and plant species;
- (e) research and identification of medicinal uses of tropical forest plant life to treat human diseases, illnesses, and health-related concerns; and
- (f) development and support of the livelihoods of individuals living in or near a tropical forest in a manner consistent with protecting such tropical forest.

5.2.9 Prohibited Purposes

Grants shall not be applied to the following purposes (each, a “**Prohibited Purpose**”):

- (a) the creation or dissemination of political propaganda, or any attempt to influence legislation or any government act or decision;
- (b) the participation in any political campaign on behalf of, or in opposition to, any candidate for public office;
- (c) any application of funds received under a Grant that constitutes, or could reasonably be expected to constitute, a Conflict of Interest;
- (d) any application of funds received under a Grant that violates, or could reasonably be expected to violate, the provisions of the Inter-American Convention on Corruption and any implementing Guatemalan laws or similar applicable statutes or regulations;
- (e) the purpose of purchasing weapons or ammunition;
- (f) any application of funds received under a Grant that is directly or indirectly disbursed, transmitted or otherwise transferred to a Non-Eligible Entity; or
- (g) any other purpose that is not an Authorized Purpose.

5.2.10 Management Expenses

The Oversight Committee shall determine the amount that the Administrator shall be entitled to receive as Management Expenses pursuant to clauses (i) and (j) of Section 6.7. The amounts approved by the Oversight Committee shall be deducted by the Trustee from funds transferred to the FCA Grants Account during such fiscal year and transferred by the Trustee to the Administrator, to such account as the Administrator indicates from time to time. The Management Expenses approved by the Oversight Committee with respect to a particular fiscal year shall under no circumstances exceed the greater of (a) ten percent (10%) of the Payments required to be made by GOG during such fiscal year, and (b) fifteen percent (15%) of the amount disbursed as Grants from the FCA Grants Account during such fiscal year. The Administrator shall not be allowed to charge any fees or other charges to any Grant Recipient.

6. GOVERNANCE AND OVERSIGHT

6.1. Creation of Oversight Committee. The Parties to this Agreement hereby create a committee (the “**Oversight Committee**”) to oversee the administration of the Accounts and ensure that all funds deriving from the Payments (together with the interest, income and capital gains thereon) are applied in accordance to the terms of this Agreement and all other Transaction Documents.

6.2. Members.

6.2.1 The Oversight Committee shall consist of five (5) voting members (each, a “**Voting Member**”). The Voting Members of the Oversight Committee shall be classified into two groups: (i) “**Permanent Members**”; and (ii) “**Term Members**”. The Permanent Members shall be designated as provided in Section 6.2.2 and the Term Members shall be designated or elected as provided in Section 6.2.3. All Voting Members shall serve on the Oversight Committee without receipt of any remuneration for their services and without any entitlement to reimbursement of their expenses.

6.2.2 The Permanent Members shall consist at all times of: (a) one designee of the GOG’s National Council for Protected Areas (CONAP) (or any successor thereto); (b) one designee of the USG; (c) one designee of CI; and (d) one designee of TNC. The initial Permanent Members of the Oversight Committee are identified in Schedule 3 (*Initial Permanent Members of the Oversight Committee*).

Each such entity shall use its reasonable efforts to appoint an individual who resides in Guatemala as its designated Permanent Member; provided that at no time shall a Permanent Member designated by either NGO be an agent, employee or officer of any government. Each Permanent Member shall hold office until his or her successor is appointed by the entity that selected him or her in accordance with this Section 6.2.2. A Permanent Member may be removed from the Oversight Committee with or without cause by the entity that selected him or her. A Permanent Member may at any time give notice of his or her resignation as a Permanent Member by delivering a resignation notice in writing to the other Voting Members of the Oversight Committee, and the entity that appointed such resigning Permanent Member shall, within sixty (60) days of such resignation, select a replacement Permanent Member.

6.2.3 There shall be one Term Member who shall be elected by a majority vote of the then current Voting Members of the Oversight Committee and (a) shall reside in Guatemala, if practicable, (b) shall not be an agent, employee or officer of any government and (c) shall be an employee, officer or director of a nongovernmental environmental, scientific, academic, sustainable development or forestry research organization in Guatemala or any other environmental nongovernmental organization of, or active in, Guatemala; provided, however, that the initial Term Member of the Oversight Committee shall be elected by the

unanimous vote of the Permanent Members at the first meeting of the Oversight Committee; provided further, however, that the Oversight Committee will not make any decisions regarding any Grant until the initial Term Member of the Oversight Committee has been elected in such manner. The Term Member shall be entitled to be reimbursed for all traveling, hotel and other expenses properly incurred by it (within Guatemala) in attending and returning from meetings of the Oversight Committee, which expenses shall be deemed to be Management Expenses.

The term of service of the Term Member shall be two (2) years, each such term of service to expire subsequent to the applicable annual meeting of the Oversight Committee. Each Term Member may be removed at any time, with or without cause, by the unanimous vote of the Permanent Members. Each Term Member may at any time resign his or her office by delivering a resignation notice in writing to the other Voting Members of the Oversight Committee and such other Voting Members shall, within ninety (90) days of such resignation, elect a replacement Term Member.

6.2.4 The Administrator shall appoint an Authorized Representative to serve as a non-voting member and the Secretary of the Oversight Committee.

6.2.5 The Administrator shall, in addition to the functions specified in this Agreement, as the Secretary of the Oversight Committee, provide administrative services to the Oversight Committee. The scope of administrative services to be provided by the Administrator to the Oversight Committee shall be reviewed by the Oversight Committee on an annual basis.

6.3. Alternate Members. At any time, each entity that has the right to designate a Permanent Member pursuant to Section 6.2.2 may designate a resident of Guatemala as an alternate to the Voting Member that is currently designated by such entity, who may act at a meeting of the Oversight Committee in place of such designated Voting Member and exercise the power and authority exercisable by such designated Voting Member (including the right to vote), in each case in place of such designated Voting Member. An alternate for any Term Member may be elected at any time by a majority vote of the then current Voting Members and shall reside in Guatemala, if practicable, and meet the criteria specified in Section 6.2.3(a). Upon receipt of notice from a Term Member that such Term Member will not be able to attend a meeting of the Oversight Committee, the Oversight Committee may request that the alternate for such Term Member, which has been elected in accordance with the immediately preceding sentence, act at a meeting of the Oversight Committee in place of such Term Member and exercise the power and authority exercisable by such Term Member (including the right to vote), in each case in place of such Term Member. Any designation of an alternate pursuant to this Section 6.3 shall be communicated in writing to all other Voting Members of the Oversight Committee, at least two (2) Business Days prior to any scheduled meeting of the Oversight Committee.

6.4. Decisions of the Oversight Committee. (a) Each Voting Member of the Oversight Committee shall be entitled to one (1) vote. At every meeting, not less than four (4) Voting

Members shall constitute a quorum. Notwithstanding the foregoing, if the same Voting Member is absent from three (3) consecutive meetings, then such Voting Member shall be deemed present at the last of such meetings solely for the purpose of meeting the quorum required for such meeting. The Oversight Committee shall use its reasonable efforts to adopt all decisions by unanimity. Should unanimity not be reached, except as otherwise specifically provided herein, decisions shall be adopted by the affirmative vote of at least three (3) Voting Members present at a validly convoked and constituted meeting. Notwithstanding the foregoing, the Oversight Committee may take action by the unanimous written consent of the Voting Members of the Oversight Committee.

(b) Notwithstanding anything to the contrary set forth herein, any decision by the Oversight Committee to authorize a Grant to a FCA Grant Recipient where as a result of such decision, such FCA Grant Recipient together with any Affiliate of such FCA Grant Recipient shall have received Grant commitments in excess of US\$500,000.00 in the aggregate, shall require the approval by all Voting Members of the Oversight Committee.

(c) A Term Member shall not be entitled to participate in any discussion by the Oversight Committee relating to, or to vote on, any FCA Grant proposal made by an organization with which such Term Member is affiliated, and to the extent any matter relating such a Grant is on any agenda of any Oversight Committee meeting, the Term Member shall recuse himself or herself from that portion of such meeting.

6.5. Chairperson. A chairperson shall be elected from among the Voting Members of the Oversight Committee by the Voting Members (the “**Chairperson**”) and shall preside at every meeting of the Oversight Committee. The Chairperson shall carry out such other duties as may be specified by this Agreement. The Chairperson shall serve for a term of two (2) years but shall remain in office until a successor is elected. The Chairperson may be removed as Chairperson of the Oversight Committee with or without cause at any time by an affirmative vote of at least four (4) of the Voting Members of the Oversight Committee. The Chairperson shall be allowed to resign from its office at any time by delivering a resignation notice in writing to all other Voting Members. No such removal of or resignation by the Chairperson shall automatically imply removal or resignation of such Chairperson as a Voting Member.

6.6. Meetings.

6.6.1 Ordinary and Extraordinary Meetings

- (a) The Oversight Committee shall hold meetings no less frequently than two (2) times per calendar year. Other meetings of the Oversight Committee shall be held by agreement of the Oversight Committee.
- (b) Ordinary meetings of the Oversight Committee (the “**Ordinary Meetings**”) shall be held on February 1 and August 1 of each year or the first Business Day immediately following such dates and such meetings shall be called by the Administrator.

- (c) Any Voting Member shall have the right to call a meeting of the Oversight Committee on a date other than the date of an Ordinary Meeting (the “**Extraordinary Meetings**”).

6.6.2 Places and Notices

- (a) Meetings shall be held at such times and such places as the Oversight Committee shall determine from time to time.
- (b) No less than ten (10) days’ advance written notice shall be given to each Voting Member and his/her alternate (if any) in case of Ordinary Meetings, which notice shall indicate the time and place in which such Ordinary Meeting shall be held.
- (c) No less than ten (10) days’ advance written notice shall be given to each Voting Member and his/her alternate (if any) in case of Extraordinary Meetings, which notice shall indicate the date, time and place in which such Extraordinary Meeting shall be held.
- (d) Prior notice of both Ordinary Meetings or Extraordinary Meetings may be waived by a Voting Member in writing and shall also be deemed to have been waived:
 - (i) by a particular Voting Member, by attendance by such Voting Member at such meeting; and
 - (ii) by all Voting Members, when a decision is adopted by the written consent of all Voting Members.

6.6.3 Meetings by Telephone

Voting Members or their alternates may participate in a meeting of the Oversight Committee by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other.

6.7. Powers and Responsibilities of the Oversight Committee. The Oversight Committee shall have the following powers and responsibilities:

- (a) supervision of the application process in respect of the Grants to be made by the Administrator to Grant Recipients in accordance with Section 5.2;
- (b) development of requests for Grant proposals; review of Grant proposals, including making all final determinations regarding whether a Grant proposal conforms to the requirements set out in Section 5.2; selection of Grant Recipients, including making all final determinations regarding whether a potential Grant Recipient

is an Eligible Entity; development of any decision criteria to be used in the review of Grant proposals or the selection of Grant Recipients; and the determination of the amount and terms of payments of Grants to be made, to the Grant Recipients in accordance with Section 5.2;

- (c) delivery to the Administrator of specific written instructions regarding the amount and terms of approved payments to the Grant Recipients, which instructions shall be in the form attached hereto as Schedule 6 (*Form of Instructions to the Administrator*);
- (d) delivery to the Administrator of specific instructions regarding exercising any remedies the Administrator may have against a Grant Recipient under a Grant Recipient Agreement, including withholding any disbursement of funds pursuant to such Agreement;
- (e) approval of any annual budgets and project plans submitted by Grant Recipients pursuant to Section 5.2.7;
- (f) delivery of instructions to the Administrator regarding the opening and closing of the FCA Grants Account and the selection of an Acceptable Financial Institution with whom the FCA Grants Account will be established;
- (g) delivery of instructions to the Administrator regarding the operation of the FCA Grants Account and all other matters provided for in this Agreement, and oversight of the administration of the FCA Grants Account to ensure that all amounts therein are applied in accordance with the terms of the Transaction Documents;
- (h) review of the investment management of the funds from time to time on deposit in the Accounts by, or on behalf of, the Trustee and the Administrator;
- (i) review, in such a manner as the Oversight Committee may determine from time to time in its sole discretion, the annual budget of Management Expenses of the Administrator relative to the services to be rendered by the Administrator as described in this Agreement;
- (j) subject to the terms of Section 5.2.10, delivery of instructions to the Administrator regarding the Oversight Committee's determination of the amount and terms of any payment of Management Expenses;

- (k) review of the performance of the Administrator, at such times and in such a manner as the Oversight Committee may determine from time to time in its sole discretion;
- (l) decisions regarding the termination of the Administrator;
- (m) the designation, at such times and in such a manner as the Oversight Committee may determine from time to time in its sole discretion, of a New Administrator, which New Administrator shall, in all cases, be a private sector entity organized under the laws of Guatemala;
- (n) the establishment and dissolution, at such times and in such manner as the Oversight Committee may determine from time to time in its sole discretion, of Advisory Committees (including the Evaluation Committee) and the delivery of instructions to any such Advisory Committee regarding the powers and responsibilities of such Advisory Committee;
- (o) on an annual basis, to review the effectiveness of the transactions contemplated by this Agreement and the development and implementation of measures designed to improve such effectiveness;
- (p) the determination of the rules and procedures for the operation of the Oversight Committee;
- (q) with respect to the management of the TFCA program:
 - (i) within one year of Closing, the establishment of a written strategic plan that includes (a) specific, key objectives, (b) a list, in order of importance, of conservation and funding priorities in order to meet those objectives, and (c) target dates for completion of objectives;
 - (ii) evaluation, on an annual basis, of progress toward key objectives specified in the strategic plan, and the implementation of changes judged necessary by the Oversight Committee to remedy deficiencies in meeting key objectives;
 - (iii) within one year of Closing, the development and implementation of a monitoring and evaluation plan for determining the conservation impact of funded projects;
 - (iv) taking all other steps necessary to satisfy the relevant criteria specified in the TFCA Evaluation Sheet; and

- (v) preparation and submission to the Parties and to USG of an annual TFCA evaluation in substantially the form of the TFCA Evaluation Sheet;
- (r) with respect to the Trustee:
 - (i) appointment of an Acceptable Financial Institution as the Trustee;
 - (ii) delivery, on an exclusive basis, of the instructions to the Trustee regarding the operation and investment of the Debt Service Account and the FCA Endowment Account and all other matters provided for in this Agreement and the Trust Agreement;
 - (iii) review, at such times and in such a manner as the Oversight Committee may determine from time to time in its sole discretion, of the investment management of the amounts held in the FCA Endowment Account by or on behalf of the Trustee and the general performance of the Trustee under the Trust Agreement; and
 - (iv) replacement, at such times and in such a manner as the Oversight Committee may determine from time to time in its sole discretion, of the Trustee as provided for under the Trust Agreement.

6.8. Delegation. Notwithstanding the creation of the Oversight Committee, each Party to this Agreement shall retain the rights, powers and discretion granted to it under this Agreement, and the Oversight Committee shall not be delegated or vested with any such rights, powers or discretion unless such delegation or vesting of rights is expressly provided for in this Agreement.

6.9. Advisory Committees. The Oversight Committee may from time to time, in accordance with Section 6.7(n), establish and dissolve ad hoc advisory committees in technical, financial and other matters related to the powers and responsibilities of the Oversight Committee set forth in Section 6.7 (each, an “**Advisory Committee**”). The Oversight Committee shall establish the Evaluation Committee pursuant to Section 6.10 below. An Advisory Committee will enable a broadened perspective and provide expert technical and/or financial input to the decision making processes. An Advisory Committee shall deliver to the Oversight Committee such reports and documents as may be requested by the Oversight Committee from time to time. Members of an Advisory Committee shall not receive any remuneration for their services but shall be entitled to be paid any traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of such Advisory Committee or meetings of the Oversight Committee or in connection with the business of the Oversight Committee, which expenses shall be deemed Management Expenses and shall be subject to pre-approval by the Oversight Committee pursuant to Section 6.7(j).

6.10. Evaluation Committee. The Oversight Committee shall establish an Advisory Committee called the “**Evaluation Committee**”, which shall provide, upon the request of the Administrator, technical evaluations of proposals submitted for Grants referred to such committee by the Administrator and assist the Oversight Committee in selecting proposals in accordance with the criteria set forth in Schedule 7. The Evaluation Committee shall be comprised of up to five specialists to be selected by the Oversight Committee in the areas of Biodiversity, forestry, natural resources management and other similar specialties; provided however that each member of the Evaluation Committee (a) shall reside in Guatemala, if practicable, (b) shall not be an agent, employee or officer of an government, and (c) shall be an employee, officer or director of a non-governmental environmental, scientific, academic, sustainable development or forestry research organization in Guatemala or any other environmental non-governmental organization of, or active in, Guatemala. The five members of the Evaluation Committee will be chosen every two (2) years by the Oversight Committee, with the possibility to serve for up to two (2) consecutive terms. Notwithstanding the foregoing provisions, no member of the Evaluation Committee shall be entitled to participate in the review of any Grant proposal submitted on behalf of an organization with which such member is affiliated, and to the extent that any matter relating to such a proposal is on any agenda of any Evaluation Committee meeting, such member shall recuse himself or herself from that portion of such meeting.

6.11. Responsibilities of the Administrator. The Administrator shall have the following responsibilities:

- (a) publicizing the availability of Grants to attract and engage potential Grant Recipients;
- (b) soliciting proposals for Grants from potential Grant Recipients;
- (c) conducting a preliminary analysis of whether each potential Grant Recipient is an Eligible Entity and reporting the results of such analysis to the Oversight Committee;
- (d) reviewing all proposals for Grants received from potential Grant Recipients in order to analyze if such proposals conform to the requirements set out in Section 5.2, and reporting the results of such analysis to the Oversight Committee;
- (e) at least thirty (30) days prior to each meeting of the Oversight Committee, delivering to each Voting Member of the Oversight Committee all proposals received from potential Grant Recipients since the immediately preceding meeting of such Voting Members (including any proposal which may not be eligible for a Grant, based on the analysis made pursuant to clauses (c) and (d) above), together with a written report setting out the results of the analysis made pursuant to clauses (c) and (d) above;

- (f) following the deliberation of the Oversight Committee and the issuance by the Oversight Committee of Grant award instructions pursuant to Section 6.7 hereof, obtaining a fully executed Grant Recipient Agreement and making Grant awards and disbursements in accordance with Oversight Committee funding decisions;
- (g) evaluating, monitoring and auditing the Grant Recipient activities in accordance with written instructions received from the Oversight Committee and with international best practices, and reporting such evaluations and audits to the Oversight Committee;
- (h) providing administrative services to the Oversight Committee; and
- (i) exercising any other powers or responsibilities of the Oversight Committee set forth in Section 6.7 as requested by the Oversight Committee in writing.

Subject to the prior approval of the Oversight Committee, including the approval of all Permanent Members, the Administrator shall be authorized to subcontract with third parties to perform any of the obligations set forth in subsections (a) through (h) of this Section 6.11. In any such instance, such third party shall, subject to the terms of Sections 5.2.10 and 6.7(j), be compensated by the Administrator (for the avoidance of doubt, such compensation shall constitute Management Expenses).

6.12. Final Determinations. Except as expressly set forth herein, the final determination of all issues relating to the Payments made by GOG under the New FCA Obligations and the disbursements and transfers made by the Trustee or the Administrator shall be made exclusively by the Oversight Committee.

7. AUDIT AND REPORTING REQUIREMENTS

7.1. Financial and Program Audits.

- 7.1.1 The Administrator shall keep true and accurate accounts and records in accordance with the Accounting Principles.
- 7.1.2 The Administrator shall cause its auditors to prepare and submit to the Oversight Committee and to the Parties hereto as soon as practicable after the close of its fiscal year (but not later than four (4) months after the close of such fiscal year) complete annual financial statements in respect of such fiscal year, certified by such auditors and prepared in the Spanish and English languages in accordance with the Accounting Principles.
- 7.1.3 The auditors of the Administrator shall be an internationally recognized auditing firm acceptable to the Oversight Committee.
- 7.1.4 The Administrator shall make the results of such audits (with any redactions thereto as approved by the Oversight Committee in writing) available to the

general public in Guatemala by means of posting on an Internet website or other ways reasonably calculated to provide access to the general public and in a manner reasonably acceptable to the Oversight Committee.

- 7.1.5 The Administrator shall use its best efforts to cause Grant Recipients to allow officials of GOG, USG, and the NGOs to have access to all relevant books of account, ledgers, spreadsheets and other documents associated with the Forest Land and its operations and activities carried out pursuant to any of the Transaction Documents.
- 7.1.6 The Administrator shall be responsible for the preparation (either by the Administrator itself or by third parties subcontracted by the Administrator) of program audits to measure effectiveness of Grants.

7.2. Narrative Reports.

Within forty-five (45) days of November 1 and May 1 of each year, the Administrator shall prepare and submit to the parties hereto and to the Oversight Committee a semi-annual financial and narrative report (a "**Program Report**") which shall identify all transactions engaged in by the Administrator during the previous six months in respect of any Grants. In addition, the Administrator shall cause its auditors to prepare and submit to the parties hereto and to the Oversight Committee a statement (a "Program Audit") that, during the examination by such auditors, such auditors did not observe or discover any Grants, expenditures, disbursements or other transactions that were in violation of Section 5.2.6 hereof. In the event that any such violation is observed or discovered, the Program Audit shall include a detailed description of the expenditures or disbursements in violation of Section 5.2.6 hereof. Each Program Audit shall also include an assessment of the completeness and accuracy of the Program Report prepared by the Administrator. Notwithstanding anything to the contrary set forth herein, all reasonable costs of any financial statement, Program Report and Program Audit, if any, which are approved in advance by the Oversight Committee, will constitute Management Expenses and will be payable pursuant to Section 5.2.10.

7.3. Access to Forest Land. The Administrator shall use its best efforts to:

- 7.3.1 cause the Grant Recipients to allow officials of GOG, USG, and the NGOs to visit their offices and project sites for the purpose of evaluating the implementation of the Grants; and
- 7.3.2 coordinate with relevant national and regional authorities for inspection of the Forest Land.

7.4. Records of Management Expenses. The Administrator shall maintain complete and accurate records containing all information required for verification of Management Expenses. Such records shall be maintained at the offices of the Administrator for a period of five (5) years following the payment of any such expense. Authorized representatives of GOG, the NGOs and USG will have the right to examine, copy, and audit these records, by appointment, during normal business hours (or such records shall be copied and delivered to

the requesting party). Any such audit will be conducted at the expense of the Person requesting the audit and upon prior written notice.

7.5. Investment of Funds in FCA Grants Account. The Administrator will cooperate with any review of the investment management of the amounts on deposit in the FCA Grants Account which is conducted by the Oversight Committee. The Administrator shall obtain periodic statements, no less frequently than on a quarterly basis, reflecting in reasonable detail (a) the return on such funds, and (b) the transactions executed with funds held in the FCA Grants Account (including all fees and commissions paid in connection with such transactions). The statements described in the immediately preceding sentence shall be delivered by the Administrator to the Chairperson of the Oversight Committee within twenty (20) days after the conclusion of each calendar quarter during the term of this Agreement and shall be delivered by the Administrator to the GOG, TNC and CI simultaneously with the delivery of the annual financial statements of the Administrator pursuant to Section 7.1.2 hereof.

8. COVENANTS

8.1. Covenants of GOG. GOG shall comply with the payment obligations set forth herein and in the Debt Swap Agreement in accordance with the terms hereof and of the Debt Swap Agreement (the “**Payments**”). The terms of Article III of the Debt Swap Agreement are hereby incorporated into this Agreement.

8.2. Covenants of the NGOs. The NGOs shall not amend the Trust Agreement without the prior approval of USG and GOG. The NGOs shall comply with their obligations under this Agreement and any other Transaction Document to which they are parties. Further, the NGOs shall use their reasonable efforts to:

- 8.2.1 publicize the efforts of GOG to conserve, maintain, and restore the Forest Land in their respective member publications, website, conferences and other appropriate fora;
- 8.2.2 assist the Grant Recipients by providing, to the extent available, technical expertise with respect to conservation, maintenance and Restoration of the Forest Land; and
- 8.2.3 act as an informal liaison with USG on behalf of the Grant Recipients on issues related to the Transaction Documents or the Grant Recipient Agreements; and.

8.3. Trust Agreement. The NGOs shall use their reasonable efforts to ensure that the relevant parties enter into the Trust Agreement with the initial Trustee within six months after the Closing Date.

9. EVENTS OF DEFAULT; NON-PERFORMANCE

9.1. Payment Default. The breach by GOG of the covenant set forth in Section 8.1 (a “**Payment Default**”) shall constitute a default under this Agreement.

9.2. Events of Default. Each of the following events (each, an “**Event of Default**”) shall constitute a default under this Agreement:

9.2.1 this Agreement or any Transaction Document or any of its provisions:

- (a) is revoked, terminated, becomes void or ceases to be in full force and effect without, in each case, the prior consent of each of the parties thereto;
- (b) becomes, or the performance of or compliance with any obligation thereunder becomes, unlawful; or,
- (c) any representation or warranty or certification made by GOG or the NGOs in the Transaction Documents shall have been incorrect or misleading when made.

9.3. Non-Performance. Each of the following events (each, a “**Non-Performance**”) shall constitute a default under this Agreement:

9.3.1 the determination by the Oversight Committee, in its sole discretion, that:

- (a) any Party has failed to comply with any of its respective obligations or covenants contained in this Agreement or any other Transaction Documents, other than a Payment Default or an Event of Default; or
- (b) any portion of the Grants or amounts held in the FCA Endowment Account or the FCA Grants Account have been delivered to a Non-Eligible Entity, have been used for a purpose other than an Authorized Purpose or for a Prohibited Purpose, or have otherwise been used in a manner not permitted under this Agreement or the Trust Agreement; or
- (c) it is reasonably likely that future Grants or amounts to be transferred to the FCA Endowment Account or the FCA Grants Account shall be transferred to a Non-Eligible Entity or shall not be used for Authorized Purposes or shall be used for Prohibited Purposes; or

9.3.2 the determination by the Oversight Committee, in its sole discretion, that:

- (a) any Party hereto has taken action which adversely affects the implementation of any Transaction Document.

9.4. Deficiency Notice. Upon the verification of the occurrence of a Payment Default, an Event of Default or a Non-Performance the Chairperson shall provide written notice thereof (a “**Deficiency Notice**”) to the defaulting or non-performing Person (the “**Non-Performing**

Person"); provided that such notice may be given by any Voting Member of the Oversight Committee if the Chairperson is the designee of the Non-Performing Party.

9.5. Remedies.

9.5.1 If, after one hundred twenty (120) days from a Payment Due Date, the GOG still has not paid all arrears under the New FCA Obligations, including any accrued and unpaid interest, and one or more of the following events has or have occurred: (i) the USG has not exercised its rights under Section 6.2 of the Debt Swap Agreement; (ii) the USG has exercised its rights under Section 6.2(a) of the Debt Swap Agreement, but not made a claim for the full amount in arrears (such unclaimed amounts referred to as "**Unclaimed Arrears**"); or (iii) the USG has exercised its rights under Section 6.2(b), but not made a claim for all future payments under the New FCA Obligations to be due and payable immediately in Dollars (such unaccelerated future payments referred to as "**Remaining FCA Obligations**"), either of the NGOs (or their designee) shall have the right to immediately take any of the following actions:

- (a) initiate discussions with GOG pursuant to Section 12.1 hereof; and
- (b) initiate arbitration proceedings pursuant to Section 12.2 hereof, for the purpose of: (a) in the case of Section 9.5.1(i) above, seeking the payment of any arrears under the New FCA Obligations, including any accrued interest or seeking the acceleration of all, or any part of, future payments under the New FCA Obligations; (b) in the case of Section 9.5.1(ii) above, seeking the payment of Unclaimed Arrears or (c) in the case of Section 9.5.1(iii) above, seeking the payment of Remaining FCA Obligations. Any amount recovered pursuant to this Section 9.5.1 shall be delivered to the Trustee for distribution in accordance with the Trust Agreement and this Agreement unless otherwise determined by the Arbitrator; provided that in all instances the Arbitrator shall direct funds recovered towards carrying out the purposes of TFCA in Guatemala.

9.5.2 If an Event of Default occurs and is continuing for more than sixty (60) days from the date of receipt of the relevant Deficiency Notice (such sixty day period, the "**Cure Period**"), then the Oversight Committee shall, or any Party hereto may, take any or all of the following actions:

- (a) initiate discussions between the Parties pursuant to Section 12.1; and
- (b) initiate arbitration proceedings pursuant to Section 12.2 hereof for the purpose of pursuing any remedies available under applicable law.

9.5.3 If a Non-Performance occurs under Section 9.3.1, and is continuing after the expiration of the Cure Period, then the Oversight Committee shall, or any Party hereto may, take any or all of the following actions:

- (a) instruct the Non-Performing Person to take such actions as are deemed necessary or appropriate to cure the Non-Performance;
- (b) In the case of Non-Performance by the Administrator or the Trustee, replace the Administrator or the Trustee and/or request the non-performing Administrator or Trustee to transfer to the account designated by the Oversight Committee an amount equal to any amount disbursed by such non-performing Administrator or Trustee in contravention of the terms of this Agreement or the Trust Agreement within thirty (30) days of receipt of such request from the Oversight Committee;
- (c) exercise the remedies provided for in the Trust Agreement or the relevant Grant Recipient Agreement(s), or instruct the Administrator to exercise such remedies; or
- (d) if the remedies described in subsections (a), (b) and (c) above fail to cure the Non-Performance to the satisfaction of any enforcing Party, initiate arbitration proceedings pursuant to Section 12.2 hereof for the purpose of pursuing any remedies available under applicable law.

9.5.4 If a Non-Performance occurs under Section 9.3.2, and is continuing after the expiration of the Cure Period, then the Oversight Committee shall, or any Party hereto may, take any or all of the following actions:

- (a) initiate discussions between the Parties pursuant to Section 12.1; and
- (b) initiate arbitration proceedings pursuant to Section 12.2 hereof for the purpose of pursuing any remedies available under applicable law.

9.6. Replacement of Grant Recipients. Should the Non-Performing Person be a Grant Recipient, then, in addition to the foregoing remedies, the Oversight Committee or the Administrator shall have the right to replace such Grant Recipient in accordance with the provisions of the relevant Grant Recipient Agreement.

10. ADMINISTRATOR

10.1. Covenants of the Administrator. Unless the Oversight Committee otherwise agrees, the Administrator shall:

- 10.1.1 follow the instructions of the Oversight Committee as to the operation and administration of the Accounts and perform the obligations of the Administrator hereunder, including the obligations set forth under Sections 5, 6, and 7 of this Agreement;
- 10.1.2 apply any amounts held in the FCA Grants Account to the making of Grants, as provided for in this Agreement;
- 10.1.3 not, without the written consent of the Oversight Committee, modify or amend its *estatutos* (or other organizational documents) in a manner that could reasonably be expected to limit the power, authority or independence of the Oversight Committee or otherwise frustrate, in the reasonable judgment of the Oversight Committee, the purposes of this Agreement or the TFCA; and
- 10.1.4 not, unless otherwise approved by the unanimous written consent of the Oversight Committee, assign any right of the Administrator to receive payments or transfers pursuant to the terms of this Agreement or the Trust Agreement.

10.2. Replacement of the Administrator. The Oversight Committee shall have the right to discharge the Administrator at any time with or without cause, in which case the Oversight Committee shall appoint a replacement Administrator and the following rules shall be observed:

10.2.1 Acceptance of Terms

- (a) The Person appointed by the Oversight Committee to replace the prior Administrator (the “**New Administrator**”) shall not be entitled to receive funds pursuant to this Agreement unless and until it:
 - (i) opens an account to serve as the FCA Grants Account in accordance with the terms of this Agreement; and
 - (ii) executes and delivers to the Oversight Committee an Acceptance Instrument.
- (b) Upon the satisfaction of the conditions set forth in paragraph (a) above, the New Administrator shall become the “Administrator” and thereafter have all of the rights and obligations of the prior Administrator under this Agreement (including, in the case of a newly designated Administrator, the obligation to designate a non-voting member to attend meetings of the Oversight Committee and fulfill the responsibilities of the Secretary to the Oversight Committee).

10.2.2 Rights and Obligations Following Acceptance by New Administrator. From and after the date of the satisfaction of the requirements set forth in Section 10.2.1(a) by the New Administrator:

- (a) the prior Administrator shall have no further right to receive funds under this Agreement or any other Transaction Document;
- (b) all of the rights and obligations of the prior Administrator under this Agreement (other than accrued obligations that have not yet been discharged by the prior Administrator) shall terminate automatically without any further action of the Parties hereto;
- (c) the prior Administrator shall turn over to the New Administrator all books, records, statements, reports and other papers in its possession relating to this Agreement or any Grants hereunder; and
- (d) the prior Administrator shall transfer to the New Administrator designated by the Oversight Committee the amounts, if any, held by it in the FCA Grants Account.

11. TERM AND TERMINATION

11.1. Termination. This Agreement shall terminate:

11.1.1 in the event that the Closing has not taken place on or before September 18, 2006; or such other later Business Day on or before September 29, 2006 as may be agreed to by the Parties and the USG; or

11.1.2 if the Closing has occurred, upon the final disbursement made by the Administrator to the Grant Recipients in accordance with the terms hereof.

11.2. Survival. Sections which by their nature are intended to be applicable beyond the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.

11.3. Survival of Endowment. Without limiting the foregoing provisions, upon the determination that no further Grants will be made hereunder from the FCA Grants Account, subject to the prior written consent of the Parties and USG, the Oversight Committee shall issue instructions to the Trustee to ensure the operation of the FCA Endowment Account for the balance of the life of the Endowment. Such instructions may include, *inter alia*, the provisions set forth in this Agreement relating to the Endowment, provisions for determining Grant approvals, provisions for Eligible Entities receiving Grants to manage Protected Areas to report on ongoing management activities to each Party, and any such other provisions as may be deemed appropriate by the Oversight Committee at such time.

12. DISPUTE RESOLUTION

12.1. Informal Resolution of Disputes. The Parties hereto hereby agree that, in the event of any dispute between or among any of the Parties relating to this Agreement, the Parties shall first seek to resolve the dispute through informal discussions and the following rules shall be observed:

- 12.1.1 Any Party may give the other Parties written notice of any dispute not resolved in the normal course of business. Within twenty (20) days after delivery of said notice, officials of all Parties to the dispute shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- 12.1.2 If the matter has not been resolved within sixty (60) days of the disputing Party's notice, or if the Parties fail to meet within twenty (20) days after delivery of such notice, any Party may invoke arbitration of the controversy or claim in accordance with Section 12.2.
- 12.1.3 If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiators shall be given at least three (3) Business Days' notice of such intention and may also be accompanied by an attorney.
- 12.1.4 All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

12.2. Arbitration of Disputes.

12.2.1 Arbitration Procedures

- (a) Subject to Section 12.1, any dispute arising out of, relating to or in connection with this Agreement, including any questions relating to its existence, validity or termination, shall be referred to the International Centre for Settlement of Investment Disputes and finally resolved by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

- (b) The Parties stipulate that the investments contemplated in this Agreement constitute “investments” within the meaning of the Convention on the Settlement of Investment Disputes Between States And Nationals Of Other States, Article 25.1.
- (c) There shall be a single arbitrator selected or appointed to resolve the dispute.
- (d) In the event the Parties cannot agree on the selection of an arbitrator within sixty (60) days of the initiation of the arbitration proceeding, the arbitrator shall be appointed in accordance with the applicable rules of arbitration.
- (e) The place of arbitration shall be New York, New York, USA.
- (f) The Parties to the arbitration shall use their reasonable efforts to conclude the arbitration of any controversy or dispute no later than one hundred twenty (120) days after the appointment of the arbitrator.
- (g) The arbitrator may include in any award the requirement that the losing Party pay the other Parties all reasonable costs including attorneys’ fees incurred during the arbitration.

12.2.2 Waiver of Sovereign Immunity by GOG

- (a) GOG hereby expressly and unequivocally waives and will not raise any defense of sovereign immunity in any fora for any claims arising from, connected with or related to this Agreement or any other Transaction Document. In particular, GOG agrees that in any arbitration proceedings or judicial proceedings for the recognition, confirmation or enforcement of any award rendered in arbitration under this Section (or proceedings, within the scope of Section 1610(a) of the Foreign Sovereign Immunities Act of 1976 of the United States of America, for attachment in aid of execution upon a judgment), it expressly and unequivocally waives and will not raise any defense of sovereign immunity or any other defense that it could not raise but for the fact that it is a sovereign state.
- (b) Without limiting the generality of the foregoing, GOG agrees that the waiver set forth in this Section shall have the fullest scope permitted under applicable laws, including the Foreign Sovereign Immunities Act of 1976 of the United States of America and is intended to be irrevocable for purposes of such Act; except, however, that the execution on or attachment of revenues, assets and property of GOG located in Guatemala through the courts of Guatemala, both prior to and post-judgment, shall be subject to the provisions of the relevant laws of Guatemala.

12.2.3 Immunity in Guatemala

- (a) Without limiting the waiver set forth in Section 12.2.2, GOG represents and warrants that it has no right to immunity, on the grounds of sovereignty or otherwise, from the service of process or jurisdiction or any judicial proceedings of any competent court located in Guatemala or from execution of any judgment in Guatemala or from the execution or enforcement therein of any arbitration decision in respect of any proceeding or any other matter arising out of or relating to its obligations under this Agreement or any other Transaction Documents, including the New Obligations.
- (b) To the extent that GOG has or may hereafter become entitled to any such immunity, it irrevocably and unconditionally agrees not to plead or claim any such immunity with respect to its obligations or any other matter arising out of or in connection with this Agreement or any other Transaction Document, including the New Obligations; except, however, that the execution on or attachment of revenues, assets and property of GOG located in Guatemala through the courts of Guatemala, both prior to and post-judgment, shall be subject to the provisions of the relevant laws of Guatemala.

12.2.4 Waiver of Immunity by Administrator

- (a) To the extent that the Administrator has or acquires immunity (sovereignty or otherwise), it hereby agrees not to claim and hereby waives such immunity.
- (b) Without limiting the generality of the foregoing, the Administrator agrees that the waiver set forth in this Section shall have the fullest scope permitted under applicable laws, including the Foreign Sovereign Immunities Act of 1976 of the United States of America and is intended to be irrevocable for purposes of such Act.

12.2.5 Special Notice Provisions

For the sole purpose of receiving service of process or other legal summons in connection with obtaining judicial recognition, confirmation or enforcement of any arbitral award pursuant to this Article, including the conversion of an award in arbitration into a judgment, the Parties irrevocably agree that any such process or summons may be served by delivery to the addresses indicated in Section 13.3.2.

12.3. Role of USG. The Parties hereto agree that USG shall be included in consultations regarding the implementation and enforcement of this Agreement.

13. MISCELLANEOUS

13.1. Amendment; Waiver.

13.1.1 This Agreement may be amended only by a written instrument signed by the Parties hereto; provided that such amendment shall have been approved in advance by USG pursuant to the Debt Swap Agreement and the Swap Fee Contractual Agreement

13.1.2 No provision of this Agreement may be waived orally, but only by a written instrument signed by the Party against whom enforcement of such waiver is sought.

13.1.3 A failure or delay in exercising any right, power or privilege in respect of this Agreement shall not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

13.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction; provided that the due authorization and execution of this Agreement by GOG shall be governed by the laws of Guatemala.

13.3. Notices.

13.3.1 All notices, consents, requests, instructions, approvals and other communications provided for herein shall be in writing and shall be deemed validly given:

- (a) upon personal delivery;
- (b) one day after being sent by facsimile with telephone confirmation of receipt; or
- (c) five days after being sent by a recognized express courier service that maintains records of receipt.

13.3.2 All notices, consents, requests, instructions, approvals and other communications provided for herein shall be delivered to the address or telefax number of the intended recipient as set out below or as subsequently notified to the other Parties in accordance herewith.

- (a) If to GOG, to:

Ministerio de Finanzas Públicas
8a. Avenida y 21 Calle Zona 1
Edificio del Ministerio de Finanzas Pública, Nivel 15,
Ciudad de Guatemala, República de Guatemala,
(502) 2248 5080 (telephone)
(502) 2248 5084 (facsimile)
Attn: Mrs. Antonieta de Bonilla
Minister of Public Finance

(b) If to TNC, to:

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, Virginia 22203-1606
(703) 841-2645 (telephone)
(703) 841-0128 (facsimile)
Attn: Office of the General Counsel

with a copy to:

The Nature Conservancy
12 Avenida 14-41
Colonia Oakland
Zona 10
Guatemala, Guatemala
Attention: Country Program Director

(c) If to CI, to:

Conservation International Foundation
1919 M Street, NW
Washington, DC 20036
(202) 912-1000 (telephone)
(202) 912-9298 (facsimile)
Attn: General Counsel

with a copy to:

CI -Guatemala
Avenida Reforma 12-01
Edificio Reforma Montufar Oficina 1105 Nivel 11
Zona 10
Ciudad de Guatemala, Guatemala
+011-502-2334-1055
Attn: Country Director

(d) If to the Administrator, to the address set forth in the Acceptance Instrument.

13.4. Counterparts.

13.4.1 This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one instrument.

13.4.2 Copies of executed counterparts transmitted by telecopy, facsimile or other electronic transmission service (such as a pdf file) shall be considered original executed counterparts for purposes of this Section, provided receipt of copies of such counterparts is confirmed.

13.4.3 This Agreement shall not be effective unless and until signed by all Parties hereto.

13.5. Severability.

13.5.1 If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct.

13.5.2 If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

13.5.3 If any provision of this Agreement is declared invalid or unenforceable for any reason other than over breadth, the offending provision will be modified so as to maintain the essential benefits of the bargain among the Parties hereto to the maximum extent possible, consistent with law and public policy.

13.6. Successors and Assigns.

13.6.1 This Agreement shall be binding upon the respective successors of the Parties hereto.

13.6.2 This Agreement shall not be assigned, delegated or otherwise transferred by GOG without the prior written consent of the other Parties and any attempt by GOG to so assign, delegate or transfer this Agreement without such consent shall be void and of no effect.

13.7. Further Assurances. Each Party hereto shall execute and deliver such additional documents and perform such acts as are reasonably requested by the other Parties in order fully to effect the intent of this Agreement.

13.8. No Joint Venture.

13.8.1 Each of the Parties hereto is an independent contractor with respect to this Agreement. Nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship between and among the parties hereto.

13.8.2 No employee, agent, officer, director or other representative of any Party shall, by reason of this Agreement, be considered:

(a) an employee of, or be entitled to employee or fringe benefits of, any other Party; or

(b) an agent or legal representative of any other Party for any purpose.

13.8.3 Without limitation of the foregoing, no Party hereto is granted by this Agreement any right or authority to assume or create any obligation or responsibility or to make any representation or warranty, express or implied, on behalf of or in the name of any other Party or to otherwise bind any other Party in any manner.

13.9. Remedies Cumulative. The rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by applicable law.

13.10. Accounting and Financial Determinations. All accounting terms used herein shall be interpreted, and all accounting determinations and computations hereunder shall be made, using the Accounting Principles consistently applied.

13.11. English Language.

13.11.1 This Agreement has been written and executed in the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

13.11.2 Este Acuerdo ha sido escrito y firmado en el idioma inglés. Cualquier traducción a cualquier otro idioma no será una versión oficial, y en el caso de cualquier conflicto en la interpretación entre la versión en inglés y la traducción, la versión en inglés prevalecerá.

13.12. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, among the Parties with respect to such subject matter are hereby superseded in their entireties.

[End of text; signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Forest Conservation Agreement as of the date and year first above written.

THE GOVERNMENT OF THE
REPUBLIC OF GUATEMALA

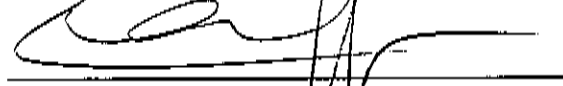


Name:

Title:

IN WITNESS WHEREOF, the Parties have executed and delivered this Forest Conservation Agreement as of the date and year first above written.

THE NATURE CONSERVANCY

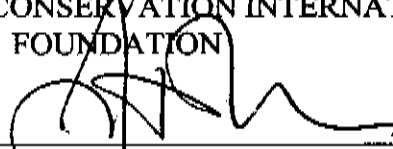


Name: Andreas Cord Lemhoff Temme

Title: Regional Director

IN WITNESS WHEREOF, the Parties have executed and delivered this Forest Conservation Agreement as of the date and year first above written.

CONSERVATION INTERNATIONAL
FOUNDATION

A handwritten signature in black ink, appearing to read 'J. Thomsen', is written over a horizontal line. The signature is somewhat stylized and overlaps the text 'CONSERVATION INTERNATIONAL' and 'FOUNDATION' above it.

Name: Jorgen Thomsen
Title: Senior Vice President

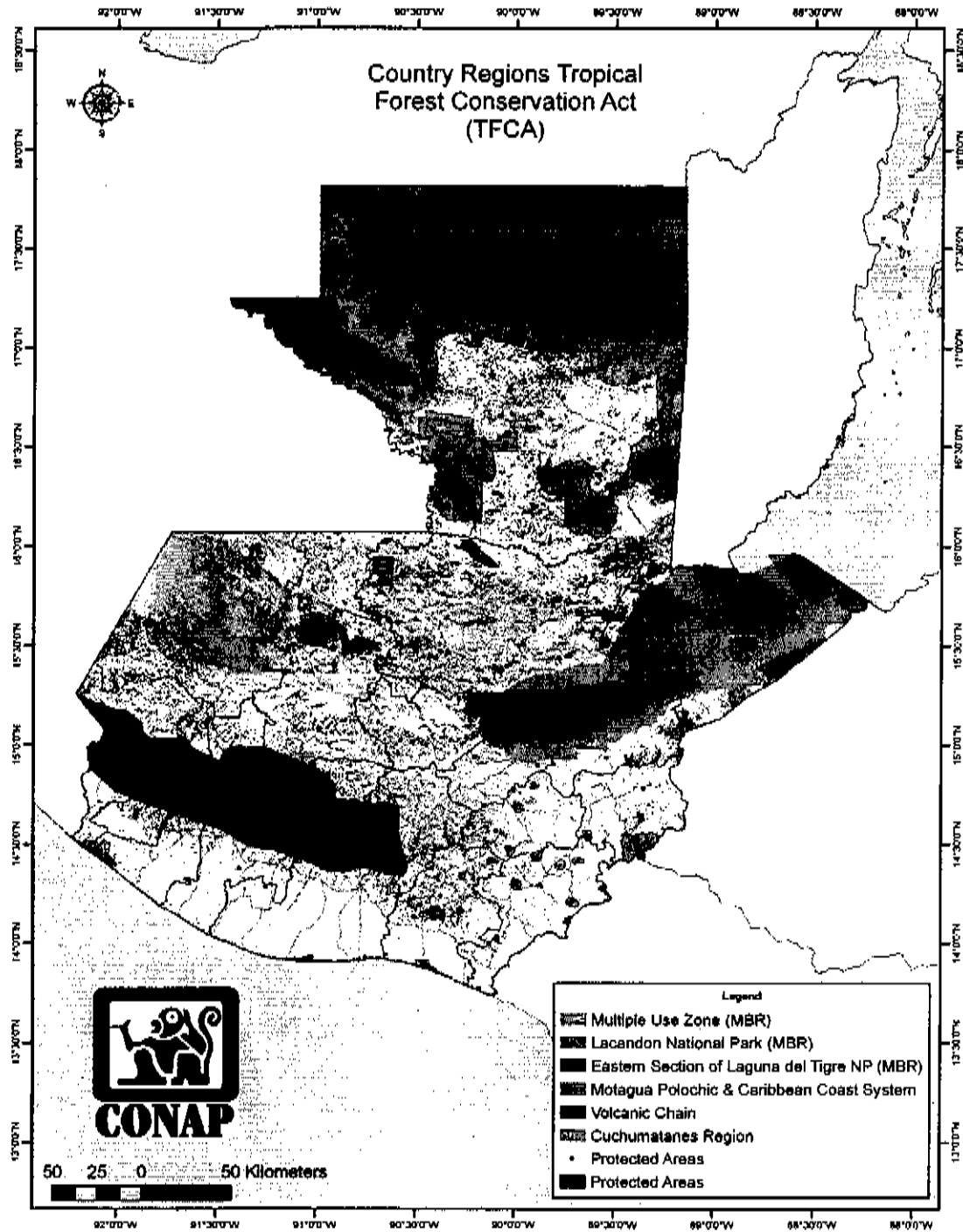
**TFCA PAYMENT FLOW
(INCLUDES ENDOWMENT CAPITALIZATION)**

Payment Date	Total Payment Due	Endowment	Remainder to Debt Service Account
9/11/2006	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
10/20/2006	\$ 170,635.88	\$ 47,727.27	\$ 122,908.61
10/20/2006	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
11/16/2006	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
1/28/2007	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
3/11/2007	\$ 239,118.22	\$ 47,727.27	\$ 191,390.95
4/20/2007	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
4/20/2007	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
5/16/2007	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
7/28/2007	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
9/11/2007	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
10/20/2007	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
10/20/2007	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
11/16/2007	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
1/28/2008	\$ 113,527.46	\$ 47,727.27	\$ 65,800.19
3/11/2008	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
4/20/2008	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
4/20/2008	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
5/16/2008	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
7/28/2008	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
9/11/2008	\$ 239,118.22	\$ 47,727.27	\$ 191,390.95
10/20/2008	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
10/20/2008	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
11/16/2008	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
1/28/2009	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
3/11/2009	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
4/20/2009	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
4/20/2009	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
5/16/2009	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
7/28/2009	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
9/11/2009	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
10/20/2009	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
10/20/2009	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
11/16/2009	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
1/28/2010	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
3/11/2010	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
4/20/2010	\$ 170,635.87	\$ 47,727.27	\$ 122,908.60
4/20/2010	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
5/16/2010	\$ 194,432.34	\$ 47,727.27	\$ 146,705.07
7/28/2010	\$ 113,527.45	\$ 47,727.27	\$ 65,800.18
9/11/2010	\$ 239,118.21	\$ 47,727.27	\$ 191,390.94
10/20/2010	\$ 170,635.88	\$ 47,727.27	\$ 122,908.61

10/20/2010	\$ 316,793.57	\$ 47,727.27	\$ 269,066.30
11/16/2010	\$ 194,432.34	\$ 47,727.39	\$ 146,704.95
1/28/2011	\$ 113,527.46	\$ -	\$ 113,527.46
3/11/2011	\$ 239,118.22	\$ -	\$ 239,118.22
4/20/2011	\$ 170,635.88	\$ -	\$ 170,635.88
4/20/2011	\$ 316,793.57	\$ -	\$ 316,793.57
5/16/2011	\$ 194,432.34	\$ -	\$ 194,432.34
7/28/2011	\$ 113,527.45	\$ -	\$ 113,527.45
9/11/2011	\$ 239,118.22	\$ -	\$ 239,118.22
10/20/2011	\$ 170,635.88	\$ -	\$ 170,635.88
10/20/2011	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2011	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2012	\$ 113,527.45	\$ -	\$ 113,527.45
3/11/2012	\$ 239,118.21	\$ -	\$ 239,118.21
4/20/2012	\$ 170,635.87	\$ -	\$ 170,635.87
4/20/2012	\$ 316,793.57	\$ -	\$ 316,793.57
5/16/2012	\$ 194,432.34	\$ -	\$ 194,432.34
7/28/2012	\$ 113,527.45	\$ -	\$ 113,527.45
9/11/2012	\$ 239,118.21	\$ -	\$ 239,118.21
10/20/2012	\$ 170,635.87	\$ -	\$ 170,635.87
10/20/2012	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2012	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2013	\$ 113,527.45	\$ -	\$ 113,527.45
3/11/2013	\$ 239,118.21	\$ -	\$ 239,118.21
4/20/2013	\$ 170,635.87	\$ -	\$ 170,635.87
4/20/2013	\$ 316,793.57	\$ -	\$ 316,793.57
5/16/2013	\$ 194,432.34	\$ -	\$ 194,432.34
7/28/2013	\$ 113,527.45	\$ -	\$ 113,527.45
9/11/2013	\$ 239,118.22	\$ -	\$ 239,118.22
10/20/2013	\$ 170,635.87	\$ -	\$ 170,635.87
10/20/2013	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2013	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2014	\$ 113,527.45	\$ -	\$ 113,527.45
3/11/2014	\$ 239,118.21	\$ -	\$ 239,118.21
4/20/2014	\$ 170,635.87	\$ -	\$ 170,635.87
4/20/2014	\$ 316,793.57	\$ -	\$ 316,793.57
5/16/2014	\$ 194,432.34	\$ -	\$ 194,432.34
7/28/2014	\$ 113,527.45	\$ -	\$ 113,527.45
9/11/2014	\$ 239,118.21	\$ -	\$ 239,118.21
10/20/2014	\$ 170,635.87	\$ -	\$ 170,635.87
10/20/2014	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2014	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2015	\$ 113,527.46	\$ -	\$ 113,527.46
3/11/2015	\$ 239,118.21	\$ -	\$ 239,118.21
4/20/2015	\$ 170,635.87	\$ -	\$ 170,635.87
4/20/2015	\$ 316,793.57	\$ -	\$ 316,793.57
5/16/2015	\$ 194,432.34	\$ -	\$ 194,432.34

7/28/2015	\$ 113,527.45	\$ -	\$ 113,527.45
9/11/2015	\$ 239,118.37	\$ -	\$ 239,118.37
10/20/2015	\$ 170,635.87	\$ -	\$ 170,635.87
10/20/2015	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2015	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2016	\$ 113,527.45	\$ -	\$ 113,527.45
4/20/2016	\$ 170,635.88	\$ -	\$ 170,635.88
4/20/2016	\$ 316,793.57	\$ -	\$ 316,793.57
5/16/2016	\$ 194,432.34	\$ -	\$ 194,432.34
7/28/2016	\$ 113,527.45	\$ -	\$ 113,527.45
10/20/2016	\$ 170,635.87	\$ -	\$ 170,635.87
10/20/2016	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2016	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2017	\$ 113,527.45	\$ -	\$ 113,527.45
4/20/2017	\$ 170,635.87	\$ -	\$ 170,635.87
4/20/2017	\$ 316,793.58	\$ -	\$ 316,793.58
5/16/2017	\$ 194,432.34	\$ -	\$ 194,432.34
7/28/2017	\$ 113,527.46	\$ -	\$ 113,527.46
10/20/2017	\$ 170,635.87	\$ -	\$ 170,635.87
10/20/2017	\$ 316,793.57	\$ -	\$ 316,793.57
11/16/2017	\$ 194,432.34	\$ -	\$ 194,432.34
1/28/2018	\$ 113,527.45	\$ -	\$ 113,527.45
4/20/2018	\$ 170,635.87	\$ -	\$ 170,635.87
4/20/2018	\$ 316,793.80	\$ -	\$ 316,793.80
5/16/2018	\$ 194,432.20	\$ -	\$ 194,432.20
7/28/2018	\$ 113,527.45	\$ -	\$ 113,527.45
10/20/2018	\$ 170,635.74	\$ -	\$ 170,635.74
1/28/2019	\$ 113,527.45	\$ -	\$ 113,527.45
7/28/2019	\$ 113,527.45	\$ -	\$ 113,527.45
1/28/2020	\$ 113,527.45	\$ -	\$ 113,527.45
7/28/2020	\$ 113,527.45	\$ -	\$ 113,527.45
1/28/2021	\$ 113,527.33	\$ -	\$ 113,527.33

Description of Forest Land



**GUATEMALA
TROPICAL FOREST CONSERVATION ACT**

DESCRIPTION OF FOREST LAND

Guatemala has identified four regions in the country that will benefit from the TFCA debt mechanism. These regions are described below and are shown on the attached map:

1. **The Maya Biosphere Reserve:** with emphasis on Lacandón National Park; the Multiple Use Zone, which includes the community forest concessions and biological corridors; conservation efforts in the eastern section of Laguna del Tigre National Park that includes the special protection area.
2. **The Volcanic Chain in the Western Highlands of Guatemala:** with emphasis on the region between the volcanic clusters stretching from Pacaya volcano National Park and Alux Forest Reserve to the Tacana volcano, from the summit to the piedmont, and on the Multiple Use Reserve of the Lake Atitlán Watershed
3. **Motagua-Polochic and Caribbean Coast System:** with emphasis on the Bocas del Polochic Wildlife Refuge, the Motagua Thorn Scrub ecosystem and the areas within and around the Golf of Honduras including the protected areas in the watersheds that drain into the Caribbean.
4. **The Cuchumatanes region:** Conservation activities are specifically focused on the following priority species and their habitats -*Hyla perkinsi*, *Bradytriton silus*, *Bolitiglosa jacksoni*, *Ptychohyla macrotympanum*, *Hyla dendrophasma*, as determined by the Alliance Zero Extinction (AZE) - that are found in the region of Todos Santos Cuchumatán, Cruz Malin, Magdalena Pepajau and other areas.

These regions have been selected to benefit from the TFCA debt for nature swap because of the:

- Regional and national ecological importance of the tropical forests and biodiversity;
- Work in these critical areas fulfill the national and institutional policies and strategies as determined by the Guatemalan Government within the Guatemalan System of Protected Areas (SIGAP); and
- Social and economic importance for Guatemala and Mesoamerica.

In general, the four regions are exceptional for their tropical forests, their biodiversity and for the benefits that their natural resources provide in goods and services to the communities that inhabit the areas and the region as a whole. The following sections describe these areas in greater detail.

1. Maya Biosphere Reserve (MBR):

The MBR is part of the largest continuum of forest in Central America and Mexico called the Maya Forest. Covering 2,112,940 ha, the MBR is the heart of the Maya Forest, which extends into southern Mexico and Belize. Because of its expanse, the Reserve contains representative and

viable samples of 19 ecosystems (18 natural and 1 of anthropogenic origin), and is a critical component for maintaining the connectivity of the Maya Forest. This is due to the fact that it allows ecological processes to function, and it provides critical habitat for many species such as the jaguar, tapir, scarlet macaw, harpy eagle and many migratory bird species. At the same time its ecological wealth provides many timber and no-timber products, which support the local economy. The Reserve also covers much of the area once inhabited by the ancient Maya, containing vestiges of at least 175 Mayan cities that provide a wealth of information about this culture.

The MBR is also home to the two largest parks in Guatemala, Sierra del Lacandon and Laguna del Tigre National Parks,

Sierra del Lacandon National Park covers an area of 203,000 ha and is the only natural bridge that connects the mountainous ecosystems between northeastern Chiapas and the forest and wetland ecosystems in the Petén lowlands. Along its western border, runs the largest river in Central America in water volume, the Usumacinta, which carries between 230 and 5,220 m³ / sec. The diversity of the park is also very important, with approximately 200 species of trees, 27 species of mammals, 424 species of birds (resident and migratory), 97 species of reptiles, 32 species of amphibians and 30 genera of fish with 112 species only in the Usumacinta River.

Laguna del Tigre National Park is the largest national park in Guatemala covering approximately 334,000 hectares. It also contains the largest protected wetland in Central America and includes 14 of the 19 ecosystems in the MBR. The vast area is periodically flooded, which helps create unique characteristics such as its sweeping savannahs and transition forests. The Park, together with Laguna del Tigre-Rio Escondido protected Biotope, is included in the Ramsar Convention's List of Internationally Important Wetlands and in the convention's Montreux Register due to the threats it faces from mankind.

Although, researchers have yet to fully study the biodiversity of Laguna del Tigre, 188 species of birds, 90 species of insects and 17 species of amphibians (CONAP, 1999) has been documented and estimates suggest that the park is home to up to 130 species of mammals (Zarza & Pérez, 2000). The park is also home to the largest numbers of Morelete's crocodile (*Crocodylus moreletii*) found in Guatemala and to other regionally endemic species such as the black howler monkey (*Alouatta pigra*) and Central American River Turtle (*Dermatemys mawii*). Felines include the jaguar (*Panthera onca*), puma (*Felis concolor*) and margay (*Leopardus wiedii*). Various species in the area are included on the IUCN Red List.

The Multiple Use Zone of the MBR is made up of the community forest concessions that cover approximately 375,000 ha, and two biological corridors, one that connects Laguna del Tigre National Park and Mirador-Rio Azul National Park and Tikal National Park and Mirador-Rio Azul National Park. The forest cover has been maintained in 98% of the area under concessions. Forest fires have also been reduced to a minimum. For example, in 2000, less than 0.1% of areas under concession were affected by fires.

The area with concessions has approximately the same number of species in the different taxa as Lacandón National Park and to help protect these species management is provided by

community forest concessions that are certified by Smart Wood. The concessions have been recognized globally as a model for community forest management. These community concessions are very diverse in terms of organizational strength (with the dual role of enterprise and association), women's participation, land area, social origin and legal status.

2. Western Volcanic Chain:

The volcanic chain encompasses parts of three ecoregions, namely: the *Sierra Madre Moist Forests*, *Central America Montane Forests* and *Central America Pine-Oak Forests* shared by Mexico and Guatemala and includes approximately 19 of the 37 volcanoes in the country. Due to their geographic isolation, the cones along the volcanic chain are "islands of evolution" that have many types of plant and animal life found nowhere else on Earth. In addition, the southern slope of the volcano chain is a critical migratory bird route. The volcanic chain is also a refuge for the only remaining population of highland margay providing a genetic link with other remaining populations in Mexico and the rest of Guatemala.

Studies developed around the volcanic cones indicate that the region has 9 species of amphibians, 12 species of reptiles, 325 species of birds, and 30 species of mammals. This region is part of the endemism system for birds of the Guatemalan-Chiapán highlands. Species such as the Resplendent Quetzal and the Horned Guan inhabit these forests. The floristic composition in this corridor includes 113 families and 386 species. Sub-alpine forests are represented in this region.

The entire Sierra Madre volcanic mountain range has highly fragmented forest areas that from centuries of unplanned use have damaged vital watershed capacity and forest resource use for local communities. This has also made the landscape extremely fragile in terms of its remaining biodiversity and much more prone to natural disasters.

3. Motagua-Polochic-Caribbean Coast System:

The region has unique ecosystems, such as the Gulf of Honduras, which is part of the Mesoamerican Barrier Reef; the Motagua Thorn Scrub, which is the only arid region in Central America and one of the largest remaining cloud forests (600 km²) in Central America and wetlands of international importance. This region has approximately 271,000 ha of protected areas. Of this amount, 243,000 ha are within the Sierra de las Minas Biosphere Reserve, 23,700 ha belong to the Bocas del Polochic Wildlife Refuge (a Ramsar Site), almost 200 ha are established as Regional Parks (Municipal protected areas), and 4,500 ha are private natural reserves. There are a total of 34 areas under six different management categories in this system.

The region has at least 885 species of mammals, birds and reptiles, representing 70% of all registered species of these taxa for Guatemala. It holds the most diverse conifer forests in Central America, with 15 species. More than 100 species of plants are used for medicinal or food purposes.

4. The Cuchumatanes Region

The Cuchumatanes highlands in northwestern Guatemala contain a high level of biodiversity and endemism. The Sierra de los Cuchumatanes is the most extensive highland region in Mesoamerica with 1500 km² above 3,000 m of elevation. The region's remaining forests are primarily Pine-Oak Lower Montane and Montane Humid Forests that act as mountainous islands and refuges for unique ecological systems that are the only ones of their kind - not only in Guatemala, but in all of Central America. These ecosystems contain more than 60 endemic species of flora, endemic amphibian species, amphibians with limited distribution, and 19 species of endemic birds. The Sierra receives over 6000mm of rainfall annually creating a lush Lower Montane Wet and Subtropical Pluvial Forests that support at least five endemic amphibians.

Initial Appointments of Permanent Members of the Oversight Committee

<u>Appointing Entity</u>	<u>Name of Permanent Member</u>
USG	Wayne Nilsestuen Mission Director, U.S. Agency for International Development
GOG	Sergio Veliz Consejo Nacional de Areas Protegidas
TNC	John Beavers The Nature Conservancy
CI	Carlos Rodriguez Conservation International Foundation

Form of Acceptance Instrument

[*date*]

Government of Guatemala
[*address*]
[*attention*]

The Nature Conservancy
[*address*]
[*attention*]

Conservation International Foundation
[*address*]
[*attention*]

Dear Sirs,

Reference is made to that certain Forest Conservation Agreement, dated as of [] (the “**Forest Conservation Agreement**”) among the Government of the Republic of Guatemala (“**GOG**”), The Nature Conservancy (“**TNC**”) and Conservation International Foundation (“**CI**”, and together with TNC, the “**NGOs**”). Capitalized terms used herein without definition have the respective meanings ascribed to them in the Forest Conservation Agreement.

Effective as of the date of this Acceptance Instrument, [*insert name of Administrator/New Administrator*] hereby accepts its appointment as Administrator under the Forest Conservation Agreement and agrees as follows:

1. RIGHTS AND OBLIGATIONS

[*insert name of Administrator/New Administrator*] shall be entitled to all benefits and subject to all of obligations, covenants, restrictions, limitations and liabilities assigned to the Administrator under the Forest Conservation Agreement. In particular, [*insert name of Administrator/New Administrator*] shall:

- comply with the instructions of the Oversight Committee;
- accept all determinations of the Oversight Committee as to the replacement of [*insert name of Administrator/New Administrator*] as Administrator; and
- comply with all the covenants and other obligations assigned to the Administrator under the Forest Conservation Agreement.

2. REPRESENTATIONS

The undersigned represents and warrants to the Parties to the Forest Conservation Agreement as of the date hereof as follows:

- (a) It is a [insert type of organization] duly organized, validly existing and in good standing under the laws of Guatemala.
- (b) It has the corporate power, and has obtained all required authorizations, to conduct its business as presently conducted and to enter into, and comply with its obligations under, the Forest Conservation Agreement and all other Transaction Documents.
- (c) It has thoroughly reviewed the Forest Conservation Agreement and all other Transaction Documents.
- (d) The execution and performance of its obligations hereunder do not and will not constitute a breach of, or conflict with, any other material agreement or arrangement, whether written or oral, by which it is bound.
- (e) This Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with the terms and conditions hereof.
- (f) *[other applicable representations and warranties]*

3. EFFECTIVENESS

This Acceptance Instrument shall take effect immediately upon the satisfaction of the conditions set forth in [Section 3.2] [Section 10.2.1 (a)] of the Forest Conservation Agreement (the "Effective Date").

4. COVENANTS

The undersigned shall comply with all the covenants and other obligations imposed on the Administrator under the Forest Conservation Agreement and all other Transaction Documents.

5. NOTICES

For the purpose of Section 13.3 of the Forest Conservation Agreement, all notices, consents, requests, instructions, approvals and other communications provided for in the Forest Conservation Agreement shall be directed as follows:

Address :
Attention :
Facsimile :

6. GOVERNING LAW AND JURISDICTION

Section 12 (*Dispute Resolution*) and Section 13.2 (*Governing Law*) of the Forest Conservation Agreement are hereby incorporated by reference into this Acceptance Instrument.

[other relevant provisions]

SIGNED:

[insert name of Administrator/New Administrator]

Name _____
Title _____

ACKNOWLEDGED AND ACCEPTED

THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA

Name _____
Title _____

THE NATURE CONSERVANCY

Name _____
Title _____

CONSERVATION INTERNATIONAL FOUNDATION

Name _____
Title _____

Form of Grant Recipient Agreement**GRANT RECIPIENT AGREEMENT**

This Grant Recipient Agreement (this "Agreement") is made and entered into as of _____, 20__ by and between:

(1) [_____] a [company limited by guarantee and not having share capital], organized under the laws of Guatemala (the "Administrator"); and

(2) [Name of Grant Recipient], a [_____] organized under the laws of Guatemala (the "Grant Recipient").

Reference is made to that certain Forest Conservation Agreement dated as of _____, 2006 (the "FCA") among the Government of the Republic of Guatemala ("GOG"), The Nature Conservancy ("TNC") and Conservation International Foundation ("CI"), and together with TNC, the "NGOs")

The Grant Recipient has submitted to the Oversight Committee which was established pursuant to the FCA (the "Oversight Committee"), a grant proposal (the "Grant Proposal"), a copy of which is attached as Exhibit A hereto. In response to such Grant Proposal, the Oversight Committee has selected the Grant Recipient to receive a grant of funds pursuant to the FCA, which grant will be used to conserve, maintain and restore certain Forest Land (as defined below in Section 1.7) in Guatemala pursuant to the terms and subject to the conditions of this Agreement.

In consideration of the mutual promises, obligations and undertakings set forth herein, it is hereby agreed by and between the parties as follows:

ARTICLE I**RECEIPT AND USE OF FUNDS**

1.1. Payments to the Grant Recipient. The Administrator will from time to time make grants to the Grant Recipient of certain funds which it holds pursuant to the FCA (such funds, together with any investment proceeds of such funds, including any interest or capital gains received in connection with such funds, the "FCA Income"), in such amounts, upon such terms and at such times as provided in written instructions from the Oversight Committee (each such instruction, a "Payment Instruction"), in accordance with the terms and subject to the conditions hereof. Each Payment Instruction will be in the form attached hereto as Exhibit B and shall be delivered by the Oversight Committee to the Administrator, or its successor as Administrator pursuant to the FCA. The Administrator shall deliver each Payment Instruction to the Grant Recipient. Each Payment Instruction may be amended or supplemented at any time by the Oversight Committee. Each Payment Instruction shall be construed as a supplement to this Agreement and shall form a part hereof and is incorporated by reference herein and is hereby ratified, approved and confirmed by the parties hereto. All payments of FCA Income made pursuant to this Section 1.1 shall be made by the Administrator to the Grant Recipient by wire

transfer or check, as specified in the Payment Instruction. Notwithstanding anything to the contrary herein, the Grant Recipient does not have any right to receive FCA Income, other than as provided pursuant to the express written direction of the Oversight Committee.

1.2. Conditional Grant. The Grant Recipient expressly acknowledges and agrees that (a) all amounts received pursuant to this Agreement are granted on the express condition that they be used for the purposes, and pursuant to the terms and subject to the conditions, specified herein, and (b) the condition set forth in this sentence is a material part of the bargain between and among the parties hereto.

1.3. Pre-Approval of Budgets. On or before the date that is ninety (90) days prior to the date on which the Grant Recipient is to receive a payment of FCA Income which, pursuant to the terms of a Payment Instruction, is to be used during a specified period (a "FCA Grant Project Period"), the Grant Recipient shall submit to the Oversight Committee for approval, a budget and project plan, which shall include a description of how it intends to use such FCA Income during such FCA Grant Project Period for the uses permitted pursuant to Section 1.6 hereof (such budget and project plan, as approved by the Oversight Committee, the "**Approved Budget**").

1.4. Receipts Account. The Grant Recipient represents that it has, prior to its execution of this Agreement, opened a separate account (the "Receipts Account") at [].¹ All FCA Income shall be deposited in the Receipts Account by the Grant Recipient immediately upon receipt thereof. The Grant Recipient shall not commingle any FCA Income in the same account with any other funds of the Grant Recipient or any third party. No disbursements or transfers shall be made from the Receipts Account except for the use of FCA Income in accordance with Section 1.6 hereof or as otherwise approved by the Oversight Committee in writing.

1.5. Investment of Funds in the Receipt Accounts. Any amounts held in the Receipt Account shall be deposited in an interest-bearing account until such time that such amounts are used in accordance with Section 1.6 hereof.

1.6. Use of FCA Income. The Grant Recipient shall use all FCA Income (a) for Authorized Purposes (as defined below), (b) not for Prohibited Purposes (as defined below), (c) pursuant to the terms of any Payment Instruction, (d) in accordance with the terms of the Grant Proposal and the then current Approved Budget, and (e) otherwise in accordance with the terms and subject to the conditions hereof.

1.7. Authorized Purposes. All FCA Income shall be used only to conserve, maintain, and restore the tropical forests in Guatemala which are identified as Forest Land in a Payment Instruction ("Forest Land"), through one or more of the following activities (collectively, the "Authorized Purposes"):

(a) establishment, restoration, protection, and maintenance of parks, protected areas, and reserves;

¹ Insert the name of a recognized private commercial bank located in Guatemala which is acceptable to the Oversight Committee.

- (b) development and implementation of scientifically sound systems of natural resource management, including land and ecosystem management practices;
- (c) training programs to increase the scientific, technical, and managerial capacities of individuals and organizations involved in conservation efforts;
- (d) restoration, protection, or sustainable use of diverse animal and plant species;
- (e) research and identification of medicinal uses of tropical forest plant life to treat human diseases, illnesses, and health-related concerns; and
- (f) development and support of the livelihoods of individuals living in or near a tropical forest in a manner consistent with protecting such tropical forest.

1.8. Prohibited Purposes. FCA Income shall not be used or expended, directly or indirectly (items (a) through (g) below shall collectively be defined as the “Prohibited Purposes”):

- (a) for the purpose of creating or disseminating political propaganda, or otherwise attempting to influence legislation or any government act or decision;
- (b) to participate in any political campaign on behalf of, or in opposition to, any candidate for public office;
- (c) in such a manner that constitutes, or could reasonably be expected to give the appearance of, a Conflict of Interest; for the purposes of this Section 1.8(c), “Conflict of Interest” means a transaction in which the interests of any agent, employee or representative of the Grant Recipient conflict with, or appear to conflict with, his or her official responsibility, including transactions with or involving the business partner(s) of the Grant Recipient’s project director, project co-director or other project team member or the members of their respective immediate families with respect to salaries, expense reimbursement or any other type of compensation, or payments to organizations in which the Grant Recipient’s project director, project co-director or other project team member or the members of their respective immediate families have a financial interest;
- (d) in such a manner that violates, or could reasonably be expected to give the appearance of a violation of, the provisions of the Inter-American Convention on Corruption and any implementing national laws or similar applicable statutes or regulations;
- (e) for the purpose of purchasing weapons or ammunition;
- (f) to pay any overhead or management expenses unless approved in advance by the Oversight Committee in writing pursuant to a Payment Instruction; or
- (g) to make any payment to the Administrator or any agency or instrumentality of GOG; provided that the Grant Recipient may make payments to the GOG (at rates generally applicable to entities which are similarly situated as the Grant Recipient) for the

provision of goods and services for which payment would normally be required for recovery of necessary costs by the GOG. This shall be taken to include but not be limited to costs related to the application for and grant of permits and licenses, the provision of inventory and mapping information or data, and the provision of any special goods or services.

1.9. No Assignment of Funds. Except as approved by the unanimous written consent of the Oversight Committee: (a) the right to receive FCA Income pursuant to the terms of this Agreement shall not be assignable, and any attempt to assign, pledge, encumber, factor, discount or otherwise transfer the right to receive such funds by the Grant Recipient shall be a material breach of this Agreement, and (b) any attempt to assign, pledge, encumber, or otherwise transfer (except as expressly provided herein) the amounts held in the Receipts Account established in accordance with Section 1.4 hereof shall be a material breach of this Agreement.

1.10. Oversight Committee Instructions. The Grant Recipient agrees to follow all written directions, instructions, rules or regulations of the Oversight Committee relating to the transactions contemplated by this Agreement which it receives pursuant to the terms hereof.

ARTICLE II

AUDIT AND REPORTING REQUIREMENTS

2.1. Financial Audits. The Grant Recipient shall, at its own cost and expense, keep true and accurate accounts and records in accordance with generally accepted accounting principles and standards, as promulgated by the Institute of Chartered Accountants of Guatemala from time to time ("Acceptable Accounting Principles"). The Grant Recipient shall submit to the Administrator as soon as practicable after the close of its fiscal year (but not later than four (4) months after the close of such fiscal year) complete annual financial statements (the "Institutional Financial Statements") in respect of such fiscal year (which will be certified by the Grant Recipient's auditors and prepared in the English language in accordance with Acceptable Accounting Principles). The auditors of the Grant Recipient shall be nationally recognized auditing firms acceptable to the Oversight Committee. The Grant Recipient shall be responsible for all costs and expenses of preparing any Institutional Financial Statement.

2.2. Narrative Reports. Within ninety (90) days of the close of its fiscal year, the Grant Recipient shall prepare and submit to the Fund Administrator an annual financial and narrative report (a "Grant Report") which shall identify all transactions engaged in by the Grant Recipient during the previous fiscal year in respect of any FCA Income and report on the Grant Recipient's accomplishments in respect of, and progress towards meeting, the goals set forth in the Grant Proposal and any applicable Approved Budget. Notwithstanding anything to the contrary set forth herein, all reasonable amounts budgeted for any Grant Report in an Approved Budget which are incurred by the Grant Recipient (or in the event no such amounts are so budgeted, all reasonable costs of any Grant Report incurred by the Grant Recipient which are approved by the Oversight Committee), will be payable from the FCA Income pursuant to Section 1.6 hereof.

2.3. Certification by Auditors. The Grant Recipient shall cause its auditors to prepare and submit to the Administrator a statement (a "Grant Audit") that, during the

examination by such auditors, such auditors did not observe or discover (A) any grants, expenditures, disbursements or other transactions of FCA Income that were in violation of Section 1.6 hereof including, without limitation, that any such grants, expenditures, disbursements or other transactions were in violation of the Authorized Purposes or were made for Prohibited Purposes and (B) any expenditures or disbursements of FCA Income in violation of an Approved Budget; provided, however, that no such report shall be required to be prepared and submitted until such time that the Grant Recipient has received grant commitments of more than the equivalent of \$100,000 United States Dollars in the aggregate pursuant to Payment Instructions or any other written commitments by the Oversight Committee. In the event that any such violation is observed or discovered, the Grant Audit shall include a detailed description of the expenditures or disbursements of FCA Income in violation of Section 1.6 hereof or in violation of an Approved Budget. Each Grant Audit shall also include an assessment of the completeness and accuracy of the Grant Report prepared by the Grant Recipient in accordance with Section 2.2. Notwithstanding anything to the contrary set forth herein, the lesser of (a) all reasonable costs of any Grant Audit that are approved by the Oversight Committee or (b) the amount budgeted for such Grant Audit in an Approved Budget which, in either case, are incurred by the Grant Recipient, will be payable from the FCA Income pursuant to Section 1.6 hereof.

2.4. Publication. The Grant Recipient shall make the Institutional Financial Statements, the Grant Reports and the Grant Audits, if any (with any redactions thereto as approved by the Oversight Committee in writing) available to the general public in Guatemala by means of posting on an Internet website or publication in a daily newspaper which is circulated island wide in Guatemala or other ways reasonably calculated to provide access to the general public and in a manner reasonably acceptable to the Oversight Committee.

2.5. Records of Expenses. The Grant Recipient shall maintain complete and accurate records containing all information required for verification of any expenses that are paid or reimbursed with FCA Income, as approved by the Oversight Committee. Such records shall be maintained at the offices of the Grant Recipient for a period of six (6) years following the payment of any such expense. Any member of the Oversight Committee or its authorized representatives shall have the right to examine, copy, and audit these records, by appointment, during normal business hours (or such records shall be copied and delivered to the requesting party). Any such audit shall be conducted at the expense of the person conducting such audit, as the case may be, and upon prior written notice.

2.6. Access to Forest Land. The Grant Recipient shall allow any member of the Oversight Committee or its authorized representatives to (a) visit its offices, for the purpose of inspecting its facilities, (b) visit any Forest Land for the purpose of inspecting the use of any FCA Income in such Forest Land and (c) have access to all relevant books of account, ledgers, spreadsheets and other documents associated with the Forest Land and its operations and activities carried out pursuant to this Agreement.

ARTICLE III

IMPROPER USE OF FUNDS; REMEDIES

3.1. Improper Use of Funds; Remedies. In the event that the Oversight Committee determines that: (a) any portion of the FCA Income received by the Grant Recipient pursuant to this Agreement has been used for a purpose not authorized by this Agreement, (b) it is reasonably likely that future payments to the Grant Recipient would not be used for the purposes specified in this Agreement, (c) the Grant Recipient is no longer capable of receiving the payments specified in this Agreement or performing the functions required of it herein or therein, or (d) the Grant Recipient is in breach of any material term or provision of this Agreement, then, in addition to all of the other remedies available at law or otherwise, the chairperson of the Oversight Committee shall provide written notice thereof (a "Deficiency Notice") to the Grant Recipient and the Grant Recipient shall, within thirty (30) days of receipt of such Deficiency Notice, take all steps necessary to rectify the matters identified in such notice. Upon delivery of the Deficiency Notice, no further payments shall be made by the Administrator to the Grant Recipient, unless and until the matters identified in the Deficiency Notice are rectified to the satisfaction of the Oversight Committee. In the event that the matters identified in the Deficiency Notice are not rectified to the satisfaction of the Oversight Committee within such thirty (30) day period, then (i) the Grant Recipient shall have no further right to receive funds under this Agreement, (ii) shall immediately transfer to an account designated by the Oversight Committee, all FCA Income then held in the Receipts Account, (iii) shall immediately pay to the Administrator an amount equal to any portion of FCA Income which it used for a purpose not authorized by this Agreement and (iv) all of the rights and obligations of the Grant Recipient under this Agreement (other than accrued obligations that have not yet been discharged by the Grant Recipient) shall terminate automatically without any further action of the parties hereto. The Administrator shall have the right to exercise any right or remedy which may be available under any applicable law or proceed by appropriate court action to enforce the terms of this Section 3.1 or to recover damages for the breach of this Section 3.1.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1. Representations and Warranties of the Grant Recipient. The Grant Recipient represents and warrants to the other parties hereto, as of the date hereof, that: (a) it is a [company] duly organized, validly existing and in good standing under the laws of Guatemala; (b) the execution and performance by it of its obligations hereunder do not and will not constitute a breach of, or conflict with, any other material agreement or arrangement, whether written or oral, by which it is bound, including its articles of association or similar organizational documents; (c) this Agreement constitutes the legal, valid and binding obligation of the Grant Recipient, enforceable in accordance with the terms and conditions hereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors', pledgees' or lessors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (d) it is a non-governmental, environmental, forestry or conservation organization of, or active in Guatemala; and (e) none of its employees, officers or

directors is a member of the Oversight Committee [or describe any other Person designated by the Oversight Committee as a Non-Eligible Entity].

ARTICLE V

INTELLECTUAL PROPERTY

5.1. The intellectual property relating to activities of the Grant Recipient contemplated by this Agreement belongs to the Grant Recipient, who should always give credit to USG, GOG, CI and TNC, as co-financers. In addition:

(a) any non-proprietary information relating to the transactions contemplated by this Agreement will be made publicly available; and

(b) any creative work developed by the Grant Recipient relating to the transactions contemplated by this Agreement, including all written, graphic, audio, visual and any other materials, contributions, applicable work product and production elements contained therein, whether on paper, disk, tape, digital file or any other media (the "Creative Work"), shall remain the intellectual property of the Grant Recipient, provided, however, that the Grant Recipient hereby irrevocably grants to the USG, GOG, CI and TNC a perpetual, royalty free, non-exclusive right to translate, publish, copy, distribute, use, and prepare derivative works from the Creative Works (and to authorize others to do so) for any purpose, in any media, and in any territory for non-commercial use.

ARTICLE VI

MISCELLANEOUS

6.1. Amendment; Termination; Waiver. This Agreement may be amended only by a written instrument signed by the parties hereto and consented to in writing by the Oversight Committee. This Agreement shall terminate on [] unless otherwise agreed to by the parties in writing; provided, however, that notwithstanding the foregoing, this Agreement will not be terminated without the written consent of the Oversight Committee. No provision of this Agreement may be waived orally, but only by a written instrument signed by the party against whom enforcement of such waiver is sought. A failure or delay in exercising any right, power or privilege in respect of this Agreement shall not be presumed to operate as a waiver, and a failure or delay in exercising a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

6.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Guatemala without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction.

6.3. Notices. All notices, consents, requests, instructions, approvals and other communications provided for herein shall be in writing and shall be deemed validly given (a) on the date of delivery when delivered by hand, (b) on the date of transmission when sent by

facsimile transmission during normal business hours with telephone confirmation of receipt, or (c) on the date of receipt in accordance with the records of receipt of a reputable overnight courier that maintains records of receipt, in each case in accordance with the notice information set forth in below or as otherwise designated by a party pursuant to this Section 6.3.

(i) if upon the Administrator to:

[INSERT ADDRESS]

(ii) if upon the Grant Recipient to:

[_____]

6.4. Survival. The terms of Sections 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, Article II, Article III, Article IV, Article V and other sections of this Agreement which by their nature are intended to be applicable beyond the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.

6.5. Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one instrument. Copies of executed counterparts transmitted by telecopy, facsimile or other electronic transmission service (such as a pdf file) shall be considered original executed counterparts for purposes of this Section 6.5, provided receipt of copies of such counterparts is confirmed. This Agreement shall not be effective unless and until signed by all parties hereto.

6.6. Severability. If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than over breadth, the offending provision will be modified so as to maintain the essential benefits of the bargain among the parties hereto to the maximum extent possible, consistent with law and public policy.

6.7. Successors and Assigns. This Agreement shall be binding upon the respective successors and permitted assigns of the parties hereto. This Agreement shall not be assigned, delegated or otherwise transferred by a party without the prior written consent of the other parties and any attempt to so assign, delegate or transfer this Agreement without such consent shall be void and of no effect.

6.8. Further Assurances. Each party hereto shall execute and deliver such additional documents and perform such acts as are reasonably requested by the other parties in order fully to effect the intent of this Agreement.

6.9. No Joint Venture. Each of the parties hereto is an independent contractor with respect to this Agreement. Nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship between and among the parties hereto. No employee, agent, officer, director or other representative of any party shall, by reason of this Agreement, be considered (a) an employee of, or be entitled to employee or fringe benefits of, any other party or (b) as an agent or legal representative of any other party for any purpose. Without limitation of the foregoing, no party hereto is granted by this Agreement any right or authority to assume or create any obligation or responsibility or to make any representation or warranty, express or implied, on behalf of or in the name of any other party or to otherwise bind any other party in any manner.

6.10. Remedies Cumulative. The rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by applicable law.

6.11. Accounting and Financial Determinations. All accounting terms used herein shall be interpreted, and all accounting determinations and computations hereunder shall be made, using internationally accepted accounting principles, standards and practices consistently applied.

6.12. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, among the parties with respect to such subject matter are hereby superseded in their entireties.

[End of text; signature page follows]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

[NAME OF ADMINISTRATOR]

By _____
Name:
Title:

[NAME OF GRANT RECIPIENT]

By _____
Name:
Title:

Form of Instructions to the Administrator

[date]

[name of Administrator]

[address]

[attention]

Dear Sirs,

Reference is made to that certain Forest Conservation Agreement, dated as of [] (the "Forest Conservation Agreement") among the Government of the Republic of Guatemala ("GOG"), The Nature Conservancy ("TNC"), and Conservation International Foundation ("CI", and together with TNC, the "NGOs"). Capitalized terms used herein without definition have the respective meanings ascribed to them in the Forest Conservation Agreement.

In my capacity of Chairman of the Oversight Committee, I hereby instruct you as follows:

[insert relevant instructions]

Name: _____
Title Chairman of the Oversight Committee

Grant Making Criteria, Procedures and Prioritization

Pursuant to Section 5.2.8 of the Forest Conservation Agreement (to which this Schedule is annexed), Grants shall be used only for Authorized Purposes undertaken in, or which directly benefit, Forest Lands. To maximize the impact and benefit of Grants, the Administrator and the Oversight Committee will need to effectively prioritize the use of available funds. The following criteria shall be used to assess proposals for funding and shall serve as the basis for prioritizing and making funding decisions.

Conservation priority setting and planning is a dynamic, iterative and never ending process, where needs and actions may change as conditions change either positively or negatively (areas restored, protected or degraded and/or threats addressed or new threats emerge), and new information (e.g., on biodiversity and ecological processes) becomes available. Where current conservation/protected areas management plans, annual operation plans and strategies, national and regional systems of protected areas and conservation corridor landscape planning are found to be lacking, the Oversight Committee may solicit and fund proposals to develop and/or adjust landscape level conservation/management plans and/or business plans for the Forest Land regions to meet the criteria below.

Project Selection Criteria

All proposals for funding must meet the following four baseline project selection criteria:

1. Capacity and suitability of project proponent and proposal

- Strategic vision to produce conservation and sustainable deliverables to achieve the protection of natural resources.
- Administrative and technical capacity of the proponent related to the focus of the proposed project. Where local organizations lack sufficient administrative or technical capacity, the project shall include organizational strengthening and capacity building elements.
- Previous experience of proponent working in the region on the proposed activities.
- Ability to engage and generate effective support from other organizations, indigenous communities, local communities, local stakeholders, government authorities and other interested/impacted parties.
- Where conservation/management plans and strategies for protected areas, national or regional protected areas systems, and conservation corridors and landscapes exist and contain clear conservation targets and operational/action plans, they will guide the Oversight Committee on investment priorities.
- Where project activities carried out will directly affect the management of a public, private, municipal or communal protected area, the positive approval or endorsement of the local or national protected areas authorities is needed.

Projects will only be considered further where proponents are considered capable of undertaking the projects they propose, given the above listed criteria.

2. Justification, need and coherence of the proposed project

- Project demonstrates an understanding of, and addresses, conservation and sustainable needs and/or threats.
- Project outcomes respond to specific conservation needs or to the reduction of conservation threats. Where applicable, these should include improvement of quality of life of local communities

related to the sustainable use of, and equitable sharing of benefits from, natural resources linked to conservation targets.

- Assumptions and risks are identified and a plan for mitigation is defined.
- Costs are reasonable and coherent with proposed activities.
- Sustainability of project outcomes is effectively addressed.
- Strategic vision and long term deliverables addressed.
- Strong logical framework and deliverables has to be developed in the body of proposal.
- Strong alliances between the government agencies and key stakeholders has to be delivered by each project.
- Project has to show capacity to leverage funds from other sources (its not an obligatory need, but it will be a criteria to select projects).
- Projects located outside of Forest Land will not be considered.

Projects will only be considered further if they adequately address the above listed aspects.

3. Legal and policy screen.

- All projects will comply with the laws of the Government of Guatemala.

Projects will only be considered further if they adequately address the above-mentioned aspect.

4. Conservation Impact

Projects should meet at least three of the following criteria:

- Contribute to the conservation of globally threatened¹ or endemic² species, and their critical habitats;
- Contribute to the conservation of threatened or vulnerable natural ecosystems including applicable Key Biodiversity Areas (KBAs)³;
- Contribute to the conservation of species of importance in traditional knowledge systems;
- Contribute to reduced pressure on, or contribute to increased connectivity between, existing protected areas including their buffer zones;
- Contribute to the creation of new public, private, municipal or communal protected areas;
- Directly contribute to improved management of an existing public, private, municipal or communal protected area, and their conservation targets.

Prioritization

Once it is determined that a given proposal meets the four project criteria above, the following prioritization process shall be employed by the Oversight Committee to determine which of those eligible projects should be funded.

BIOLOGICAL PRIORITIZATION

Throughout, viable projects, according to the general criteria defined in articles 1, 2, 3 and 4 of this Schedule, will be compared against one another based upon their site priority for biodiversity conservation, analyzed as a function of:

¹ Species threat status according to the IUCN Red List, or national Red List where taxa have not been assessed globally. Priority ranking (most important first), as follows: CR, Critically Endangered; EN, Endangered; VU, Vulnerable.

² Endemism level is measured on the percentage of the species' global range in Guatemala: an endemic species is one that is considered to have $\geq 90\%$ of its global range in Guatemala.

³ As defined by the Center for Applied Biodiversity Science at Conservation International.

- **Representativity** geographic areas that serve to ensure there is representation of the full spectrum of ecoregions⁴ and KBAs across the protected area system;
- **Irreplaceability** the most irreplaceable sites are those that represent the single most viable population and/or greatest genetic diversity of a target species (globally threatened or endemic), ecoregions and natural ecosystems;
- **Urgency** geographic areas that represent an immediate conservation opportunity and/or have severe threats to ecoregions and natural ecosystems and endemic and/or threatened species; (emergency projects can be considered based on the kind of emergency and threat that represents);
- **Complementarity** geographic areas that are “most different” (measured by species, ecoregions or natural ecosystems) from sites already under conservation management within the protected area system; and
- **Functionality** geographic areas that are ecologically viable or have sufficient integrity to persist over long periods of time.

GEO-THEMATIC PRIORITIZATION

In addition to biological prioritization, proposals will be compared against one another based upon their geo-thematic priority, analyzed within the following framework⁵:

- A. **Within The Maya Biosphere Reserve:**
- In the Multiple Use Zone funds will be provided for:
 - Monitoring and evaluation of the management of each community concession,
 - Strengthening the technical, administrative and social processes of the integrated management plans,
 - Strengthening the ecological integrity of the Biological Corridors
 - In the Sierra Lacandón National Park and the eastern section of Laguna del Tigre National Park:
 - Strengthen administration and management, and reduce threats.
- B. **In The Volcanic Chain in the Western Highlands of Guatemala:**
- Projects related to community management and research that supports the improved management of the areas.
 - Projects related to management activities and forest protection.
- C. **In the Motagua-Polochic-Caribbean Coast System:**
- For protected areas management and to reestablish forest cover.
- D. **In the Cuchumatanes Region:** Conservation activities specifically focused on creating protected areas and conserving five priority species and their habitats as determined by the Alliance for Zero Extinction (AZE). These habitats are located in Todos Santos Cuchumatán, Cruz Maltín, Pepajau Magdalena and other areas.

SOCIAL AND INSTITUTIONAL PRIORITIZATION

Projects of high biological and geo-thematic priority, as described above, will be analyzed as a function of:

⁴ Using the The Nature Conservancy guidelines.

⁵ For all prioritization elements related to increasing effective management, the Oversight Committee shall use the following documents (as such documents may be updated or amended from time to time) as benchmarks: *Estrategia de Monitoreo del Manejo de las Áreas Protegidas del SIGAP* (including *Formulario de Reportaje de Campo*), *Serie de Coediciones Técnicas No. 14, CONAP*; and *Evaluación de Gestión del Sistema Guatemalteco de Áreas Protegidas, CONAP, 2002-2004*.

- **Good governance and participation** Projects that involve indigenous and local communities and relevant stakeholders in the planning, decision making, and management of existing and new protected areas and corridors. This includes participatory processes of territorial planning and management with all stakeholders, consistent with the policy to consolidate the Guatemalan SIGAP based on social participation;
- **Integration** Projects that aim for the integration of the area into broader conservation landscapes;
- **Sustainable use** Projects that consider development or implementation of sustainable use practices as a strategy for mitigation of conservation threats;
- **Coordination** Projects that include coordination between different proposals, initiatives and/or stakeholders, leading to appropriate management of the protected areas and corridors and enhancing linkage between them and between different regional protected area systems; and
- **Leverage** Projects that provide matching resources.

PARTICULAR PRIORITIZATION RELATING TO THE ENDOWMENT BASE AMOUNT

The Endowment Annual Net Interest on Two Million One Hundred Thousand Dollars (US\$2,100,000) of the Endowment (the "Endowment Base Amount") shall be available for Grants in accordance with the following prioritization:

A. First priority shall be applied to Grants to finance the recurrent costs of effectively managing new and/or expanded Protected Areas created between the date of execution of this Forest Conservation Agreement and the date the Endowment Account reaches the Endowment Base Amount. Such Protected Areas shall be located in Forest Land. It is anticipated that such new or expanded Protected Areas will occur in the Cuchumatanes and Volcanic Chain areas, but all new or expanded Protected Areas shall be eligible. For the avoidance of doubt, the documents set forth in Footnote 5 shall govern the determination of effective management.

B. In the event no new or expanded Protected Areas have been created before the Endowment Base Amount is on deposit in the FCA Endowment Account, the Endowment Annual Net Interest on the Endowment Base Amount may be used to finance Protected Area creation or expansion in Forest Land, with a particular focus on the Cuchumatanes and Volcanic Chain regions. In such event the Oversight Committee will finance the creation of Protected Areas only to the extent that such Endowment Annual Net Interest (combined with income from other sources, if applicable) is sufficient to finance the management of these new Protected Areas consistent with the effective management criteria set forth in the Estrategia de Monitoreo del Manejo de las Areas Protegidas del SIGAP, as such may be amended from time to time.

C. In the event that no new or expanded Protected Areas have been created by the date specified in section A. above and it is not feasible to support creation or expansion of Protected Areas as outlined above, the Endowment Annual Net Interest on the Endowment Base Amount shall be reinvested into the Endowment until such time as investment in one of the two priorities listed above becomes feasible.

The Project Selection Criteria and remaining Prioritization Criteria outlined in this Schedule 7 shall be applied in connection with any proposal submitted to receive a Grant with funds from the Endowment Annual Net Interest on the Endowment Base Amount; provided, however, that in the event of any conflict between the Particular Prioritization Relating to the Endowment Base Amount and any of the Project Selection Criteria and/or the remaining Prioritization Criteria, the Particular Prioritization Relating to the Endowment Base Amount shall control.

Procedures

During the six month period following the Closing, the Oversight Committee shall work closely with the Administrator to operationalize the grant making program provided for in the Forest Conservation Agreement.

Particular attention shall be given to the requirements set forth in Sections 6.11 and 6.7 and the Oversight Committee shall develop clear procedures for implementing these provisions.

SCHEDULE 8

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)	Rating
			<p>definition: "OC/B and its implementor" = The Oversight Committee/ Board and its Fund Administrator or Office of Executive Director.</p>		<p>Excellent (4); Acceptable (3); Needs Improvement (2); Unacceptable (1); NA</p>
A.	Implementation of Agreements		<p>A.1.1 The OC/B and its implementor become operational within one year from the signing of the agreements. A.1.2 The Fund, or other implementor of the TFCA agreement, is in compliance with all articles of the agreements, including the legal registry of the appropriate implementing bodies. A.1.3 The Fund, or other implementor of the TFCA agreement, completes, and makes accessible, annual audits, plans and reports as may be required in the agreements.</p>		
B.	Governance	Planning	<p>B.1.1 Within one year of January 1, 2005 or within one year of becoming operational, the OC/B has established a written strategic plan that includes (a) specific, key objectives, (b) a list, in order of importance, of conservation and funding priorities in order to meet those objectives, and (c) target dates for completion of objectives. B.1.2 The established goals & objectives complement plans/programs of others (eg. national environmental plans, donors, swap partners).</p>		

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)	Rating
			<p>B.1.3 The OC/B, or its implementors, have established all internal operational policies and procedures in accordance with normal business standards.</p>		
		Implementation	<p>B.2.1 The OC/B meets in accordance with the bilateral agreement with achieves a quorum at these meetings.</p>	<p>(info should include no. of meetings, no. of meetings at which quorum was achieved)</p>	
		Monitoring	<p>B.3.1 The OC/B evaluates, on an annual basis, progress toward the key objectives specified in the strategic plan, and implements any changes judged necessary to remedy deficiencies in meeting the key objectives.</p>		
			<p>B.3.2 Within one year of January 1, 2005 or within one year of becoming operational, the OC/B has established and implemented a monitoring and evaluation plan for determining the conservation impact of funded projects. OC/B monitors assessment of impact of projects.</p>	<p>(please provide details of monitoring and evaluation methodology, percentage of projects undergoing M&E; number of visits per project; results of monitoring, administrator/OC/B corrective actions as applicable).</p>	

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)	Rating
			B.3.3 The OC/B conducts an annual performance review of institutional management (itself, the implementors, and, if applicable, the Trustee or Investment Manager).		
C.	Grant Management	Planning	C.1.1 The percentage of total funds paid into the Foundation or Fund (or other vehicle established to receive payments resulting from the Forest Conservation Agreement) disbursed as grants annually, is at a reasonable level.		
		Implementation	C.2.1 Request for Applications (RFAs), or other grant solicitation mechanisms used, are undertaken on a schedule consistent with an OC/B approved expenditure plan, if applicable, and widely publicized (if competitive). (Please specify publication method, frequency, and number of grant applications received). C.2.2 Grant processing, including fund disbursement periods, is maintained within reasonable targeted timeframes.		
		Monitoring	C.3.1 Grant agreements require reporting on the conservation impact of project. C.3.2 The OC/B has a policy on the need for, and the frequency of, financial audits of grant recipients. C.3.3 Implementor ensures that all necessary grant recipient financial audits and/or impact reports are submitted as required by agreements. C.3.4 The OC/B, through its implementors, ensures periodic on-site reviews of grant projects.		
				(e.g. number of active projects, number of active projects receiving site inspections,	

Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate) and number of site inspections per project).	Rating
D. Financial Management	Planning	<p>D.1.1 The OC/B has established a financial plan (complete with budgets, forecasts of income and expenditures).</p> <p>D.1.2 As appropriate, the OC/B has established a written investment policy (guidance for the implementor or fund manager).</p>		
	Implementation	<p>D.2.1 The administrative costs were kept within the limits established by the bilateral agreement or its amendments during the last fiscal year.</p> <p>D.2.2 The OC/B has established, as appropriate, in-house or outsourced investment monitoring capabilities (separate from the Investment Manager).</p> <p>D.2.3 Assuming fund sustainability beyond the life of the TFCA agreement is an objective, the fund has diversified its sources of revenue (fund raising).</p>		
<p>Note: These criteria represent targets that TFCA programs should aim to reach for most effective implementation; however, they do not necessarily represent legal obligations of parties to the underlying agreements.</p>				

Form of Opinion of the Attorney General of Guatemala

[Closing Date]

Deputy Assistant Secretary for International
Development, Debt and Environment Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220 U.S.A.

Conservation International Foundation
1919 M Street NW, Suite 600
Washington, D.C. 20036 U.S.A.

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, Virginia 22203-1606

Ladies and Gentlemen:

I, [name], Attorney General of the Government of Guatemala (the "GOG"), render this opinion in connection with the execution and delivery by the GOG of (a) the Agreement Between the Government of the United States of America and the Government of Guatemala Regarding a Debt-For-Nature Swap to Prepay and Cancel Certain Debt Owed by the Government of Guatemala to the Government of the United States of America, dated as of [], 2006 (the "Debt Swap Agreement"), and (b) the Forest Conservation Agreement, dated as of [], 2006 (the "Forest Conservation Agreement") among Conservation International Foundation, a non-profit public benefit corporation organized under the laws of California in the United States of America ("CI"), The Nature Conservancy, a nonprofit corporation organized under the laws of the District of Columbia in the United States of America ("TNC"), and the GOG. The Debt Swap Agreement and the Forest Conservation Agreement are herein referred to collectively as the "Debt Swap Documents." Capitalized terms used herein without definition have the respective meanings ascribed thereto in the Debt Swap Documents.

For the purposes of this opinion, I have examined the following:

- (i) The Constitution of the Republic of Guatemala of [1985] (the "Constitution");
- (ii) The executed Debt Swap Documents;
- (iii) The executed Swap Fee Contractual Agreement Among the Government of the United States of America, CI and TNC, dated as of [], 2006 (the "Swap Fee Contractual Agreement");

(iv) The U. S. Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended (the "TFCA");

(v) Evidence that there have been granted all appropriate authorizations, approvals, licenses and consents which may be necessary to authorize the GOG to perform all actions necessary on its part to implement the provisions of the Debt Swap Documents, and that the same are in full force and effect, as of the date hereof; and

(vi) All such other laws, regulations, orders, instruments and documents as I have deemed necessary or appropriate for the purpose of giving this opinion.

This opinion is confined to the facts known or made known to me as of the date hereof and to the laws of Guatemala in existence at the date hereof and I do not assume any obligation to update this opinion or to inform you of any changes to facts or law. Other than my examination of the TFCA, I have made no investigation of the laws of the United States of America or of any jurisdiction other than Guatemala as a basis for this opinion and do not express or imply any opinion thereon. I have assumed that there is nothing in the laws of any jurisdiction other than Guatemala that affects this opinion.

In giving this opinion, I have assumed, without independent investigation: (i) the genuineness of all signatures (other than those on behalf of the GOG), the authenticity of all documents submitted to me as originals and the conformity to the originals of such documents submitted to me as copies; (ii) the due organization, existence and good standing of all parties to the Debt Swap Documents other than the GOG; and (iii) that the Debt Swap Documents are legal, valid, binding and enforceable against the parties thereto in accordance with their respective terms under, and comply in all material respects with, the laws of all relevant jurisdictions outside of Guatemala.

Based on and subject to the foregoing, I am of the following opinion:

1. The GOG, acting through the Ministry of Finance, has full power and authority to incur the obligations set forth in the Debt Swap Documents, to execute and deliver the Debt Swap Documents, to comply with the provisions thereof, and to perform the obligations expressed to be binding upon it in the Debt Swap Documents.

2. The Ministry of Finance of the has full legal right, power and authority to pledge the full faith and credit of the GOG under the terms of the Debt Swap Documents and when executed and delivered by the GOG, the Debt Swap Documents will constitute the direct, general and unconditional obligations of the GOG for which the full faith and credit of the GOG is pledged and the payment obligations of the GOG under the Debt Swap Documents will rank *pari passu* in right of payment with all other unsecured and unsubordinated Indebtedness of the GOG. For purposes of this opinion, "Indebtedness" means any payment obligation (whether pursuant to a guarantee or otherwise), including any contingent liability, for borrowed money or arising from bonds, debentures, notes or similar instruments. The Debt Swap Documents constitute legal, valid and binding obligations of the GOG, enforceable in accordance with their respective terms.

3. The agreements of the GOG in Section 12.2 of the Forest Conservation Agreement:

- a. not to raise any defense that it could not raise but for the fact that it is a sovereign state, in any arbitration proceedings or judicial proceedings for the recognition, confirmation or enforcement of any award rendered in arbitration under such Section 12.2 (or proceedings, within the scope of Section 1610(a) of the Foreign Sovereign Immunities Act of 1976 of the United States of America, for attachment in aid of execution upon a judgment); and
- b. to submit to binding arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States;

are legal, valid, binding and enforceable under Guatemalan law and there is no legal or administrative impediment to the GOG entering into such agreements.

4. The GOG is subject to civil and private commercial law with respect to its obligations under the Debt Swap Documents. The making and performance by the GOG of the Debt Swap Documents constitute private and commercial activities rather than governmental or public activities. Neither the GOG nor any of its property, assets or revenues enjoys any right to immunity, on the grounds of sovereignty or otherwise, from the service of process or jurisdiction or any judicial proceedings of any competent court located in Guatemala or from execution of any judgment in Guatemala or from the execution or enforcement therein of any arbitration decision in respect of any proceeding or any other matter arising out of or relating to its obligations under the Debt Swap Documents.

5. The choice of law of the State of New York, United States of America as the governing law of the Forest Conservation Agreement is a legal, valid, binding and enforceable choice of law under the laws of Guatemala and will be recognized and given effect to by the courts of Guatemala.

6. The execution and delivery of the Debt Swap Documents, the performance by the GOG of its obligations thereunder and compliance by the GOG with the terms thereof, have been duly authorized under the laws of Guatemala and by all necessary actions of the GOG and do not as of the date hereof:

- a. violate any provisions of any constitutional provision, law, rule, regulation, order, judgment, injunction, decree, resolution, determination or award of any court or any judicial, administrative or governmental authority having the requisite jurisdiction over the GOG;
- b. conflict with or result in a breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, any agreement or other instrument which conflict, breach or default will be likely to impair the performance by the GOG of its obligations under the Debt Swap Documents; or
- c. constitute any arrangement that will create or result in any lien, pledge, mortgage, charge or other encumbrance or security interest on the whole or any part of

the property or assets of the GOG, as security in respect of any obligation of the GOG in respect to any unsecured and unsubordinated Indebtedness.

7. The officials of the GOG executing the Debt Swap Documents and all documents required to be delivered thereunder are duly authorized to execute and deliver the same for and on behalf of the GOG.

8. As far as I am aware, the GOG is not in default under any constitutional provision, law, rule, regulation, order, judgment, injunction, decree, resolution, determination or award as is referred to in Paragraph 6(a) of this opinion, nor is the GOG in default under any agreement, instrument, arrangement or obligation as is referred to in Paragraphs 6(b) or (c) of this opinion, in any such case being a default which could reasonably be expected to have a material adverse effect on the GOG's ability duly to perform its obligations under the Debt Swap Documents.

9. It is not necessary or advisable in order to ensure the legality, validity, enforceability or admissibility in evidence of the Debt Swap Documents in Guatemala that the Debt Swap Documents or any other agreement, document, notice or instrument be filed, recorded, registered, authenticated, legalized or enrolled with any court or authority in Guatemala or that any stamp, registration or similar tax be paid on or in relation to the same.

10. All acts and conditions required to be done and performed by the GOG, and all consents, approvals, exemptions and other requirements of the governmental authorities in Guatemala required to be obtained or satisfied for the execution and performance of the transactions contemplated by the Debt Swap Documents in order to make the obligations of the GOG thereunder valid, binding or enforceable in accordance with their respective terms have been done, performed, obtained and satisfied in compliance with the laws of Guatemala and all applicable regulations and regulatory requirements, and are in full force and effect.

11. There is no litigation or administrative proceeding before any court or governmental authority or agency or tribunal pending (or to my knowledge threatened) to enjoin or restrain the execution or performance by the GOG of any of the Debt Swap Documents or to challenge the validity of the Guatemalan laws and proceedings under which any of the Debt Swap Documents have been or are to be executed, performed or enforced.

12. No consents, licenses, approvals or authorizations of, or declarations to, governmental authorities or agencies are required under the laws of Guatemala, other than those already obtained to implement and make effective the arrangements contemplated by the Debt Swap Documents.

13. The Debt Swap Documents are in proper legal form under the laws of Guatemala for the enforcement thereof against the GOG.

14. Neither the execution and delivery of the Debt Swap Documents and the Swap Fee Contractual Agreement by the parties thereto, nor the receipt and/or investment by the Trustee of the Payments (and any interest, income or capital gains paid or received in connection therewith) (collectively, "FCA Income"), the holding of any FCA Income by the Trustee or the Administrator, or the payment by the Administrator of FCA Income to any Grant Recipient

pursuant to the Forest Conservation Agreement, result, under the laws of Guatemala, in any income tax, customs duties, property tax, stamp duty, transfer tax or other taxes, duties or imposts imposed by the GOG or any of its departments or subdivisions, other than the following taxes, to the extent applicable under current law: (a) a 12% Value Added Tax, which is payable on the purchase of goods and services, it being understood that Grants to Grant Recipients are not considered to be taxable purchases of goods and services, and (b) a 10% financial products withholding tax on the interest earned in funds in the Accounts. For the avoidance of doubt, the opinion set forth in this Paragraph 14 does not extend to any assessments, taxes, levies, fees or other charges that may be incurred by a Grant Recipient making an expenditure of FCA Income in the ordinary course of business.

15. There is no constitutional provision, statute, law, rule, regulation, ordinance, code, order, decision, injunction, judgment, award or decree currently in effect which could reasonably be expected to limit the power, authority or independence of the Oversight Committee or otherwise frustrate the purposes of the Debt Swap Documents or the Swap Fee Contractual Agreement.

I am qualified to practice law in Guatemala and I do not purport to be an expert on, or to express any opinion herein concerning any laws other than the laws of Guatemala as in effect on the date hereof. For the purpose of rendering my opinion in the third sentence of paragraph 2 above, I have assumed that the laws of the State of New York are the same as the laws of Guatemala.

This opinion speaks as of the date hereof, is given pursuant to Section 3.2.1 of the Forest Conservation Agreement solely for the benefit of USG, CI and TNC and may not be relied on by any other person.

Very truly yours,

Attorney General
Government of the Republic of Guatemala