

**Grant Agreement  
Borjomi Kharagauli National Park**

Dated November 2, 2009

**PREAMBLE**

This Grant Agreement (the “Agreement”) is made and entered into as of the 2<sup>nd</sup> day of the month of November, 2009, by and between:

- (a) The Caucasus Protected Areas Fund (“CPAF”), a foundation (*Stiftung*) established under the laws of Hessen, Germany; and
- (b) The Ministry of Environment Protection and Natural Resources of Georgia (the “Ministry”), and the Public Law Body of the Ministry--Agency of Protected Areas (the “Agency”)

(each of the CPAF and the Ministry and the Agency a “Party”, and collectively, the “Parties”).

**RECITALS**

WHEREAS, the Ministry, the Agency and the CPAF have entered into a Framework Agreement, dated December 5, 2008, which contemplates, among other things, grants by the CPAF to certain Protected Areas in Georgia to finance Covered Costs, as defined in the Framework Agreement.

WHEREAS, the Ministry, the Agency, and the Administration Unit that manages Borjomi-Kharagauli National Park (“BKNP”) in Georgia (the “BKNP Unit”) applied for such a grant initially by application dated June 16 2009, and the Application was re-submitted and dated August 17, 2009, in response to comments received from the CPAF (the re-submitted Application, including the Preliminary Operating Plan for 2010-2012 (the “Initial Operating Plan” and, insofar as it relates to 2010, the “Preliminary 2010 Operating Plan”) and Preliminary Budget for 2010-2012 (the “Initial Budget” and, insofar as it relates to 2010, the “Preliminary 2010 Budget”) forming part thereof is herein referred to as the “Application”);

WHEREAS, such grant will be used exclusively for the benefit of BKNP and the other protected areas administered by the BKNP Unit as identified in the Application (the “PPA”);

WHEREAS, the Board of the CPAF approved the Application and the grant to be made pursuant to this Agreement at its meeting on October 26, 2009; and

WHEREAS, the Parties wish to enter into this Agreement to establish the terms and conditions of the proposed grant.

NOW, THEREFORE, the Parties hereby agree as follows:

§ 1. Agreement Term

This Agreement shall be effective on the signing thereof and, except for the provisions that expressly survive the expiration hereof, shall expire on December 31, 2012, unless sooner terminated in accordance with this Agreement.

§ 2. Defined Terms; Representation and Joint Accountability.

Certain of the capitalized terms used in this Agreement and not defined herein shall have the definition set forth in the Framework Agreement, or in the Application. The Ministry and the Agency represent and

warrant to the CPAF that the Application is accurate and complete and does not omit any information that would be material to understanding the operations and financing needs of the BKNP Unit. The Ministry and the Agency shall be jointly and severally accountable to the CPAF for fulfillment of the commitments and obligations set forth in the Application and set forth in this Agreement.

### § 3. Grant.

#### 3.1 General.

The recipient of the Grant shall be the Agency. The CPAF hereby grants to the Agency, for exclusive use in financing Covered Costs in the budget of the PPA (as administered by the BKNP Unit) for the calendar years 2010-2012 as contemplated by the Application, the sum of up to Euro 276,800 (the "Grant"), of which Euro 246,800 will be available for disbursement as described under Section 4 and Appendix A, and Euro 30,000 (Euro 10,000 annually for the calendar years 2011-2013) will be set aside by the CPAF to cover the costs of audit as described under Section 7. It is agreed and understood that Grant funds may be provided, in the discretion of the CPAF, in whole or in part directly by it or indirectly through a third party donor arranged by the CPAF.

As used herein, the term "First Grant Year" shall mean calendar year 2010, the term "Second Grant Year" shall mean calendar year 2011, the term "Third Grant Year" shall mean calendar year 2012, and the term "Grant Year" shall mean one of such years.

#### 3.2 Budgets and Operating Plans.

Grant funds shall be disbursed to the Agency only the basis of Approved Budgets and Approved Operating Plans as described below.

##### 3.2.1 Preliminary Operating Plans and Preliminary Budgets.

- (1) As noted above in the Recitals, the Preliminary 2010 Operating Plan and the Preliminary 2010 Budget form part of the Application.
- (2) By July 31 of the First and Second Grant Years, the Agency shall submit to the CPAF:
  - A Draft Operating Plan for the following Grant Year, and an explanation of any significant changes between such Plan and the Initial Operating Plan; and
  - A Draft Preliminary Budget for the following Grant Year, and an explanation of any significant variances between such Budget and the Initial Budget contained in the Application.
- (3) In the event that the Draft Operating Plan or Draft Preliminary Budget for a following Grant Year does not contain any changes from the operating plan or budget planned for such following Grant Year contained in the Initial Operating Plan or the Initial Budget, as the case may be, that in the CPAF's judgment are material, such Draft Operating Plan or Draft Preliminary Budget shall become the "Following Year Preliminary Operating Plan" or "Following Year Preliminary Budget". Notwithstanding the foregoing, the Parties acknowledge that the allocation of CPAF funds to vehicle purchases in 2011 and 2012 is preliminary and subject to mutual agreement in connection with the review of the 2011 Draft Preliminary Budget.
- (4) In the event that the Draft Operating Plan or Draft Preliminary Budget for a following Grant Year contains changes from the operating plan or budget planned for such following Grant Year contained in the Initial Operating Plan or the Initial Budget that in the CPAF's judgment are material, the CPAF and the Agency shall use their reasonable best efforts to agree a revised Draft Operating Plan and a revised Draft Preliminary Budget for the following Grant Year that take into account such changes, and if they so agree, such revised Draft Operating Plan and revised Draft Preliminary Budget shall become the "Following Year Preliminary Operating Plan" or "Following Year Preliminary Budget".

For the purposes hereof, the Preliminary 2010 Operating Plan and the Preliminary 2010 Budget, in respect of the year 2010, and the Following Year Preliminary Operating Plan and Following Year Preliminary Budget, determined in respect of a following Grant Year as provided above, each shall be referred to as a “Preliminary Operating Plan” or a “Preliminary Budget”, as the case may be.

### 3.2.2 Approved Operating Plans and Approved Budgets

- (1) The Agency and the Ministry shall use their best efforts to ensure that the Preliminary Operational Plan for a given Grant Year is adopted as the Operating Plan of the PPA for such Grant Year and that the Preliminary Budget for a given Grant Year is included in the budget for the entire PA system as proposed to the parliament. In addition, the Ministry and Agency, in course of submission of the budget of the Ministry, shall apply the Ministry of Finance in order to ensure that the Grant is reflected in an organizational code specifically dedicated to the given Grant.
- (2) Promptly after the Operating Plan for the relevant Grant Year has been officially adopted and the budget for the relevant Grant Year has been enacted into law, the Agency shall notify the CPAF of such approval or enactment and as to whether there have been any changes from the Preliminary Operating Plan or the Preliminary Budget. In the event that the Preliminary Operating Plan or Preliminary Budget of the PPA for the Grant Year has been adopted without any change which, in the judgment of the CPAF, is material, the operating plan and budget so adopted or enacted shall become the “Approved Operating Plan” and the “Approved Budget” for the relevant Grant Year for purposes of this Agreement. In the event that during the approval and legislative processes there have been changes to the Preliminary Operating Plan or the Preliminary Budget which the CPAF deems to be material, the CPAF and the Agency shall use their reasonable best efforts to agree a revised Operating Plan and a revised Budget for the relevant Grant Year that take into account such changes, and if they so agree, such revised operating plan and revised budget shall become the “Approved Operating Plan” and the “Approved Budget” for the relevant Grant Year for purposes of this Agreement.
- (3) If applicable, in respect of any Grant Year, prior to the CPAF’s disbursement of Grant funds for such year, the Agency shall provide the CPAF with a copy of any official document or schedule of the Agency other than the Preliminary Operating Plan or the Preliminary Budget which sets forth the Approved Operating Plan or the Approved Budget for the PPA for such Grant Year.

### 3.2.3 Budget Calendar

If applicable, in respect of any Grant Year, prior to the CPAF’s disbursement of Grant funds for such year, the Agency shall provide the CPAF with a calendar setting forth the scheduled funding of the PPA from non-CPAF sources (excluding regular payments by the Agency of PPA expenses) for the Grant Year.

### 3.2.4 Changes to Budgets and Operating Plans

- (1) The Agency shall be entitled to carry forward any unused funds from a current Grant Year to the subsequent Grant Year, subject to Section 10 and to the following conditions: (i) the Preliminary Budget and the subsequent Approved Budget for the following Grant Year must explicitly reflect any unspent Grant funds carried over from one Grant Year to the next Grant Year; and (ii) any carry-over in excess of Euro 3000 shall be considered a material change and subject to the provisions of Section 3.2.1(4) above.
- (2) The Agency shall request prior approval from the CPAF for any of the following:
  - Any material change to the Approved Operating Plan during any Grant Year.
  - Re-budgeting from or to any Approved Budget line item or items in an amount (individually or in the aggregate) greater than 3000 Euros in the aggregate in any Grant Year.

- Use or obligation of Grant funds in a future Grant Year to pay or incur costs relating to a preceding Grant Year.

Subject to the foregoing, the Agency shall be entitled to make changes to the Approved Budget or the Approved Operating Plan provided that it promptly informs the CPAF of such changes.

#### § 4. Disbursements.

##### 4.1 General.

- (1) Disbursement of the Grant in each Grant Year shall be in tri-annual installments as provided in Appendix A to this Agreement (“Disbursement Conditions and Schedule”), and each disbursement will be subject to the terms and conditions of this Agreement, including those set forth in the Disbursement Conditions and Schedule. All disbursement of the Grant installments shall be subject to the Ministry, the Agency, and the BKNP Unit’s satisfactory performance under this Agreement (as determined by the CPAF in its sole discretion).
- (2) As set forth in the Disbursement Conditions and Schedule, each disbursement request shall be for an “Authorized Advance Amount” (as defined in such Schedule). The Authorized Advance Amount includes the Agency’s good faith estimate of spending of Grant funds in the relevant 4 month period plus a cushion. In the event that, on more than two occasions during the term of the Grant, at least 85% of the good-faith estimate (excluding the cushion) is not spent in the 4 month period to which the disbursement request relates, the CPAF and the Agency shall consult as to the reasons for this. In the event that the CPAF is not satisfied, in its sole discretion, with the explanations received, it shall be entitled to reduce subsequent disbursements as it deems appropriate.

##### 4.2 Grant and Disbursement Currency.

The Grant is denominated in Euro. Within 30 calendar days after determination of the Approved Budget for a given Grant Year and notification to the CPAF thereof in accordance with Section 3.2.2(2), the CPAF shall convert the Grant to the Agency in respect of such Grant Year into Georgian currency (GEL) and advise the Agency of the relevant amount available to it in GEL. From the date of such conversion, the CPAF’s obligation to support the budget under the Grant shall be expressed in the relevant amount of GEL, and the budget for the relevant Grant Year shall be adjusted as necessary to reflect the relevant GEL amount. The CPAF will not contribute additional funds to the Grant or supplement the budget on account of fluctuations in currency exchange rates.

##### 4.3 Payment Mechanics

The Ministry and the Agency shall apply to the Ministry of Finance so that the Ministry of Finance creates a separate organizational treasury code for the Agency that shall be dedicated exclusively to receiving and disbursing the Grant from CPAF. The Ministry and the Agency will notify to the CPAF details of such treasury code of the Agency to which payment of the Grant funds shall be made.

#### § 5. Covenants.

##### 5.1 Reporting

The Agency and the BKNP Unit shall provide written reports to the CPAF on PPA operations, in each case certified and signed by the director of the BKNP Unit, the Agency Head and the “Ministry”. The written reports shall include the following:

- (1) By December 10 of the First, Second and Third Grant Years, a progress report on achievement of

operational, conservation, and other goals contained in the Management Plan and in the Operating Plan for the PPA.

- (2) Within five (5) months of the end of each Grant Year, an annual statement of revenues and expenses for such year, in the form contained in the Approved Budget and audited as provided below, and containing an explanation of any significant variations from the Approved Budget.

The Ministry and the Agency represent and warrant that all reports submitted pursuant to this Section shall be true, complete, and accurate.

## 5.2 Adoption of Management Plan.

The Ministry and the Agency shall cause a Management Plan to be adopted for the BKNP Unit meeting the requirements of the Annex to the Framework Agreement and otherwise satisfactory to the CPAF not later than June 30, 2011. On the terms and subject to the conditions of the Framework Agreement, and subject to the availability of funds, the CPAF anticipates financing 50% of the "Plan Development Costs" related to the preparation of such Management Plan.

## § 6. Record Retention and Access.

### 6.1 Record Retention.

The Ministry, the Agency, and the BKNP Unit shall retain all records relating to this Agreement for a period of at least three (3) years after the expiration date of this Agreement, with any extensions thereof, or for such longer period(s) as may otherwise be required by applicable law.

### 6.2 Access.

The Agency and the BKNP Unit shall afford reasonable access to the CPAF and its representatives (including third parties retained by the CPAF) to: (i) all relevant financial and other records of the Agency and the BKNP Unit in order to permit the CPAF to properly audit the annual statement of revenues and expenses of the PPA, and (ii) technical, scientific and operational records of the BKNP Unit in order to evaluate the fulfillment of operational and conservation goals and the effective use and management of funds.

## § 7. Cooperation.

### 7.1 General

The Ministry, the Agency, and the BKNP Unit shall cooperate with:

- (1) Auditors appointed by the CPAF to audit the statement of revenues and expenses of the PPA at least annually so that the CPAF receives audited financial statements of the PPA within five (5) months of the end of each Grant Year. The audit of the financial statements shall cover all PPA revenues and expenditures, including those not financed with the CPAF funds.
- (2) Any technical advisers or other representatives that the CPAF may designate from time to time to evaluate the effectiveness of management, the achievement of the Management Plan and Operating Plan, achievement of conservation, operational, or other goals, and/or overall implementation of the Operating Plan or the Management Plan.

### 7.2 Site Visits.

For purposes of this Section 7, the CPAF or its authorized representatives shall have the right, with reasonable advance notice, to conduct site visits, meet with Ministry, Agency, and PPA personnel, and

view any materials, equipment, tools, or supplies purchased under this Agreement, and any books, documents, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda relating to performance under this Agreement. The CPAF or its authorized representatives shall have the right to reproduce any such records. The Ministry, the Agency, or the BKNP Unit's failure to provide such access shall constitute a material breach of its obligations under this Agreement.

### 7.3 Costs

Reasonable fees and costs associated with the CPAF's auditors, technical advisors, or authorized representatives shall be paid from Grant funds supplied by the CPAF and separately earmarked by the CPAF for such purpose.

## § 8. Grant Termination.

### 8.1 General Termination Rights.

The CPAF, in its sole discretion, shall have the right to terminate this Agreement on not less than one (1) year notice at any time if it determines, in its sole discretion, that:

- (i) it is unable to attract funds from donors or otherwise no longer has the means to continue funding the Grant as originally contemplated; or
- (ii) the Ministry, the Agency, or the BKNP Unit is not pursuing, either in the PPA covered by this Agreement, or in PPAs in Georgia generally, conservation objectives that are consonant and consistent with the Caucasus Eco-Regional Plan.

8.1.1 Furthermore, the CPAF may immediately terminate this Agreement if it determines, in its sole discretion, that termination is required for reasons of fraud, misconduct, improper use of funds, intentional misrepresentation in reports or submissions to the CPAF, or health and safety reasons.

8.1.2 The Ministry or the Agency may terminate this Agreement at any time in their sole discretion in respect of any Grant Year by notice given at least 6 months prior to the beginning of such Grant Year.

### 8.2 Specific Termination Rights.

The CPAF may terminate this Agreement if,

(i) during the period of 90 calendar days following the submission to the CPAF of a Draft Operating Plan or Draft Preliminary Budget for the relevant Grant Year pursuant to Section 3.2.1(4) that contains material changes from the Initial Operating Plan or the Initial Budget for such Grant Year, the Parties shall have failed to agree upon a Preliminary Operating Plan or a Preliminary Budget for such Grant Year, or

(ii) during the period of 90 calendar days following notification to the CPAF in accordance with Section 3.2.2(2) that the budget or the operating plan for the relevant Grant Year as approved by the government or enacted into law contains material changes from the Preliminary Operating Plan or the Preliminary Budget for such Grant Year, the Parties shall have failed to agree upon an Approved Operating Plan or an Approved Budget for such Grant Year

(iii) A Management Plan shall not have been timely adopted for the PPA in accordance with Section 5.2.

## § 9. Procurement.

All procurement of goods and services under this Agreement shall be conducted in a manner to provide, to the maximum extent practical, open and free competition, in accordance with all applicable laws. In addition:

- (i) Taxes under the applicable Georgian legislation relating to the activities covered by this Agreement, including value added taxes (VAT) associated with the purchase of goods and services under this Agreement, and customs duties associated with imports of goods or services from outside Georgia shall not be paid with grant funds.
- (ii) No person involved in the selection, award, or administration of a procurement contract under this Agreement, and no member of the person's family, may have a financial interest in the vendor, solicit or accept gratuities or special favors from the vendor, or receive any personal financial benefit in connection with the procurement.
- (iii) Unless otherwise approved by the CPAF, all financial conflicts of interest (whether associated with procurement contracts or otherwise) are prohibited under this Agreement. A financial conflict of interest is defined as a situation in which financial or other personal considerations of an individual or an individual's family member may directly or indirectly affect, or have the appearance of affecting, an individual's professional judgment in exercising any duty or responsibility in connection with this Agreement.

#### § 10. Unspent/Misused Funds.

The Ministry and the Agency, and the BKNP Unit shall promptly return to the CPAF any Grant funds that are unspent and unobligated at the end of this Agreement. Furthermore, in the event that the CPAF determines that funds have been used for purposes not contemplated by this Agreement, the equivalent amount of any such funds shall be promptly refunded by the Ministry or the Agency to the CPAF following such determination by the CPAF.

#### § 11. Future Ineligibility.

If Grant funds are used for purposes not contemplated in this Agreement, the BKNP Unit or the Party or Parties responsible for use of funds for purposes not contemplated by this Agreement, as determined by the CPAF in its discretion, shall be ineligible for further grants from the CPAF for a period to be determined by the Board.

#### § 12. Miscellaneous.

12.1 Compliance with Law and Policies. The Ministry, the Agency, and the BKNP Unit shall comply with all Georgian applicable laws and regulations, and with its own policies and procedures, in the performance of this Agreement.

12.2 Governing Law. This Agreement shall be construed in accordance with the terms and conditions set forth herein, and the laws of Germany, without regard to principles of conflicts of law.

12.3 Language. This Agreement shall be entered into in the English and Georgian languages in three counterparts. In case of discrepancies between the English and the Georgian version the English version shall prevail. The language of all communications in connection with this Agreement shall be English.

12.4 Dispute Resolution. The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of this Agreement. If any such dispute cannot be settled amicably through ordinary negotiations by the authorized representatives of the Parties, the state court (*Landgericht*) in Frankfurt am Main will have exclusive jurisdiction over all disputes arising under this Agreement, and the Agency and the Ministry hereby waive any claims to sovereign immunity for purposes of such proceedings and the enforcement of any judgment.

12.5 Liability and Indemnification. Neither the CPAF nor any officer, director, trustee, employee, or agent of any of the foregoing, shall have any liability to the Ministry, the Agency, or the BKNP Unit, or any

other entity or person for any claim, loss, damage, or injury incurred in the course of the performance of this Agreement or otherwise in connection therewith, other than, in the case of the CPAF, the obligations of the CPAF stated in this Agreement or arising from the CPAF's willful misconduct. The Ministry and the Agency shall indemnify, hold harmless, and defend the CPAF, and each or any officer, director, trustee, employee, or agent of any of the foregoing, and their respective successors and assigns, from and against any and all claims, demands, and actions, and from any and all liabilities, all nature of damages, and expenses (including reasonable attorneys' fees and litigation costs) resulting therefrom, arising out of, or related to, this Agreement or the representations or certifications made herein by the Ministry, the Agency, or the BKNP Unit.

12.6 Notices. Any notices, authorizations, approvals, or other communications concerning this Agreement shall be in writing. Unless otherwise provided, all communications shall be sufficient when delivered in person, or sent by facsimile, or by certified or registered air mail or international courier, to

**Caucasus Protected Areas Fund**

c/o Dr. H. Gärtner/Steuerberater  
Attention: Executive Director  
Tulpenhofstr. 18  
63067 Offenbach  
Germany  
Fax: +331 45 55 4859

**Ministry of Environment Protection and Natural Resources of Georgia**

Attention: Minister  
6, Gulua Street  
0114 Tbilisi, Georgia  
Fax: +995 727237

**Agency of Protected Areas of Georgia**

Attention: Chairman  
6, Gulua Street  
0114 Tbilisi, Georgia  
Fax: +995 752353

12.7 Partial Invalidity; Severability Clause. Should any term or condition of this Agreement be determined to be unlawful by a court of law or adjudicative body with jurisdiction over the Parties, the remaining terms and conditions of the Agreement will continue to remain in force and effect and shall be interpreted so as to best effect the original intentions of the Parties.

12.8 Amendments. Any amendments to this Agreement shall be valid only if made by mutual written agreement by the Parties.

12.9 Entire Agreement. Consistent with Section 2, this Agreement comprises the entire agreement between the Parties concerning its subject matter and shall supersede all prior agreements, oral and written declarations of intent and other legal arrangements (whether binding or non-binding) made by the Parties in respect thereof. The provisions of this Agreement shall take precedence over any inconsistent statement in the Framework Agreement or in the Application.

12.10 Force Majeure. If any Party is rendered unable, wholly or in part, by force majeure, to perform its obligations under this Agreement, the performance of such obligations by such Party, so far as they are affected by force majeure, shall be excused from the inception of any such inability until it is corrected, but for no longer period. The Party claiming an inability to perform shall immediately after the occurrence of the force majeure, notify the other Parties verbally of the nature, date of inception, and expected duration of the force majeure, and the extent to which it will prevent the Party giving such notice from performing

its obligations under this Agreement. The Party giving notice shall confirm such notification in writing as soon as practicable. The Party claiming inability to perform shall promptly correct such inability to the extent it may be corrected through the exercise of reasonable diligence. The term “force majeure” shall mean any act, event, cause, or occurrence rendering a Party unable to perform its obligations which is not within the reasonable control of such Party, excluding any act, event, cause, or occurrence caused by a Party’s own financial condition or negligence.

12.11 Publicity. Should the Ministry, the Agency, or the BKNP Unit desire to publish or release any publicity or materials of any kind concerning or relating to this Agreement or work performed hereunder, such material shall be submitted to the CPAF for review. Except as otherwise provided in this Agreement, neither the Ministry, the Agency, nor the BKNP Unit will use the name or logo of the CPAF in any press release or product advertising, or for any other promotional purpose, without first obtaining the written consent of the CPAF.

12.12 No Third Party Rights. Unless explicitly stated in this Agreement, this Agreement is not intended to create and does not create any rights in or benefits to any third party.

12.13 No Joint Venture or Partnership. The Ministry, the Agency, and the BKNP Unit shall be considered independent contractors for purposes of this Agreement. Nothing in this Agreement shall constitute a legal partnership or joint venture or establish a relationship of agency between the Ministry, the Agency, or the BKNP Unit, and the CPAF.

12.14 No Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the consent of other Party.

12.15 Waiver of Default or Breach. Failure of a Party to exercise any of its rights under this Agreement shall in no way constitute a waiver of those rights, nor shall such failure excuse the other Party from any of its obligations under this Agreement. No benefit or right accruing to any Party under this Agreement shall be waived unless the waiver is reduced to writing and signed by each Party. The waiver, in one instance, of any act, condition, or requirement stipulated in this Agreement shall not constitute a continuing waiver or a waiver of any other act, condition, or requirement, or a waiver of the same act, condition, or requirement in other instances, unless specifically so stated. Except as otherwise provided in this Agreement, the rights and remedies provided in the Agreement shall be cumulative and not exclusive of any rights or remedies provided by law.

12.16 Survival. All provisions of this Agreement (including, without limitation, the provisions regarding audit rights and disputes) that by their terms require any performance following termination or expiration of this Agreement shall survive such termination or expiration.

**IN WITNESS WHEREOF**, the Parties have hereunto signed their names.

**MINISTRY OF ENVIRONMENT PROTECTION AND NATURAL RESOURCES OF GEORGIA**

By \_\_\_\_\_

George Khachidze

Minister

**AGENCY OF PROTECTED AREAS OF GEORGIA**

By \_\_\_\_\_

Giorgi Shonvadze

Chairman

**CAUCASUS PROTECTED AREAS FUND**

By \_\_\_\_\_

David Morrison  
Executive Director

## **Appendix A**

### **Disbursement Conditions and Schedule**

For purposes of this Agreement, the following terms shall have the meanings indicated:

- “CPAF Approved Budget” shall mean the total amount budgeted for the CPAF in the Approved Budget for such Grant Year, as adjusted pursuant to Section 4.2;
- “Remaining Grant Year CPAF Approved Budget” shall mean the Grant Year CPAF Approved Budget less the amounts previously advanced to the Agency under the Grant in such Grant Year;
- Authorized Advance Amount shall mean:
  - In respect of each tri-annual disbursement request under this Agreement, (i) the Agency’s good faith estimate of spending of Grant funds in the relevant 4 month period (January-April, May-August, and September-December, as applicable), plus (ii) a cushion of 15%, minus (iii) any unspent CPAF funds from the previous period, subject in each case to the applicable Ceiling unless such Ceiling is waived in writing by the CPAF.
- Ceiling
  - In respect of the First Payment in any Grant Year, the Ceiling shall be 45% of the CPAF Approved Budget
  - In respect of the Second Payment in any Grant Year, the Ceiling shall be calculated 65% of the Remaining Grant Year CPAF Approved Budget;
  - In respect of the Third Payment in any Grant Year, the Ceiling shall be the Remaining Grant Year CPAF Approved Budget.

Disbursement requests under this Agreement must be for an Authorized Advance Amount. Disbursement requests may be issued in accordance with the calendar and subject to the conditions set forth below:

#### **FIRST GRANT YEAR**

First Payment: The first payment will be made no earlier than February 1 of the Grant Year. In advance of the first payment, the Ministry, the Agency, or the BKNP Unit shall conduct a competitive tender procedure to identify contractor(s) for the rehabilitation project for the BKNP administration building and the related activity (as set forth in the Application). The tender procedure shall be designed to result a competitive process that selects a qualified contractor in a manner consistent with applicable Georgian laws and regulations (a “Competitive Tender”). The CPAF shall have the right to nominate a representative to attend all proceedings of the tender commission appointed by the Agency relating to the opening and review of the tender documentation and the selection of the winning bidder.

If, within 4 calendar days following the announcement of the winning bidder, the CPAF is not satisfied that there has been a Competitive Tender, it shall immediately notify the Agency. In such event, the CPAF (or its representative) and the APA shall, as soon as possible, meet to discuss the basis for the CPAF’s position, and the Agency and the CPAF shall use all reasonable efforts to agree as to whether there was a Competitive Tender. If the CPAF and the APA shall not agree on the appropriate steps to be taken by the 7<sup>th</sup> calendar day following the selection of the bidder, the CPAF shall not be required to fund its obligation in respect of the renovation of the administrative building that was the subject of such tender, provided that its determination that is not satisfied that there was a Competitive Tender was made in good faith and has a basis in applicable Georgian law and regulations.

Prior to launching the tender for the renovation project for the administrative building, the APA will present the renovation project to the CPAF and its representatives and consider in good faith suggestions and recommendations in relating the project.

- (1) In addition, the CPAF shall have received the following items:

- (a) The Approved Budget and Approved Operating Plan shall have been approved or deemed approved as contemplated by Section 3.2.2(2);
  - (b) The CPAF shall have received a copy of the documents contemplated by Section 3.2.2(3) and 3.2.3, if applicable;
  - (c) A disbursement request for an Authorized Advance Amount;
  - (d) Confirmation from the Agency (supported by fax or other communication from the BKNP Unit) that expenditure of the CPAF funds in the 4 month period to which the disbursement request relates are expected to be in the amount of estimate (excluding the cushion) included in the Authorized Advance Amount set forth in the disbursement request;
  - (e) Confirmation by the Agency that:
    - 1. The Agency has (i) made all payments up to date related to expenditures planned to be made by the Agency in the First Year Approved Budget; and (ii) made total payments to or on behalf of the BKNP Unit for expenditures in the PPA in the previous year at least equal to the amount provided for in the approved budget for the previous year;
    - 2. Any other non-CPAF sources have funded all amounts scheduled to have been funded by them in the First Year Approved Budget and the approved budget in the previous year (as applicable).
    - 3. The Ministry, the Agency and the BKNP Unit have complied, in all material respects, with their obligations under this Agreement, and all the conditions precedent to the disbursement of the Grant funds as set forth in this Agreement have been fulfilled.
  - (f) A favorable opinion by the CPAF's Executive Director (or his/her designated representative), on the basis of the information and reports delivered pursuant to this Agreement, and any other matters they deem relevant to the effective use of Grant funds.
- (2) Second Payment: The second payment will be made no earlier than May 1 of the Grant Year. In advance of the second payment the CPAF shall have received the following items:
- (a) A disbursement request for an Authorized Advance Amount;
  - (b) Confirmation from the Agency (supported by fax or other communication from the BKNP Unit) (i) that the Agency and any other non-CPAF sources have funded all amounts scheduled to be funded by them to date in the Grant Year, (ii) of the amount of any unspent Grant funds at the end of the previous 4-month period and (iii) that expenditure of the CPAF funds in the 4 month period to which the disbursement request relates are expected to be in the amount of estimate (excluding the cushion) included in the Authorized Advance Amount set forth in the disbursement request;
  - (c) Confirmation by the Agency that the Ministry, the Agency and the BKNP Unit have complied, in all material respects, with their obligations under this Agreement, and all the conditions precedent to the disbursement of the Grant funds as set forth in this Agreement have been fulfilled; and
  - (d) A favorable opinion by the CPAF's Executive Director (or his/her designated representative), on the basis of the information and reports delivered pursuant to this Agreement, and any other matters they deem relevant to the effective use of Grant funds.
- (3) Third Payment: The third payment will be made no earlier than September 1 of the Grant Year. In advance of the third payment the CPAF shall have received the following items:
- (a) The financial statement ("final accounts") for the previous year for the PPA in accordance with Agency/Ministry accounting procedures;
  - (b) A disbursement request for an Authorized Advance Amount;
  - (c) Confirmation from the Agency (supported by fax or other communication from the BKNP Unit) (i) of the amount of any unspent Grant funds at the end of the previous 4-month period and (ii) that expenditure of the CPAF funds in the 4 month period to which the disbursement request relates are expected to be in the amount of estimate (excluding the cushion) included in the Authorized Advance Amount set forth in the disbursement request;
  - (d) Confirmation by the Agency:
    - 1. Of the total expenditures from all funding sources made for the Grant Year for the PPA as of June 30 of the Grant Year (or a later date as agreed with the CPAF);
    - 2. That the Agency and any other non-CPAF sources have funded all amounts scheduled to be

- funded by them to date in the Grant Year; and
3. The Ministry, the Agency and the BKNP Unit have complied, in all material respects, with their obligations under this Agreement, and all the conditions precedent to the disbursement of the Grant funds as set forth in this Agreement have been fulfilled.
- (e) A favorable opinion by the CPAF's Executive Director (or his/her designated representative), on the basis of the information and reports delivered pursuant to this Agreement, and any other matters they deem relevant to the effective use of Grant funds.

## **SECOND AND THIRD GRANT YEAR**

- (1) First Payment: The first payment will be made no earlier than February 1 of the Grant Year. In advance of the first payment, the CPAF shall have received the following items:
  - (a) The Approved Budget and Approved Operating plan shall have been approved or deemed approved as contemplated by Section 3.2.2(2);
  - (b) The CPAF shall have received a copy of the documents contemplated by Section 3.2.2(3) and 3.2.3, if applicable;
  - (c) A disbursement request for an Authorized Advance Amount;
  - (d) Confirmation from the Agency (supported by an fax or other communication from the BKNP Unit) that expenditure of the CPAF funds in the 4 month period to which the disbursement request relates are expected to be in the amount of estimate (excluding the cushion) included in the Authorized Advance Amount set forth in the disbursement request;
  - (e) Confirmation by the Agency that:
    1. The Agency has (i) made all payments up to date related to expenditures planned to be made by the Agency in the Grant Year Approved Budget;, and (ii) made total payments in the previous Grant Year to or on behalf of the BKNP Unit for expenditures in the PPA at least equal to the amount provided for in the Approved Budget for such Grant Year;
    2. Any other non-CPAF sources have funded all amounts scheduled to have been funded by them in the Approved Budget and the approved budget in the previous Grant Year (as applicable); and
    3. The Ministry, the Agency and the BKNP Unit have complied, in all material respects, with their obligations under this Agreement, and all the conditions precedent to the disbursement of the Grant funds as set forth in this Agreement have been fulfilled.
  - (f) A favorable opinion by the CPAF's Executive Director (or his/her designated representative), on the basis of the information and reports delivered pursuant to this Agreement, and any other matters they deem relevant to the effective use of Grant funds.
- (2) Second Payment: The second payment will be made no earlier than May 1 of the Grant Year. In advance of the second payment the CPAF shall have received the following items:
  - (a) A disbursement request for an Authorized Advance Amount;
  - (b) Confirmation from the Agency (supported by fax or other communication from the BKNP Unit)
    - (i) that the Agency and any other non-CPAF sources have funded all amounts scheduled to be funded by them in the Grant Year to date, (ii) of the amount of any unspent Grant funds at the end of the previous 4-month period and (iii) that expenditure of the CPAF funds in the 4 month period to which the disbursement request relates are expected to be in the amount of estimate (excluding the cushion) included in the Authorized Advance Amount set forth in the disbursement request;
  - (c) Confirmation by the Agency that the Ministry, the Agency and the BKNP Unit have complied, in all material respects, with their obligations under this Agreement, and all the conditions precedent to the disbursement of the Grant funds as set forth in this Agreement have been fulfilled; and
  - (d) A favorable opinion by the CPAF's Executive Director (or his/her designated representative), on the basis of the information and reports delivered pursuant to this Agreement, and any other matters they deem relevant to the effective use of Grant funds.
- (3) Third Payment: The third payment will be made no earlier than September 1 of the Grant Year. In advance of the third payment the CPAF shall have received the following items:

- (a) Confirmation by the Agency that there has been officially adopted a Management Plan for the PPA as contemplated by Section 5.2.
- (b) The financial statement (“final accounts”) for the previous year for the PPA in accordance with Agency/Ministry accounting procedures, and a statement of revenues and expenses of the PPA covering the prior Grant Year as audited by auditors appointed by the CPAF as provided in the Agreement, including an audit opinion satisfactory to the CPAF;
- (c) A disbursement request for an Authorized Advance Amount;
- (d) Confirmation from the Agency (supported by fax or other communication from the BKNP Unit)
  - (i) of the amount of any unspent Grant funds at the end of the previous 4-month period and (ii) that expenditure of the CPAF funds in the 4 month period to which the disbursement request relates are expected to be in the amount of estimate (excluding the cushion) included in the Authorized Advance Amount set forth in the disbursement request;
- (e) Confirmation by the Agency:
  - 1. Of the total expenditures from all funding sources made for the Grant Year for the PPA as of June 30 of the Grant Year (or a later date as agreed with the CPAF);
  - 2. That the Agency and any other non-CPAF sources have funded all amounts scheduled to be funded by them in the Grant Year to date; and
  - 3. The Ministry, the Agency and the BKNP Unit have complied, in all material respects, with their obligations under this Agreement, and that all the conditions precedent to the disbursement of the Grant funds as set forth in this Agreement have been fulfilled.
- (f) A favorable opinion by the CPAF’s Executive Director (or his/her designated representative), on the basis of the information and reports delivered pursuant to this Agreement, and any other matters they deem relevant to the effective use of Grant funds.