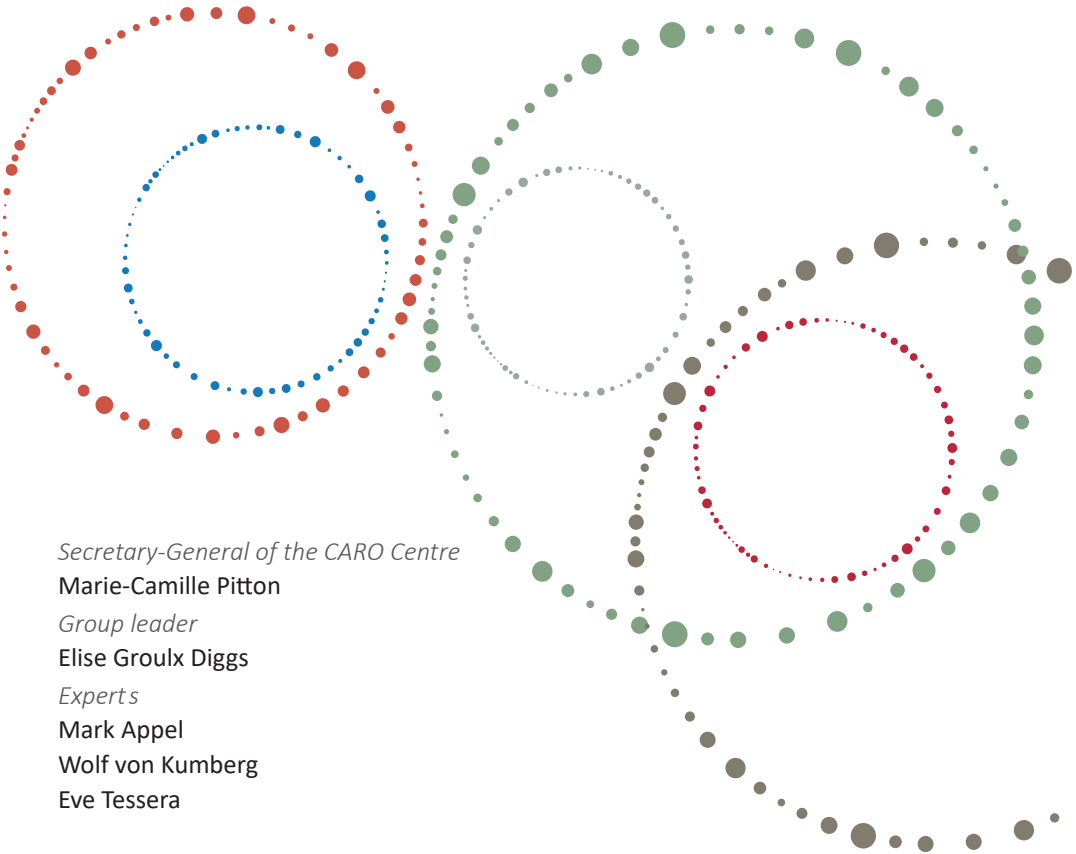


OHADAC Conflict Management Committee Rules



Secretary-General of the CARO Centre

Marie-Camille Pitton

Group leader

Elise Groulx Diggs

Experts

Mark Appel

Wolf von Kumberg

Eve Tessera

The OHADAC project is co-financed by the European Regional Development Fund
under the auspices of the INTERREG Caraïbes programme



Rules Highlights:

Experienced, Impartial Assistance – A purpose driven conflict management tool, the Conflict Management Committee (CMC) is designed to inspire trust in project by the parties and stakeholders alike. A proper process will help achieve the “social license to operate” key to any successful project.

Unique Combination of Expertise – The CMC forms a group of experienced neutrals, with balance being sought between Engineering, Contract management and ESG backgrounds.

Stakeholder Engagement – The process provides for information gathering, early and continuous engagement with stakeholder communities, monitoring by the CMC, and active communication amongst and between contracting parties, community stakeholders and the CMC.

Institutional Framework – The CARO Centre offers a sound institutional framework for the implementation of its mission by the CMC. Placed under the authority of its Secretary-General, the CARO Centre appoints and replaces CMC members, sets and manages the costs of proceedings, and monitors the satisfactory progress of CMC’s mission under the Rules.

Focus on Problem Solving – The Rules focus on project-based, early problem identification and active dialogue, with the intent of solving problems and issues before they become disputes. Regular meetings and site visits throughout the project lifecycle create opportunities for informal problem identification, exploration of practical solutions, dialogue, and resolution. Failing informal resolution, the Rules present the option of a CMC-issued written recommendation, with mediation serving as a final step. The Rules intentionally avoid the inclusion of a mandatory binding determination, as the intent is to focus on dialogue between the stakeholders to resolve issues. Nothing in the Rules prevents the stakeholders to proceed to a binding form of dispute resolution, should they seek to do so.

Consideration of ESG Legal Framework – Modern Infrastructure Contracts typically include ESG contractual clauses, incorporating compliance with ESG goals into the contractual framework. In addition to imperative provisions of the law applicable to the contract, international guidelines in the field of environmental and social protection are acknowledged as relevant norms to be considered by the CMC throughout the implementation of its mission.

TABLE OF CONTENTS

Introduction.....	2
Rules Highlights	3
Article 1. Definitions.....	6
Article 2. Scope of the Rules	9
Article 3. Jurisdiction and Role of the CARO Centre	9
Article 4. Establishment of CMCs	10
Article 5. Appointment and Confirmation of CMC members... ..	10
Article 6. Continuing Duty of Impartiality, Independence and Neutrality; Disclosure and Challenge Procedure	12
Article 7. Resignation, Removal or Termination of CMC Members	13
Article 8. Communications and Notices	14
Article 9. Confidentiality/Immunity from Service/Judicial Immunity	15
Article 10. Privacy	15
Article 11. Cooperation of Parties and Stakeholders; Integrity of the process	16
Article 12. Powers of the CMC.....	16
Article 13. Information Exchange	17
Article 14. Organisational Meeting, Project Meetings and Site Visits	18
Article 15. Conflict Avoidance – Horizon Scanning	20
Article 16. Informal Assistance with Differences	21

Article 17.	Formal Referral for a Recommendation in the event of a Dispute.....	21
Article 18.	Grievance Procedure	24
Article 19.	Mediation	26
Article 20.	Fees and Expenses.....	26
APPENDIX 1 - Grievance Procedure & Mechanism.....		28
A.	Introduction and Purpose	28
B.	Objectives	28
C.	Request for initiation of the Grievance Procedure	29
D.	Reporting Channels.....	30
E.	Confidentiality.....	30
F.	Examination of the eligibility of the Grievance.....	31
APPENDIX 2 - Agreement for a Conflict Management Committee (ACMC)		32
1.	Purpose and Role of the CMC	33
A.	Disagreements and Disputes	33
B.	Grievance Function	34
2.	CMC Members’ Qualifications and Obligations	35
3.	Parties’ Obligations	35
4.	CMC Member(s) Fees and Expenses	36
5.	Termination	37
6.	Arbitration and Applicable Law.....	37
APPENDIX 3 - Schedule of costs.....		39

Article 1. Definitions

In the Rules:

- i. “Agreement” means the agreement reached by the Parties and Stakeholders resolving a Grievance pursuant to Article 18(13).
- ii. “Budget” means a CMC estimation of the CMC’s anticipated fees and expenses, communicated to the Parties after review by the CARO Centre.
- iii. The “CARO Centre” means the OHADAC (Organization for the Harmonization of Business Law in the Caribbean) Regional Arbitration Centre.
- iv. “Conference” means a hearing bringing the Parties together.
- v. “Conflict” means any Differences and Disputes stemming out the Project, between the Parties to the Contract and/or between one or the Parties and the Stakeholder(s).
- vi. “Conflict Management Agreement” is the agreement between and amongst the Parties and the CMC in the form set out in Appendix 2.
- vii. “Conflict Management Committee” (“CMC”), also referred to as the Committee herein, means a committee composed of one or three Members, established in accordance with Article 4 of the Rules, to assist the Parties to the Contract and Stakeholder(s) in avoiding and resolving Conflict(s).
- viii. “Contract” means the agreement or interrelated agreements between the Parties forming the Project that contains or is subject to provisions for establishing a Conflict Management Committee under the Rules.
- ix. “Difference” means that matters/issues are not being viewed in the same manner by the Parties to the Contract, and/or the Stakeholder(s), so requiring a dialogue.
- x. “Dispute” means any unresolved Difference stemming out of the Contract that is formally referred to a CMC by the Parties for a Recommendation.

- xi. “Grievance” means a complaint raised to the CMC pursuant to these Rules concerning an alleged breach of Undertakings in the Stakeholder Engagement Plan (SEP) by a Party(ies) and/or Stakeholder(s).
- xii. “Grievance Procedure and Mechanism” (as per Appendix 1) means a non-judicial complaint process that may be used by the Parties, Stakeholders or CMC regarding the Undertakings set forth in the Stakeholder Engagement Plan (SEP).
- xiii. “Horizon Scanning” means the tasks carried out by the CMC as described in Article 1.
- xiv. “Human Rights and Environmental Impact Assessment” has the meaning defined in the UN Guiding Principles on Business and Human Rights.
- xv. “Party” or Parties means a party to the Contract and includes one or more parties, as appropriate, or a/their representative(s).
- xvi. “Project” is the subject-matter defined in the Contract.
- xvii. A “Recommendation” may be issued in writing by the Conflict Management Committee (CMC), upon formal referral by the Parties, in the event of a Dispute stemming from the Contract. Recommendations may also be issued by the CMC as part of the Grievance process.
- xviii. Roster of Neutrals: a body of experienced neutrals, selected by the CARO Centre for the purpose of confirmation or appointment, per Article 5 of the Rules. These neutrals are selected based on their contractual, technical and/or ESG background.
- xix. “Rules” means the CARO CMC Rules.
- xx. The “Secretariat” means the Secretariat of the OHADAC Regional Arbitration Centre.
- xxi. The “Secretary-General” means the Secretary-General of the OHADAC Regional Arbitration Centre.
- xxii. “Stakeholder” means those individuals, groups or communities, including their representatives, that are rights-holders or have legitimate interests that are affected or could be

affected by an adverse impact stemming from the Project, and have been recognised and invited to participate in proceedings under these Rules by the CMC.

xxiii. “Stakeholder Engagement Plan” means a document reflecting agreements and commitments made by the Parties and Stakeholder(s), taking into account impact statements or concerns of Stakeholders shared with the Parties orally or in writing, with the intent of preventing, mitigating, stopping, eliminating, and/or remedying Stakeholder concerns.

xxiv. “Stakeholder Impact Report” means the annual report conducted by companies with the objective to prevent, end or mitigate the negative impact that their activities have on human rights and the environment, such as on child labour, slavery, pollution or biodiversity loss, as well as evaluation of the human rights and environmental impact of their value chain partners, including suppliers, transport, distribution or sales, in accordance with the UN Guiding Principles on Business and Human Rights.

xxv. “Undertakings” means commitment(s) made by the Parties and the Stakeholder(s) in respect of the Project as set out in the Stakeholder Engagement Plan.

xxvi. “Vulnerable Stakeholders” means affected Stakeholders that find themselves in marginalised situations and situations of vulnerability, due to specific contexts or intersecting factors including, among others, sex, gender, age, race, ethnicity, class, caste, education, indigenous status, migration status and disability, as well as social and economic status, which are the causes of diverse and often disproportionate adverse impacts, and create discrimination and additional barriers to process participation and access to justice.

Article 2. Scope of the Rules

1. CMCs, established in accordance with the Rules, assist the Parties and Stakeholder(s) in avoiding or resolving their Differences and Disputes. They achieve this function (i) in avoiding Disagreements informally under Articles 15 and 16 and (ii) in resolving Disputes through CMC assistance under Article 17.
2. CMCs also monitor the proper implementation of the Undertakings to Stakeholders, set out in the Stakeholder Engagement Plan, provided for in Article 13.

Article 3. Jurisdiction and Role of the CARO Centre

1. These Rules will apply whenever Parties to a Contract or any subsequent agreement provide for the application of these Rules or CMC intervention. Unless otherwise provided for in the Contract the version of the Rules at the time the Contract was entered into shall apply.
2. The CARO Centre, via its Secretariat, is responsible for all the administrative aspects of the CMC's intervention.
3. The Secretariat of the CARO Centre is placed under the authority of the Secretary-General. It monitors the progress of CMC's mission, appoints and removes CMC members, manages the costs of proceedings, and assists constructive communication between the Parties, the members of the CMC and the Stakeholders.

Article 4. Establishment of CMCs

1. CMCs are composed of 1 or 3 members and are established for a period that will span the term of the Contract.
2. The establishment of the CMC is placed under the responsibility of the CARO Centre, which shall be seized of a Request for establishment of the CMC (the “Request”) as provided in Article 5 below.
3. The CMC will begin its activities after every CMC Member and the Parties have signed the CMC Member Agreement(s) and, in any case, no later than at the Project commencement date pursuant to the Contract.

Article 5. Appointment and Confirmation of CMC members

1. The CMC shall be established before the Project commencement date, after receipt of the Registration Fee (Schedule of costs – Appendix 3).
2. The CARO Centre is responsible for establishing the CMC, upon written Request of one or both Parties to the Contract. The Request shall be communicated to the Secretariat as early as possible upon signing of the Contract.
3. The CARO Centre shall determine whether the CMC will be composed of 1 or 3 members.
4. CMC Members will be selected by the Parties and/or the CARO Centre. It is recommended that at least one member of the CMC be appointed from the CARO Roster of Neutrals.
- Where the CMC is composed of only one member: the Parties are expected to agree on a name; in case they fail to do so by the time allocated by the CARO Centre, the CARO Centre will appoint the sole member of the CMC.

- Where the CMC is composed of three members: each Party is given the opportunity to select one CMC member and the CARO Centre shall appoint the third CMC member, who will act as Chair. If a Party fails to select a CMC member by the time allocated by the CARO Centre, the CARO Centre will appoint such CMC member.

When the CARO Centre appoints a member of the CMC it will do so after solicitation of the Parties views, as provided in 5 below.

5. When appointing CMC member(s), the CARO Centre and the Parties shall consider the prospective CMC Member's attributes including, but not limited to, nationality, residence, language skills, training, qualifications, experience, availability and ability to conduct their work in a timely manner. The CARO Centre and the Parties will take into consideration the necessary balance between technical, contractual and ESG expertise within the CMC.
6. When a Party selects a CMC member, the nomination shall be transmitted to the CARO Centre by the Party, for confirmation by the CARO Centre.
7. Upon receipt of the nomination from a Party, or when the CARO Centre appoints a CMC Member, the CARO Centre shall contact the prospective CMC Member and invite him or her to accept or decline the appointment and communicate a declaration of independence and impartiality (the "Declaration of Independence"). If the prospective CMC Member accepts his or her mission, s/he shall communicate to the Secretariat an acceptance letter, and issue and sign the Declaration of Independence. In this letter, the prospective CMC Member must disclose in writing to the Parties, the other CMC Members, and to CARO, any facts or circumstances, including any recent or continuing economic or social relationships with the Parties or their Counsel, which might call into question the CMC

Member's impartiality, independence and neutrality in the eyes of the Parties and the Stakeholders, as well as any circumstances that could give rise to reasonable doubts as to the Member's impartiality, independence and neutrality. Upon receipt of this information in the Statement of Independence, the CARO Centre shall immediately forward it to the Parties, inviting objections, if any.

8. Absent objections, CMC Members shall be appointed or confirmed by the CARO Centre.
9. When an objection to the appointment of a CMC member is made, the CARO Centre may refuse to confirm him or her. In such circumstances, the CARO Centre will, after hearing the views of the concerned CMC Member, other CMC Members and the Parties, decide whether to confirm the CMC Member's appointment.
10. After confirmation, each CMC Member will execute the CMC Member Agreement together with the Parties.

Article 6. Continuing Duty of Impartiality, Independence and Neutrality; Disclosure and Challenge Procedure

1. Every CMC Member must be and remain impartial, independent, and neutral of the Parties and the issues at stake, throughout the term of the CMC Member Agreement.
2. A CMC Member shall immediately disclose in writing to the Parties and the other CMC Members any new facts or circumstances of a similar nature to those referred to in Article 5 concerning the CMC Member's impartiality, independence and neutrality which may arise in the course of such CMC Member's tenure.
3. Should any Party wish to challenge the appointment or continued service of a CMC Member, it may submit to the

CARO Centre a request for a decision upon the challenge including the reason for the challenge. The CARO Centre will decide upon the challenge, after having given the challenged CMC Member, other CMC Members and Party(ies) an opportunity to comment on the challenge.

4. Should any Stakeholder(s) wish to challenge the continued service of a CMC Member, it may submit to the CARO Centre a request for a decision upon the challenge including a written statement of the reason for the challenge. The CARO Centre shall decide the challenge after having given the challenged CMC Member, other CMC Members, Party(ies) and relevant Stakeholder(s) an opportunity to comment on the challenge.

Article 7. Resignation, Removal or Termination of CMC Members

1. A CMC Member may resign at any time by giving a minimum of three months' written notice to the Parties with copy to the CARO Centre, unless otherwise agreed by the Parties and the CMC Member concerned.
2. When a CMC Member has to be replaced due to death, illness, resignation, termination or removal for cause, the new CMC Member shall be appointed in the same manner as the CMC Member being replaced.
3. The CARO Centre, on its' own initiative, may remove a CMC Member for failure to perform or if the CMC Member becomes incapable of performing the duties required of a CMC Member. The CARO Centre, after hearing the views of the challenged CMC Member, may also seek the views of the other CMC Members, the Parties and/or the Stakeholders, prior to making a decision on removal. All actions taken by the CMC prior to the replacement of a CMC

Member shall remain valid. When a CMC member is being replaced, the remaining CMC Members shall not hold Conferences or issue written Recommendations without the agreement of each of the Parties, until the substitute Member is appointed.

Article 8. Communications and Notices

1. Unless determined otherwise by the CMC, all written communications and notices may be transmitted by any means that allows for a record of its transmission.
2. All notifications and written communications provided for under the Rules shall be made simultaneously to the other Party(ies), the CMC members and the CARO Centre Secretariat.
3. If the CARO Centre or the CMC grants the parties a time limit, the time limit shall start to run the day after receipt of this communication. Regarding official holidays:
 - If the day after which communication is deemed to have been received is an official holiday or a bank holiday in the place of destination of the communication, or a non-working day, the time limit shall start to run from the next working day;
 - Official holidays, bank holidays and non-working days in general that occur during the time limit are included when calculating the time limit;
 - If the time limit expires on an official holiday, a bank holiday or a non-working day in the place of destination of the communication, this time limit will be extended to the next working day in that location.
4. The CARO Centre and the CMC have discretion to extend the time limits provided for in these Rules. The parties may

also agree to derogate from such time limits by extending or shortening them.

Article 9. Confidentiality/Immunity from Service/Judicial Immunity

1. Information that is communicated by a Party or Stakeholder to the CMC as confidential will not be shared with others by the CMC without the agreement of the communicating Party/Stakeholder. CMC members shall not be compelled to divulge information received in CMC proceedings or testify in any arbitral or judicial proceedings relating to CMC proceedings.
2. Neither the CARO Centre nor the CMC is a necessary party in arbitral or judicial proceedings related to CMC proceedings.
3. To the fullest extent permitted under the applicable law, neither the CARO Centre nor the CMC shall be liable for any act or omission in connection with CMC proceedings.

Article 10. Privacy

CMC proceedings are private and may only be attended by the Parties and Stakeholders invited to participate by the CMC, unless otherwise agreed by the Parties and the CMC.

Article 11. Cooperation of Parties and Stakeholders; Integrity of the process

1. The Parties and Stakeholders shall cooperate with each other and the CMC in the application of these Rules.
2. There will be no reprisals or targeting of whistle-blowers, Stakeholders and/or human rights defenders for use of the Grievance Process.
3. The CMC may take such steps as they deem necessary to support such cooperation and ensure the integrity of the process.

Article 12. Powers of the CMC

All proceedings before the CMC shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties jointly agree or, failing them, the CMC itself may settle on. Subject to these Rules, and in consultation with the Parties and Stakeholders, the CMC may take whatever measures it deems appropriate to manage proceedings. Procedural decisions shall be taken by a majority of the CMC members. Where agreed by the CMC, procedural decisions may be made by the Chair of the CMC alone.

1. CMC powers shall include, but are not limited to, the following:
 - a. Decide the language or languages of the proceedings before the CMC, due regard being given to all relevant circumstances, including the language of the Contract;
 - b. Insure as much as possible that all Parties and Stakeholders can understand the language of the proceedings or, when deemed necessary, provide for translation or interpretation services;

- c. Require the Parties and/or the Stakeholders to produce any documents that the CMC deems necessary in order to fulfil its functions;
 - d. Call meetings, site visits and Conferences;
 - e. Determine all procedural matters arising during any meeting, site visit or Conference;
 - f. Question Parties, Stakeholders, their respective representatives and any other participants in CMC proceedings, in the sequence the CMC chooses;
 - g. Where required, and only after consultation with the Parties, appoint one or more experts;
 - h. After consultation with the Parties and others as appropriate, determine which Stakeholder(s) to include in the process.
2. The CMC may take such measures as they deem necessary for protecting trade secrets and confidential information.
 3. Where there are more than two Parties to the Contract or multiple Stakeholders, the Rules may be adapted to the multiparty situation by agreement of the Parties or, failing such agreement, by the CMC.

Article 13. Information Exchange

1. The Parties, and/or when relevant the Stakeholders, shall fully cooperate with the CMC, and communicate information in a timely manner. In particular, the Parties and the CMC shall cooperate to ensure that, as soon as possible after the CMC has been constituted, the CMC becomes fully informed about the Project and provided with the documentation necessary for it to carry out its responsibilities including, without limitation, reports related to the Stakeholder(s) and Stakeholder Impact

Reports also known as Human Rights and Environmental Impact Assessment/HREIA.

2. The Parties shall ensure that the CMC is kept informed of the implementation of the Project and the Stakeholder Engagement Plan, as well as any Differences arising in the course thereof.
3. During the course of on-site meetings, conferences and visits, the Parties shall provide the CMC with sufficient meeting and working space, including private meeting space, accommodation, secure means of communication, and office and information technology to support the CMC in fulfilling its' responsibilities.

Article 14. Organisational Meeting, Project Meetings and Site Visits

1. As soon as practicable after its appointment, the CMC, in consultation with the Parties and/or when relevant the Stakeholder(s), shall schedule a Preliminary Organisational Meeting, with such further organisational meetings scheduled as the CMC deems necessary during the term of the Project.
2. The purpose for the Organisational Meeting includes but is not limited to the following:
 - a. Engage with the Parties and the Stakeholders to formulate, approve and conclude the Stakeholder Engagement Plan.
 - b. Establish a schedule of meetings and site visits, including pre-meeting information exchange, expected attendees at meetings and site visits, and any other matters that the CMC determines will assist with the efficient operation of the CMC.

c. Establish a Budget, based on the schedule of meetings, estimating CMC Member(s) remuneration throughout the implementation of their mission, and including the remuneration of expert(s), if any is/are appointed, on the basis of the provisions of Article 12(1)(g). The CARO Centre will review the Budget prior to it being communicated to the Parties. CMC Members can readjust the Budget during the course of the proceedings, subject to the provisions of Article 20.

d. Address any other matter that the CMC deems necessary for the efficient and effective performance of its obligations pursuant to the Contract and these Rules.

3. The frequency of scheduled meetings and site visits shall be determined by the CMC.
4. The Parties and, when relevant, the Stakeholders shall attend all such meetings and site visits, during which the CMC Members may engage in informal conversations with one or more representatives of the Parties as well as with the Stakeholder(s). In the event that a Party or, when relevant, Stakeholder, fails to attend after due notice, the CMC may nevertheless decide to proceed in the absence of that Party or Stakeholder. In the event that a CMC Member fails to attend, the remaining CMC members may proceed if the Parties so agree.
5. Decide on site visits to the site or sites where the Project is being implemented.
6. Determining whether meetings should be held in person at any location, or by telephone, videoconference, or other virtual means.
7. For cost considerations, virtual meetings should be preferred whenever appropriate.
8. During scheduled meetings and site visits, the CMC shall review the implementation of the Project with the Parties and, where it deems it necessary, with the Stakeholder(s).

The CMC shall assist the Parties and the Stakeholder(s) in avoiding Conflict(s) pursuant to Article 15, provide Informal Assistance with respect to any Disagreements pursuant to Article 16, provide Recommendations concerning any Disputes pursuant to Article 17 and provide Recommendations concerning any Grievance pursuant to Article 18.

9. Any Party or Stakeholder may request an urgent meeting or site visit in addition to the scheduled meetings and site visits. The CMC shall make their best efforts to make themselves available for urgent meetings or site visits.
10. After every meeting and site visit, the CMC shall prepare a written summary of the meeting or site visit, including a list of those present, and provide a copy to the Parties and any Stakeholder(s) in attendance.

Article 15. Conflict Avoidance – Horizon Scanning

1. Horizon Scanning includes CMC monitoring and review of the Project, on a continuous basis, to identify emerging issues, risks, impacts and opportunities, allow for better preparedness, and support problem-solving.
2. Horizon Scanning also assists in reviewing implementation of the Parties and Stakeholders Undertakings in the Stakeholder Engagement Plan.
3. Where a Difference is identified, the CMC may provide the Parties and Stakeholders with further Informal Assistance as provided in Article 16.

Article 16. Informal Assistance with Differences

1. On its own initiative, or upon the request of any Party and /or the Stakeholder(s), the CMC may informally assist the Parties and/or the Stakeholder(s) in resolving any Differences that have arisen during the performance of the Project. Such informal assistance may occur during any meeting or site visit, or upon written request by a Party and/or the Stakeholder(s) to the CMC with copy to all. A Party and/or the Stakeholder(s) requesting informal assistance from the CMC should, if possible, inform the CMC and the other Party and/or the Stakeholder(s) well in advance of the meeting or site visit during which such informal assistance would occur.
2. In accordance with these Rules, and in consultation with Parties and Stakeholder(s), the CMC may take such measures as it deems appropriate in providing informal Assistance. Such assistance may include both separate and collective dialogue between and amongst the CMC Members, Parties and/or Stakeholder(s). Furthermore, and, in order to assist resolution, CMC members may share informal views orally or in writing with the Parties and/or Stakeholders.

Article 17. Formal Referral for a Recommendation in the event of a Dispute

1. When a Difference between the Parties is not resolved by Informal Assistance, at which point the Difference becomes a Dispute, any Party may formally refer that Dispute to the CMC for a Recommendation. The procedures set forth below shall apply to Formal Referrals.

2. If a Dispute arises, any Party may refer the Dispute to the CMC for its' written Recommendation. In referring a Dispute to the CMC, the referring party shall submit a position paper (the "Position Paper") to the other Party or Parties, with a simultaneous copy to the CMC and the CARO Centre. The Position Paper will include a summary of the Dispute, a list of the issues submitted to the CMC for a Recommendation, and the referring Party's position thereon together with the redress sought and any evidence supporting the referring Party's position.
3. The other Party will submit a Response to the referring Party with a simultaneous copy to the CMC and the CARO Centre within 30 days after receipt of the Position Paper. The Response will include a summary of the responding Party's position with respect to the Dispute, any evidence supporting the responding Party's position, and a statement of what the responding Party requests the CMC to determine.
4. Based on the content of the Position Paper and the Response, CMC members may adjust the Budget to reflect the additional workload generated by the formal process required. The CARO Centre may also increase its' administrative costs to reflect the additional workload generated by the formal process.
5. The Parties remain free to resolve the Dispute at any time, with or without the CMC's assistance. The CMC may, at its discretion, enter into informal discussions with the Parties at any time.
6. The CMC may, unless the Parties unanimously request a Conference, render a written Recommendation based on the written submissions of the Parties.
7. Where the CMC, in its own discretion, or when the Parties request a Conference through unanimous agreement, such Conference will be scheduled by the CMC.

8. If a Party fails to attend the Conference, the CMC may nevertheless proceed with the Conference if the CMC is satisfied that the absent Party received proper notice of the Conference.
9. The CMC will act fairly and impartially between the Parties, giving each of them a reasonable opportunity to present its case.
10. The CMC's Recommendation will be rendered within 30 days of receipt of the Response or, if a Conference is held, within 30 days of its conclusion.
11. The CMC may, after consultation with the Parties and, taking into account the nature and complexity of the Dispute and other relevant facts and circumstances, extend the timeframe to issue its Recommendation.
12. When the CMC is composed of three Members, it shall make every effort to achieve unanimity. If this cannot be achieved, a Recommendation may be issued by agreement of the majority.
13. Recommendations of the CMC carry great weight but are not binding on the Parties, although it is anticipated that they will be complied with.
14. When the CMC has issued a Recommendation, each Party will submit its written acceptance or rejection of the Recommendation to the other Party and to the CMC, within 30 days of its issuance.
15. Where a Party has rejected the Recommendation, the Dispute will proceed to Mediation in accordance with Article 19.
16. Recommendations of the CMC shall be admissible in any subsequent mediation, arbitration, or judicial proceeding.

Article 18. Grievance Procedure

1. An important role of the CMC is to monitor and oversee the implementation of Undertakings agreed upon by the Parties and the Stakeholder(s), as set out in the Stakeholder Engagement Plan. This role is accomplished by the CMC through the Organisational Meeting as set out in Article 14, the Horizon Scanning as set out in Article 15 and the use of Informal Assistance with Differences as set out in Article 16. The Grievance Procedure is incorporated in these Rules in Appendix 1.
2. The Parties and Stakeholder(s) may each request initiation of the Grievance Procedure by the CMC for breach of Undertakings in the Stakeholder Engagement Plan (SEP). Where it is the view of the CMC that Undertakings may possibly be affected by actions or lack thereof either by a Party or Stakeholder(s), it may, at its own discretion, initiate the Grievance Procedure.
3. CMC members may adjust the Budget to reflect the additional workload generated by the Grievance Procedure. The CARO Centre may also increase its' administrative costs to reflect the additional workload generated by the Grievance procedure.
4. If the Grievance, as defined in Appendix 1, Article F, is deemed applicable by the CMC, the CMC may take such steps as it deems necessary to gather information, engage both Parties and Stakeholders in dialogue, explore solutions and make Recommendations.
5. The CMC may, with the consent of the Party(ies) and Stakeholder(s) involved in the Grievance Procedure, appoint an expert or, if necessary, more than one expert to conduct an independent analysis of specific/technical issues raised by the Grievance.

6. The CMC will facilitate active dialogue allowing Party(ies) and Stakeholder(s) to ascertain and agree on possible options that could resolve the Grievance. Where this results in a resolution, the agreement on the Grievance resolution is set out in a written document between the Stakeholder(s) and the Party(ies), including an Action Plan setting out the steps to be taken.
7. When an agreement resolving the Grievance is not reached within 30 days after the Grievance Procedure is initiated, the CMC will issue a Recommendation, as set out in Article 17, for resolution of the Grievance, including an Action Plan. The 30-day time period can be extended by the CMC after consultation with the Parties and relevant Stakeholders.
8. When the CMC is composed of three Members, it shall make every effort to achieve a unanimous Recommendation. If this cannot be achieved, a Recommendation may be agreed upon by a majority of the members.
9. Recommendations of the CMC carry great weight but are not binding on the Party(ies) and/or the Stakeholder(s).
10. When the CMC has issued a Recommendation, each Party or Stakeholder(s) will submit its written acceptance or rejection of the Recommendation(s) to the other Party(ies), Stakeholder(s) and the CMC within 30 days.
11. Where any Party or Stakeholder(s) has rejected the Recommendation, the Grievance will proceed to Mediation in accordance with Article 19 of the Rules. Pending the Mediation, the Parties and the Stakeholder(s) may voluntarily comply with the Recommendation(s).
12. Recommendations of the CMC shall be admissible in any subsequent mediation, arbitration, or judicial proceeding.
13. Where the Grievance Procedure has resulted in a written Agreement, the CMC will monitor the implementation of

the Agreement and assist the Party(ies) and Stakeholder(s) in the implementation process through active dialogue.

14. The Party(ies) and Stakeholder(s) shall cooperate with each other and the CMC during the Grievance Procedure process.

Article 19. Mediation

Mediation, as provided for in Articles 17 and 18 above, will be administered by the CARO Centre and proceed in accordance with the OHADAC Mediation Rules. A single mediator, or two co-mediators, shall be appointed by the CARO Centre. Mediation may take place both online and/or in person.

Article 20. Fees and Expenses

1. The Fees and Expenses of the CMC (“Fees and Expenses”) shall include the administrative costs incurred by the CARO Centre to administer the CMC process (“Administrative Costs”), as well as the costs incurred by CMC member(s) and expert(s), when applicable. These costs comprise the remuneration of CMC member(s) (the “CMC Member(s) Fee”) and expert(s), if any is/are appointed (the “Remuneration of the Expert”), as well as any disbursements relating to the CMC’s implementation of its mission (the “Expenses”).
2. The Fees and Expenses shall be provisionally set by the Secretariat, as appropriate, according to the scale appended hereto (the “Schedule of Costs” – Appendix 3) that is in force on the date of referral to the CARO Centre. The Fees and Expenses may be adjusted by the Secretariat

as the proceedings progress, based on the complexity of the project, including the filing of Disputes (Article 17) or Grievances (Article 18), the Budget and its amendments. CMC Members will review the Budget annually and may adjust the Budget, in particular when a Dispute (Article 17) or a Grievance (Article 18) is referred to the CMC. The Budget and its amendments are reviewed by the CARO Centre prior to communication to the Parties.

3. Unless otherwise agreed by the parties, the Fees and Expenses shall be shared equally by the Parties.
4. The Registration Fee shall be paid with the Request for the establishment of the CMC, as provided in Article 5 above. The Registration Fee is not refundable.
5. During the proceedings, the CARO Centre will request advance deposits on Fees and Expenses as necessary. All Costs, Fees and Expenses under these Rules shall be paid in full by the Parties, upon receipt of an invoice(s) issued by the CARO Centre.
6. If an invoice(s) has not been paid at the end of thirty (30) days from the date of having been requested from the Parties, the Secretariat shall inform the Parties of this circumstance so that each of them can make the required payment. Any party may substitute itself for another for the payment of an invoice.
7. Failing satisfaction of such payment, the CARO Centre may order the suspension or termination of CMC's mission under the Rules.
8. At the termination of the CMC mission, the CARO Centre will provide the Parties with a final accounting statement and will refund any unused Fees to the Parties.
9. All other expenses incurred by the Parties, including legal counsel, shall remain payable by them, unless otherwise agreed by the Parties.

APPENDIX 1 - Grievance Procedure & Mechanism

A. Introduction and Purpose

1. The purpose of this document is to outline and formalize the Grievance Procedure to be followed pursuant to the CMC Rules.
2. The Grievance Procedure provides a process for the Stakeholder(s) and Party(ies) to have their concerns heard, investigated and responded to by the CMC within a defined timeframe.
3. This Grievance Procedure is intended to permit the Stakeholder(s), Party(ies) and CMC to monitor and manage the Undertakings set forth in the Stakeholder Engagement Plan (SEP) in a transparent, fair, and credible manner for all parties. It is meant to create a foundation for dialogue and to build open and respectful relationships.
4. This Grievance Procedure applies to Stakeholder(s), Party(ies) and the CMC.

B. Objectives

The objectives of this Grievance Procedure are to:

1. Provide safe avenues for the Stakeholder(s) and Parties to raise issues and, where necessary, lodge formal Grievances concerning the management and/or fulfilment of Undertakings given by the Parties and/or Stakeholders in the Stakeholder Engagement Plan.
2. Provide a framework for Grievances to be addressed in a timely and effective manner.

3. Provide a process for the CMC to gather information, engage both Parties and Stakeholders in dialogue, explore solutions and make recommendations.
4. Provide transparency as to how Grievances are to be dealt with during the Project.
5. Provide certainty to both the Stakeholder(s) and the Party(ies) as to the fulfilment of their respective Undertakings.

C. Request for initiation of the Grievance Procedure

1. The Parties and/or Stakeholder(s) may request initiation of the Grievance Procedure by the CMC. Where it is the view of the CMC that Undertakings may be affected by actions or lack thereof by a Party or Stakeholder, it may, at its own discretion, initiate the Grievance Procedure.
2. Where a Party(ies) or Stakeholder(s) wishes to initiate the Grievance Procedure, it should communicate its' Complaint/Grievance to the other Party(ies), with a simultaneous copy to the CMC and the CARO Centre. When a Party(ies) or Stakeholder(s) request initiation of the Grievance Procedure, the Complaint/Grievance should include:
 - The date,
 - Name and signatures of the Party(ies) and/or Stakeholder(s) filing the complaint, or the name of their representatives with a signed letter providing proof of mandate and authority to provide the representation,
 - Description of the breach(es) of Undertakings,
 - Description of the action or lack thereof by a Party(ies) or Stakeholder(s) and the harm or expected harm, as a result of the breach(es),
 - Support for the allegations,

- Description of desired outcomes.
3. Notwithstanding the requirement(s) of Article C) 2) above, anonymous complaints may be submitted to the CMC and/or the CARO Centre, for communication to the CMC.

D. Reporting Channels

1. A combination of reporting channels has been established to support the Stakeholder(s) and the Party(ies) in lodging a Grievance with the CMC. The establishment of different channels is designed to enable the Stakeholder(s) or the Party(ies) to choose the option most appropriate to their circumstances. The CARO Centre will communicate Grievance filing process, including the availability of anonymous filing, by posting them on the CARO website. The CMC will assist the Stakeholder(s) and the Party(ies) in understanding both the Grievance/Complaint filing process and the Grievance Procedure.
2. Grievance reporting channels can be any of the following:
 - Face to face
 - By phone
 - Written correspondence
 - Via email
 - Via the CARO Centre website
3. Language(s) of the Grievance Procedure shall be determined by the CMC, after consultation with the Parties and Stakeholders.

E. Confidentiality

Information that is communicated by a Party or Stakeholder to the CMC as confidential will not be shared with others by the CMC without the agreement of the communicating Party/Stakeholder.

F. Examination of the eligibility of the Grievance

1. CMC will decide whether a Grievance is within its mandate and assesses the seriousness of the breach(es) and alleged harm(s).
2. During the eligibility examination, CMC can request the Party(ies) and Stakeholder(s) to provide additional information and clarification.
3. CMC informs the Stakeholders and the Parties when a Grievance is declared eligible or not.

APPENDIX 2 - Agreement for a Conflict Management Committee (ACMC)

The Agreement for a Conflict Management Committee (“ACMC”) is an agreement by and between the Parties to the contract specified below and the Members of the Conflict Management Committee (CMC) constituted herein. This CMC is made this [] day of [] in the year [] by and between:

Name and address of Party 1 (including contact details)

Name and address of Party 2 (including contact details)

and

Name and address of all CMC Members (including contact details)

Notice to the Parties and the CMC Members shall be given at the above addresses. Any changes in these contact details shall be immediately communicated to all concerned.

Whereas:

The Parties have entered into a contract dated [] (the “Contract”) for [specify scope of work/services to be provided, at which location and the name of project].

In this ACMC, words and expressions shall have the same meanings as are assigned to them in the Rules.

The Parties have agreed to establish a CMC in accordance with the Conflict Management Committee Rules of the CARO Centre (the “Rules”) and to refer their Conflicts to the CMC in accordance with the Rules, which are incorporated herein.

The Parties desire jointly to appoint the undersigned person(s) to act as a (one or three) Member CMC] [and desire X Member to act as

chairperson of the CMC], hereinafter referred to as the CMC Members. The date of this ACMC shall be the date of the CMC Members appointment.

CARO Centre:

If CARO appoints the undersigned CMC Members or any of them, the Parties and the CMC Members are bound by the Rules and the terms of this ACMC as if the Parties had appointed the CMC Members.

The Parties and CMC Members jointly agree as follows:

1. Purpose and Role of the CMC

A. Disagreements and Disputes

1.1 The CMC shall assist the Parties in the avoidance or mitigation of Conflicts and the timely resolution of Conflicts in accordance with the Rules.

1.2 Any Dispute arising under the Contract may be referred to the CMC by either Party.

1.3 The true mission of a CMC is not judicial; rather it is to prevent Conflicts. The Parties may at any time jointly refer a Dispute related to the Contract to the CMC for it to give an informal advisory opinion as a means of conflict avoidance or provide informal assistance to resolve a Dispute in any other form deemed appropriate by the CMC.

1.4 Upon referral of a Dispute, the CMC shall confer with the Parties to discuss the process to be used to find a solution or, if needed, to make a Recommendation.

1.5 All CMC Members shall communicate or meet as needed to review and discuss the Dispute and, where required, issue timely Recommendations to the Parties in accordance with the Rules.

1.6 The CMC Member is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as CMC Member unless the act or omission is in bad faith, and that any employee or agent of the CMC Member is similarly protected from liability.

1.7 Where a Conflict is submitted to Mediation or to arbitration or to the courts, the CMC Members shall not be called as a witness in any of the proceedings.

B. Grievance Function

1.8 An important role of the CMC is to monitor and oversee the implementation of Undertakings made by the Parties and Stakeholders, as set out in the Stakeholder Engagement Plan. This role is accomplished by the CMC through Horizon Scanning and the use of the Informal Assistance with Conflicts as set out in the Rules by means of the Parties, Stakeholders or the CMC invoking the Grievance Procedure.

1.9 The Grievance Procedure is incorporated in these Rules as per Appendix 1 thereof.

2. CMC Members' Qualifications and Obligations

2.1 CMC Members undertake to perform their duties in accordance with the Rules and the terms of this ACMC and confirm that they are impartial and independent of the Parties and shall remain so until their appointment is terminated. If facts or circumstances arise that from a reasonable third person's point of view could be perceived as a conflict of interest, CMC Member(s) shall promptly disclose such facts or circumstances to the Parties and the CARO Centre.

2.2 The Parties hereby agree that the appointed CMC Members have the necessary expertise in the type of work or services to be performed under the Contract and have the language skills needed to fulfil the duties as CMC Members.

2.3 The CMC Members shall keep confidential all information provided to the CMC during the course of its service and use such information only for the avoidance and settlement of Disagreements and Disputes, unless otherwise agreed by the Parties or required by applicable law.

2.4 CMC members will schedule meetings and site visits as necessary and will make themselves available to Parties and Stakeholder(s) alike.

3. Parties' Obligations

3.1 The Parties shall provide each CMC Member with a copy of the Contract documents, and any other documents pertinent to the performance of the Contract and necessary for the CMC's operations, and keep the CMC informed of the project's

development by furnishing the CMC with relevant information such as progress reports or minutes of meetings.

3.2 The Parties jointly and severally undertake to pay the CMC Members, in consideration of the carrying out of the services under this ACMC and the Rules, in accordance with Clause 4 below. Unless otherwise agreed, the fees and expenses of the CMC shall be shared equally by the Parties.

3.3 The Parties shall communicate relevant information and copy all documents and notifications to all Parties, in a timely manner.

3.4 The Parties undertake to observe the Rules and the terms of this ACMC in all regards and, without limitation, will cooperate fully in ensuring that the CMC can carry out its Purpose and Role as set out in Article 1 herein.

3.5 The Parties shall commit to cooperate with each other, Stakeholder(s) and the CMC during the course of the Project.

4. CMC Member(s) Fees and Expenses

4.1 The CARO Centre shall decide what the reasonable remuneration of the CMC Members shall be when setting the Fees and Expenses as per the terms of Article 20 and the provisions contained in the Schedule of costs (Appendix 3). The CARO Centre's decision shall be final and binding on the Parties and the CMC Members.

4.2 The CMC Members shall be reimbursed for the actual cost of telephone calls, postage and courier charges reasonably incurred in connection with the Members' duties; all reasonable and necessary travel expenses including business class airfare by the most direct

route to the destination, subsistence, and other direct travel expenses (the “Expenses”). The Expenses shall be reimbursed in the same currency as that in which the CMC Member(s) Fee is payable. Original receipts shall be provided for all Expenses.

4.3 All payments to the CMC Member shall be made without deductions or restrictions to the following account: [insert banking and account details]. The transfer charges shall be borne by the Party making the transfer.

4.4 All fees and expenses shall be invoiced to and paid by each of the Parties in equal shares. All payments shall be made within 30 days of receiving the Member’s invoice.

5. Termination

5.1 The Parties may jointly terminate this ACMC at any time by giving one-month written notice to the CMC Members.

5.2 Any CMC Member may resign from the ACMC at any time by giving two months written notice to the Parties.

6. Arbitration and Applicable Law

This ACMC shall be governed by the laws of [specify applicable law].

Any dispute or difference arising out of or in connection with this ACMC shall first be attempted to be resolved through mediation administered by the CARO Centre pursuant to the OHADAC Mediation Rules.

Signed for and on behalf of Party 1

_____ (Signature)

_____ (Name and designation)

Signed for and on behalf of Party 2

_____ (Signature)

_____ (Name and designation)

Signed for and on behalf of each CMC Member

_____ (Signature)

_____ (Name and designation)

APPENDIX 3 - Schedule of costs

*Schedule of Costs excluding tax, fees and expenses applicable as at
12 September 2023*

On the basis of **Article 20 of the Rules**, the Fees and Expenses of the CMC shall include the administrative costs incurred by the CARO Centre to administer the CMC process (“Administrative Costs”); the costs incurred by CMC member(s) (“CMC Member(s) Fee”) and expert(s), if any is/are appointed; and any disbursements relating to the CMC’s implementation of its mission. The Fees and Expenses shall be set by the Secretariat of the CARO Centre at the beginning of the proceedings on the basis of the following:

Amount of CARO’s Administrative Costs <i>(i)</i> In EUR <i>(ii)</i>	CMC Member(s) Fee <i>(vii) (viii)</i>
(1) Registration Fee <i>(iii)</i> EUR 2.000	(1) Hourly rate From EUR 200 to EUR 650
(2) CMC Establishment Fee <i>(iv)</i> EUR 2.000 for a one-member CMC EUR 6.000 for a three-members CMC	(2) Daily Fee estimate From EUR 1.400 to EUR 4.550
(3) Management costs (per month) <i>(v)</i> EUR 3.000	
(4) Replacement Fee <i>(vi)</i> EUR 2.000	
<i>Please note that these costs do not include travel arrangements and costs nor CMC Members’ expenses, which shall also be borne by the Parties (ix)</i>	

General Terms and Conditions:

- (i) CARO's **Administrative Costs** include the following expenses:
- a. Registration Fee: *cf.* (iii) below;
 - b. CMC Establishment Fee: *cf.* (iv) below
 - c. Management Costs: *cf.* (v) below
- (ii) CARO Administrative costs and CMC Member Fees are estimated in Euros (EUR). Nevertheless, these costs may be paid in other currencies such as: USD, based on the conversion rate in force on the requested date.
- (iii) The Registration **Fee** must be paid at the time the CARO Centre is mandated and is non-refundable, even if the Parties eventually decide that a CMC shall not be set up by the CARO Centre. The Registration Fee will be payable by each party to the Contract (as defined under the CARO Conflict Management Committee Rules – “**the Rules**”) and will be paid in full and in advance by the petitioner.
- (iv) The **CMC Establishment Fee** corresponds to the cost incurred by the CARO Centre for appointing or confirming each CMC Member, as per the terms of Article 5 of the Rules. It must be paid by the Parties prior to the setting up of the CMC.
- (v) The Management **Costs** include CARO's due diligence work during the implementation phase of the CMC's mission as per the Rules, including:
- o The financial management of the proceedings as per the provisions of the Rules;

- The administrative aspects of CMC’s intervention, which includes assistance organizing on-line or virtual meetings;
- Administrative file management and document storage;
- When necessary and upon request, intervention between the Parties, the CMC’s members and the Stakeholders.

Management Costs will be invoiced to the Parties on a regular basis by the CARO Centre.

(vi) The **Replacement Fee** is charged by CARO when a CMC Member needs to be replaced as per the terms of Article 7 of the Rules, or when a party challenges a CMC Member as per the terms of Article 6 of the Rules. When a CMC Member is challenged by a party, the Replacement Fee will be charged irrespective of the outcome of the challenge procedure, and will have to be paid at the time a challenge is introduced by a party.

(vii) The **CMC Member(s) Fee** corresponds to the remuneration of the CMC member(s) for the implementation of their mission under the Rules (Article 20(1) of the Rules). Please note that CMC Member(s) Fees do not include VAT. The CMC Member(s) will be responsible to invoice relevant VAT sums directly to the parties.

(viii) Further to the Organizational Meeting (Article 14 of “the Rules”), CMC Member(s) defines a schedule of meetings, providing for number and frequency of meetings, including site visits; formal and informal meetings with other CMC Members, Parties and/or Stakeholders; document(s) and correspondence review. On the basis of this schedule, the

CMC establishes a budget corresponding to the anticipated cost of their intervention throughout the implementation of their mission, as defined under the Rules. CMC will have the opportunity to adjust the budget every twelve months, in particular where a Dispute (Article 17 of the Rules) or a Grievance (Article 18 of the Rules) is referred to the CMC.

- (ix) Administrative costs and CMC Member(s) Fee do not include room rentals nor possible costs and disbursements in the case of CMC Members' Expenses such as travel and accommodation, translation costs *etc.* The CARO Centre shall, however, check that such costs are reasonable.



OHADAC Regional Arbitration Centre

Tour Sécid, 2ème étage
Place de la Rénovation
97110, Pointe-à-Pitre, Guadeloupe
+ 590 590 212 972 | secretariat@carohadac.org
www.carohadac.org