

From: [Nichalos Peters](#)
To: [Magerkurth, Christina](#)
Cc: [Mailbox, REDD](#); ["Laura George "](#); ["Amerindian People Association"](#); [yafosy@yahoo.com](#); [rcelorio@law.gwu.edu](#); [Tcgreen100@gmail.com](#)
Subject: FW: APA ART Appeal Submission
Date: Wednesday, October 18, 2023 6:25:39 PM
Attachments: [APA appeal addendum re threshold regs.pdf](#)
[APA Appeal Terms of Reference Redlined.pdf](#)
[Letter to ART re Appeal TORs Oct 18.pdf](#)
[Annexes ART APPEAL.zip](#)

You don't often get email from nicholasp@apaguyana.com. [Learn why this is important](#)

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Dear Christina,
Further to our submission, kindly find attached the Annexes.

Regards,
Nicholas Peters.

From: Nichalos Peters <nicholasp@apaguyana.com>
Sent: Wednesday, 18 October 2023 6:00 pm
To: 'Christina.Magerkurth@winrock.org' <Christina.Magerkurth@winrock.org>
Cc: 'redd@winrock.org' <redd@winrock.org>; 'Laura George ' <laurag@apaguyana.com>
Subject: APA ART Appeal Submission

Dear Christine,
Ms George is currently out on assignment. Kindly find attached the relevant documents sent on her behalf.

Regards,
Nicholas Peters,
Advocacy and Policy Support Officer,
Amerindian Peoples Association.



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October 18, 2023

Christina Magerkurth
Managing Director
ART Secretariat

Dear Ms. Magerkurth:

Please find the attached redlined and executed Terms of Reference (TOR) for the appeal and an addendum to our submissions concerning the Threshold Requirements. We reiterate our commitment to move forward with the appeal process. However, we are only able to do so under the provisions in the executed TOR. We welcome ART's revision of the TOR to reflect that the Threshold Requirements are new and therefore require more time to enable us to have a chance to properly respond. In the spirit of good faith and cooperation, we have prioritized our concerns to redline only those we believe are most essential for a proper consideration of our appeal. We believe that these redlined changes to the TORs will help to ensure the legitimacy, fairness, and transparency of the appeal process, in line with the guiding principles described in Article 1 of the Complaint Guidance. We note that these principles largely mirror the international standards that ART considers "not applicable" to it – Principle 31 of the UN Guiding Principles for Business and Human Rights as well as the recommendations of the UN Office of the High Commissioner for Human Rights regarding the effectiveness criteria for non-State-based grievance mechanisms (that is, grievance mechanisms operated by private entities such as ART).

For your convenience, we list the principal redlines here:

1. The second page now clarifies that the ART Secretariat is representing ART in this appeal, as the TORs reference the representatives, plural, of both Parties. The signature page now accordingly also has a signature line for the representative of ART in this appeal.
2. Part II of the TOR includes provision for the consideration and appointment of non-voting technical and subject-matter experts to the Committee.
3. Parts VII and VIII expand the set of information that the Committee may consider in its deliberations. Contrary to ART's letter dated 10 October, we hope not to "constrain the documents that the Appeal Committee will consider"; rather, it is essential that the Appeal Committee has the freedom to consider all information it considers relevant to the appeal.
4. Part XI ensures that the Committee considers the substantive issues raised in the APA Complaint and reiterated in the Appeal Submission, whether or not such issues were addressed in the Memorandum of Review. This provision is essential because the investigator assigned to draft the Memorandum of Review considered only procedural issues and stated that substantive issues would be considered on appeal.
5. Part XIV includes a provision requiring the consent of all voting members of the Committee for the Secretariat to attend a meeting of the Committee. This is an important safeguard for the



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Committee's impartiality and independence, as the Appeal Secretariat is also the secretariat of the respondent (and presumably the representative of the respondent).

6. Part XVI provides that correspondence between or among the Parties, the Committee, the Secretariat, and/or any third parties in relation to the Appeal shall not be considered Confidential Materials once the Threshold Decision or Decision, as relevant, has been rendered and communicated to the Parties. This provision enhances the transparency of the grievance mechanism.

Finally, we wish to note that the APA has full confidence that our selected Appeal Committee member, who has already been approved by the ART Secretariat, will be in compliance with the Terms of Reference once executed. It is our understanding that the Communication that Professor Celorio sent to ART listed questions for the ART Secretariat regarding the TORs. We regret any misunderstanding on ART's part that this list of questions was an advocacy submission made in furtherance of our appeal.

We look forward to your execution of these redlined TOR and the consideration of the appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'L George', is centered on a light gray rectangular background.

Laura George
Amerindian Peoples Association



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18 October 2023

To:

Mary Grady, ART Secretariat

Christina Magerkurth, ART Secretariat

cc:

ART Board

Appeal Committee

Re: Addendum to APA Appeal of ART Decision on Complaint about issuance of credits to Guyana for 2016-2020

Dear ART Secretariat:

The Amerindian Peoples Association (APA) writes to submit this addendum to its submission (Appellant's Additional Submission) for the Appeal of the decision taken in response to our complaint submitted on 8 March 2023 (APA Complaint). In accordance with paragraph 21 of the Terms of Reference of the Appeal, this addendum will address the new Threshold Requirements as articulated in paragraphs 29-31 of the Terms of Reference.

The APA meets the Threshold Requirements and the Appeal should proceed to a decision on the merits because (1) the Appeal Submission is limited to issues raised in the APA Complaint and matters within the mandate of ART TREES; (2) the APA has clearly identified the specific findings in the Memorandum of Review that are being appealed and has submitted written evidence demonstrating a reasonable likelihood of a material error in the specific findings identified, which if remedied would have had a material impact on the recommendations set out in the Memorandum of Review; and (3) the APA has met the procedural requirements of an ART Appeal.

I. The Appeal Submission is limited to issues raised in the APA Complaint and matters within the mandate of ART TREES.

The first Threshold Requirement (Terms of Reference paragraph 29(1)) limits an Appeal to (a) issues raised and the record in the Original Complaint, and (b) matters within the mandate of ART TREES.

The Appeal Submission raises four primary issues: (1) ART must ensure that its grievance mechanism meets international standards;¹ (2) the Government of Guyana does not fully respect the land rights of indigenous peoples;² (3) the Government of Guyana did not respect the rights of indigenous peoples to

¹ Appeal Submission at 2.

² Appeal Submission at 3.



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FPIC in the process of developing its ART proposal;³ and (4) the Government of Guyana has not demonstrated ownership of ERRs as required in each TREES document.⁴ We note that the Appeal Submission largely reiterates many of the substantive points made in the APA Complaint because the Investigation Report made no effort to address these substantive issues.⁵

Article 2(3)(a) of the Complaint Guidance states that it is out of ART's scope to consider "Complaints related to the laws, policies, and regulations of the host country, unless this directly relates to the entity's obligation to comply with ART's standards and procedures." We note preliminarily that this Complaint Guidance was published after the APA first submitted its complaint and should not be applied retroactively. Nonetheless, this does not bar any of the issues raised in the APA Complaint or Appeal Submission. While some of the issues relate to the laws of Guyana, all such issues relate directly to Guyana's obligation to comply with TREES. For example, the question of the statutory authority of the National Toshias Council in Guyana is directly related to the Government of Guyana's obligation to demonstrate ownership or rights to ERRs.

a. Issue 1

The first issue, regarding the compliance of the ART grievance mechanism with relevant international standards, is raised in the APA Complaint at page 2 under the heading "Registration of concern about legitimacy of ART grievance mechanism." This section is expanded in the Appeal Submission because at the time the APA Complaint was filed in March 2023, very little information was available about the ART grievance mechanism (only TREES Article 16). The section addressing this issue in the APA Complaint references the guidance from the UN Office of the High Commissioner for Human Rights on non-State-based grievance mechanisms for victims of business-related human rights abuses. This guidance and the associated UN Guiding Principles form the basis of the discussion in the Appeal Submission of the legitimacy of ART's grievance mechanism. This issue was therefore raised in the APA Complaint and contained in the record thereof.

Finding 4 of the Memorandum of Review states that "A specific comment about the grievance mechanism does not reflect an understanding of the role of TREES". It appears to us from correspondence with ART as well as from this Memorandum of Review that ART has consistently attempted to suggest that international best practice with regard to non-State-based grievance mechanisms do not apply to it. This is clearly erroneous and has been consistently used by ART to change the parameters of the complaints process, undermining the legitimacy and fairness of the process. As the Appeal Submission noted, since the Memorandum of Review was published and the Complaint dismissed, ART then issued a new Complaints Guidance. Art. 2(3)(b) of that Guidance considers that it would be out of scope to consider complaints "on matters previously submitted through the mechanism or addressed as part of a public comment submission unless new, compelling evidence is provided". The APA is concerned about how the

³ Appeal Submission at 7.

⁴ Appeal Submission at 13.

⁵ Meeting between Laura George and Charlotte Young, 17 April 2023.



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ART grievance mechanism can at all address “substantive complaints regarding the rules, requirements and content of the standard, TREES and operative documents” if it cannot consider complaints that the complainant believes were wrongly addressed by the VVB. While the Complaints Guidance does, unlike TREES Art. 16, provide that the ART complaints mechanism can consider complaints that the VVB made erroneous decisions regarding a Participant’s compliance with TREES, it then states that the only recourse would be forwarding that complaint to the VVB for consideration in the next round of validation and verification or to the VVB’s accreditation body. Taken together, these provisions in the Complaints Guidance raise concerns about the scope of grievances ART is willing to address.

This issue is within the mandate of ART TREES and indeed concerns ART’s mandate as a whole, as a poorly designed grievance mechanism undermines the legitimacy of all other aspects of the ART mechanism. This issue is also within the scope of ART’s complaints process as defined in Article 16 of TREES, which allows complaints related to the application of ART program requirements, as well as in Article 2 of the Complaint Guidance. The Guidance provides that “The scope of the ART Complaints Process is to provide a formal process for addressing grievances related to ART policies and procedures, substantive complaints regarding the rules, requirements and content of the standard, TREES and operative documents.”⁶ The ART Complaint Process is an ART procedure. It is also described in Article 16 of TREES and therefore falls within the ambit of the “content of the standard, TREES and operative documents.” Therefore, the issue of the compliance of ART’s grievance mechanism with international standards is within the mandate of ART TREES.

The first issue therefore meets the first Threshold Requirement.

b. Issue 2

The second issue, that the Government of Guyana does not fully respect the land rights of indigenous peoples, is raised throughout the APA Complaint. The Appeal Submission addresses this issue with reference to TREES Section 12.5.1, Theme 1.2; Section 12.5.2, Themes 2.3 and 2.4; and Section 12.5.3, Theme 3.3. These sections and themes are raised in the APA Complaint at pages 9-11 and 13-17. The second issue was therefore raised in the APA Complaint and contained in the record thereof.

The second issue is within the mandate of ART TREES, whose immutable principle number 2 is to “Be consistent with the United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP) decisions including the ... Cancun Safeguards, which establish environmental, social, and governance principles countries are expected to uphold... in particular to ensure the recognition, respect, protection and fulfillment of the rights of indigenous peoples and local communities.” The scope of the ART Complaints Process as defined in Article 16.1 of TREES includes objections to the “application of ART program requirements” and as defined in Article 2 of the Complaint Guidance includes “substantive complaints regarding the rules, requirements and content of the standard, TREES and operative

⁶ Complaint Guidance, Article 2.



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documents.” The second issue concerns the application of the Cancun Safeguard requirements to the Government of Guyana and compliance with the substantive requirements and content of TREES. This issue is therefore within the mandate of ART TREES.

The second issue therefore meets the first Threshold Requirement.

c. Issue 3

The third issue, that the Government of Guyana did not respect the rights of indigenous peoples to FPIC in the process of developing its ART proposal, is likewise raised throughout the APA Complaint. The Appeal Submission addresses this issue with reference to TREES Section 12.5.1, Theme 1.2; Section 12.5.2, Themes 2.1 and 2.4; Section 12.5.3, Theme 3.3; and Section 12.5.4, Themes 4.1 and 4.2. These sections and themes are raised in the APA Complaint at pages 9-12, 15-16, and 17-18. The third issue was therefore raised in the APA Complaint and contained in the record thereof.

The third issue is within the mandate of ART TREES. As with the second issue, this issue concerns the second immutable principle of ART. As above, the third issue concerns the application of the Cancun Safeguard requirements to the Government of Guyana and compliance with the substantive requirements and content of TREES. This issue is therefore within the mandate of ART TREES.

The third issue therefore meets the first Threshold Requirement.

d. Issue 4

The fourth issue, that the Government of Guyana has not demonstrated ownership of ERRs as required in each TREES document, is raised in the APA Complaint at page 8 under the heading “Section 6. Ownership rights to emissions reductions and/or removals to be issued by ART.” The fourth issue was therefore raised in the APA Complaint and contained in the record thereof.

The fourth issue is within the mandate of ART TREES. As above, the fourth issue concerns compliance with the substantive requirements and content of TREES—in this case, the requirement that TREES credits will only be issued to States “that have demonstrated clear ownership or rights” to ERRs.⁷ This issue is therefore within the mandate of ART TREES.

The fourth issue therefore meets the first Threshold Requirement.

II. The APA has clearly identified the specific findings in the Memorandum of Review that are being appealed and has submitted written evidence demonstrating a reasonable likelihood

⁷ TREES, Annex A, p. 81.



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of a material error in the specific findings identified, which if remedied would have had a material impact on the recommendations set out in the Memorandum of Review.

The second Threshold Requirement (Terms of Reference paragraphs 29(2) and 30) states that the Appellant must clearly identify the specific findings in the Memorandum of Review that are being appealed and must submit written evidence demonstrating a reasonable likelihood of a material error in the findings identified. A material error is one that, if remedied, would have had a material impact on the recommendations set out in the Memorandum of Review.

The portion of the Appeal Submission filed in June clearly identifies the specific findings of the Memorandum of Review that are being appealed: the first paragraph of the Appeal Submission states that the APA is appealing findings 5, 6, 8, 9, 10, and 11 of the Memorandum of Review. At the beginning of each of Sections II, III, and IV of the portion of the Appeal Submission filed in June, specific reference is made to each of the relevant findings. Section II refers to findings 9, 10, and 11. Section III refers to findings 5, 6, 8, and 11. Section IV refers to finding 8.

The written evidence submitted by the APA demonstrates a reasonable likelihood (and indeed, much more than a reasonable likelihood) of a material error in the specific findings identified. The entirety of the portion of the Appeal Submission filed in June constitutes evidence of the errors in the Memorandum of Review. In general, the findings of the Memorandum of Review fail to engage with the substantive allegations of noncompliance with TREES. The Memorandum states that its focus is “on the primary issue that appears throughout the Comments/Complaint: that the APA concerns were raised, but not heard or considered during the validation and verification process.”⁸ This was not the primary issue raised in the Complaint; rather, the primary issue is that the Government of Guyana has not fully complied with the safeguards in Article 12 of TREES. Of course, if the ART program requirements have been misapplied then that necessarily means that there was a failure of the validation and verification process. However, this complaint raises concerns about the substantive application of the TREES standard. TREES Art. 16.1 provides that complaints relating to validation and verification should be raised with the validation and verification body’s own grievance mechanism. This complaint was brought to ART as an objection to the misapplication of ART’s program requirements to the Government of Guyana’s (GoG’s) proposal and associated decision made by ART to issue credits to the GoG. Because of this misunderstanding of the APA Complaint, the Memorandum of Review made no findings on the Government of Guyana’s compliance with TREES. The very fact that the substantive allegations of noncompliance with TREES safeguards are uncontested by any of the findings of the Memorandum of Review (which merely states instead that these issues had already been considered or addressed) is a material error in the specific findings identified.

Because the Memorandum of Review did not conduct an independent evaluation of the substantive claims in the APA Complaint, the recommendations of the Memorandum of Review contained no recommendations for corrective action for noncompliance with TREES. If any one of the complaints raised

⁸ Memorandum of Review at 1.



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about the GoG's substantive non-compliance with TREES were found to have been proven, the Memorandum of Review would have contained a recommendation for prospective corrective action in accordance with TREES. Therefore, if any one of the substantive complaints of noncompliance with TREES is found to have been proven, this material error of failing to consider that claim would be one that if remedied would have a material impact on the recommendations set out in the Memorandum of Review.

In addition, the Appeal Submission demonstrates a reasonable likelihood of material error in each of the individual findings identified.

Finding 5 states that "specific issues raised related to information access were considered and addressed."⁹ The Appeal Submission pointed out that the Memorandum of Review only looked to the validation and verification report to determine that the VVB "reviewed similar concerns" and concluded that the GoG's "outreach efforts" conformed with TREES. However, the APA's Complaint raised the concern precisely that the TREES requirements have been misapplied and that the GoG's outreach efforts, as described by the VVB, were insufficient to meet the Cancun Safeguard requirements regarding access to information. A proper consideration of the evidence provided by the APA in its Complaint leading to the conclusion that the consultation process was inadequate and did not conform to TREES would mean that credits were issued to Guyana in error.

Finding 6 states that "specific issues regarding shortcomings of the public consultation process ignores [sic] the record of what was considered."¹⁰ The Appeal Submission again points out that the Memorandum of Review failed to consider the evidence provided by the APA in its complaint and instead merely cited to the VVB's report without any further analysis. Even in the "record of what was considered" by the VVB, there is evidence that the GoG failed to comply with international standards for consultation with indigenous peoples. As above, proper consideration of the evidence provided by the APA in its Complaint leading to the conclusion that the consultation process was inadequate and did not conform to TREES would mean that credits were issued to Guyana in error.

Finding 8 states that "specific comments about ownership of credits—titled and untitled—were addressed."¹¹ The Appeal Submission points out that the Memorandum of Review dismisses the APA's concern about the Government's lack of respect for indigenous peoples' land rights first by stating that TREES does not require carbon rights to be defined in national legislation, and second by referencing the VVB's finding that the NTC had made a decision regarding sale of credits from indigenous peoples' lands. Regarding the first point, the Appeal Submission noted that TREES does in fact state that Participants must explain how carbon rights and/or related property interests are established in national constitutional and legal frameworks, and that Participants must explain how claims to such rights from indigenous peoples are addressed and resolved. The Memorandum of Review's erroneous conclusion regarding the lack of definition of carbon rights in Guyanese legislation is a material error that leads to further erroneous

⁹ Memorandum of Review at 12.

¹⁰ Memorandum of Review at 13.

¹¹ Memorandum of Review at 13.



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conclusions regarding how ownership of credits is defined and/or transferred. The APA pointed out in its Complaint and Appeal that under Guyanese legislation, namely the Amerindian Act, indigenous peoples via their village councils hold recognized property rights over their titled lands, and decisions regarding most matters affecting village lands are taken by village general meetings. The Complaint and Appeal note as well that by international human rights law as incorporated into the Guyanese Constitution, e.g. Art. 154A, indigenous peoples have rights to make decisions via their representative institutions over all of their traditional lands, territories, and resources, even if those lands, territories, and resources are not legally recognized by the government.

In regard to the second point above, the NTC has no authority under national legislation to make any decisions on behalf of villages over their property rights. Additionally, the NTC is not a traditional or chosen decision-making institution for indigenous peoples in Guyana and therefore also does not have any authority by international law to make decisions on behalf of villages over their property rights.

The Memorandum of Review's failure to consider the above points raised in the Complaint constitute a material misunderstanding of both TREES and the application of TREES in the context of Guyanese and international human rights law. A proper consideration of these points leading to the conclusion that the GoG does not have ownership of ERRs generated in titled and/or untitled land would mean that there was an error in the amount of credits issued to the GoG, as credits cannot be issued to the GoG for ERRs that it does not have rights to.

Finding 9 states that "specific comments about control over titled lands are out of scope of ART TREES."¹² As the Appeal Submission noted, this statement in and of itself is a material error in the Memorandum of Review. Cancun Safeguard B explicitly requires that the government respect, protect, and fulfill indigenous peoples' land tenure rights. This necessarily means that it is required that indigenous peoples have title which recognizes their ownership of their traditional lands, and that indigenous peoples have control over those titled lands. The Appeal Submission also points out that the Memorandum of Review makes the erroneous statement that ART is only concerned with forestry programs and not mining or other activities. To the extent that mining and other activities take place in forested areas, they necessarily affect the generation of emissions reductions and therefore fall squarely within the scope of TREES. Notably, TREES requires that the Participant government respect, protect, and fulfill land tenure rights. It does not specifically limit that requirement to lands over which there are forestry or REDD+ activities taking place. Even if it did, as the APA noted in its Complaint and Appeal, the GoG's proposal covers the entirety of the national forest area.

The Memorandum of Review's erroneous summary dismissal of the APA's complaint in this regard constitutes a material misunderstanding of TREES and the land use context of Guyana. If this error were corrected, the Memorandum of Review would necessarily have reached the conclusion that the GoG does

¹² Memorandum of Review at 14.



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not meet the Cancun Safeguard requirement regarding indigenous peoples' land rights and that the credits were issued to the GoG in error.

Finding 10 states that "specific comments about land titling dispute mechanisms do not understand the TREES process; and were considered."¹³ As the APA noted in its Appeal Submission, the Memorandum of Review erroneously interprets TREES Cancun Safeguard B requiring respect for, protection of, and fulfillment of land rights. First, the outcome indicator for Theme 2.4 of Cancun Safeguard B is clear that there must resolution of land rights grievances. The Memorandum of Review suggests that not all land disputes need be resolved before verification and validation is concluded; however, TREES suggests that at a minimum resolution of land grievances must be in process. Moreover, the Memorandum of Review concludes that a land titling dispute mechanism must exist and be effective but does not then offer any suggestion that it has found that such a mechanism does in fact exist in Guyana. The reviewer ignores the evidence provided by the APA that in fact no such mechanism does exist and thus land grievances remain ongoing. If these errors were corrected, the Memorandum of Review would find that the GoG has not conformed with Cancun Safeguard B and that the credits were issued incorrectly.

Finding 11 states that "other specific comments are outside of the scope of ART TREES, are factually incorrect, or will be addressed (per the Secretariat) in the current 2021 verification."¹⁴ As the Appeal Submission noted, the Memorandum of Review erroneously fails to consider that although "ART does not specify a required legal framework for land titling," TREES does require that a participant Government respect, protect, and fulfill the rights of indigenous peoples, including land tenure rights. Complaints regarding the effectiveness of land titling programs for indigenous peoples are therefore well within the scope of ART TREES. Mining and other issues pertaining to titled and customary indigenous lands are also squarely within the scope of ART TREES for this reason and for the reasons discussed above.

Finding 11 also suggests that international human rights standards for consultation and FPIC are immaterial because the Government of Guyana does not claim to follow the recommendations of international human rights bodies with respect to consultation and FPIC, and there is no requirement in TREES that the Government do so. This is a material misinterpretation of Cancun Safeguard A, Theme 1.2, which requires consistency with the objectives of relevant international conventions and agreements. The statements and recommendations of human rights treaty bodies such as CERD and CEDAW, which provide guidance on the objectives and implementation of treaties ratified by the Government of Guyana, are relevant to the question of whether the Government of Guyana has complied with this requirement of TREES. Dismissing them is therefore a material error.

Moreover, it is erroneous for the Memorandum of Review to dismiss concerns related to respect for indigenous peoples' rights simply because they were considered by the VVB and will be considered again during the 2021 verification. The Memorandum of Review itself acknowledges that the monitoring report submitted by the GoG for the 2016-2020 and 2021-25 crediting periods are substantially the same. In fact,

¹³ Memorandum of Review at 14.

¹⁴ Memorandum of Review at 14.



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nothing has changed in regard to the GoG's compliance with the Cancun Safeguards in relation to the respect for and protection of indigenous peoples' participation and land rights. However, even if the VVB considers these issues properly during the 2021 verification, that would not affect the 2016-2020 credits. Therefore, the Memorandum of Review's failure to consider complaints on the basis that they would be considered in the 2021 verification constitutes a material error.

III. The APA has met the procedural requirements of an ART Appeal.

For an ART Appeal to meet the Threshold Requirements, submissions for the appeal must be provided to ART at REDD@winrock.org with the subject line "Appeal submission to ART" within 30 days of receiving the investigation findings.

The APA sent its submission to ART at REDD@winrock.org on June 16, 2023, 29 days after receiving the investigation findings on May 18, 2023. Although the subject line of the email was "Appeal of ART decision on APA's Complaint" rather than "Appeal submission to ART," we note that ART promptly acknowledged receipt of the submission.¹⁵ Since neither party was under any misapprehension of the nature or content of the communication, it would be unreasonable to find that the APA failed an eligibility review on this basis.

Therefore, APA substantially meets the procedural requirements of an ART Appeal.

IV. Conclusion

The APA meets all of the Threshold Requirements identified in sections 29-31 of the Appeal TOR. First, each issue identified in the appeal was raised in the APA Complaint, and each issue is clearly within the mandate of ART TREES, as they concern ART's immutable principles and the requirements and content of TREES, including the Cancun Safeguards. Second, the APA clearly identified the specific findings being appealed and provided evidence of material errors in these findings. Third, the APA substantially meets the procedural requirements of an ART Appeal.

The APA attaches in Annexes the sources cited in its Complaint and Appeal. These are not new evidentiary materials but rather documents already referenced in its Complaint and Appeal. The APA provides such documents in the form of Annexes for the Committee's ease of reference.

¹⁵ In an email communication from the ART Secretariat to Laura George on June 18, 2023, the Secretariat stated, "The ART Secretariat acknowledges receipt of the appeals letter."

APPEAL

Amerindian Peoples Association

(the “Appellant”)

- and -

Architecture For REDD+ Transactions

(the “Respondent”)

**(Re Complaint by Amerindian Peoples Association regarding the 2016-2020
Validation and Verification of the Government of Guyana’s REDD+ Program)**

TERMS OF REFERENCE

Members of the Independent Committee (each a “Member”)

Roselyn Fosuah Adjei

Rosa Celorio

Thomas Green

ART Secretariat

Mary Grady

Christina Magerkurth

13 October 2023

Laura George

Governance and Rights Coordinator
200 Charlotte Street
Bourda, Georgetown, Guyana
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Representing Amerindian Peoples Association

**Architecture For REDD+ Transactions
ART Secretariat**

c/o Mary Grady and Christina Magerkurth
2451 Crystal Drive, Suite 700
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Representing Architecture for REDD+ Transactions

Roselyn Fosuah Adjei

yafossy@yahoo.com

Rosa Celorio

rcelorio@law.gwu.edu

Thomas Green

Tcgreen100@gmail.com

I. The Parties and their Representatives

1. By signing these Terms of Reference, the Appellant and the Respondent (collectively the “Parties” or separately each a “Party”) confirm that the above-mentioned representatives of the Parties are duly authorised to act and express themselves in this Appeal in the name and for the account of the Party that appointed them, in particular for the execution of these Terms of Reference. Each may validly exercise his/her power and authority individually or collectively.
2. Any addition or change to the registered office of a Party or to a Party’s legal representation after the date of the execution of these Terms of Reference must be communicated to the Committee and the ART Secretariat (“**Secretariat**”) in writing immediately after such addition or change.

II. Constitution of the Committee

3. The Committee shall serve as the decision-making body for the purposes of the Appeal. It will be constituted as follows:
 1. On August 30, 2023, Rosa Celorio was confirmed as Member upon approval by the Secretariat following proposal by the Appellant pursuant to Article 16.2 of the REDD+ Environmental Excellence Standard (“**TREES**”) and Article 4.3 of the Guidance on ART’s Complaints and Appeals Process (“**Guidance**”).
 2. On July 19, 2023, Thomas Green was confirmed as Member upon acknowledgment by the Secretariat and nomination by Winrock from among Winrock’s Board of Directors or Senior Management team pursuant to Article 16.2 of TREES and Article 4.3 of the Guidance.
 3. On July 17, 2023, Roselyn Fosuah Adjei was confirmed as Member upon acknowledgment by the Secretariat and nomination by ART from among ART’s Board of Directors pursuant to Article 16.2 of TREES and Article 4.3 of the Guidance.
 4. **The above-mentioned Committee members shall consider whether to appoint non-voting technical and subject-matter experts to the Committee and may appoint such experts in accordance with Article 4(3) of the Complaint Guidance.**
5. The Parties agree to the appointment of Mary Grady and Christina Magerkurth as the administrative secretaries for the Committee, referred to as the Secretariat (“**Secretariat**”) in these Terms of Reference.
6. By signing these Terms of Reference, each Party confirms that the Committee has been properly constituted and in accordance with TREES and the Guidance.
7. Accordingly, the Parties waive any objections **to the present composition of the Committee, without prejudice to the Committee’s right to appoint (additional) non-voting technical and subject-matter experts to the Committee** in respect of matters known to the Parties at the date of signature.

III. Obligations of Committee

9. Members and Non-Voting Members, as applicable, shall not act as an advocate for any Party to the Appeal and shall conduct themselves at all times in a manner that is:

1. Wholly independent;
 2. Wholly impartial; and
 3. Free of any personal interest or other conflict of interest in respect of any and all aspects of the Appeal.
10. Members and Non-Voting Members, as applicable, shall be subject to the requirements of confidentiality set out below and their Confidentiality Undertaking.
11. In the event that a Member or Non-Voting Member, as applicable, breaches a confidentiality obligation set out in these Terms of Reference, that individual will be subject to removal from his/her position upon a majority vote of all other Members of the Committee.

IV. Obligations of Secretariat

12. The Secretariat shall be required to support these proceedings in such a way that promotes and upholds their efficiency, timeliness, impartiality, and confidentiality.

V. Notifications and Communications

13. The Parties and the Committee must send copies of all written correspondence directly to all other Parties' representatives, each Member, and the Secretariat simultaneously to the addresses indicated set out in this Terms of Reference.
14. Communications shall be sent to the Party representatives at the email addresses as set out in this Terms of Reference on or before any date set by the Committee and by courier only when required. All signatories shall promptly notify the Secretariat of any change in their contact information.
15. Documents must be sent to the Secretariat in electronic form only.
16. Subject to any requirements of mandatory law that may be applicable, and unless the Parties agree otherwise, (1) the Terms of Reference may be signed in counterparts and (2) such counterparts may be scanned and communicated to the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof.

VI. Procedure to Date

15. On March 8, 2023, the Appellant delivered its complaint ("**Original Complaint**") regarding the 2016-2020 validation and verification of the Government of Guyana's REDD+ Program, in accordance with Article 16.2 of TREES and ~~Article 3.1 of the Guidance~~.
16. On April 3, 2023, the Government of Guyana provided its formal response to the Original Complaint ("**Government of Guyana Response**").

17. On April 24, 2023, the Chair of the National Toshiacos Council provided its formal response to the Original Complaint (“**NTC Response**”).
18. On May 11, 2023, Charlotte Young, Winrock International’s General Counsel and Chief Risk and Compliance Officer, acting as the “**Independent Reviewer**”, delivered her conclusions based on a review of the Original Complaint (“**Memorandum of Review**”).
19. On May 18, 2023, the Secretariat published the Memorandum of Review along with a statement (“**Statement of Secretariat**”) on ART’s public website.
20. On June 16, 2023, the Appellant delivered its intention to appeal the Memorandum of Review’s conclusions (the “**Appellant’s Submissions**”).

VII. Overview of the Appeal Process

21. The Appeal shall proceed in two stages:

1. First, the Committee shall have ninety (90) days from the execution of these Terms of Reference ~~in order to~~ to consider the Appellant’s Submissions in order to determine whether the Threshold Requirements (defined below) have been met. If the Committee determines that, on the basis of the Appellant’s Submissions, the Threshold Requirements have not been met, then the Appeal shall be dismissed and the decision of the Committee shall be final and binding. The Committee shall issue its written decision on the Threshold Requirements (“**Threshold Decision**”) to the Secretariat, which shall provide notice of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. Should the Appellant wish to file any addenda to the Appellant’s Submissions (“**Appellant’s Additional Submissions**”) in order to address solely the Threshold requirements set out in Sections 29 through 31, inclusive, of these Terms of Reference, it shall do so on or before October 18, 2023.
2. Second, if the Committee determines that the Threshold Requirements have been met, the Committee shall issue its Threshold Decision to the Secretariat, which shall provide notice of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. The Appeal shall then proceed in accordance with the following process and timelines:
 1. The Respondent may, in its sole discretion, file Responding Submissions, in response to the Appellant’s Submissions, on or before the date that is ten (10) days after the date that the Threshold Decision has been posted on the ART website. The Responding Submissions shall be strictly confined to the matters raised in the Appellant’s Submissions and the mandate of ART TREES.
 2. In the event that that Respondent files Responding Submissions, the Appellant may, in its sole discretion, file Reply Submissions, in response to the Respondent’s Reply Submissions, on or before the date that is ten (10) days after the date that the Threshold Decision has been posted on the ART website. The Appellant’s Reply Submissions shall be strictly confined to the matters raised in the Respondent’s Responding Submissions and shall not raise new issues or be repetitive of the Appellant’s Submissions.

3. The Secretariat shall promptly prepare and disseminate to the Parties and the Members an appeal record (“**Appeal Record**”) which shall consist of:
 - (i) Original Complaint;
 - (ii) **Government of Guyana** Response;
 - (iii) NTC Response;
 - (iv) Memorandum of Review;
 - (v) Statement of Secretariat;
 - (vi) The Appellant’s Submissions;
 - (vii) **The Appellant’s Additional Submissions**
 - (viii) The Respondent’s Responding Submissions, if any; and
 - (ix) If the Respondent has filed Responding Submissions, the Appellant’s Reply Submissions, if any.
4. The Committee consider the Appeal Record and render its Decision on the Appeal (the “**Decision**”) in accordance with these Terms of Reference, based ~~exclusively on the written record before it~~ **on the Appeal Record and any other information that the Committee deems relevant** within the mandate of ART TREES on or before the date that is ninety (90) days after the date that the Threshold Decision has been posted on the ART website. The Decision shall be final and binding, with the effect of any such Decision being implemented on a prospective and not a retroactive basis.

VIII. General Conduct of the Committee

22. The Appeal shall be conducted by the Committee in accordance with the due process mandated by the Article 16.2 of TREES and the Guidance including: applicable notice of timelines and proceedings, the opportunity to provide written submissions in accordance with Section IX, and a written decision of the Committee based ~~exclusively on the record before it~~ **on the Appeal Record and any other information that the Committee deems relevant** and matters within the mandate of ART TREES.
23. Any additional procedural matter may be determined by the Committee by way of procedural orders after consultation with the Parties.
24. Subject to Section 23, any question of admissibility or what is beyond the scope of the ART TREES mandate shall be decided by the Committee.
25. The Committee shall deliberate the matters properly before it in strict confidence and attempt to arrive at all decisions by consensus. Where consensus is not achievable, the decisions of the Committee shall be made by a simple majority of its voting Members.
26. The Appeal is limited to the issues raised and evidence proffered in the Original Complaint, as mandated by ~~Article 16.2 of TREES and~~ Article 4.1 of the Guidance and matters within the mandate of ART TREES. The Committee shall not consider any new issues, and, subject to the Appellant’s Submissions addressing the alleged error in the Memorandum of Review as set out in Paragraph IX.2(ii), the Committee shall not accept any new or additional evidence.
27. The Appellant bears the burden to prove that it has met the Threshold Requirements, and if it has received a positive Threshold Decision, that the Appeal should succeed on its merits.
28. Each of the Parties shall bear their own costs of the proceeding.

IX. Threshold Eligibility Determination

29. The Committee shall conduct an eligibility review ~~in accordance with Article 16.2 of TREES and Articles 4.1 and 4.2 of the Guidance~~. In particular, the Committee shall review the Appellant's Submissions to determine whether the Appeal meets the following threshold requirements (collectively, the "**Threshold Requirements**"):
1. The Appeal is limited to (i) the issues raised and the record in the Original Complaint, and (ii) matters within the mandate of ART TREES;
 2. The Appellant has: (i) clearly identified the specific finding(s) in the Memorandum of Review that is (are) being appealed; and (ii) submitted written evidence demonstrating a reasonable likelihood of a material error in the specific finding(s) identified in (i); and
 3. The Appellant has met the procedural requirements of an ART Appeal, including providing the Appellant's Submissions within 30 days of receiving the Memorandum of Review by notice to ART at REDD@winrock.org with the subject line "Appeal submission to ART";
30. The Appellant's Submissions **and Additional Submissions, if filed**, to support the evaluation of the Threshold Requirements shall include: (i) a statement of the specific finding(s) from the Memorandum of Review that is (are) being appealed, (ii) written submissions setting out clear evidence of the Appellant's asserted error; and (iii) submissions on how the error, if proven, would have had a material impact on the recommendations set out in the Memorandum of Review.
31. The burden of proof and onus is on the Appellant to prove that the Threshold Requirements have been met.
32. The Committee shall have ninety (90) days from the date that the Appeal Panel is constituted through the execution of these Terms of Reference by all relevant entities in order to consider the Appellant's Submissions and render its Threshold Decision on whether the Threshold Requirements have been met.
33. If the Committee determines that, on the basis of the Appellant's Submissions, the Threshold Requirements have not been met, then the Appeal shall be dismissed, and the decision of the Committee shall be final and binding. The Committee shall issue its written Threshold Decision to the Secretariat, which shall provide notice and a copy of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. The Secretariat shall communicate the Committee's Threshold Decision to the Appellant and the Respondent, with notice that the Appeal is dismissed and shall proceed no further.
34. If the Committee determines that the Threshold Requirements have been met, the Committee shall issue its Threshold Decision to the Secretariat, which shall provide notice of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. The Appeal shall then proceed in accordance with the process and timelines outlined in Section 21(2) and Part XI of these Terms of Reference.
35. The Committee's determination set out in the Threshold Decision shall be final and binding on the Parties.

XI. Determination of Issues on Appeal and Decision

36. The processes and procedures set out in this Part XI apply only in the event that the Committee, in its Threshold Decision, determines that the Threshold Requirements have been met. If the Committee in its Threshold Decision determines that the Threshold Requirements have been met, then the Appeal shall proceed on its merits and within the scope of the ART TREES mandate.
37. The Committee shall then, on the basis of the Appeal Record, determine whether:
 1. There was a clear and proven error in the Memorandum of Review reflecting the decision recommendations of the Independent Reviewer; and
 2. The error, if remedied, would have had a material impact on the decision, recommendations of the Independent Reviewer set out in the Memorandum of Review.
38. In making its determinations on the questions outlined in Section 37, the Committee shall consider each substantive issue raised in the Appellant's Submissions. A determination that the Memorandum of Review has not considered a substantive issue raised by the Appellant or that the Appellant has proven any substantive issue shall be considered a clear and proven error in the Memorandum of Review that would have had a material impact on the decision if remedied.
39. In the event that the Committee finds that the questions outlined in Section 37 are both answered in the affirmative, then the Appeal shall succeed, and any remedies shall be limited to the mandate of ART TREES and implemented through the Secretariat on a prospective, and not a retrospective, basis. The Committee shall issue its Decision to the Secretariat, which shall provide notice of the Decision to all Parties and post the Decision on the ART website. The Secretariat shall communicate the Committee's Decision to the Appellant and the Respondent, with notice of any prospective actions that will be taken by the Secretariat in accordance with the Decision.
40. In the event that the Committee finds that either of the questions outlined in Section 37 are answered in the negative, then the Appeal shall be fully and finally dismissed. The Committee shall issue its written Decision to the Secretariat, which shall provide notice and a copy of the Decision to all Parties and post the Decision on the ART website. The Secretariat shall communicate the Committee's Decision to the Appellant and the Respondent, with notice that the Appeal is fully and finally dismissed.
41. The Committee shall limit its considerations on the Appeal to the Appeal Record for the purposes of formulating its final decision and findings on the Appeal addressing the questions set out on Section 37 and issuing its Decision on the Appeal.
42. The burden of proof and onus is on the Appellant to prove that the Appeal should be granted on its merits and that both questions set out in Section 37 are answered in the affirmative.
43. The Committee and the Parties agree to make every effort to conduct the Appeal in an expeditious and cost-effective manner, in accordance with these Terms of Reference.
44. The Committee shall issue a written report setting out its Decision on or before the date that is 90 days after the date of the Threshold Decision. In the event the Committee does not achieve consensus, the Decision will be based on a majority vote of the Members, with any dissenting views set out as part of the same written document.

45. The Committee shall have the right to extend the review timeline, as required, with notice of any such extensions provided to the Parties.
46. The Decision shall be communicated via email to the Parties and posted on the ART website, where it will be publicly available.
47. The Decision is a final and binding disposition of the Appeal with no further right of appeal to any other body.

XIII. Language of the Appeal

48. The language of the proceedings is English.

XIV. Place and Conduct of Appeal

49. There shall be no defined place of the Appeal as the Committee is encouraged to conduct its processes electronically with the assistance of the Secretariat. The Committee shall meet in person, electronically, or through combined in-person and electronic means in order to deliberate and render its Threshold Decision, and if applicable, Decision. Members and Non-Voting Members may participate in a meeting by means of teleconference or video conference through which all members at the meeting can speak to, and hear, all other participants at the meeting.
50. This Appeal shall be conducted in writing with all Parties proceeding by way of written submissions, and the Committee issuing its Threshold Decision, and, if applicable, the Decision, in writing. This shall not limit the ability of the Committee to confidentially discuss or deliberate the issues before it in accordance with each Member's enduring Confidentiality Undertaking or the Secretariat's ability to administer the Appeal.
51. The Secretariat in its supporting capacity shall be entitled to attend the Committee's meetings, **with the consent of all voting members of the Committee.**
52. Meetings of the Committee shall be in-camera and wholly confidential.

XV. Protection of Personal Data

53. The Parties and their legal representatives shall put in place and shall ensure that all those acting on their behalf put in place:
 1. appropriate technical and organizational measures to ensure a reasonable level of security appropriate to the Appeal, taking into account the scope and risk of the processing, the state of the art, the impact on data subjects, the capabilities and regulatory requirements of all those involved in the Appeal, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes personal data or sensitive business, proprietary or confidential information; and
 2. mechanisms to ensure that they comply with data breach notification procedures.

XVI. Confidentiality

54. The Appeal including all deliberations of the Committee are and shall be strictly confidential, in accordance with Article 16.2 of TREES.
55. Members of the Committee shall not discuss the substance of the Appeal, their deliberations, or any other matter relating to the Appeal other than when the Committee is meeting to deliberate for the purposes of formulating and rendering the Threshold Decision, and, if applicable, the Decision.
56. The Parties, the Committee and the Secretariat shall use Confidential Materials (as defined below) solely for the purpose of this Appeal and for no other purpose. Confidential Materials are all documents produced, filed or exchanged in the present Appeal, including:
1. all correspondence between or among the Parties, the Committee, the Secretariat and/or any third parties in relation to the Appeal, **before the Threshold Decision, if the Appeal is rejected for ineligibility, or Decision, if the Appeal is accepted as having met the Threshold Requirements, has been rendered and communicated to the Parties;**
 2. all documents filed in the Appeal, including the Appeal Record, and all documents produced (whether by a Party or a third party);
 3. all minutes, records (including recordings and notes), and deliberations of the Committee, its meetings and conferences; and
 4. information contained in or derived from any such documents.
- (“Confidential Materials”)**
57. Documents and information shall not be considered Confidential Materials to the extent that they are:
1. Properly available on ART’s website at <https://www.artredd.org/complaints/> as of September 4, 2023;
 2. The Threshold Decision or the Decision, once rendered and communicated to the Parties;~~or~~
 3. Part of the Appeal Record, once the **Threshold Decision, if the Appeal is rejected for ineligibility, or the Decision, if the Appeal is accepted as having met the Threshold Requirements, has been rendered and communicated to the Parties; or**
 4. **Correspondence between or among the Parties, the Committee, the Secretariat, and/or any third parties in relation to the Appeal, once the Threshold Decision or Decision, as above, has been rendered and communicated to the Parties.**
58. The Parties, the Committee, and the Secretariat shall not disclose or publish any Confidential Materials unless expressly provided for in these Terms of Reference or agreed to in writing by the Parties.
59. All individuals participating in or supporting this proceeding shall be required, prior to being entitled to participate in the proceedings or receive any documents in connection with the proceedings, to give a written undertaking to keep Confidential Materials confidential and to comply with these Terms of Reference, such undertakings to be in the form set out in

Schedule "A" attached to these Terms of Reference.

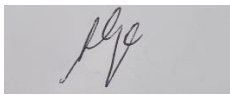
60. The Parties, the Committee and the Secretariat shall not disclose Confidential Materials, or the information contained therein, to any third person, excluding any individual (including experts, delegates and representatives) necessary for the ordinary conduct of the Appeal. Any such necessary individual, prior to such disclosure, shall be required to give a written confidentiality undertaking in accordance with Schedule A and these Terms of Reference.

61. For greater certainty, unless disclosure is required by law, judicial or arbitral order, or for the purpose of enforcing a judgment, order, direction, decision or award, or as needed to protect or to pursue a Party's legal right, or to enable the Secretariat, a Member or Non-Voting Member to respond to a challenge, the Parties, the Committee and the Secretariat undertake to preserve the confidential nature of the Appeal, as set out above.

62. Any documents, communications or correspondence submitted in the course of these proceedings may be destroyed unless a Party or a Member requests in writing within a period fixed by the Secretariat the return of such documents, communications or correspondence.

XVII. Signature of the Terms of Reference

I agree to be bound by these Terms of Reference:



_____ Name
For and on behalf of Appellant

_____ Name
For and on behalf of Respondent

Date:

_____ Name
Member

Date:

_____ Name
Member

Date:

_____ Name
Member

Date:

I agree to be bound by these Terms of Reference, as applicable to the Secretariat:

_____ Name

For and on behalf of Secretariat

Date:

I agree to be bound by these Terms of Reference, as applicable to the Secretariat:

_____ Name
For and on behalf of Secretariat

Date:

“Schedule A”

CONFIDENTIALITY UNDERTAKING

TO: The Secretariat and [Parties/other Party]

FROM: Amerindian Peoples Association (and its counsel) and Architecture For REDD+ Transactions (and its counsel), the Members [as applicable].

1. IN CONSIDERATION of being provided with materials in connection with the appeal between Amerindian Peoples Association and Architecture For REDD+ Transactions (the “**Parties**”), in respect of which a presumption of confidentiality applies to all materials defined as Confidential Materials in the Terms of Reference (“**Confidential Materials**”), I hereby agree to maintain the confidentiality of such Confidential Materials. It shall not be copied or disclosed to any other person who has not signed a Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.

2. I acknowledge that I am aware of the Terms of Reference that has been agreed to by the Parties, a copy of which has been attached to this Undertaking as **Schedule “A”**, and I agree to be bound by it.

3. I specifically Acknowledge that I am aware of the Terms of Reference’s confidentiality provisions, which impose an obligation to treat all aspects of these proceedings as confidential, subject to certain limited and specified exceptions, and I agree to be bound by these requirements.

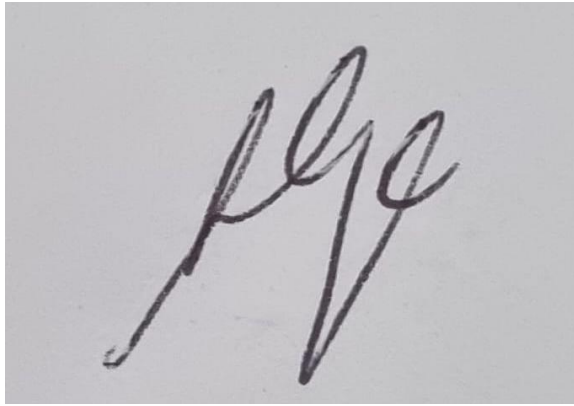
4. I will promptly return or otherwise destroy any Confidential Materials received by me to the Party that provided me with such materials or the information recorded in those materials, at the conclusion of my involvement in these proceedings.

5. I acknowledge and agree that either of the Parties to this appeal is entitled to relief to restrain breaches of the Terms of Reference, including breaches of its provisions relating to confidentiality, to enforce its terms and provisions in addition to any other remedy to which any Party to this appeal may be entitled at law or in equity.

6. I agree to submit to the jurisdiction of the courts of Arkansas in relation to any dispute arising in relation to this matter.

SIGNED, SEALED AND DELIVERED before a witness this 18 day of October,

2023.

A handwritten signature in black ink, appearing to read 'L George', written on a light gray background.

Laura George

(Print Name)

Nicholas Peters

A handwritten signature in red ink, appearing to read 'Nicholas Peters', written on a light gray background.

(Print Witness Name)

(Signature)

(Witness Signature)