

**LOAN CONTRACT No. 2091/BL-GY**

between the

CO-OPERATIVE REPUBLIC OF GUYANA

and the

INTER-AMERICAN DEVELOPMENT BANK

Financial Sector Reform Program

December 12, 2008

## **LOAN CONTRACT**

### **SPECIAL CONDITIONS**

#### **INTRODUCTION**

##### **Parties, Constituent Elements and Executing Agency**

#### **1. PARTIES AND PURPOSE OF THE CONTRACT**

CONTRACT entered into on December 12, 2008 between the CO-OPERATIVE REPUBLIC OF GUYANA, hereinafter referred to as the "Borrower", and the INTER-AMERICAN DEVELOPMENT BANK, hereinafter referred to as the "Bank", to cooperate in the execution of a financial sector reform program, hereinafter referred to as the "Program".

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

(a) This Contract consists of these Special Conditions, and the General Conditions attached hereto. If any provision of the Special Conditions should present any inconsistency or contradiction with the General Conditions, the provisions of the Special Conditions shall prevail. The principle of specific rules shall prevail over general rules.

(b) Rules for the application of amortization, interest, credit fee, inspection and supervision, disbursement, obligations relating to currencies, participations, renunciation of part of the financing, transactions falling due in public holidays, place of payments, application of payments, advance payments, receipt and promissory notes clauses, as well as other conditions related to Program execution, are established in detail in the General Conditions. The General Conditions also include general definitions.

#### **3. EXECUTING AGENCY**

The parties agree that the execution of the Program and the utilization of the resources of the financing from the Bank shall be carried out by the Borrower, through the Bank of Guyana ("BOG"), which for the purposes of this Contract shall be referred to as the "Executing Agency" or "BOG". The Executing Agency certifies its legal and financial capacity to function as such. The Borrower, through its Ministry of Finance ("MOF") undertakes to guarantee that the Executing Agency will carry out the execution of the Program in accordance with the provisions set forth in this Contract.

### **CHAPTER I**

#### **Amount of the Financing and Purpose**

**SECTION 1.01 Amount of the Financing.** (a) In accordance with this Contract, the Bank agrees to grant to the Borrower, and the Borrower accepts, a "Financing", composed as follows:

- (i) up to the amount of two million five hundred thousand dollars (US\$2,500,000) chargeable to the resources of the Single Currency Facility of the ordinary capital resources of the Bank, hereinafter the "Ordinary Capital Financing;" and
- (ii) up to the amount of two million five hundred thousand dollars (US\$2,500,000) chargeable to the resources of the Fund for Special Operations, hereinafter the "Fund for Special Operations Financing".

(b) The amounts disbursed from the Financing shall constitute the "Loan". Unless otherwise stated in this Contract, the term "dollars" hereinafter signifies the currency of legal tender in the United States of America.

**SECTION 1.02 Purpose.** The purpose of the Program is to contribute to the strengthening of the financial sector and the improvement in access to financial services of firms and individuals in order to foster the development of productive economic activities and the enhancement of the standards of living of the population. To that end, the Program will support the implementation of policy reforms in the following five (5) areas: (i) the macroeconomic framework; (ii) the regulatory and supervisory framework for the financial sector; (iii) the access to financial services; (iv) monetary policy accountability and improvement of the payments system efficiency; and (v) improvement of anti-money laundering framework.

## CHAPTER II

### **Amortization, Interest, General Inspection and Supervision and Credit Fee**

**SECTION 2.01 Amortization.** (a) The Loan shall be completely repaid by the Borrower as set forth in Article 3.01 of the General Conditions.

(b) **Ordinary Capital Financing.** The first repayment installment of the portion of the Loan disbursed against the Ordinary Capital Financing shall be paid six (6) years from the date of signature of this Contract and the last installment shall be paid no later than thirty (30) years from the same date.

(c) **Fund for Special Operations Financing.** The portion of the Loan disbursed against the Fund for Special Operations Financing shall be repaid in one single installment forty (40) years from the date of signature of this Contract.

**SECTION 2.02 Interest.** (a) **Ordinary Capital Financing.** Interest payable on the portion of the Loan disbursed against the Ordinary Capital Financing shall accrue on the daily outstanding balances of such portion of the Loan and shall be at a rate determined pursuant to Article 3.04(a) of the General Conditions for a Single Currency Facility loan with an Adjustable Interest Rate. The Bank shall notify the Borrower of the rate of interest applicable during each Semester, as soon as practicable after the determination thereof.

(b) **Fund for Special Operations Financing.** Interest payable on the portion of the Loan disbursed against the Fund for Special Operations Financing shall accrue on the daily outstanding balances of such portion of the Loan at the rate set forth in Article 3.04(b) of the General Conditions.

(c) Interest shall be payable semiannually beginning six (6) months from the effective date of this Contract.

**SECTION 2.03      Resources for General Inspection and Supervision.** During the disbursement period, resources of the Financing shall not be allocated to cover the Bank's expenses for general inspection and supervision, unless otherwise established by the Bank during said period as a result of its periodic review of financial charges, in accordance with the applicable provisions of the Bank's policy on lending rate methodology in ordinary capital loans, and the Borrower is notified by the Bank in this regard. Under no circumstance shall there be a charge for this purpose in any semester which is greater than the amount which results from applying 1% to the amount of the Financing, divided by the number of semesters included in the original disbursement period.

**SECTION 2.04      Credit Fee.** The Borrower shall pay a credit fee at a percentage that will be established by the Bank on a periodic basis as a result of its review of financial charges, in accordance with the applicable provisions of the Bank's policy on lending rate methodology in ordinary capital loans; provided that, under no circumstance, may it exceed the percentage contemplated in Article 3.02 of the General Conditions.

### CHAPTER III

#### **Conditions Concerning Disbursements**

**SECTION 3.01      General Provision.** (a) The amount of the Financing shall be disbursed in dollars chargeable to the resources of the Single Currency Facility of the ordinary capital of the Bank, in the case of the Ordinary Capital Financing, and to the Fund for Special Operations in the case of the Fund for Special Operations Financing.

(b) The Bank will make the disbursement in one (1) tranche up to the amount of five million dollars (US\$5,000,000). The disbursement of the Financing will be subject to the compliance by the Borrower of the conditions precedent set forth in this Chapter and the conditions and procedures established in Chapter IV of the General Conditions.

**SECTION 3.02      Special Conditions Prior to all the Disbursements.** The disbursement of the Financing will be subject, in addition to the conditions precedent stipulated in Articles 4.01 and 4.03 of the General Conditions, to the compliance by the Borrower of the following provisions:

- (a) The Borrower maintains a macroeconomic framework that allows the achievement of the objectives of the Program and is consistent with the Policy Letter described in Section 4.01 of these Special Conditions; and
- (b) The Borrower maintains open the special account referred to in Article 4.01(c) of the General Conditions.

**SECTION 3.03      Special conditions prior to the disbursement of the only tranche of the Financing.** The Bank shall only initiate the disbursement of the resources of the Financing after the Borrower has complied, to the satisfaction of the Bank, in addition to the conditions precedent set forth in Articles 4.01 and 4.03 of the General Conditions and in Section 3.02 of these Special Conditions, with the following requirements:

- (a) Regulatory and Supervisory Framework for the Financial Sector: The objective is to strengthening the financial sector, improve the regulatory framework and the efficiency of the financial sector.
  - 1. The identification of the legislative amendments required to enhance coordination and sharing information among supervisory agencies has been conducted by the Bank of Guyana (“BOG”);
  - 2. Key financial ratios of all deposit taking Licensed Financial Institutions (LFIs), in particular: (1) Capital Ratios, such as Total Qualifying Capital/Risk Weighted Assets and Tier 1 Capital/Risk Weighted Assets; (2) Asset Quality Ratios, such as Risk Weighted Assets / Total Assets and Non-performing Loans / Total Loans; (3) Earnings Ratios, such as ROA and ROE; and (4) Liquidity Ratios, such as Liquid Assets / Total Assets and Liquid Assets / Total Demand & Time Liabilities have been publicly disclosed by the BOG;
  - 3. New Guidelines required to introduce risk based supervision, in particular the Guidelines on Corporate Governance have been approved and issued;
  - 4. Improvements on new bank reporting forms to facilitate easier analysis of financial performance of individual banks based on the New Chart of Accounts have been approved and implemented;
  - 5. The identification of the legislative amendments to supervise the New Building Society (NBS) under the BOG has been conducted by the BOG; and
  - 6. A plan to enhance supervisors’ technical capacity to enforce norms and regulations has been approved by the BOG.
- (b) Access to Financial Services: The objective is to improve the access to financial services of firms and individuals in order to foster the development of productive economic activities.
  - 1. An analysis to develop new financial instruments, such as leasing has been initiated;
  - 2. The monitoring of small scale financial institutions (microfinance entities) has been initiated;
  - 3. Partnerships between commercial banks (GAB) and MFIs have been facilitated by BOG;

4. The identification of the legislative amendments required to facilitate the establishment of a Credit Bureau has been conducted by the BOG; and
  5. Creditor rights in the judicial system have been improved.
- (c) Monetary Policy and Systems of Payments: The objective is to increase the public dissemination of the BOG financial sector policy to foster transparency and accountability.
1. Annual and Half-year reports on the state of the nation's economy with special emphasis to financial sector developments and domestic inflation control have been prepared by the BOG and presented to the Ministry of Finance ("MOF");
  2. A framework to support automation of payment and transfer mechanisms of public sector salaries, pensions and public assistance, is under preparation by the MOF and BOG; and
  3. A study examining the options for setting up a loss-sharing arrangement for large-value transfer system, consistent with best practices, has been initiated.
- (d) Anti-Money Laundering Framework: The objective is to improve anti-money laundering and countering the financing of terrorism.
1. A draft bill of the new anti-money laundering and countering the financing of terrorism incorporating international best practices, such as: (1) establishment and management of a Financial Intelligence Unit; and (2) provide sufficient and adequate powers for the prosecution of money laundering and terrorism financing, has been prepared.

**SECTION 3.04      Disbursement Period.** The period for the disbursement of the resources of the Financing shall be twelve (12) months from the effective date of this Contract.

**SECTION 3.05      Goods Excluded from the Financing.** (a) No disbursement from the resources of the Financing shall be made for expenditures on:

- (i) imported goods included in the groups or sub-groups of the United Nations Standard International Trade Classification (SITC) list, as indicated in Section 3.06 of these Special Conditions;
- (ii) imported goods acquired under contracts in an amount less than ten thousand dollars (US\$10,000) equivalent;
- (iii) imported goods financed in foreign exchange, under medium or long terms;
- (iv) imported luxury goods;

- (v) imported weapons;
- (vi) imported goods for the use of the armed forces; and
- (vii) imported goods from countries that are not members of the Bank.

(b) If the Bank determines at any time that resources of the Financing have been used to pay expenditures incurred in any of the goods referred to in subsection (a) of this Section, the Borrower will have to immediately reimburse to the Bank or to the special account referred to in subsection (c) of Article 4.01 of the General Conditions, as the Bank may determine, the total amount of the resources of the Financing used for the payment of goods excluded from the Financing.

**SECTION 3.06      Negative List.** The goods referred to in subsection (i) of Section 3.05 of these Special Conditions are included in the following groups and sub-groups of the United Nations Standard International Trade Classification (SITC)<sup>1/</sup>, including any amendment that may be made to these groups or sub-groups and of which the Bank shall notify the Borrower:

| <u>GROUPS</u> | <u>SUB-GROUPS</u> | <u>DESCRIPTION OF ITEM</u>   |
|---------------|-------------------|--|
| 112           | -                 | Alcoholic beverages  |
| 121           | -                 | Tobacco, unmanufactured tobacco refuse   |
| 122           | -                 | Tobacco, manufactured (whether or not containing tobacco substitutes)  |
| 525           | -                 | Radioactive and associated materials   |
| 667           | -                 | Pearls, precious and semi-precious stones, worked or unworked  |
| 718           | 718.7             | Nuclear reactors, and parts thereof, fuel elements (cartridges), non-irradiated for nuclear reactors   |
| 897           | 897.3             | Jewelry of gold, silver or platinum group metals (except watches, and watch cases) and goldsmiths' or silversmiths' wares (including set gems) |
| 971           | -                 | Gold, non-monetary (excluding gold ores and concentrates)  |

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<sup>1/</sup> See the Standard International Trade Classification, Revision 3 (SITC, Rev. 3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev. 3 (1986).

## CHAPTER IV

### **Execution of the Program**

**SECTION 4.01      Policy Letter.** The Borrower and the Bank have agreed on the content of the Policy Letter dated September 23, 2008. The Policy Letter describes the objectives, policies and actions to be implemented in order to achieve the objective of the Program. It also reflects the Borrower's commitment with the execution of the Program, and with the provision established in Section 4.04 of these Special Conditions.

**SECTION 4.02      Periodic Meetings.** (a) The Borrower and the Bank shall meet at least every six (6) months at the request of either party and on the date and at the place agreed upon, to exchange views on: (i) the general progress achieved in carrying out the Program, compliance with the obligations set forth in Sections 3.02 and 3.03 of these Special Conditions, and performance of the commitments undertaken in the Policy Letter; and (ii) the consistency of the Co-operative Republic of Guyana's macroeconomic framework with the objectives of the Program. Prior to such exchange of views, the Borrower shall furnish to the Bank, for its review and comment, a report in such detail as the Bank shall reasonably request on the fulfillment of the obligations referred to in sub-paragraphs (i) and (ii) of this Section.

(b) If from the review of the Program's reports, the Bank does not find satisfactory the implementation of the Program, the Borrower undertakes to present to the Bank within thirty (30) days from the date the Bank has been notified, the plans or reports necessary to correctly implement the Program, along with a timetable for its implementation.

**SECTION 4.03      Ex-post Evaluation.** The Borrower agrees to, directly or through the Executing Agency, cooperate in the evaluation of the Program to be carried out by the Bank after the Program's execution, with the purpose of identifying to the extent possible whether or not the objectives of the Program have been reached, and to provide to the Bank all the information, data and documentation that the Bank may request to carry out said evaluation.

**SECTION 4.04      Modification of Legal Provisions and Basic Regulations.** The parties agree that, when changes are approved in the macroeconomic and sector policies indicated in the letter referred to in Section 4.01 of these Special Conditions, or in the legal provisions or in the basic regulations of the Executing Agency, and the Bank considers that said changes can substantially affect the Program, the Bank will have the right to request to the Borrower all necessary and reasonable information, with the purpose of determining whether said changes can or can not have a substantial adverse effect in the execution of the Program. The Bank, after receiving and analyzing the information provided by the Borrower, will take the measures it deems necessary in accordance with the provisions set forth in this Contract.



## CHAPTER V

### **Records, Inspections, and Reports**

**SECTION 5.01**     **Records, Inspections, and Reports.** Resources of the Financing will be deposited in the Special Account or in the Special Accounts exclusively designated for the Program. The Borrower agrees to maintain separate accounting records, and an adequate internal control system, in accordance with Article 6.01 of the General Conditions.

**SECTION 5.02**     **Audits.** The Borrower shall furnish to the Bank, upon its request, an audited report with respect of any disbursement of resources of the Financing, duly certified by independent auditors acceptable to the Bank, in accordance with terms of reference previously agreed upon with the Bank.

## CHAPTER VI

### **Miscellaneous Provisions**

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

**SECTION 6.02**     **Termination.** Payment in full of the Loan and of all interest and fees shall terminate this Contract and all obligations arising thereunder.

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

**SECTION 6.04**     **Communications.** Any notice, request, or communication from one party to another by virtue of this Contract shall be made in writing and shall be considered to have been made when the relevant document is delivered to the addressee at the respective address given below, unless the parties agree otherwise in writing:

For the Borrower:

Mailing address:

Ministry of Finance  
Main & Urquhart Streets  
Georgetown  
Guyana

Facsimile: (592) 226-1284

For the Bank:

Mailing address:

Inter-American Development Bank  
1300 New York Avenue, N.W.  
Washington, D.C. 20577  
U.S.A.

Facsimile: (202) 623-3096

## CHAPTER VII

### Arbitration

**SECTION 7.01**     **Commitment to Arbitrate.** For the solution of any controversy which may arise out of this Contract and which is not resolved by agreement between the parties, they unconditionally and irrevocably submit themselves to the procedure and ruling of the Arbitration Tribunal referred to in Chapter IX of the General Conditions.

IN WITNESS WHEREOF, the Borrower and the Bank, each acting through its authorized representative, have signed this Contract in two (2) equally authentic originals in Georgetown, Guyana, on the date above written.

CO-OPERATIVE REPUBLIC OF  
GUYANA

INTER-AMERICAN DEVELOPMENT  
BANK

/s/ Ashni Singh

/s/ Marco Carlo Nicola

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Ashni Singh  
Minister of Finance

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Marco Carlo Nicola  
Representative in Guyana

## **PART TWO**

### **GENERAL CONDITIONS**

#### **CHAPTER I**

##### **Application of the General Conditions**

**ARTICLE 1.01. Application of the General Conditions.** These General Conditions apply to the Loan Contracts entered into by the Inter-American Development Bank with its borrowers to support sectoral adjustment programs, and accordingly the provisions hereof form an integral part of this Contract.

#### **CHAPTER II**

##### **Definitions**

**ARTICLE 2.01. Definitions.** For the purposes of the obligations contracted between the parties, the following definitions are adopted:

- (a) "Bank" means the Inter-American Development Bank.
- (b) "Board" means the Board of Executive Directors of the Bank.
- (c) "Borrower" means the party to which the Financing is made available.
- (d) "Contract" means the entirety of the Special Conditions, the General Conditions and the Annexes.
- (e) "Contracting Agency" means the entity with the legal capacity to sign the Contract for the Procurement of Works and Goods and the Selection and Contracting of Consultants with the Contractor, Supplier, and Consulting Firm or Individual Consultant, as the case may be.
- (f) "Convertible Currency" or "Currency of a country other than that of the Borrower" means any currency which is legal tender in a country other than that of the Borrower, the Special Drawing Rights of the International Monetary Fund, and any other unit which represents the debt service obligation of a borrowing by the Bank.
- (g) "Cost of Single Currency Qualified Borrowings with an Adjustable Interest Rate" means the cost to the Bank of the Single Currency Qualified Borrowings with an Adjustable Interest Rate in the Single Currency of the Financing, expressed as a percentage per annum, as determined by the Bank.
- (h) "Dollars" means dollars of the United States of America, unless otherwise stated.

- (i) "Effective Date "means the date on which the Loan Contract acquires full legal validity pursuant to the provisions of Section 6.01 of the Special Conditions.
- (j) "Executing Agency/Agencies" means the entity/entities responsible for executing all or part of the Project.
- (k) "Financing" means the funds which the Bank has agreed to make available to the Borrower and comprises the Ordinary Capital Financing and the Fund for Special Operations Financing.
- (l) "Fraud and corruption" means the act(s) defined in Article 5.02(c) of these General Conditions.
- (m) "Fund for Special Operations" means the Bank's Fund for Special Operations.
- (n) "Fund for Special Operations Financing" means the portion of the Financing chargeable to the Fund for Special Operations.
- (o) "General Conditions" means the entirety of articles which comprise Part Two of this Contract and reflect the basic policies of the Bank uniformly applicable to its contracts for loans for sectoral adjustment programs.
- (p) "Guarantor" means the party which guarantees the fulfillment of the obligations contracted by the Borrower and which assumes other obligations for which it is liable in accordance with the Guarantee Contract.
- (q)"Loan" means the funds disbursed from the Financing.
- (r)"Ordinary Capital Financing" means the portion of the Financing chargeable to the Single Currency Facility.
- (s) "Program" means the institutional or policy measures that the Borrower, the Executing Agency or the Guarantor must implement in order for the Bank to disburse the resources of the Financing.  
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- (t) "Semester" means the first or second six months of a calendar year.
- (u) "Single Currency" means any convertible currency which forms part of the Single Currency Facility and the Fund for Special Operations.
- (v) "Single Currency Facility" means the facility the Bank has established to lend in certain convertible currencies which the Bank selects from time to time.

(w)"Single Currency Qualified Borrowings" for borrowings denominated in any Single Currency means either: (i) from the date that the first Loan in such Single Currency is approved by the Bank's Board, resources of such Single Currency's transitional stabilization mechanism and borrowings of the Bank in such Single Currency that are assigned to fund loans in such Single Currency under the Single Currency Facility; or (ii) beginning on the first day of the seventh Semester following the above-mentioned date, borrowings of the Bank that are assigned to fund loans in such Single Currency under the Single Currency Facility.

(x) "Special Conditions" means the entirety of the provisions which comprise Part One of this Contract and contain the particular terms of the operation.

### CHAPTER III

#### **Amortization, Interest and Credit Fee**

**ARTICLE 3.01. Dates of Payment of Amortization and Interest.** (a) **Ordinary Capital Financing.** The Borrower shall amortize the portion of the Loan disbursed against the Ordinary Capital Financing in semiannual, consecutive, and, insofar as possible, equal installments on the same dates as those determined in accordance with Section 2.02 (c) of the Special Conditions for payment of interest.

(b) **Fund for Special Operations Financing.** The Borrower shall amortize the portion of the Loan disbursed against the Fund for Special Operations Financing in one installment payable on the date set forth in Section 2.01(c) of the Special Conditions.

(c) If the date of signature of the Loan Contract falls between June 15th and 30th or between December 15th and 31st, the dates for the payment of interest shall be June 15th and December 15th, as the case may be.

**ARTICLE 3.02. Credit Fee.** (a) **Ordinary Capital Financing.** The Borrower shall pay on the undisbursed balance of the Ordinary Capital Financing a credit fee, which shall begin to accrue sixty (60) days after the date of signature of the Contract. The amount of said fee shall be as indicated in the Special Conditions and under no circumstance may exceed 0.75% per annum. The fee shall be payable in dollars, on the same dates as those specified for the payment of interest pursuant to the provisions of the Special Conditions.

(b) The credit fee shall cease to accrue in full or in part, as the case may be, to the extent that: (i) the respective disbursements have been made; or (ii) the Financing has been cancelled totally or partially pursuant to Articles 3.13, 3.14 and 4.02 of these General Conditions and the relevant provisions of the Special Conditions.

(c) **Fund for Special Operations Financing.** The Borrower shall not pay a credit fee with respect to the Fund for Special Operations Financing.

**ARTICLE 3.03. Computation of Interest and Credit Fee.** The interest and credit fee shall be calculated according to the exact number of days in the respective Semester.

**ARTICLE 3.04. Interest Rate.** (a) **Ordinary Capital Financing.** The Bank shall periodically determine the annual interest rate that shall accrue on the portion of the Loan disbursed against the Ordinary Capital Financing, in accordance with its lending rate policy, and as determined by the Cost of Single Currency Qualified Borrowings with an Adjustable Interest Rate in the Single Currency of the Financing, plus the prevailing ordinary capital lending spread expressed as a percentage per annum.

(b) **Fund for Special Operations Financing.** The interest rate chargeable to the portion of the Loan disbursed against the Fund for Special Operations Financing shall be 0.25% per annum.

**ARTICLE 3.05. Currency Obligations.** All payments of amortization and interest shall be made in the Single Currency disbursed.

**ARTICLE 3.06. Valuation of Convertible Currencies.** Whenever it shall be necessary pursuant to this Contract to determine the value of a currency of a country other than that of the Borrower in terms of another currency, such value shall be as reasonably determined by the Bank.

**ARTICLE 3.07. Participations.** (a) The Bank may cede to other public or private institutions, in the form of participations, the rights corresponding to the Borrower's pecuniary obligations under this Contract. The Bank shall promptly notify the Borrower of each assignment.

(b) Participations may be granted in respect of either of the following: (i) amounts of the Loan disbursed prior to execution of the participation agreement; or (ii) amounts of the Financing which are still undisbursed at the time of the participation agreement's execution.

**ARTICLE 3.08. Application of Payments.** All payments shall be applied first to fees and interest due on the payment date, and if a balance exists, to the amortization of installments of principal due.

**ARTICLE 3.09. Advance Payments.** Upon advance notice in writing to the Bank of at least fifteen (15) days, the Borrower may pay, on one of the interest payment dates indicated in the Special Conditions, any part of the Loan prior to its maturity, provided that on the payment date no sum is owing in respect of fees or interest. Each partial advance payment shall be applied to the portion of the Loan disbursed against the Ordinary Capital Financing and the portion of the Loan disbursed against the Fund for Special Operations Financing in the same proportion that each represents of the total Financing. The part of the partial advance allocated to the Ordinary Capital Financing shall be applied *pro rata* to each unpaid installments of principal. The part of the partial advance allocated to the Fund for Special Operations Financing shall be applied against the single amortization installment.

**ARTICLE 3.10. Receipts.** At the request of the Bank, the Borrower shall sign and deliver to the Bank, upon the completion of disbursements, a receipt or receipts for the amounts disbursed. Likewise, the Borrower shall sign and deliver to the Bank, at its request, promissory notes or other negotiable instruments representing the Borrower's obligation to repay the Loan with the interest agreed upon in the Contract. Such documents shall be in the form prescribed by the Bank taking into account the applicable legal provisions of the country of the Borrower.

**ARTICLE 3.11. Transactions Falling Due on Public Holidays.** Any payment or other transaction which, pursuant to this Contract, should be effected on Saturday, Sunday or a day which is a banking holiday according to the law of the place where it is required to be made, shall be considered validly effected if carried out on the first business day immediately thereafter, and in such case no penalty whatsoever shall apply.

**ARTICLE 3.12. Place of Payments.** All payments shall be made at the principal office of the Bank in Washington, District of Columbia, United States of America, unless the Bank designates another place or places for this purpose by written notification to the Borrower.

**ARTICLE 3.13. Renunciation of Part of the Financing.** The Borrower, with the concurrence of the Guarantor, if any, may renounce, by written notice to the Bank, its right to utilize any portion of the Financing which has not been disbursed before the receipt of the notice. The renunciation shall be deemed to have been made in respect of the Ordinary Capital Financing and the Fund for Special Operations Financing, and shall be applied in the same proportion that each represents, of the total amount of the Financing.

**ARTICLE 3.14. Automatic Cancellation of Part of the Financing.** Unless the Bank and the Borrower and the Guarantor, if any, expressly agree in writing to extend the term for making disbursements, that portion of the Financing not committed or disbursed, as the case may be, within the corresponding term, shall automatically be canceled.

## **CHAPTER IV**

### **Conditions Relating to Disbursements**

**ARTICLE 4.01. Conditions Precedent to First Disbursement.** The first disbursement of the Financing shall be subject to fulfillment of the following requirements to the satisfaction of the Bank:

- (a) The Bank shall have received one or more well-founded legal opinions which establish, with citations of the pertinent constitutional, legal, and regulatory provisions, that the obligations undertaken by the Borrower in this Contract, and those of the Guarantor, if any, in the Guarantee Contract, are valid and enforceable. Such opinions shall also refer to any other legal question that the Bank may reasonably deem relevant.

- (b) The Borrower, directly or through the Executing Agency, if any, shall have designated one or more officials to represent it in all acts relating to the implementation of this Contract and shall have furnished the Bank with authentic copies of the signatures of said representatives. Should two or more officials be designated, the designation shall indicate whether such officials may act separately or must act jointly.
- (c) The Borrower, directly or through the Executing Agency, if any, shall have provided the Bank evidence that it has established a special bank account for the deposit by the Bank of the sums disbursed from the Financing.
- (d) The Borrower, directly or through the Executing Agency, if any, shall have presented to the Bank a disbursement request in the form indicated in Article 4.03 of these General Conditions.

**ARTICLE 4.02. Period for Fulfilling the Conditions Precedent to First Disbursement.** If within sixty (60) days from the effective date of this Contract, or within such longer period as the parties may agree in writing, the conditions precedent to the first disbursement established in Article 4.01 of these General Conditions and in the Special Conditions have not been fulfilled, the Bank may terminate this Contract by giving notice to the Borrower.

**ARTICLE 4.03. Requisites for All Disbursements.** For the Bank to make any disbursement, it shall be necessary that: (a) the Borrower, or the Executing Agency, if any, shall have submitted in writing a disbursement request and, in support thereof, shall have supplied to the Bank such pertinent documents and other background materials as the Bank may have required; (b) requests must be presented no later than thirty (30) calendar days in advance of the date of expiry of the term for disbursement or of any extension thereof which the Borrower and the Bank may have agreed to; (c) none of the circumstances described in Article 5.01 of these General Conditions shall have occurred; and (d) the Guarantor, if any, shall not be in non-compliance for more than one hundred twenty (120) days with any obligation to make payments to the Bank on any Loan or Guarantee.

**ARTICLE 4.04. Application of Disbursed Amounts.** The Bank shall calculate the percentage that each of the Ordinary Capital Financing and the Fund for Special Operations Financing represent of the total Financing and shall charge each disbursement to the Ordinary Capital and the Fund for Special Operations in the respective proportion.

**ARTICLE 4.05. Disbursement Procedures.** The Bank may make disbursements against the Financing: (a) by transferring to the order of the Borrower the sums to which it is entitled under this Contract by depositing the same in the special bank account referred to in Article 4.01(c) of these General Conditions; (b) by making payments on behalf of and in agreement with the Borrower to other banking institutions; and (c) by utilizing such other method as the parties may agree upon in writing. Any banking expenses that may be charged by a third party in connection with disbursements shall be borne by the Borrower. Unless the parties agree otherwise, disbursements shall be made on each occasion, only in amounts of not less than five (5%) percent of the total amount of the Financing.



## CHAPTER V

### **Suspension of Disbursements and Accelerated Maturity**

**ARTICLE 5.01. Suspension of Disbursements.** The Bank, by written notice to the Borrower, may suspend disbursements if any of the following circumstances occurs and so long as it continues:

- (a) Delay in the payment of any sums owed by the Borrower to the Bank for principal, fees, interest, return of advances of funds or for any other reason, under this Contract or any other Loan Contract entered into between the Bank and the Borrower.
- (b) Nonfulfillment by the Borrower of the Program agreed upon with the Bank or any other obligation set forth in this Contract.
- (c) Withdrawal or suspension from membership in the Bank of the country in which the Program is to be executed.
- (d) Any restriction of the legal capacity, or adjustment or amendment of the functions or assets of the Borrower or the Executing Agency, if any, which, in the opinion of the Bank may adversely affect the Program or the purposes of the Financing. In this case, the Bank shall have the right to require the Borrower provide reasoned and detailed information in order that the Bank may determine whether such modification or modifications have or might have an unfavorable effect on the execution of the Program. The Bank may suspend disbursements only if, after hearing the Borrower and weighing the information or clarification received or if the Borrower fails to respond prior to the date of the next disbursement, the Bank considers that the modifications made affect the Program.
- (e) The non-compliance on the part of the Guarantor, if any, of any obligation set forth in the Guarantee Contract.
- (f) When the Borrower is not a member country, any extraordinary circumstance which, in the opinion of the Bank, makes it unlikely that the Borrower will be able to comply with the obligations established in this Contract or to fulfill the purposes for which it was entered into.
- (g) If it is determined at any stage that evidence is sufficient to support a finding that an employee, agent, or representative of the Borrower, Executing Agency or Contracting Agency, has engaged in an act of fraud and corruption in the execution of the Program or in the use of the resources of the Financing.

**ARTICLE 5.02. Termination, Accelerated Maturity and other Measures.** (a) The Bank may terminate this Contract with respect to the part of the Financing not yet disbursed or may declare the

entire loan or a portion thereof immediately due and payable, together with interest and commissions accrued up to the date of payment if: (i) any of the circumstances set forth in paragraphs (a), (b), (c), (e) and (f) of the preceding article continues for more than sixty (60) days; or (ii) the information referred to in paragraph (d) of the preceding Article, or the clarifications or additional information presented by the Borrower or the Executing Agency or the Contracting Agency, if any, are not satisfactory to the Bank. If the Bank declares a portion of the loan immediately due and payable, payment received by the Bank shall be applied to the portion of the Loan disbursed against the Ordinary Capital Financing and the portion of the Loan disbursed against the Fund for Special Operations Financing, in the same proportion that each represents of the total Financing. The payment allocated to the Ordinary Capital Financing shall be applied *pro rata* to each unpaid installment of principal. The payment allocated to the Fund for Special Operations Financing shall be applied against the single amortization installment.

(b) The Bank may cancel the part of the Financing,, or may declare the portion of the loan immediately due and payable, if it determines at any time that: (i) representatives of the Borrower, Executing Agency, or Contracting Agency have committed any act of fraud or corruption, in the execution of the Program or in the use of the resources of the Financing, , and the Borrower, Executing Agency, or Contracting Agency, has not taken timely and remedial measures, observing the due process guarantees of the Borrowing country's legislation, and acceptable to the Bank. Any cancellation shall be deemed made with respect to the Ordinary Capital Financing and the Fund for Special Operations Financing, in the percentage that each represents of the total amount of the Financing.

(c) For the purposes of the above paragraph, acts of fraud and corruption shall be understood to include, but not be limited to, acts of: (i) a corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, of something of value to influence the actions of another party; (ii) a fraudulent practice is any act or omission, including a misrepresentation, which deliberately or as a result of gross negligence, misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation; (iii) a coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence in an inappropriate manner the actions of a party; and (iv) a collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

(d) If, in accordance with the administrative procedures of the Bank, it is demonstrated that any firm, entity or individual bidding for or participating in a Bank-financed project including, *inter alia*, Borrower, Executing Agency, Contracting Agency, bidders, suppliers, contractors, sub-contractors, concessionaires, applicants, consultants, (including their respective officers, employees and agents) has engaged in an act of fraud or corruption, the Bank may:

- (i) decide not to finance any expenditure related to the execution of the Program or the utilization of the resources of the Financing;
- (ii) suspend disbursement of the operation as described in Article 5.01 (g) above of these General Conditions, if it is determined at any stage that evidence is sufficient to

support a finding that an employee, agent or representative of the Borrower, Executing Agency or Contracting Agency has engaged in an act of fraud or corruption;

- (iii) cancel, and/or accelerate repayment of, the portion of a loan or grant earmarked for a contract as described in Article 5.02 (b) above of these General Conditions, when there is evidence that the representative of the Borrower has not taken the adequate remedial measures within a time period which the Bank considers reasonable, and in accordance with the due process guarantees of the Borrowing country's legislation;
- (iv) issue a reprimand in the form of a formal letter of censure of the firm, entity or individual's behavior;
- (v) issue a declaration that an individual, entity or firm is ineligible, either permanently or for a stated period of time, to be awarded or participate in contracts under Bank-financed projects except under such conditions as the Bank deems to be appropriate;
- (vi) refer the matter to appropriate law enforcement authorities; and/or
- (vii) impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement of the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions.

(e) The imposition of any action to be taken by the Bank pursuant to the provisions referred to above may be public or private.

**ARTICLE 5.03. Non-waiver of Rights.** Any delay by the Bank in the exercise of its rights pursuant to this Contract, or failure to exercise them, shall not be construed as a waiver by the Bank of any such rights nor as acquiescence in events or circumstances which, had they occurred, would have empowered it to exercise them.

**ARTICLE 5.04. Provisions not Affected.** The application of any of the measures provided for by this Chapter shall not affect the obligations of the Borrower established in this Contract, which shall remain in full force and effect, except that in case the entire Loan has been declared due and payable, only the pecuniary obligations of the Borrower shall continue in force.

## **CHAPTER VI**

### **Records, Inspections and Reports**

**ARTICLE 6.01. Internal Control and Records.** The Borrower or the Executing Agency, or the Contracting Agency, as the case may be, shall maintain appropriate systems of internal accounting and administrative controls. The accounting system shall be organized so as to provide the necessary

documentation to permit the verification of transactions and facilitate the timely preparation of financial statements and reports. The records shall be maintained for a minimum of three (3) years after the date of final disbursement of the Loan, in such a way that: (a) make it possible to identify the sums received from the Bank; and (b) such documents include the information relating to the execution of the Program and the utilization of the resources of the Financing.

**ARTICLE 6.02. Inspections.** (a) The Bank may establish such inspection procedures as it deems necessary to assure the fulfillment of the Program.

(b) The Borrower, the Executing Agency, or the Contracting Agency, if any, shall permit the Bank to inspect and examine at any time the records and documents the Bank may deem pertinent. The personnel which the Bank shall send as investigators, agents, auditors or experts for this purpose, shall receive the complete cooperation of the respective authorities. All the costs relating to transportation, salaries, and other expenses of such personnel shall be borne by the Bank.

(c) The Borrower, the Executing Agency or the Contracting Agency, as the case may be, shall, upon request of an authorized representative of the Bank, provide to the Bank any documents, including costs incurred with resources of the Financing, that the Bank might reasonably request. In addition, the Borrower, the Executing Agency and the Contracting Agency shall make their personnel available, upon reasonable notice, to respond to questions from Bank personnel, which arise during the review or audit of such documents. The Borrower, the Executing Agency or the Contracting Agency, as the case may be, shall produce the documents in a timely manner or shall submit an affidavit to the Bank setting forth the reasons why the requested material is unavailable or is being withheld.

(d) If the Borrower, the Executing Agency or Contracting Agency, as the case may be, refuses to comply with the Bank's request, or otherwise obstructs the Bank's review of the matter, the Bank in its sole discretion, may take appropriate action against the Borrower, Executing Agency or Contracting Agency, as the case may be.

**ARTICLE 6.03. Reports and Financial Statements.** (a) The Borrower or the Executing Agency, as appropriate, shall present to the Bank the reports indicated in the Special Conditions and those listed below, within the periods specified with respect to each:

- (i) (i) Within one hundred twenty (120) days following the close of each fiscal year, the Borrower, when the Borrower is not the Republic or the Central Bank, beginning with the fiscal year in which this Contract was signed and while the obligations of the Borrower under this Contract continue, three copies of its financial statements as of the close of such fiscal year and complementary financial information relative to such statements.
- (ii) Within one hundred and twenty (120) days following the close of each fiscal year of the Executing Agency, beginning with the fiscal year in which this Contract was signed and during the period stipulated in the Special

Conditions, three copies of the financial statements and complementary financial information of the Executing Agency, when the latter is not also the Borrower and it is so stipulated in the Special Conditions.

(b) The statements and documents described in subparagraphs (a)(i) and (ii) shall be submitted with the opinion of the auditing entity specified in the Special Conditions of this Contract and in accordance with requirements satisfactory to the Bank. The Borrower or the Executing Agency, as the case may be, shall authorize the auditing entity to provide the Bank with any additional information it may reasonably request with respect to the financial statements and audit reports issued.

(c) In cases in which the audit is to be performed by an official auditing agency and such authority is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the periods mentioned above, the Borrower or the Executing Agency shall contract the services of a firm of independent public accountants acceptable to the Bank. The services of a firm of independent public accountants may also be utilized if the contracting parties so agree.

## CHAPTER VII

### **Provision on Encumbrances and Exemptions**

**ARTICLE 7.01. Commitment on Encumbrances.** If the Borrower should agree to create any specific encumbrance on all or part of its assets or revenues to secure an external debt, it shall at the same time create an encumbrance guaranteeing to the Bank, equally and proportionally, the fulfillment of the pecuniary obligations arising from this Contract. However, the foregoing shall not apply: (a) to encumbrances on goods used as security for payment of the unpaid balance of the purchase price; and (b) to encumbrances created in banking operations to secure payment of debts with maturities of not more than one year. In the event that the Borrower is a member country, the term "assets or revenues" shall mean all types of assets or revenues which belong to the Borrower or any of its dependent agencies which are not autonomous entities with their own separate capital.

**ARTICLE 7.02. Tax Exemption.** The Borrower undertakes to ensure that both the principal and the interest and other charges of the Loan shall be paid without any deduction or restriction whatsoever, exempt from any tax, fee, duty or charge established or that may be established by the laws of its country, and to pay any tax, fee, or duty applicable to the signing, negotiation, and execution of this Contract.

## CHAPTER VIII

### **Arbitration Procedure**

**ARTICLE 8.01. Composition of the Tribunal.** (a) The Arbitration Tribunal shall be composed of three members to be appointed in the following manner: one by the Bank, another by the Borrower, and a third, hereinafter called the "Referee", by direct agreement between the parties or through their

respective arbitrators. If the parties or the arbitrators fail to agree on who the Referee shall be, or if one of the parties should not designate an arbitrator, the Referee shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, one shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his successor shall be appointed in the same manner as for the original appointment. The successor shall have the same functions and faculties as his predecessor.

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

**ARTICLE 8.02. Initiation of the Procedure.** In order to submit the controversy to arbitration, the claimant shall address to the other party a written communication setting forth the nature of the claim, the satisfaction or compensation which it seeks, and the name of the arbitrator it appoints. The party receiving such communication shall, within forty-five (45) days, notify the adverse party of the name of the person it appoints as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the parties have not agreed as to the person who is to act as Referee, either party may request the Secretary General of the Organization of American States to make the appointment.

**ARTICLE 8.03. Convening of the Tribunal.** The Arbitration Tribunal shall be convened in Washington, District of Columbia, United States of America, on the date designated by the Referee, and, once convened, shall meet on the dates which the Tribunal itself shall establish.

**ARTICLE 8.04. Procedure.** (a) The Tribunal shall be competent to hear only the matters in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity to make oral presentations.

(b) The Tribunal shall proceed ex aequo et bono, basing itself on the terms of this Contract, and shall issue an award even if either party should fail to appear or present its case.

(c) The award shall be in writing and shall be adopted with the concurrent vote of at least two members of the Tribunal. It shall be handed down within approximately sixty (60) days from the date on which the Referee is appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The award shall be notified to the parties by means of a communication signed by at least two members of the Tribunal, and shall be complied with within thirty (30) days from the date of notification. The award shall be final and will not be subject to any appeal.

**ARTICLE 8.05. Costs.** The fees of each arbitrator shall be paid by the party which appointed him and the fees of the Referee shall be paid by both parties in equal proportion. Prior to the convening of the Tribunal, the parties shall agree on the remuneration of the other persons who, by mutual

agreement, they deem should take part in the arbitration proceedings. If such agreement is not reached in a timely manner, the Tribunal itself shall determine the compensation which may be reasonable for such persons under the circumstances. Each party shall defray its own expenses in the arbitration proceedings, but the expenses of the Tribunal shall be borne equally by the parties. Any doubt regarding the division of costs or the manner in which they are to be paid shall be determined, without appeal, by the Tribunal.

**ARTICLE 8.06. Notification.** All notifications relative to the arbitration or to the award shall be made in the manner provided in this Contract. The parties waive any other form of notification.