

**LOAN CONTRACT No. 2215/BL-GY**

between the

CO-OPERATIVE REPUBLIC OF GUYANA

and the

INTER-AMERICAN DEVELOPMENT BANK

Road Improvement and Rehabilitation Program

March 21, 2010

## SPECIAL CONDITIONS

### **INTRODUCTION**

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

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

CONTRACT entered into on March 21, 2010, 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 Road Improvement and Rehabilitation Program (hereinafter referred to as the “Project”).

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

(a) This Contract consists of these Special Conditions, the General Conditions, and the Annex, which are attached hereto. If any provision of the Special Conditions or the Annex should present any inconsistency or contradiction with the General Conditions, the provisions of the Special Conditions or the Annex, as the case may be, shall prevail. In case of inconsistencies or contradictions between the Special Conditions or the Annex, specific rules shall prevail over general rules.

(b) Rules for the application of amortization, interest, credit fee, inspection and supervision and disbursement clauses, as well as other conditions related to Project 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 Project and the utilization of the resources of the financing from the Bank shall be carried out by the Ministry of Public Works and Communication (MPWC) which for the purposes of this Contract shall be referred to as the “Executing Agency”. The Borrower, through the Executing Agency, undertakes to fulfill all the obligations set forth in this Contract.

### **CHAPTER I**

#### **Costs, Financing and Additional Resources**

**SECTION 1.01. Cost of the Project.** The total cost of the Project is estimated to be the equivalent of twenty four million eight hundred thousand dollars of the United States of America (US\$24,800,000). Unless otherwise stated in this Contract, the term “dollars” hereinafter signifies the currency of legal tender in the United States of America. The Annex to this Loan Contract includes the Project’s budget with the distribution by investment categories and sources of financing.

**SECTION 1.02. 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 twelve million four hundred thousand dollars (US\$12,400,000) 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 twelve million four hundred thousand dollars (US\$12,400,000) 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”.

## **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 date of signature of the Loan Contract.

(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 no later than forty (40) years after the date of signature of the Loan 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 a USD LIBOR-based Rate until the disbursed amount reaches a minimum amount for an automatic conversion, which would be the larger of USD3,000,000 or 25% of the net approved amount of the Financing (*i.e.* approved minus cancelled amount of the Financing), moment at which the Bank will apply a USD Fixed Rate over such amount, which will reflect the market conditions at the time of such conversion.

(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) Once this Contract has entered into effect, interest shall be payable semiannually, on dates that shall be determined based on the day and month of signature of this Loan Contract, and taking into account Article 3.01(c) of the General Conditions.

**SECTION 2.03. Resources for General Inspection and Supervision.** The Borrower shall not be required to cover the Bank's expenses for general inspection and supervision of the Financing, except if the Bank determines otherwise in respect to the Ordinary Capital Financing, as a result of its semiannual review of financial charges applicable to its operations financed with the Single Currency Facility of the Ordinary Capital, and the Borrower is notified by the Bank in this regard. In such event, the Borrower shall pay the Bank directly the corresponding amount, in dollars, during the disbursement period and on the dates on which interest payments are due. 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 Ordinary Capital 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 Financing; provided that, under no circumstance, may it exceed the percentage contemplated in Article 3.02 of the General Conditions.

### **CHAPTER III**

#### **Disbursements**

**SECTION 3.01. Currencies of Disbursement of the Financing.** (a) The amount of the Financing shall be disbursed in dollars chargeable to the resources of the Single Currency Facility of the Ordinary Capital resources 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 resources of the Financing shall only be used for payments of goods and services and for such other purposes as are indicated in this Contract. Goods and services shall originate in the member countries of the Bank and shall be acquired pursuant to the proceedings set forth in this Contract

**SECTION 3.02. Currency Availability.** (a) Notwithstanding Sections 1.02(a) and 3.01 hereof, if the Bank is unable to obtain access to the agreed upon Single Currency to make disbursements as established in Article 4.04 of the General Conditions, the Bank, in consultation with the Borrower, may disburse in any other Single Currency of its choice, until such time as it is able to regain access to the agreed upon Single Currency.

(b) If pursuant to section 3.02(a) above, the Bank disburses in a Single Currency that is not the agreed Single Currency, the financial charges for the Ordinary Capital Financing shall be those which correspond to such Single Currency, while financial charges for the Fund for Special Operations shall remain unchanged.

**SECTION 3.03. Special Conditions Prior to First Disbursement.** In addition to the conditions precedent stipulated in Article 4.01 of the General Conditions, the first disbursement of

the Financing shall be subject to the fulfillment, to the satisfaction of the Bank, of the following requirements:

- (a) evidence that the finance and accounting section of Works Services Group (WSG) is fully staffed including a: Finance Comptroller, with commitments for at least the first year of Project execution;
- (b) evidence that an accounting software suitable for project accounting is in place, and accounting procedures are established, enforced and maintained up to date; and
- (c) evidence that at least three staff members of the finance and accounting section of WSG are fully trained in the use of the accounting software.

**SECTION 3.04. Special Execution Conditions.** In addition to the conditions precedent stipulated in Article 4.01 of the General Conditions and in Section 3.03 of these Special Conditions, the Executing Agency shall comply with the following requirements for the execution of the Project:

- (a) The bidding documents for the selection of contractors to carry out the civil works shall incorporate the following requirements: (i) the final technical designs, (ii) the Environmental and Social Management Plan, as well as the General and Particular Environmental Specifications; and (iii) the requirement that Contractors hire an Environmental Engineer as part of their field personnel;
- (b) Prior to signing the contract with the Contractors to carry out the civil works, the Executing Agency shall demonstrate that it has selected and hired the firms to supervise such civil works;
- (c) The bidding documents for the selection of the supervisory firms of the civil works must incorporate the requirement that an Environmental Inspector is hired as part of their field personnel;
- (d) Prior to authorizing the firm to carry out the final technical designs of the civil works, the Executing Agency shall submit the corresponding engineering studies to the Bank's for its no objection;
- (e) Prior to tendering the civil works, the Executing Agency shall submit to the Bank, for its no objection, the engineering, environmental and cost benefit analysis, and final technical designs, and, if necessary the relocation plans; and
- (f) Prior to the commencement of the first civil works contract WSG shall hire and/or appoint, a social specialist and an environmental specialist with experience in civil works with preference in roads projects. If an expert with experience in both social and environmental issues is available, the responsibility for both areas can be assigned to that professional.

**SECTION 3.05. Reimbursement of Expenditures Chargeable to the Financing.** With the consent of the Bank, resources of the Financing may be used to reimburse expenditures incurred or to finance those that may be incurred in the Project on or after October 28, 2009 and up to the effective date of this Contract, provided that requirements substantially similar to those set forth in

this Contract have been fulfilled.

**SECTION 3.06. Disbursement Period.** The period for final disbursement of the resources of the Financing shall expire five (5) years from the effective date of this Contract.

**SECTION 3.07. Revolving Fund.** (a) For the purposes of the provisions set forth in Article 4.07(b) of the General Conditions, the amount of the revolving fund shall not exceed 5% of the amount of the Financing.

(b) The reports on the execution of the Project which the Borrower shall submit to the Bank, in accordance with Article 7.03(a)(i) of the General Conditions, shall include the financial-accounting information about management of the Revolving Fund resources, upon request by the Bank.

## CHAPTER IV

### Execution of the Project

**SECTION 4.01. Procurement of goods and works.** Goods and works shall be procured in accordance with the provisions set forth in Document GN-2349-7 ("Policies for the Procurement of Goods and Works Financed by the Inter-American Development Bank"), dated July 2006 (hereinafter referred to as the "Procurement Policies"), which are known to the Borrower, and the following provisions:

(a) International Competitive Bidding: Except as otherwise provided in subsection (b) of this Section, goods and works shall be procured pursuant to the thresholds of one million dollars (US\$1,000,000) and above for works and one hundred thousand dollars (US\$100,000) and above for goods respectively.

(b) Other Procurement Procedures: The following procurement methods may be used for the procurement of goods and works as long as the Bank determines that these methods meet the requirements established in the provisions set forth in Section III of the Procurement Policies:

- (i) *National Competitive Bidding*; for works, where the estimated cost of each contract is less than one million dollars (US\$1,000,000) and more than one hundred thousand dollars (US\$100,000); and for goods where the estimated cost of each contract is less than one hundred thousand dollars (US\$100,000) and more than twenty five thousand dollars (US\$25,000), pursuant to the provisions set forth in paragraphs 3.3 and 3.4 of the Procurement Policies and the provisions below, and provided that such procurement method is not in contradiction with the Procurement Policies or the basic guarantees that every procurement must meet; and
- (ii) *Shopping*; for works estimated to cost less than one hundred thousand dollars (US\$100,000) and goods estimated to cost less than twenty five thousand dollars (US\$25,000) per contract, in accordance with the provisions set forth in paragraph 3.5 of the Procurement Policies.

(c) Additional Procurement Requirements. The Borrower, through the Executing Agency, (i) shall carry out the procurement of works and goods in accordance with the general plans, technical, social and environmental specifications, budgets and other documents required for the acquisition or the construction, and, as the case may be, the specific guidelines and other documents necessary for the call for prequalification or bids; and (ii) in the case of works, shall show evidence that it has, prior to the initiation of the works, the right of legal possession, easements or other necessary rights on the land to initiate the construction of the works.

(d) Review by the Bank of Procurement Decisions

- (i) Procurement Planning: Prior to the issuance of any invitations to prequalify or to bid for contracts, as the case may be, the Borrower, through the Executing Agency, shall present the proposed procurement plan for the Project to the Bank for its review and approval, in accordance with the provisions set forth in paragraph 1 of Appendix 1 to the Procurement Policies. This plan shall be updated every twelve (12) months, or as needed, during Project execution, and submitted to the Bank for its review and approval. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as approved by the Bank and with the provisions set forth in said paragraph 1.
- (ii) Prior Review: Unless the Bank agrees otherwise in writing, the contracts for works and the acquisition of goods and related services shall be subject to prior review, in accordance with the procedures spelled out in paragraphs 2 and 3 of Appendix 1 to the Procurement Policies.

**SECTION 4.02. Maintenance of Works.** The Borrower, through the Executing Agency, undertakes to preserve all the goods and works included in the Project in the operating conditions in which they were upon their acquisition, at a level compatible with their intended use and, particularly, to: (a) ensure that the works and equipment included in the Project shall be adequately maintained according to generally accepted technical standards; and (b) present to the Bank a report on the status of said works and equipment and an annual maintenance plan for that year, during the five (5) years following the completion of the first of the works of the Project and within the first quarter of each calendar year. The annual maintenance plan shall include: (i) details of the organization responsible for maintenance; and (ii) information pertaining to the resources to be allocated for maintenance during the current year. If from the inspections conducted by the Bank or from the reports it receives, it is determined that maintenance does not meet the levels agreed upon, the Borrower, through the Executing Agency, shall undertake the necessary measures to correct these shortcomings.

**SECTION 4.03. Contracting of Consultants.** Consultants' services shall be procured in accordance with the provisions set forth in Document GN-2350-7 ("Policies for the Selection and Contracting of Consultants Financed by the Inter-American Development Bank"), dated July, 2006 (hereinafter called "the Consultant Policies"), which the Borrower declares to know and the provisions set forth below:

- (a) Quality- and Cost-Based Selection. Except as otherwise provided in subsection (b) of

this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Policies, and the provisions of paragraphs 3.16 through 3.20 thereof applicable to quality- and cost- based selection (QCBS) of consultants. The short list of consultants for each contract for services estimated to cost less than one hundred thousand dollars (US\$100,000) equivalent per contract, may be comprised entirely by national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Policies.

(b) Other Methods of Procurement of Consultant's Services. The following methods, other than QCBS, may be used for the procurement of consultants' services for those services which the Bank agrees meet the requirements set forth in the Consultant Policies for their use: (i) Quality-Based Selection (QBS); (ii) Selection under a Fixed Budget (FBS); (iii) Least-Cost Selection (LCS); (iv) Selection Based on Consultants' Qualifications (CQS); (v) Single Source Selection (SSS); and (vi) Selection of Individual Consultants.

(c) Review by the Bank of the process of selection of consultants:

- (i) Selection and Contracting Planning: Prior to the issuance of any request for proposal to the consultants, the Borrower, through the Executing Agency, shall present to the Bank, for its review and approval, a procurement plan, which shall include contract cost estimates, contract packaging and applicable selection criteria and procedures, in accordance with the provisions set forth in paragraph 1 of Appendix 1 to the Procurement Policies. This plan shall be updated every twelve (12) months, or as needed, during Project execution, and submitted to the Bank for its review and approval. Selection and contracting of consultants shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank.
- (ii) Ex-ante Review: Unless the Bank agrees otherwise in writing, the contracts for the contracting of consulting services shall be subject to ex-ante review, in accordance with the procedures spelled out in paragraphs 2 and 3 of Appendix 1 to the Consultant Policies.

**SECTION 4.04. Annual Operation Plans (AOPs).** (a) The Borrower, through the Executing Agency shall submit to the satisfaction of the Bank, within thirty (30) days prior the conclusion of each calendar year during the execution of the Program, the corresponding AOP for the next year. This AOP shall include the report of the performed activities corresponding to the previous year and the proposed activities for the following year. The AOP shall include as a minimum, the following: (i) a report on the status of execution of the Program for each component; (ii) the procurement plan for the acquisition of works, goods and services, as well as the procurement plan for consultancy services including budget and disbursement projections; (iii) the accomplishment of goals and outcomes of the Program; (iv) progress in meeting results indicators for each component of the Program in accordance with the Results Matrix of the Program; (v) problems raised; and (vi) solutions taken. The AOP shall be prepared in accordance with the guidelines previously agreed with the Bank and on the basis of reports referred to in Section 5.01.

(b) The AOP for the first year of execution of the Project shall be presented as part of the initial report set forth in Article 4.01(c) of the General Conditions.



**SECTION 4.05. Supervision Reports.** For the purposes set forth in Article 7.03(a)(i) of the General Conditions, the Executing Agency shall present to the Bank, within 30 days following the end of each semester and during the execution of the Project, supervision reports of the activities of the Project. These reports shall contain, at least the following elements: (i) descriptions of the executed activities; (ii) accounts of the contractors', consultants' and the supervision firm's performances; (iii) description of the procurement processes carried out during the reported period; (iv) updated schedule of physical progress and disbursements; (v) level of compliance with the performance indicators; (vi) progress with respect to the implementation and execution of environmental audits, including timeline, results and implemented measures to comply with the Environmental and Social Management Plans (ESMPs); (vii) identification of risks / events that may potentially affect the future implementation of the Project; (viii) execution plan to be completed in the following two six month periods; (ix) maintenance plan for the following two six month periods; (x) a summarized project financial statement, and (xi) the estimated cash flow for the next two six month periods.

**SECTION. 4.06 Evaluation.** (a) When the disbursement of the Financing has achieved 40% or the committed funds achieved 50%, whatever occurred first, and when the disbursement of the Financing has achieved 90%, the Borrower shall submit to the Bank sufficient information to allow the Bank to carry out a mid term and a final evaluation, respectively, to review: (i) the impacts produced by the Project execution; and (ii) procurement procedures and results for goods, services, consultancies and civil works.

(b) The Borrower shall collect, store and retain all necessary information, environmental and social performance reviews, indicators and parameters, including the semi-annual plans, the mid-term review, and final evaluations, in order to assist the Bank to prepare the Project Completion Report (PCR).

**SECTION 4.07 Environmental and social measures.** The Borrower, through the Executing Agency, shall execute all the activities included in the Project in accordance with the Environmental and Social Management Report (ESMR).

## CHAPTER V

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

**SECTION 5.01.**     **Records, Inspections, and Reports.** The Borrower agrees to, directly or through the Executing Agency, maintain records, permit inspections, and submit reports and financial statements in accordance with the provisions established in Chapter VII of the General Conditions.

**SECTION 5.02.**     **Audits.** (a) With respect to the provisions of Article 7.03 of the General Conditions, the financial statements of the Project shall be submitted to the Bank on an annual basis, duly certified by a firm of independent public accountants acceptable to the Bank.

(b)     The cost related to the auditing referred to in subsection (a) of this Section 6.03, will be financed with resources of the Financing.

## 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, date upon which it acquires full legal validity.

**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 and Urquhart Streets  
Georgetown, Guyana

Facsimile: (592) 227-3931

For matters related to the execution of the Project

Mailing address:

Ministry of Public Works and Communication  
Wights Lane, Kingston, Georgetown  
Georgetown, Guyana

Facsimile: (592) 225-6954

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 copies in Cancún, Quintana Roo, United Mexican States, on the date above written.

CO-OPERATIVE REPUBLIC OF  
GUYANA

INTER-AMERICAN DEVELOPMENT  
BANK

/s/ Ashni Singh

/s/ Luis Alberto Moreno

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Ashni Singh  
Minister of Finance

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Luis Alberto Moreno  
President

## **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, 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 a LIBOR Interest Rate” means the cost to the Bank of the Single Currency Qualified Borrowings with a LIBOR 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 7.01 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 to assist in carrying out the Project and comprises the Ordinary Capital Financing and the Fund for Special Operations Financing.

(l) “Fixed Base Rate” means the market swap rate on the effective date of the LIBOR-based Rate fixing.

(m) “Fraud and corruption” means the act(s) defined in Article 5.02(c) of these General Conditions.

(n) “Fund for Special Operations” means the Bank’s Fund for Special Operations.

(o) “Fund for Special Operations Financing” means the portion of the Financing chargeable to the Fund for Special Operations.

(p) “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 Loan Contracts.

(q) “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.

(r) “LIBOR Interest Rate” means in the case of Single Currency Facility Loans<sup>1</sup>:

(i) The LIBOR Interest Rate on an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be “USD-LIBOR-BBA,” which is the rate for deposits in Dollars for a period of three (3) months that appears on the Telerate Page 3750 <LIBOR01> as of 11:00 a.m., London time, on the day that is two (2) London Banking Days preceding that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter. If such rate does not appear on the Telerate Page 3750 <LIBOR01>, the rate for that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be determined as if the parties had specified “USD-LIBOR-Reference Banks” as the applicable LIBOR Interest Rate.

(ii) “USD-LIBOR-Reference Banks” means that the rate for an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be determined on the basis of the rates at which deposits

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<sup>1</sup> Any capitalized terms used in paragraph (r) of Article 2.01 and not otherwise defined herein shall have the meaning assigned to them in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc., as amended and supplemented from time to time, which are hereby incorporated by reference.

in Dollars are offered by the Reference Banks at approximately 11:00 a.m., London time, on the day that is two (2) London Banking Days preceding that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter to prime banks in the London interbank market for a period of three (3) months commencing on that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter and in a Representative Amount. The Calculation Agent or Agents utilized by the Bank will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If at least two (2) quotations are provided, the rate for that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be the arithmetic mean of the quotations. If fewer than two (2) quotations are provided as requested, the rate for that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be the arithmetic mean of the rates quoted by major banks in New York City, selected by the Calculation Agent or Agents utilized by the Bank, at approximately 11:00 a.m., New York City time, on that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter for loans in Dollars to leading European banks for a period of three (3) months commencing on that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter and in a Representative Amount. If more than one Calculation Agent provides an interest rate to the Bank as a result of the procedure described above, the Bank will determine, in its own discretion, the applicable LIBOR Interest Rate for each Quarter for the Interest Rate Determination Date, based on the interest rates received from the Calculation Agents. For purposes of the foregoing provision, if the Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter is not a Banking Day in New York City, the rates quoted on the first day immediately thereafter which is a Banking Day in New York City shall be utilized.

- (s) “Loan” means the funds disbursed from the Financing.
- (t) “Official Auditing Authority” means the Borrower’s official auditing authority.
- (u) “Ordinary Capital Financing” means the portion of the Financing chargeable to the Single Currency Facility.
- (v) “Project” means the Program or Project for which the Financing has been extended.
- (x) “Revolving Fund” means a fund that the Bank may establish as provided in Article 4.07 of these General Conditions, for the purpose of advancing resources to defray Project expenses chargeable to the Financing.
- (y) “Semester” means the first or second six months of a calendar year.

(z) “Single Currency” means any convertible currency which forms part of the Single Currency Facility and the Fund for Special Operations.

(aa) “Single Currency Facility” means the facility the Bank has established to lend in certain convertible currencies which the Bank selects from time to time.

(bb) “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.

(cc) “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 3.14, 3.15 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.** (i) Interest shall be charged on the daily outstanding balances of the Loan which does not reach the accumulated Financing amount of an automatic disbursed conversion amount which correspond to three million dollars (US\$3,000,000) or twenty five percent (25%) of the net approved amount of the Financing (amount of the Financing minus cancellations), whichever is greater, at an annual rate for each Quarter as determined by the Bank on an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter, calculated as follows: (i) the respective LIBOR Interest Rate as defined in Article 2.01(r) of these General Conditions; (ii) plus or minus a cost margin computed quarterly as the weighted average of all the cost margins to the Bank related to the borrowings assigned to the pool of Bank borrowings which funds the Single Currency Facility Loans with a LIBOR-Based Interest Rate; (iii) plus the ordinary capital lending spread prevailing on the Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter, expressed as a percentage per annum.

- (ii) Interest shall be charged on the daily outstanding balances of the Loan which reach the accumulated Financing amount of an automatic disbursed conversion amount which correspond to three million dollars (US\$3,000,000) or twenty five percent (25%) of the net approved amount of the Financing (amount of the Financing minus cancellations), whichever is greater, at an annual fixed rate as determined by the Bank at the time of the automatic conversion date, calculated as follows: (i) the respective Fixed Base Rate as defined in Article 2.01(l) of these General Conditions; (ii) plus or minus a cost margin computed quarterly as the weighted average of all the cost margins to the Bank related to the borrowings assigned to the pool of Bank borrowings which funds the Single Currency Facility Loans with a LIBOR-Based Interest Rate; (iii) plus the ordinary capital lending spread prevailing on the Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter, expressed as a percentage per annum. The Bank shall promptly notify the Borrower of the Fixed Base Rate upon its determination, at the time of the conversion execution date.
- (iii) The Borrower and Guarantor of any Single Currency Facility Loan with a LIBOR-Based Interest Rate expressly acknowledge and agree that: (i) the LIBOR Interest Rate referred to in Article 3.04(a)(i) above, and the cost margin of the Bank borrowings referred to in Article 3.04(a)(ii) above, may be subject to significant fluctuations during the life of the Loan and, therefore, the LIBOR-Based Interest Rate alternative for Single Currency Facility loans may involve significant financial risks to the Borrower and the Guarantor; and (ii) any risk of fluctuations in the LIBOR-Based Interest Rate alternative for Single Currency Facility loans is assumed entirely by the Borrower and the Guarantor, if applicable.



- (iv) Whenever, in light of changes in market practice affecting the determination of the LIBOR-Based Interest Rate alternative for Single Currency Facility loans, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rate applicable to the Loan other than as provided in Article 3.04(a)(i) above, the Bank may modify the basis for determining the interest rate applicable to the Loan upon not less than three (3) months' notice to the Borrower and the Guarantor of the new basis. The new basis shall become effective on the expiration of the notice period unless the Borrower or the Guarantor notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

(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. Rate of Exchange.** (a) The rate of exchange to be used to determine the equivalency of the currency of the Borrower's country, in relation to dollars, shall be as follows:

- (i) The rate of exchange pursuant to the understanding in force between the Bank and the respective member country for the purposes of maintaining the value of the currency in conformity with the provisions of Article V, Section 3 of the Agreement Establishing the Bank.
- (ii) Should there be no agreement in force between the Bank and the respective member country with regard to the rate of exchange to be applied for the purpose of maintaining the value of its currency held by the Bank, the latter shall have the right to require that the rate of exchange to be applied for the purposes of payment of amortization and interest shall be that which on the due date is utilized by the Central Bank of the member country or by the corresponding monetary authority to sell dollars to residents of such country, other than government agencies, for the following transactions: (a) payment of principal and interest due; (b) remittance of dividends or other income from capital investments in the respective country; and (c) remittance of investment capital. In the event that there is no uniform rate of exchange for these three types of operations, the highest rate shall be applied, i.e., the rate representing the highest number of units of the currency of such country per dollar.
- (iii) If, on the date on which the payment is due, the foregoing rule cannot be applied because the operations referred to do not exist, payment shall be made on the basis of the most recent rate of exchange used for such operations within the thirty (30) days preceding the respective due date.

- (iv) If, notwithstanding the application of the foregoing rules, the effective rate of exchange for the purpose of determining payment cannot be ascertained, or if discrepancies arise in the determination thereof, the determination of the Bank shall prevail, taking into consideration the realities of the foreign exchange market of the member country concerned.
- (v) If, due to non-compliance with the foregoing rules, the Bank considers that any payment made in the respective currency has been insufficient, it shall so notify the Borrower immediately in order that the latter shall pay the difference within a period not greater than thirty (30) business days from receipt of the notification. If, on the other hand, the sum received by the Bank is higher than that due, it shall return the excess amount within the same time period.
- (vi) In case of a delayed payment the Bank may require that the rate of exchange in effect at the time of payment be applied.

(b) For the purpose of determining the equivalency in dollars of an expenditure incurred in the currency of the Borrower's country, the rate of exchange which is applicable on the date of payment of such expenditure shall be utilized, pursuant to paragraph (a) above. To that end, the date of payment of such expenditure shall mean the date on which the Borrower, the Executing Agency or any natural or juridical person in whom the power to incur expenditures has been vested makes the respective payments to the order of the contractor or supplier.

**ARTICLE 3.07. 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 3.08. 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 3.09. Application of Payments.** All payments shall be applied first to returns of unjustified advances of funds, then to fees and interest due on the payment date, and if a balance exists, to the amortization of installments of principal due.

**ARTICLE 3.10. Advance Payments.** (a) Upon an irrevocable advance notice in writing to the Bank, accompanied by the expressed written consent of the Guarantor, if any, of at least thirty (30) days, the Borrower may prepay, on one of the amortization payment dates, all or part of the outstanding balance of the Loan, provided that on the payment date no sum is due and outstanding in respect of fees or interest. The Borrower shall specify in the notice the amount the Borrower intends to prepay.

(b) 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 Borrower may not prepay the outstanding balance of a Loan disbursed against the Ordinary Capital Financing in an amount lower than three million dollars (US\$3,000,000), unless the remaining outstanding balance of the Loan is lower than that amount. The part of the partial advance allocated to the Fund for Special Operations Financing shall be applied against the single amortization installment.

(c) Notwithstanding the provision of sub paragraph (b) above, in cases of partial or total prepayment of the outstanding balance of the Loan disbursed against the Ordinary Capital Financing, any gain or loss resulting from the cancellation or change of the Bank's funding associated with the corresponding prepayment will be either credited or charged by the Bank to the Borrower, as the case may be, within thirty (30) days from the date of prepayment. In the event of any gain, it will be credited in first to any amounts due and payable by the Borrower to the Bank. The Bank shall also charge the Borrower any cost the Bank may incur as a result of failure on the part of the Borrower to comply with the written request for partial or total prepayment of the outstanding balance of the Loan as requested in advance by written notice of the Borrower, in accordance with the provisions of this Section.

**ARTICLE 3.11. 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 3.12. 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 3.13. 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 3.14. 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 amount of the Financing which has not been disbursed before the receipt of the notice, provided that the amounts foreseen in Article 5.03 of these General Conditions are not involved. 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 represent, of the total amount of the Financing.

**ARTICLE 3.15. 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, either directly or through the Executing Agency, if any, shall have presented to the Bank an initial report prepared in the form indicated by the Bank, which in addition to such other information as the Bank may reasonably request pursuant to the provisions of this Contract, shall set forth: (i) a plan for implementation of the Project including, except with respect to a program for the granting of credits, the plans and specifications deemed necessary by the Bank; (ii) a calendar or schedule of work or granting of credits, as the case may be; (iii) a table of the source and use of funds setting forth a detailed schedule of investments in accordance with the categories of investment established in this Contract and an indication of the annual contributions needed from the various sources of funds from which the Project will be financed; and (iv) the format in which the progress reports referred to in Article 7.03(a)(i) of these General Conditions shall be presented. If this Contract permits the recognition of expenditures made prior to its signature or to the date of the Resolution authorizing the Financing, the initial report shall include a statement of the investments and, in accordance with the objectives of the Financing, a description of works carried out under the Project or a statement as to credits granted, as the case may be, up to a date immediately preceding the report.

(d) The Borrower or Executing Agency shall have presented to the Bank the plan, catalog or code of accounts referred to in Article 7.01 of these General Conditions.

(e) The Official Auditing Authority referred to in the Special Conditions shall have agreed to perform the auditing function foreseen in Article 7.03(b) of these General Conditions and

in the Special Conditions, or the Borrower or the Executing Agency shall have agreed with the Bank with respect to a firm of independent public accountants to perform the above functions.

**ARTICLE 4.02. Period for Fulfilling the Conditions Precedent to First Disbursement.** If within one hundred eighty (180) 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. Disbursements for Technical Cooperation.** If the Special Conditions contemplate the Financing of expenses for technical cooperation, the disbursements therefore may be made once the conditions established in Article 4.01(a) and (b) and in Article 4.03 of these General Conditions have been fulfilled.

**ARTICLE 4.06. 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; (b) by making payments on behalf of and in agreement with the Borrower to other banking institutions; (c) by establishing or replenishing the Revolving Fund referred to in Article 4.07 below; and (d) 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 only in amounts of not less than the equivalent of fifty thousand dollars (US\$50,000) each.

**ARTICLE 4.07. Revolving Fund.** (a) Upon fulfillment of the requirements set forth in Articles 4.01 and 4.03 of these General Conditions and the pertinent requirements established in the Special Conditions, the Bank may advance resources of the Financing for the purpose of establishing, increasing or replenishing a Revolving Fund to defray costs pertaining to the execution of the Project which, pursuant to provisions of this Contract, are eligible for financing with such resources.

(b) Except by express agreement between the parties, the amount of the Revolving Fund shall not exceed five percent of the amount of the Financing. Upon justified request, the Bank may

increase or replenish the Revolving Fund as the resources are used, provided that the requirements of Article 4.03 of these General Conditions and those which may be established in the Special Conditions have been fulfilled. The Bank may also reduce or cancel the Revolving Fund should it determine that the resources provided through the Revolving Fund exceed the needs of the Project. The establishment and the replenishment of the Revolving Fund shall be regarded as disbursements for the purposes of this Contract.

(c) The plan, catalog or code of accounts that the Borrower or Executing Agency must present to the Bank in accordance with Article 4.01(d) of these General Conditions shall indicate the accounting method used by the Borrower to verify the transactions and statements of account of the Revolving Fund.

(d) Not later than thirty (30) days prior to the date agreed upon for the final disbursement of the Financing, the Borrower shall present a final justification of the use of the Revolving Fund and return any unused portion thereof.

## **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 any other obligation set forth in the Contract or in any other Contract entered into with the Bank for the Financing of the Project.

(c) Withdrawal or suspension from membership in the Bank of the country in which the Project is to be executed.

(d) The Project or the purposes of the Financing may be affected by: (i) any restriction, modification or alteration of the legal capacity, functions or assets of the Borrower or the Executing Agency; or (ii) any modification or change made without the written concurrence of the Bank of the basic conditions fulfilled before the approval of the Resolution authorizing the Financing or the signature of the Contract. In such cases, the Bank will have the right to require the Borrower and the Executing Agency to provide reasoned and detailed information. Only after hearing the Borrower or the Executing Agency and weighing the information or clarification received, or if the Borrower and the Executing Agency fail to respond, may the Bank suspend disbursements if it considers that the modifications made affect the Project substantially and unfavorably or make its execution impossible.

(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 during the bidding process, negotiation of a contract, or the execution of the contract.

**ARTICLE 5.02. Termination, Accelerated Maturity, or Partial Cancellation of Undisbursed Balances 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) and (e) 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 pertaining to the procurement of certain goods, works or related services, or consulting services, or may declare the portion of the loan pertaining to such items immediately due and payable, if it determines at any time that: (i) the procurement was carried out without following the procedures set forth in this Contract; or (ii) representatives of the Borrower, Executing Agency or Contracting Agency have committed any act of fraud or corruption, either in the process of selecting the contractor or supplier or consultant, or in the negotiation or execution of the respective contract, and the Borrower 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, bidders, suppliers, contractors, sub-contractors, concessionaires, applicants, consultants, Executing Agency or Contracting Agency (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 proposal to award a contract or a contract awarded for works, goods, related services and consultant services financed by the Bank;
- (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. Obligations not Affected.** Notwithstanding the provisions of the foregoing Articles 5.01 and 5.02, none of the measures set forth in this Chapter shall affect the disbursement by the Bank of: (a) any amounts subject to the guarantee of an irrevocable letter of credit; and (b) any amounts which the Bank by specific written agreement with the Borrower or the Executing Agency, or the Contracting Agency, if any, has agreed to provide from the resources of the Financing to make



payments to a contractor or supplier of goods and related services or consultant services. The exceptions set forth in subparagraph (b) shall not apply if the Bank determines that acts of fraud and corruption occurred with respect to the procurement of, or the negotiation or execution of the contract for, the works, goods and related services or consultant services.

**ARTICLE 5.04. 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 5.05. 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

### Execution of the Project

**ARTICLE 6.01. General Provisions for Execution of the Project.** (a) The Borrower undertakes that the Project shall be executed with due diligence in conformity with sound financial and technical practices, and in accordance with the plans, specifications, investment schedule, budgets, regulations, and other documents approved by the Bank. The Borrower further undertakes that its obligations shall be fulfilled to the satisfaction of the Bank.

(b) Any important modification in the plans, specifications, investment schedule, budgets, regulations or other documents which the Bank has approved, as well as any substantial change in the contract or contracts for goods or services which may be funded with the resources devoted to the execution of the Project, or in the categories of investment, shall require the written consent of the Bank.

**ARTICLE 6.02. Prices of Public Tenders.** Contracts for execution of works, procurement of goods, and rendering of services for the Project shall be undertaken at a reasonable cost which shall generally be the lowest market price, taking into account quality, efficiency, and any other pertinent factors.

**ARTICLE 6.03. Use of Goods.** Except with the express authorization of the Bank, the goods acquired with the resources of the Financing shall be used exclusively for the purposes of the Project. Once the Project has been completed, the construction machinery and equipment utilized in the execution of the Project may be used for other purposes.

**ARTICLE 6.04. Additional Resources.** (a) The Borrower shall contribute in a timely manner all the resources in addition to those of the Loan which may be necessary for the complete and uninterrupted execution of the Project. If during the process of disbursement of the Financing an increase in the estimated cost of the Project arises, the Bank may require the modification of the

investment schedule referred to in Article 4.0l(d) of these General Conditions in order that the Borrower shall meet such increase.

(b) Within the first sixty (60) days of each calendar year of Project execution, the Borrower shall demonstrate to the Bank that it will have available when needed, the resources necessary to make the local contribution during the respective year, , if any.

## CHAPTER VII

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

**ARTICLE 7.01. Internal Control and Records.** The Borrower or the Executing Agency, or the Contracting Agency, as the case may be, shall maintain an appropriate system 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 of the Project 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 various sources; (b) show, in accordance with the catalogue of accounts approved by the Bank, the investments in the Project, both with the resources of the Loan and with the other funds to be provided for its complete execution; (c) include sufficient detail to show the works performed, goods acquired and the services contracted, as well as the utilization of such works, goods and services; and (d) such documents include documentation relating to the bidding process and the execution of the contracts financed by the Bank including, but not limited to, bid requests, bid packages, summaries, bid evaluations, contracts, correspondence, work product and drafts, and invoices, including documents relating to the payment of commissions, and payments to agents, consultants and contractors; and (e) show the cost of the investments in each category and the progress of the works. With respect to credit programs, the records shall also detail the credits granted, the recoveries obtained, and the utilization of the funds recovered.

**ARTICLE 7.02. Inspections.** (a) The Bank may establish such inspection procedures as it deems necessary to assure the satisfactory development of the Project.

(b) The Borrower, the Executing Agency and the Contracting Agency, if any, shall permit the Bank to inspect at any time the Project, the equipment and materials involved therein, and to examine such records and documents as the Bank may deem pertinent. The personnel which the Bank shall send or designate 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 procurement-related documents, 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 7.03. Reports and Financial Statements.** (a) The Borrower or the Executing Agency, as appropriate, shall present to the Bank the following reports, within the periods specified with respect to each:

- (i) Reports on the execution of the Project, in the format established in the initial report mentioned in Article 4.01(c)(iv) of these General Conditions, within sixty (60) days following the end of each calendar Semester, or within such other period as the parties may agree, prepared in accordance with the relevant rules agreed to with the Bank.
- (ii) Such other reports as the Bank may reasonably request regarding the investment of the sums lent, the use of goods acquired with such sums, and the progress of the Project.
- (iii) Three copies of the financial statements for the entire Project as of the close of each fiscal year of the Executing Agency, and supplementary financial information relating to such statements. Such financial statements shall be submitted within one hundred twenty (120) days following the close of each fiscal year of the Executing Agency, beginning with the fiscal year in which the Project was initiated and during the period stipulated in the Special Conditions.
- (iv) When the Special Conditions so require, three copies of the financial statements of the Borrower as of the close of each fiscal year, and supplementary financial information relating to such statements. The financial statements shall be submitted during the period stipulated in the Special Conditions, beginning with the fiscal year in which the Project was initiated and within one hundred twenty (120) days following the close of each fiscal year of the Borrower. This obligation shall not apply if the Borrower is the Republic or the Central Bank.
- (v) When the Special Conditions so require, three copies of the financial statements of the Executing Agency as of the close of each fiscal year, and supplementary financial information relating to such statements. The statements shall be submitted during the period stipulated in the Special Conditions, beginning with the fiscal year in which the Project was initiated and within one hundred twenty (120) days following the close of each fiscal year of the Executing Agency.

(b) The statements and documents described in subparagraphs (a)(iii), (iv) and (v) 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 the Official Auditing Authority 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 VIII

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

**ARTICLE 8.01. 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 8.02. 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 IX

### **Arbitration Procedure**

**ARTICLE 9.01. 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 9.02. 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 9.03. 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 9.04. 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 9.05. 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 9.06. 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.



## **ANNEX**

### **THE PROJECT**

#### **Road Improvement and Rehabilitation Program**

##### **I. Objectives**

- 1.01** The objective of the Project is to enhance urban and suburban mobility and safety, and improve accessibility to an important agricultural zone, lower transport costs and reduce accident rates, through the rehabilitation and improvement of the East and West Canje Roads, the urban arterial network in Georgetown, the access road to the airport from the East Bank Road (EBR), and localized interventions on the EBR between the Cricket Stadium and Diamond / Grove.
- 1.02** The specific objectives of the Project are the improvement of the road reliability and driving conditions by rehabilitating and improving the different road corridor.

##### **II. Description**

- 2.01** In order to achieve the abovementioned objectives, the Project will implement the following components:

###### **Component 1: Improvement and Rehabilitation of the East and West Canje Roads**

- 2.02** The scope of works to be carried out under this Component would include: (i) improvement and rehabilitation of both roads, replacement of 24 bridges and 6 culverts and the rehabilitation of 3 box culverts; (ii) construction of shoulders in interurban segments, and sidewalks and other safety related works in urban areas; and (iii) improvements of urban crossings, and roadside amenities, including bus stops and parking areas at key locations to enhance safety and socioeconomic benefits. In addition, roadside public utilities infrastructure will be properly relocated. Sound interface between road drainage and urban sewage networks will be introduced in town crossings.

###### **Component 2: Improvement and Rehabilitation of main roads**

- 2.03** The Sheriff Street – Mandela Road roadway in Georgetown is the only direct link between the heavily populated East Coast Demerara and East Bank Demerara. Additionally, the roadway provides the main access to very large residential areas in Georgetown such as Campbellville and South Ruimveldt. Commercial activity continues to increase steadily along the roadway, creating a chaotic mix of pedestrian and vehicular traffic, and parking requirements. Traffic control and road safety features such as pedestrian walkways, pedestrian crossings, lane markings, ‘no parking’ zones, lighting

and signage are inadequate. The roadway is approximately seven kilometers long, and its width varies from seven to thirteen meters. It has an asphaltic concrete surface (approximately six inches thick after overlays), on a stabilized white sand / sand clay base.

- 2.04** While the roadway is seemingly sound structurally, its surface is rough and undulating, and significant cracking has begun to emerge. The correction of these defects would require an asphaltic concrete overlay to be applied. The existing surface could be partially milled and re-laid as a 'geometric correcting' base layer before the overlay if necessary. Additionally, some of the existing surface could be recycled and used to manufacture the 'hot mix' for the overlay. Based on the results of the technical studies drain construction to either side of the road and the construction of sidewalks and other road safety features, could be included as necessary.
- 2.05** The Cheddi Jagan International Airport (CJIA) Access Road is a rigid concrete pavement, which is approximately three and one half kilometers long and seven meters wide. It is the only access to the CJIA and the relatively large Timehri community. The surface provides for relatively rough driving conditions, and several sections of the pavement have failed and were replaced with asphaltic concrete fills. The scope of works to be carried out would include an asphaltic concrete overlay to improve the driving comfort and protect the pavement from further deterioration, as well as the improvement of roadside amenities at key locations to enhance safety.
- 2.06** The EBR has been widened to 4 lanes between the outskirts of Georgetown to the new Cricket Stadium. South of the Stadium the road continues with 2 lanes, providing access to the ever developing residential areas of Diamond and Grove villages on the East Bank of Demerara. It is the intention of the Government to continue the 4-lane widening further south. A study to carry out the technical assessments, including engineering, socio-environmental aspects, cost-benefit analysis and prioritization of critical works, and preparation of technical designs to continue with the widening works is being funded by the government of Guyana. This subcomponent will finance the implementation of the prioritized measures along the EBR between the Cricket Stadium and the Diamond / Grove urban development, and would include localized interventions such as upgrading intersections, improvement of road safety, traffic management, ease of traffic congestion, among others.

### **Component 3: Implementation Support**

- 2.07** This component will finance the consulting services for supervision of the civil works in Components 1 and 2 as well as for the conduct of required technical and environmental supervision and audits.



### **III. Total Cost of the Project and Financing Plan**

- 3.01** The total cost of the Project, estimated in the amount of US\$24,800,000 will be distributed among the following categories of expenditures:

Table Cost  
(US\$ millions)

Category	TOTAL
<b>1. Improvement and Rehabilitation of the East and West Canje Roads</b>	<b>11.00</b>
<b>2. Improvement and Rehabilitation of main roads</b>  Sheriff Street – Mandela Avenue in Georgetown  Access road to the international airport from the EBR  Prioritized interventions on the EBR between the Cricket Stadium and the Diamond / Grove urban area	<b>10.30</b>
<b>3.Contingencies</b>	<b>2.00</b>
<b>4. Implementation Support</b>	<b>1.40</b>
<b>5. Financial audit</b>	<b>0.10</b>
<b>TOTAL</b>	<b>24.80</b>

### **IV. Execution**

- 4.01** The Ministry of Public Works and Communication (MPWC), through the Works Services Group (WSG) will be responsible for the fulfillment of technical, administrative and financial procedures related to the execution of the Project, as well as the planning, monitoring, supervision and evaluation of the Project.
- 4.02** The Executing Agency will have the following responsibilities during Project implementation: a) prepare and obtain Bank approval for all bidding documents required to hire the civil work contractors and consulting firms; b) carry out, control and register all administrative and accounting procedures needed; c) coordinate the bidding processes according to the Bank policies; d) monitor the civil works and construction contracts through consulting firms specifically hired to that effect; e) maintain adequate accounting and financial controls as well as appropriate support documentation filing systems for verification by the Bank and the external auditing firm; f) prepare and submit to the Bank disbursement requests and corresponding justification of expenses; g) prepare and submit to the Bank semiannual reports on the revolving fund, Project execution including annual

updates of the Annual Plan of Operations, audited financial reports, and other financial reports as required by the Bank; h) record and control the results of the Project through the agreed indicators; and i) address and resolve contractor claims and address related contract adjustments. In addition, the EA will maintain separate files for the operations of the Project, and allow for financial and accounting monitoring of the Bank resources, and the local counterpart, in accordance with Bank requirements.

- 4.03** The contractors who will carry out the civil works will be overseen by engineering supervision firms hired by the Executing Agency with funds from the Project. The contractors will be hired using International Competitive Bidding (ICB) procedures and in accordance with terms of reference agreed with the Bank. The bidding documents for the selection of contractors to carry out the civil works shall incorporate the following requirements: (i) the final technical designs; (ii) the Environmental and Social Management Plan, as well as the General and Particular Environmental Specifications; and (iii) the requirement that Contractors hire an Environmental Engineer as part of their field personnel.
- 4.04** Prior to signing the contract with the Contractors to carry out the civil works, the Executing Agency will demonstrate that it has selected and hired the firms to supervise such civil works.
- 4.05** The supervision firms will also carry out the supervision of the environmental and social aspects of the civil works. Therefore, the bidding documents for the selection of the supervisory firms of the civil works must incorporate the requirement that an Environmental Inspector is hired as part of their field personnel. The supervision firms will review all technical documentation at the beginning of their contracts and at regular intervals throughout the Project to ensure, *inter alia* the adequacy of the programming of work. The supervision firms will submit, twice per year, reports to the Executing Agency and the Bank outlining progress in the works carried out by the contractors and will prepare as-built drawings for all work performed upon the completion of each major work component.
- 4.06** For follow-up and compliance purposes, additional safeguards will be put in place: (i) the Supervisory Engineering Firm, will appoint an environmental inspector and provide any additional environmental and social staff as required to ensure implementation of the ESMPs; (ii) the Construction Contractor will assign a qualified Environmental Engineer who will assume responsibility for implementation of the ESMP during construction and post-construction and act as a liaison with the Supervisory Engineer's Environmental Inspector; (iii) environmental reports will be required on a monthly basis and an environmental audit of each individual project will be done prior to the reception of the project; and (iv) prior to the commencement of the first civil works contract, the Executing Agency shall hire and/or appoint, a social specialist and an environmental specialist with experience in civil works with preference in roads projects, who will jointly oversee the performance of both the supervisory and contracting firms, review their reports and direct and ensure the correction of any non-compliance issues.