

**LOAN CONTRACT No. 2629/OC-JA**

Between

JAMAICA

and the

INTER-AMERICAN DEVELOPMENT BANK

Energy Efficiency and Conservation Programme

November 22, 2011

## SPECIAL CONDITIONS

### **INTRODUCTION**

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

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

CONTRACT entered into on November 22, 2011 between JAMAICA (hereinafter referred to as the “Borrower”) and the INTER-AMERICAN DEVELOPMENT BANK (hereinafter referred to as the “Bank”) to cooperate in the execution of the Energy Efficiency and Conservation Programme (hereinafter referred to as the “Programme”). The major aspects of the Programme are described in detail in the Annex (hereinafter referred to as the “Annex”).

#### **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 shall prevail. In the case of inconsistencies or contradictions between the Special Conditions or the Annex, specific provisions shall prevail over general provisions.

(b) Procedural provisions relating to amortization, interest, credit fee, inspection and supervision and disbursement clauses, as well as other conditions related to Programme 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 Programme and the utilization of the resources of the financing granted by the Bank shall be carried out in their entirety by the Borrower, through its Ministry of Energy and Mining (hereinafter referred to as either the “Executing Agency” or “MEM”). In order to execute the Programme, the MEM will establish a Project Executing Unit within its Energy Division, which will be responsible for the implementation, coordination, management and supervision of the Programme.

## CHAPTER I

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

**SECTION 1.01**      **Cost of the Programme.** The total cost of the Programme is estimated to be the equivalent of twenty million dollars of the United States of America (US\$20,000,000). Unless otherwise stated in this Contract, the term “dollars” hereinafter signifies the currency of legal tender in the United States of America.

**SECTION 1.02**      **Amount of the Financing.** In accordance with this Contract, the Bank agrees to provide to the Borrower, and the Borrower accepts financing, hereinafter referred to as the “Financing,” chargeable to the resources of the Single Currency Facility of the ordinary capital of the Bank, of up to the amount of twenty million dollars (US\$20,000,000). The amounts disbursed from the Financing shall constitute the “Loan.” The Loan shall be a Single Currency Facility Loan with a LIBOR-Based Interest Rate.

**SECTION 1.03**      **Currency Availability.** Notwithstanding Sections 1.02 and 3.01(a) of these Special Conditions, if the Bank is unable to obtain access to the agreed upon Single Currency, the Bank 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. Amortization payments shall be made in the Single Currency disbursed, and interest and other financial charges shall be those which correspond to such Single Currency.

## CHAPTER II

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

**SECTION 2.01**      **Amortization.** The Loan shall be completely repaid by the Borrower by means of semiannual, consecutive, and, insofar as possible, equal installments. The first installment shall be paid four (4) years and six (6) months from the effective date of this Contract, taking into account the provisions of Article 3.01 of the General Conditions, and the last installment shall be paid no later than twenty (20) years from the same date.

**SECTION 2.02**      **Interest.** (a) The Borrower shall pay interest on the daily outstanding balances of the Loan at a rate determined pursuant to the provisions of Article 3.04 of the General Conditions for a Single Currency Facility Loan with a LIBOR-Based Interest Rate. The Bank shall notify the Borrower of the rate of interest applicable during each Quarter as soon as practicable after the determination thereof.

(b) Interest shall be payable to the Bank semiannually, beginning six months after the effective date of this Loan Contract, taking into account the provisions of Article 3.01 of the General Conditions.

(c) The Borrower may request that all or part of the outstanding balance of the Loan with a LIBOR-Based Interest Rate be converted to a Fixed Interest Rate, or that all or part of the outstanding balance of the Loan with a Fixed Interest Rate be reconverted to a LIBOR-Based Interest Rate, pursuant to Article 3.04 of the General Conditions of this Contract.

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

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

### **CHAPTER III**

#### **Disbursements**

**SECTION 3.01      Currencies of Disbursement and Use of Funds.** (a) The amount of the Financing shall be disbursed in dollars from the Single Currency Facility of the ordinary capital resources of the Bank, to pay for goods and services acquired in accordance with the procedures and for the purposes set forth in this Contract.

(b) The resources of the Financing shall only be used for payment of goods and services originating in the member countries of the Bank.

**SECTION 3.02      Special Conditions Precedent 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) The Project Execution Unit (PEU) has been established and the Project Manager and the Financial Officer have been selected or designated, in accordance with terms of reference previously approved by the Bank;

(b) The Operational Manual of the Programme (OMP) has been duly approved by the Executing Agency on the terms previously approved by the Bank; and

(c) The Energy Efficiency and Conservation Programme Steering Committee (EECPSC) has been established.

**SECTION 3.03.      Reimbursement of Expenditures Chargeable to the Financing.** With the consent of the Bank, up to the equivalent of four hundred thousand dollars (US\$400,000) of the resources of the Financing may be used to reimburse expenditures incurred in relation to the Programme. Said expenditures shall have been incurred before November 17, 2011 but after

April 6<sup>th</sup>, 2011 provided that requirements substantially similar to those set forth in this Contract have been fulfilled. It is understood that, with the consent of the Bank, the resources of the Financing also may be used to reimburse expenditures incurred or to finance those that may be incurred in the Programme on or after November 17, 2011 and up to the effective date of this Contract, provided that the requirements set forth above have been substantially fulfilled.

**SECTION 3.04      Disbursement Period.** The period for final disbursement of the resources of the Financing shall expire four (4) years from the effective date of this Contract.

**SECTION 3.05      Exchange Rate.** For the purposes of the provisions set forth in Article 3.06(b) of the General Conditions of this Contract, the parties agree that the applicable exchange rate shall be that which is indicated in subsection (b)(i) of said Article.

## CHAPTER IV

### Execution of the Programme

**SECTION 4.01      Procurement of Goods and Works.** Goods and works shall be procured in accordance with the provisions set forth in Document GN-2349-9 (“Policies for the procurement of goods and works financed by the IDB”), dated March 2011 (hereinafter called “the Procurement Policies”) of which the Borrower confirms its knowledge, and with the following provisions of this Section:

(a)      International Competitive Bidding: Except as otherwise provided in subsection (b) of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Procurement Policies. The provisions of paragraphs 2.55 and 2.56, and of Appendix 2 of said Policies, regarding the domestic margin of preference when comparing bids, shall apply to goods manufactured in the country of the Borrower.

(b)      Other Procurement Procedures: The following procurement methods may be used for the procurement of works and goods that the Bank agrees meets the requirements established in the provisions of Section III of the Procurement Policies:

- (i)      National Competitive Bidding, for works with an estimated cost of less than the equivalent of one million five hundred thousand dollars (US\$1,500,000) per contract and goods estimated to cost less than the equivalent of one hundred and fifty thousand dollars (US\$150,000) per contract, in accordance with the provisions of paragraphs 3.3 and 3.4 of the Procurement Policies, as long as using said method is not contrary to the basic protections that must be met in bidding procedures, nor contrary to the Procurement Policies; and
- (ii)      Shopping, for works estimated to cost less than the equivalent of one hundred and fifty thousand dollars (US\$150,000) per contract, and for goods estimated to cost less than the equivalent of twenty five thousand dollars (US\$25,000) per contract, in accordance with the provisions of paragraph 3.5 of the Procurement Policies.

(c) Additional Procurement Conditions: The Executing Agency 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 terms and other documents necessary for the call for prequalification or bids; and in the case of works, shall have with respect to the real property where the works will be constructed, the right of legal possession, easements or other rights necessary to initiate the construction, as well as the riparian rights required for the respective 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 Executing Agency shall present the proposed procurement plan for the Programme to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Procurement Policies. This plan shall be updated every twelve (12) months or as needed during Programme execution, and each updated version shall be submitted to the Bank for its review and approval. Procurement of all goods and works shall be undertaken in accordance with the procurement plan that has been approved by the Bank, and with the provisions of said paragraph 1.

(ii) Prior Review: Unless the Bank agrees otherwise in writing, the following contracts shall be subject to prior review, in accordance with the procedures established in paragraphs 2 and 3 of Appendix 1 to the Procurement Policies:

(A) With respect to each contract for works and goods to be procured following International Competitive Bidding. The Executing Agency shall present to the satisfaction of the Bank, evidence that it has complied with the requirements set forth in subparagraph (c) of this Section.

(iii) Ex Post Review. With respect to each contract not governed by subsection (d)(ii) (A) of this Section, the procedures set forth in paragraph 4 of Appendix 1 to the Procurement Policies shall apply. The Executing Agency shall retain and make available to the Bank, evidence that it has complied with the requirements set forth in subparagraph (c) of this Section.

**SECTION 4.02** Maintenance of Works. The Borrower and the Executing Agency undertake to: (i) ensure that the works and equipment included in the Programme shall be adequately maintained according to generally accepted technical standards; and (ii) present to the Bank a report on the status of said works and equipment and an annual maintenance plan for that year, as established in section V of the Annex, during the five (5) years following the completion of the first of the works of the Programme and within the first quarter of each calendar 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 and the Executing Agency shall undertake the necessary measures to correct these shortcomings.

**SECTION 4.03      Selection and Contracting of Consultants.** The selection and contracting of Consultants shall be carried out in accordance with the provisions of Document GN-2350-9 (“Policies for selection and contracting of consultants financed by the IDB”), dated March 2011 (hereinafter called “the Consultant Policies”), of which the Borrower confirms its knowledge, and with the following provisions of this Section:

(a)      The Executing Agency shall carry out the selection and contracting of consultants 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 of consultants. The short list of consultants for services estimated to cost less than the equivalent of two hundred thousand dollars (US\$200,000) per contract may comprise entirely national consultants in accordance with the provisions set forth in paragraph 2.7 of the Consultant Policies.

(b)      Review by the Bank of the Selection of Consultants

- (i)      Planning of Selection and Contracting: Prior to the issuance of any request for proposal to the consultants, the Executing Agency shall present to the Bank, for its review and approval, a plan for the selection of consultants, which shall include cost estimates for each contract, contract grouping and applicable selection methods and procedures, in accordance with the provisions set forth in paragraph 1 of Appendix 1 to the Consultant Policies. Such plan shall be updated every twelve (12) months or as needed during Programme execution and each updated version shall be submitted to the Bank for its review and approval. Selection of all consultants’ services shall be undertaken in accordance with the selection plan, as updated from time to time, that has been approved by the Bank.
- (ii)      Prior Review: Unless the Bank agrees otherwise in writing, the selection and contracting procedure shall be subject to the Bank’s prior review, in accordance with the procedures established in paragraphs 2 and 3 of Appendix I of the Consultant Policies.

**SECTION 4.04      Compilation of Data and Ex Post Evaluation Report.** The Borrower, through the Executing Agency, shall collect and maintain available information, indicators and parameters needed to carry out an “*ex post*” evaluation, if required, of the Programme results, based on a methodology, and terms to be agreed with the Bank.

**SECTION 4.05      Operations Manual of the Programme (OMP).** The parties agree that the execution of the Programme will be governed by the terms of this Contract and the provisions of the OMP referred to in Section 3.02 of these Special Conditions, provided that the OMP may not be modified during the execution of the Programme without the prior written consent of the Bank. In the case of inconsistencies or contradictions between the provisions of this Contract and those of the OMP, provisions of this Contract shall prevail.

## CHAPTER V

### Supervision

**SECTION 5.01      Records, Inspections and Reports.** The Borrower agrees to directly or through the Executing Agency: maintain records; permit inspections; submit reports; maintain a management, accounting and financial administration system acceptable to the Bank; and submit financial statements and financial reports to the Bank in accordance with the provisions established in this Chapter and in Chapter VII of the General Conditions.

**SECTION 5.02      Supervision of Programme Execution.** (a) The Bank shall use the Programme Implementation Plan referred to in Article 4.01(d)(i) of the General Conditions as an instrument to supervise Programme execution. The Programme Implementation Plan shall be based on the Procurement Plan referred to in Sections 4.01(d)(i) and 4.03(b)(i) of these Special Conditions, and shall include a complete planning of the Programme, with the critical path of actions to be implemented in order to disburse the resources of the Financing before the expiration of the disbursement period set forth in Section 3.04 of these Special Conditions.

(b) The Programme Implementation Plan shall be updated as needed, particularly upon the occurrence of a significant change that causes or may cause a delay in Programme execution. The Borrower shall inform the Bank of any change in the Programme Implementation Plan no later than upon presentation of the respective semiannual Programme execution report.

**SECTION 5.03      Monitoring and evaluation.** (a) The Borrower through the Executing Agency will be responsible for developing a monitoring system for gathering and maintaining data related to the different indicators included in the Results Framework of the Programme. Through the Programme's monitoring system, the Executing Agency will submit semi-annual reports describing the physical progress of the Programme made with respect to the indicators measured during the period covered by the Results Framework, lessons learned, and any other information required to ensure the successful implementation of the Programme. The Programme's monitoring system will also identify critical events and risks for the Programme.

(b) The Executing Agency shall use the indicators of the Results Framework as the main indicators for the Monitoring and Evaluation (M&E) Plan. The M&E Plan will focus on measuring the result indicators and specific benefits achieved by each of the components

(c) The Executing Agency shall carry out a midterm evaluation once 50% of the resources of the Financing are disbursed, or after two (2) years of the Programme's execution whichever come first. The Executing Agency will elaborate a project status report, assessing the level of progress of the Programme in relation to indicators, in order to identify and support any proposed changes that may be required to attain the Programme targets.

(d) The Executing Agency shall carry out a final evaluation once 90% of the resources of the Financing are disbursed. The final evaluation will evaluate the impact and results obtained by the Programme, identify the main lessons learnt and will include an ex-post cost benefit analysis of the Programme.



**SECTION 5.04      Financial Statements and other Reports.** The Borrower agrees to directly or through the Executing Agency submit the following report: within one hundred and twenty (120) days following the closing of each fiscal year of the Executing Agency and within the disbursement period of the Financing, the Programme's audited financial statements duly audited by a firm of independent auditors selected and hired by the Executing Agency respectively. The last of these reports shall be submitted within one hundred and twenty (120) days following the date stipulated for the final disbursement 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.

**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  
30 National Heroes Circle  
Kingston 4, Jamaica

Facsimile: (876) 924-9291

For matters related to execution of the Programme

Mailing address:

Ministry of Energy and Mining  
36 Trafalgar Road  
Kingston 10, Jamaica

Facsimile: (876) 968 – 2082

For the Bank:

Mailing address:

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

Facsimile: (202) 623-3096

## CHAPTER VII

### Arbitration

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

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

JAMAICA

INTER-AMERICAN DEVELOPMENT  
BANK

/s/ Audley Shaw

/s/ Ancile E. Brewster

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Audley Shaw  
Minister of Finance and Planning

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Ancile E. Brewster  
Representative of the Bank in Jamaica

## **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)     “Advance of Funds” means the amount of resources advanced by the Bank to the Borrower, chargeable to the resources of the Financing, to cover eligible expenditures of the Project, as provided in Article 4.08 of these General Conditions.

(b)     “Bank” means the Inter-American Development Bank.

(c)     “Bank Group” means the Bank, the Inter-American Investment Corporation and the Multilateral Investment Fund.

(d)     “Board” means the Board of Executive Directors of the Bank.

(e)     “Borrower” means the party to which the Financing is made available.

(f)     “Closing Period” means a ninety (90)-day period from the date stipulated for the final disbursement of the Financing, in order to finalize pending payments to third parties, to present the final justification of expenditures made, to reconcile the books and records, and to reimburse to the Bank the resources disbursed from the Financing but not used and/or justified, as provided in Article 4.09 of these General Conditions.

(g)     “Contract” means the entirety of the Special Conditions, the General Conditions and the Annexes.

(h)     “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, Consulting Firm or Individual Consultant, as the case may be.

(i) “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.

(j) “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.

(k) “Derivative Contract” means any derivative contract signed between the Bank and the Borrower or the Bank and the Guarantor to document and/or confirm one or more derivative transactions agreed between the Bank and the Borrower or the Bank and the Guarantor and its subsequent amendments. All attachments and other supplemental agreements to a Derivative Contract will form an integral part of such Derivative Contract.

(l) “Executing Agency/Agencies” means the entity/entities responsible for executing all or part of the Project.

(m) “Fixed Base Rate” means the market swap rate on the effective date of the conversion.

(n) “Fixed Interest Rate” means the sum of: (i) the Fixed Base Rate as defined in Article 2.01(m) of these General Conditions, plus (ii) the prevailing ordinary capital lending spread expressed in basis points (bps) which shall be determined by the Bank periodically.

(o) “Financing” means the funds which the Bank has agreed to make available to the Borrower to assist in carrying out the Project.

(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) “Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter” means the 15th day of the months of January, April, July and October of each calendar year. The LIBOR-Based Interest Rate determined by the Bank on an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter shall apply retroactively to the first fifteen (15) days of the respective Quarter, and shall continue to apply through and including the last day of the Quarter.

(s) “LIBOR Interest Rate” means any of the following definitions, in accordance with the currency of the Loan: <sup>1</sup>

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<sup>1</sup> Any capitalized terms used in paragraph (s) 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.

(i) In the case of Single Currency Facility Loans in Dollars:

- (A) 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 Reuters page <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 Reuters page <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.
- (B) “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 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.

(ii) In the case of Single Currency Facility Loans in Euros:

- (A) The LIBOR Interest Rate on an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be “EUR-EURIBOR-Telerate,” which is the rate for deposits in euros for a period of three (3) months that appears on the Reuters page <LIBOR01> as of 11:00 a.m., Brussels time, on the day that is two (2) TARGET Settlement Days preceding that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter. If such rate does not appear on the Reuters page <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 “EUR-EURIBOR-Reference Banks” as the applicable LIBOR Interest Rate.
- (B) “EUR-EURIBOR-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 in euros are offered by the Reference Banks at approximately 11:00 a.m., Brussels time, on the day that is two (2) TARGET Settlement Days preceding that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter to prime banks in the Euro-zone 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 assuming an Actual/360 day count basis. The Calculation Agent or Agents utilized by the Bank, will request the principal Euro-zone 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 the Euro-zone, selected by the Calculation Agent or Agents utilized by the Bank, at approximately 11:00 a.m., Brussels time, on that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter for loans in euros 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 Brussels and in the Euro-zone, the rates quoted on the first day immediately thereafter which is a Banking Day in Brussels and in the Euro-zone shall be utilized.

(iii) In the case of Single Currency Facility Loans in Yen:

- (A) The LIBOR Interest Rate on an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be “JPY-LIBOR-BBA,” which is the rate for deposits in Yen for a period of three (3) months that appears on the Reuters page <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 Reuters page <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 “JPY-LIBOR-Reference Banks” as the applicable LIBOR Interest Rate.
- (B) “JPY-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 in Yen 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 Tokyo, selected by the Calculation Agent or Agents utilized by the Bank, at approximately 11:00 a.m., Tokyo time, on that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter for loans in Yen 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 Tokyo, the rates quoted on the first day immediately thereafter which is a Banking Day in Tokyo shall be utilized.

(iv) In the case of Single Currency Facility Loans in Swiss Francs:

- (A) The LIBOR Interest Rate on an Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter will be “CHF-LIBOR-BBA,” which is the rate for deposits in Swiss Francs for a period of three (3) months that appears on the Reuters page <LIBOR02> 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 Reuters page <LIBOR02>, 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 “CHF-LIBOR-Reference Banks” as the applicable LIBOR Interest Rate.
- (B) “CHF-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 in Swiss Francs 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 Zurich, selected by the Calculation Agent or Agents utilized by the Bank, at approximately 11:00 a.m., Zurich time, on that Interest Rate Determination Date of the LIBOR-Based Interest Rate for each Quarter for loans in Swiss Francs 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 Zurich, the rates quoted on the first day immediately thereafter which is a Banking Day in Zurich shall be utilized.

- (t) “Loan” means the funds disbursed from the Financing.
- (u) “Prohibited Practices” means the act(s) defined in Article 5.03 of these General Conditions.
- (v) “Project” means the Program or Project for which the Financing has been extended.
- (w) “Quarter” means each of the following three-month (3-month) periods of the calendar year: the period beginning on January 1 and ending on March 31; the period beginning on April 1 and ending on June 30; the period beginning on July 1 and ending on September 30; and the period beginning on October 1 and ending on December 31.
- (x) “Semester” means the first or second six months of a calendar year.
- (y) “Single Currency” means any convertible currency which the Bank has selected for lending under the Single Currency Facility.
- (z) “Single Currency Facility” means the facility the Bank has established to lend in certain convertible currencies which the Bank selects from time to time.
- (aa) “Single Currency Facility Loan with a LIBOR-Based Interest Rate” means any Loan or portion of a Loan made by the Bank to be disbursed, accounted for, and repaid in a Single Currency under the Single Currency Facility and which, in accordance with the Special Conditions of this Loan Contract, will bear a LIBOR-Based Interest Rate as determined pursuant to Article 3.04(a) of these General Conditions.
- (bb) “Single Currency Qualified Borrowings” for Loans 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.** The Borrower shall amortize the Loan in semiannual installments on the same dates as those determined in accordance with Section 2.02 of the Special Conditions for payment of interest. If the date of signature of the Loan Contract falls between June 15 and 30 or between December 15 and 31, the dates for the payment of interest and for the payment of the first and subsequent amortization installments shall be June 15 and December 15, as the case may be.

**ARTICLE 3.02. Credit Fee.** (a) The Borrower shall pay on the undisbursed balance of the Financing which is not in the currency of the Borrower's country a credit fee, which shall begin to accrue sixty (60) days after the date 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.

(b) For Single Currency Facility Loans in dollars of the United States of America, this fee shall be paid in dollars of the United States of America. For Single Currency Facility Loans in currencies other than U.S. dollar Single Currency Facility Loans, this fee shall be paid in the currency of the particular Loan. This fee shall be paid on the same dates as those specified for the payment of interest pursuant to the provisions of the Special Conditions.

(c) This 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 3.15, 3.16, 4.02 or 5.02 of these General Conditions and the relevant provisions of the Special Conditions.

**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.** (a) Interest shall be charged on the daily outstanding balances of the Loan 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(s) 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; and (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.

(b) 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 for Single Currency Facility loans is assumed entirely by the Borrower and the Guarantor, if applicable.

(c) Whenever, in light of changes in market practice affecting the determination of the LIBOR-Based Interest Rate 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.

(d) The Borrower, with the written consent of the Guarantor, if any, may request that all or part of the outstanding balance of the Single Currency Facility Loan with a LIBOR-Based Interest Rate be converted to a Fixed Interest Rate as defined in Article 2.01(n) of these General Conditions, which will be determined by the Bank and communicated by written notice to the Borrower. For purposes of the application of the Fixed Interest Rate to the outstanding balance, each conversion shall only be executed subject to a minimum amount of 25% of the net approved amount of the Financing (amount of the Financing minus cancellations) or three million dollars (US\$3,000,000), whichever is greater, unless the conversion is for the remaining balance owed on the Single Currency Facility Loan with a LIBOR-Based Interest Rate, in which case, with the approval of the Bank, the amount of the conversion may be less than said limit. The models of the letters to proceed with the conversion, as determined hereby, will be submitted to the Borrower, as soon as the Borrower manifests its interest in proceeding with such conversion.

(e) The Borrower, with the written consent of the Guarantor, if any, may request that all or part of the outstanding balance of the Loan with a Fixed Interest Rate be reconverted to a LIBOR-Based Interest Rate as determined pursuant to Article 3.04(a) of these General Conditions, through written notice to the Bank. Each reconversion of the Loan to a LIBOR-Based Interest Rate shall only be made on the remaining balance of the respective conversion or for an amount of at least three million dollars (US\$3,000,000), whichever is greater. Any gain or loss resulting from the cancellation or change of the Bank's funding associated with the reconversion, 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 reconversion. In the event of any gain, it will be credited in the first place to any amounts due and payable by the Borrower to the Bank.

**ARTICLE 3.05. Disbursements and Payments of Amortization and Interest in National Currencies.** (a) Amounts which are disbursed in the currency of the Borrower's country shall be applied against the Financing and owed in accordance with the equivalency in dollars of the United States of America as determined in accordance with the rate of exchange in effect on the date of the respective disbursement.

(b) Payments of amortization and interest shall be made in the currency disbursed, in an equivalent amount of dollars of the United States of America, as determined in accordance with the rate of exchange in effect on the payment date.

(c) For the purpose of determining the equivalencies stipulated in paragraphs (a) and (b) above, the relevant rate of exchange, in accordance with Article 3.06, shall be used.

**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 of the United States of America, 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 of the United States of America 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 of the United States of America.
- (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.

(b) For the purpose of determining the equivalency in dollars of the United States of America of an expenditure incurred in the currency of the Borrower's country, one of the following rates of exchange shall be used, in accordance with the provisions set forth in the Special Conditions of this Contract and pursuant to paragraph (a) of this Article: (i) the same exchange rate used in the conversion of the resources disbursed in dollars of the United States of America to the currency of the Borrower's country. In this case, for purposes of the reimbursement of expenditures chargeable to the Financing and the recognition of expenditures chargeable to the local counterpart, the applicable exchange rate shall be the prevailing exchange rate on the date on which the request is presented to the Bank; or (ii) the prevailing exchange rate in force in the Borrower's country on the effective date of the payment of the expenditure in the currency of the Borrower's country.

**ARTICLE 3.07. Disbursements and Payments of Amortization and Interest in Single Currencies.** For Single Currency Facility Loans, disbursements and payments of amortization and interest shall be in the Single Currency of the particular Loan.

**ARTICLE 3.08. 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 3.09. 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.

(c) With the prior consent of the Borrower, the Bank may cede all or part of the undisbursed amount of the Financing to other public or private institutions. To that end, the portion subject to participation shall be denominated in terms of a fixed number of units of one or more convertible currencies. Likewise, with the Borrower's prior consent, the Bank may set, for the portion subject to participation, an interest rate other than that established in the present Contract. Interest payments and amortization installments shall be made in the specified currency in which the participation was granted and on the dates specified in Article 3.01 of these General Conditions.

After the final disbursement has been made, the Bank shall give the Borrower and the Participant a schedule of amortization.

**ARTICLE 3.10. 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 3.11. Advance Payments.** Pursuant to an irrevocable request in writing to the Bank, accompanied by the written consent of the Guarantor, if any, at least thirty (30) days in advance, 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. In the event that the prepayment does not cover the entire outstanding balance of the Loan, the prepayment will be applied proportionately to the remaining amortization installments. The Borrower may not prepay the outstanding balance of a Loan with a Fixed Interest Rate 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. Notwithstanding the foregoing, if there is any gain or loss resulting from the cancellation or change of the Bank's funding associated with the corresponding prepayment, it will be either credited or charged by the Bank to the Borrower, as the case may be. In the event of any gain, it will be credited in the first place to any amounts due and payable by the Borrower to the Bank.

**ARTICLE 3.12. 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.

**ARTICLE 3.13. Transactions Falling Due on Public Holidays.** Any payment or other transaction which, pursuant to this Contract, should be effected on a 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 3.14. 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 3.15. 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 part of the Financing which has not been disbursed before the receipt of the notice, provided that the amounts foreseen in Article 5.04 of these General Conditions are not involved.

**ARTICLE 3.16. 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 the 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 demonstrated to the Bank that sufficient resources have been allocated to cover, at least during the first calendar year, the execution of the Project in accordance with the investment schedule referred to in the following paragraph. If this Financing constitutes a continuation of the same lending operation, the earlier stage or stages of which the Bank is financing, the obligation set forth in this paragraph shall not be applicable.

(d)     The Borrower, either directly or through the Executing Agency, as the case may be, 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 the plans and specifications deemed necessary by the Bank, except with respect to a program for the granting of credits; (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 content that the progress reports referred to in Article 7.03 of these General Conditions shall have. If this Contract permits the recognition of expenditures made prior to its entry into effect, 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.

(e)     The Borrower or Executing Agency shall have demonstrated to the Bank that it has an adequate financial information system and internal control structure for the purposes indicated in this Contract.

**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, as the case may be, shall have submitted in writing, or by electronic means in such form and conditions as may be specified by the Bank, 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. For Loans in which the Borrower has opted to receive financing in a combination of Single Currencies, or in one or more Single Currencies, the request must indicate the specific amounts of the particular Single Currency(ies) requested for disbursement; (b) the Borrower or the Executing Agency, as the case may be, shall have opened and maintains one or more bank accounts in a financial institution to which the Bank shall make the disbursements of the Financing; (c) unless the Bank otherwise agrees, disbursement requests must be presented no later than thirty (30) calendar days in advance of the date of expiration of the term for disbursement or of any extension thereof which the Borrower and the Bank may have agreed to in writing; (d) none of the circumstances described in Article 5.01 of these General Conditions shall have occurred; and (e) 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. 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 4.05. Charges for the Inspection and Supervision Fee.** If the Bank determines that an amount shall be charged to cover its expenses for general inspection and supervision in accordance with the Special Conditions, the Bank will notify the Borrower and the latter will indicate whether it will pay the corresponding amount directly to the Bank or whether such amount should be withdrawn and retained by the Bank from the resources of the Financing. Both the payment by the Borrower and the retention by the Bank of any fee allocated to general inspection and supervision will be carried out in the currency of the Loan.

**ARTICLE 4.06. Disbursement Procedures.** The Bank may make disbursements against the Financing: (a) by transferring to the Borrower the sums to which it is entitled under this Contract, under the modality of reimbursement of expenses and/or Advance of Funds; (b) by making payments on behalf of and in agreement with the Borrower to third parties; (c) by utilizing such other modality 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 one hundred thousand dollars of the United States of America (US\$100,000) each.



**ARTICLE 4.07.      Reimbursement of Expenditures.** (a) With resources of the Financing and 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 disburse resources of the Financing to reimburse the Borrower and/or the Executing Agency, as the case may be, for expenditures related to the execution of the Project that are eligible to be financed with resources of the Financing, pursuant to the provisions of this Contract.

(b) Except by express agreement between the parties, the disbursement requests for reimbursing expenditures financed by the Borrower and/or Executing Agency, as the case may be, in accordance with paragraph (a) above, shall be made promptly following the incurrence of such expenses, or not later than sixty (60) days following the conclusion of each Semester or within such other term as the parties may agree.

**ARTICLE 4.08.      Advance of Funds.** (a) Provided that the requirements of Articles 4.01 and 4.03 of these General Conditions and those which may be established in the Special Conditions have been fulfilled, the Bank may disburse resources from the Financing as an Advance of Funds to the Borrower or the Executing Agency, as the case may be, to cover eligible expenditures related to the execution of the Project, in accordance with the provisions of this Contract.

(b) The maximum amount of each Advance of Funds shall be set by the Bank on the basis of the liquidity needs of the Project to cover periodic projected expenditures, in accordance with paragraph (a) above. At no time may the maximum amount of an Advance of Funds exceed the amount required to finance such expenditures, during a period of up to six (6) months, in accordance with the investment schedule and the cash flow required to meet such purpose and the capacity demonstrated by the Borrower or the Executing Agency, as the case may be, to use the resources of the Financing.

(c) The Bank may: (i) increase the maximum amount of an Advance of Funds when immediate cash flow needs that merit such increase arise, upon presentation of a request duly justified and accompanied by a statement of projected expenditures for the execution of the Project during the corresponding Advance of Funds period in effect; or (ii) make a new Advance of Funds on the basis of the provisions contained in paragraph (b) above, provided that at least eighty percent (80%) of the total amount of resources disbursed as an Advance of Funds has been justified. The Bank may take any of the above-mentioned actions, provided that the requirements of Articles 4.01 and 4.03 of these General Conditions and those which may be established in the Special Conditions have been fulfilled.

(d) The Bank may also reduce or cancel the total aggregate balance of any Advance or Advances of Funds should the Bank determine that the disbursed resources of the Financing have not been used and/or have not been justified to the Bank sufficiently and on a timely basis, in accordance with the provisions of this Contract.

**ARTICLE 4.09.      Closing Period.** The Borrower or the Executing Agency, as the case may be, shall: (a) present to the Bank's satisfaction, within a period of ninety (90) days from the date stipulated for the final disbursement of the Financing, the supporting documentation relating to expenditures made for the execution of the Project, and any other information that the Bank may

have requested; and (b) return to the Bank, at the latest on the day of expiration of the Closing Period, the balance of disbursed resources of the Financing that has not been duly justified. If audit services are to be financed with resources of the Financing, and such services will not be concluded or billed prior to the expiration of the Closing Period referred to in section (a) above, the Borrower or the Executing Agency, as the case may be, shall inform and reach agreement with the Bank as to the way in which payment for such services will take place, and shall return to the Bank the resources of the Financing allotted for such purpose, should the Bank not receive the audited financial statements and/or audited financial reports within the periods stipulated in this Contract.

**ARTICLE 4.10. Availability of Local Currency.** The Bank shall be obliged to make disbursements to the Borrower in local currency only to the extent that the respective depository of the Bank has placed such currency at its effective disposition.

## **CHAPTER V**

### **Suspension of Disbursements, Accelerated Maturity and other Dispositions**

**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 contract entered into between the Bank and the Borrower, including another Loan Contract or Derivatives Contract.

(b) Nonfulfillment by the Borrower of any other obligation set forth in this Contract or in any other contract entered into with the Bank for the financing of the Project or in any Derivative Contract signed with the Bank.

(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 or in any Derivatives Contract signed with the Bank.

(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, in accordance with the sanctions procedures of the Bank, that an employee, agent, or representative of the Borrower, Executing Agency or Contracting Agency, has engaged in a Prohibited Practice during the procurement process or during the execution of a contract.

**ARTICLE 5.02. Termination, Accelerated Maturity or Partial Cancellation of Undisbursed Balances.** (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 fees 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, if any, are not satisfactory to the Bank.

(b) The Bank may cancel the undisbursed portion of the Financing or accelerate repayment of that part of the Financing earmarked for a contract, when it is determined in accordance with the sanctions procedures of the Bank, that a firm, entity or individual bidding for or participating in an activity financed by the Bank, including, *inter alia*, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers or suppliers, concessionaires, the Borrower, the Executing Agency or the Contracting Agency (including their respective officers, employees and agents, irrespective of whether the agency is express or implied) has engaged in a Prohibited Practice at any stage of the procurement or implementation of a contract; and that there is evidence that the Borrower, the Executing Agency or the Contracting Agency has not taken adequate remedial measures (including, *inter alia*, providing adequate notice to the Bank upon learning of the Prohibited Practice) within a period of time the Bank considers reasonable.

(c) The Bank may also cancel the undisbursed portion of the Financing or accelerate the maturity of that part of the Financing pertaining to the procurement of certain goods, works or related services, or consulting services, if it determines at any time that the procurement was carried out without following the procedures set forth in this Contract.

**ARTICLE 5.03. Prohibited Practices.** (a) For the purposes of this Contract, a “Prohibited Practice” shall be understood to include the following acts: (i) a “corrupt practice”, is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; (ii) a “fraudulent practice”, is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party 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 the property of the party to influence improperly the actions of a party; (iv) a “collusive practice”, is an arrangement between two or more parties designed to achieve an improper purpose, including influencing

improperly the actions of another party; and (v) an “obstructive practice”, is (A) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (B) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Articles 7.01(c), 7.02(e) and 7.04(g) of these General Conditions.

(b) In addition to the provisions established in Articles 5.01(g) and 5.02(b) of these General Conditions, if it is determined in accordance with the sanctions procedures of the Bank, that a firm, entity or individual bidding for or participating in an activity financed by the Bank, including, *inter alia*, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers, concessionaires, the Borrower, the Executing Agency or the Contracting Agency (including their respective officers, employees and agents, irrespective of whether their authority has been formally or implicitly granted) has engaged in a Prohibited Practice at any stage during the procurement process or during the execution of a contract, the Bank may:

- (i) not finance any proposal to award a contract for works, goods, and related services or for consultant services;
- (ii) determine that a contract will not be eligible for Bank financing whenever there is evidence that the Borrower, the Executing Agency or the Contracting Agency has not taken adequate remedial measures (including, *inter alia*, providing adequate notice to the Bank upon learning of the commission of the Prohibited Practice) within a period of time the Bank considers reasonable;
- (iii) issue the firm, entity or individual a reprimand in the form of a formal letter of censure for its behavior;
- (iv) declare that a firm, entity or individual is ineligible, either permanently or for a stated period of time, to (A) be awarded or participate in contracts under activities financed by the Bank; and (B) be a nominated sub-consultant, sub-contractor, supplier or service provider of an otherwise eligible firm being awarded a Bank-financed contract;
- (v) 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 to the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions set forth in Article 5.01(g), Article 5.02(b) and Article 5.03(b)(i) to (v).

(c) The provisions of Article 5.01(g) and Article 5.03(b)(i) will also be applicable in cases where firms, entities or individuals have been declared temporarily ineligible for the awarding of additional contracts pending the final outcome of a sanction proceeding, or other resolution.

(d) The imposition of any action to be taken by the Bank pursuant to the provisions referred to above will be made public.

(e) Any firm, entity or individual bidding for or participating in an activity financed by the Bank, including, *inter alia*, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers, concessionaires, the Borrower, the Executing Agency or the Contracting Agency (including their respective officers, employees and agents, (irrespective of whether the agency is express or implied) may be subject to sanctions pursuant to agreements the Bank may have with other international financial institutions regarding the mutual enforcement of debarment decisions. For purposes of this paragraph (e) the term “sanction” shall mean any permanent debarment, conditions on future contracting or any publicly-disclosed action taken in response to a violation of an international financial institution’s applicable framework for addressing allegations of Prohibited Practices.

(f) When a Borrower procures works, goods or related services directly from a specialized agency or hires a specialized agency to provide consulting services using resources of the Financing, under an agreement between the Borrower and such specialized agency, all provisions under this Contract regarding sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, suppliers, contractors, consulting firms or individual consultants, personnel, sub-contractors, sub-consultants, service providers, concessionaires (including their respective officers, employees and agents, irrespective of whether the agency is express or implied), or to any other entities that have signed contracts with such specialized agency to supply works, goods and related services, in connection with the Bank-financed activities. The Bank reserves the right to require the Borrower to invoke remedies such as suspension or termination. The Borrower agrees that contracts with specialized agencies shall include provisions requiring them to consult the Bank’s list of firms and individuals debarred, either temporarily or permanently by the Bank. In the event a specialized agency signs a contract or purchase order with a firm or an individual temporarily or permanently debarred by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

**ARTICLE 5.04. 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 to a supplier of goods and related services or consultant services. The exceptions set forth in subparagraph (b) shall not apply if the Bank determines that Prohibited Practices 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 5.05. 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 5.06. 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 and Public Tender.** 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 of the resources in addition to those of the Loan which may be necessary for the complete and uninterrupted execution of the Project, the estimated amount of which is specified in the Special Conditions. If during the process of disbursement of the Financing an increase in the estimated cost of the Project takes place, the Bank may require the modification of the investment schedule referred to in Article 4.01(d) of these General Conditions such that the Borrower shall meet such increase.

(b) Beginning with the calendar year following the initiation of the Project and during the period of its execution, the Borrower shall demonstrate to the Bank within the first sixty (60) days of each calendar year that it will have available when needed the resources necessary to make the local contribution to the Project during that year.

## **CHAPTER VII**

**Financial Information and Internal Control Systems,**  
**Inspections, Reports and External Audits**

**ARTICLE 7.01.      Financial Information and Internal Control Systems.** (a) The Borrower or the Executing Agency, or the Contracting Agency, as the case may be, shall maintain: (i) a financial information system acceptable to the Bank that enables accounting, budgetary and financial record-keeping, as well as the issuance of financial statements and other reports related to the resources of the Financing and other financial sources, as the case may be; and (ii) an internal control structure that enables effective Project management; provides reliability regarding the financial information and the physical, magnetic and electronic records and files; and enables the fulfillment of the provisions of this Contract.

(b)      The Borrower or the Executing Agency, or the Contracting Agency, as the case may be, shall preserve the original records of the Project for a minimum period of three (3) years after the date agreed upon for the final disbursement of the Financing, in such a way as to: (i) make possible the identification of the sums received from the different sources; (ii) show, in accordance with the financial information system approved by the Bank, the investments in the Project, financed both with the resources of the Loan and with the other funds to be provided for its complete execution; (iii) include sufficient detail to show the works performed, goods procured and services contracted, as well as the utilization of such works, goods and services; (iv) provide evidence as to conformity in the acceptance, authorization and payments for the purchased or contracted works, goods and services; (v) maintain documentation relating to the bidding process and the execution of the contracts financed by the Bank and other financial sources, including, but not limited to, bid requests, bid packages, summaries, bid evaluations, contracts, correspondence, work product and drafts, invoices, certificates and acceptance reports, and receipts, including documents relating to the payment of commissions, and payments to agents, consultants and contractors; and (vi) show the cost of the investments in each category and the physical and financial progress of the works, goods and services. With respect to credit programs, the records shall also detail the credits granted, the recoveries obtained, and the utilization of the funds recovered.

(c)      The Borrower agrees that all bidding documents, requests for proposals and contracts financed with a Bank loan that are entered into by the Borrower, the Executing Agency or the Contracting Agency shall include a provision that requires that providers of goods or services, suppliers and subcontractors, consultants and their agents, personnel or concessionaires, keep all documents and records related to Bank-financed activities for a period of seven (7) years after completion of the work contemplated in the relevant contract.

**ARTICLE 7.02.      Inspections.** (a) The Bank may establish such inspection procedures as it deems necessary to ensure 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 and 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.

(e) The Borrower agrees that all bidding documents, requests for proposals and contracts financed by the Bank that are entered into by the Borrower, the Executing Agency or the Contracting Agency shall include a provision that requires applicants, bidders, suppliers and their agents, contractors, consultants, personnel, sub-contractors, sub-consultants, service providers and concessionaires to: (i) allow the Bank to inspect any and all accounts, records and other documents relating to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank; (ii) provide full assistance to the Bank in the case of an investigation; and (iii) deliver to the Bank any document deemed necessary for the investigation of allegations of Prohibited Practices and ensure that those employees or agents who are responsible for Bank-financed activities will be available to respond to inquiries within the context of an investigation, be it from Bank personnel or from any investigator, agent, auditor or consultant duly assigned to the investigation. If any applicant, bidder, supplier or its agent, contractor, consulting firm or individual consultant, personnel, subcontractor, sub-consultant, service provider, or concessionaire refuses to cooperate or fails to comply with the Bank's request or otherwise obstructs an investigation carried out by the Bank, the Bank, in its sole discretion, may take appropriate action against said applicant, bidder, supplier and its agent, contractor, consultant, personnel, subcontractors, sub-consultants, service provider, or concessionaire.

**ARTICLE 7.03.      Reports.** The Borrower or the Executing Agency, as appropriate, shall present to the Bank's satisfaction the reports on the execution of the Project, within sixty (60) days following the end of each Semester, or within such other period as the parties may agree, prepared in accordance with the relevant rules agreed to with the Bank; and 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.

**ARTICLE 7.04.      External Audit.** (a) The Borrower shall present to the Bank, directly or through the Executing Agency, within the deadlines, for the period of duration, and with the frequency provided in the Special Conditions of this Contract, the financial statements and other reports, and any additional financial information that the Bank may request, in accordance with accounting principles and standards acceptable to the Bank.



(b) The Borrower agrees to have the financial statements and other reports, as indicated in the Special Conditions of this Contract, audited by independent auditors acceptable to the Bank, in accordance with auditing principles and standards acceptable to the Bank, and to present to the Bank's satisfaction such information as may be requested by the Bank related to the independent auditors whose services have been engaged.

(c) The Borrower shall select and hire directly or through the Executing Agency, as the case may be, the independent auditing services that are necessary for the timely submission of the financial statements and other reports indicated in paragraph (b) above, no later than four (4) months before the closing of each fiscal year of the Borrower, beginning on the date on which this Contract enters into effect, or such other time as may be agreed upon between the parties, in accordance with procedures and terms of reference previously agreed upon with the Bank. The Borrower or the Executing Agency, as the case may be, shall authorize the external auditors to provide the Bank with any additional information it may reasonably request with respect to the audited financial statements and/or audited financial reports.

(d) In cases in which the audit is to be performed by an official auditing agency and such agency is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the deadlines, for the period of duration or with the frequency mentioned in this Contract, the Borrower or the Executing Agency, as the case may be, shall select and contract the services of independent auditors acceptable to the Bank, as provided under section (c) above.

(e) Notwithstanding the provisions above, the Bank may, on an exceptional basis and subject to prior agreement between the parties, select and hire the services of independent auditors to prepare the financial statements of the Project and other audited reports as provided in this Contract when: (i) the benefits of the selection and hiring of such services by the Bank outweigh the costs of doing so; (ii) there is limited access to auditing services within the country; or (iii) special circumstances warrant the selecting and hiring of such services by the Bank.

(f) The Bank shall have the right to request the Borrower or the Executing Agency, as the case may be, to have other types of independent audits and/or services carried out relating to the auditing of projects, of the Executing Agency and related entities, of the financial information system, and of the bank accounts of the Project, among others. The nature, frequency, scope, timing, methodology, type of applicable auditing norms, reports, selection procedures and terms of reference shall be agreed upon between the parties.

(g) All bidding documents, requests for proposals and contracts financed by the Bank that are entered into by the Borrower, the Executing Agency or the Contracting Agency with a provider of goods or services, contractor, subcontractor, consultant, sub-consultant, personnel or concessionaire shall include a provision allowing the Bank to inspect any and all accounts, records and other documents related to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank.

## **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 upon 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.

## **THE ANNEX**

### **THE PROGRAMME**

#### **Energy Efficiency and Conservation Programme**

##### **I. Objective**

- 1.01** The general objective of this Programme is to enhance Jamaica's energy efficiency (EE) and energy conservation (EC) potential through the design and implementation of cost saving Energy Efficiency (EE) and Energy Conservation (EC) measures in the public sector. The Programme will: (i) strengthen the institutional capacities of the Ministry of Energy and Mining (MEM) for implementing EE and EC measures; (ii) invest in EE and EC measures in the public sector; and (iii) increase awareness and knowledge among key public and private stakeholders together with demand-side management support.

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

- 2.01** In order to achieve the above-captioned objective, the Programme will support the following components:

###### **Component I. Institutional Strengthening**

- 2.02** This component will provide key technical support to the MEM for the execution, management, coordination and supervision of the Programme and is structured in four sub-components:

Sub-component I. Project Executing Unit (PEU) within the MEM to cover the following areas: (a) financial expertise; (b) procurement for the EE and EC investments; (c) project management and coordination; and (d) technical support for the implementation and supervision of the EE measures;

Sub-component II. It includes the assessment and definition of an appropriate institutional framework within the portfolio of the MEM which will lead in the implementation of EE measures nationwide to achieve national EE goals;

Sub-component III. Energy savings monitoring and verification activities which will validate the effectiveness of EE and EC measures implemented (monitoring of electricity consumption and bills of retrofitted public sector facilities and correlation against the EE and EC measures implemented); and

Sub-component IV. Design and implementation of EE initiatives including the development of Maintenance and Environmental Disposal Manuals for future EE activities.

## **Component II. Investments in EE and EC**

- 2.03** This component will involve the implementation of EE and EC investment measures in the public sector and is divided in three subcomponents:

Sub-component I – Lighting: Replacement of obsolete lighting such as incandescent bulbs and inefficient fluorescent lighting with efficient lighting including Light Emitting Diodes (LED);

Sub-component II –Air Conditioning. Replacement of window units and inefficient mini-split AC with inverter-based mini split units and/or efficient AC central units; and

Sub-component III – Building Envelope. Introduction of building envelop measures such as roof cooling, window seals and door sealants that reduce the heat gain of the buildings including, window and roof insulations and/or measures that reduce energy losses such as automatic door closers, occupancy sensors and programmable thermostats.

## **Component III. Demand side management program and EE/EC education awareness**

- 2.04** This component will finance the following activities:

Sub-component I. Sub-component I will finance activities to increase awareness among the public and private sectors regarding EE and EC cost and benefits, focusing on the following: (a) support the design of EE and EC incentive mechanisms within the public sector as well as the analysis of introducing other demand side management technologies such as Smart Grid or Metering; (b) support the definition of minimum EE and EC standards, in coordination with Bureau of Standards (BSJ) , for specific technologies such as lighting and/or AC; and (c) finance additional technical and regulatory studies needed to implement subsequent EE measures within the public sector; and

Sub-component II. It will finance: (a) workshops and seminars on EE procurement and EE management for private and public stakeholders; and (b) dissemination activities in order to increase awareness among private and public stakeholders and disseminate the main lessons learnt nationally and regionally.

### III. Total Cost of the Programme and Financing Plan

- 3.01** The estimated cost of the investment component of the Programme is the equivalent of US\$20,000,000, in accordance with the following investment categories and sources of financing:

#### Cost and Financing (in US\$)

Categories		Bank	Total
<b>1</b>	<b>Component I - Institutional Strengthening</b>	<b>1,698,500</b>	<b>1,698,500</b>
1.1	Project Execution Unit Staffing & Equipment	958,500	958,500
1.2	EE institutional framework	300,000	300,000
1.3	Energy Saving Monitoring and Verification Activities	240,000	240,000
1.4	Training & Maintenance and Environmental Disposal Manuals	200,000	200,000
<b>2</b>	<b>Component II - Investments in EE and EC</b>	<b>17,000,000</b>	<b>17,000,000</b>
2.1	Replacement of Lighting (per unit)	8,503,428	8,503,428
2.2	Replacement of Air-conditioning Systems (per unit)	7,317,005	7,317,005
2.3	Retrofit and Insulation of Building Envelopes (per measure)	1,179,567	1,179,567
<b>3</b>	<b>Component III – Demand Side Management and EE/EC Education Awareness</b>	<b>980,000</b>	<b>980,000</b>
3.1	Demand side management for EE and EC	680,000	680,000
3.2	Education on EE and EC and knowledge dissemination	300,000	300,000
<b>4</b>	<b>Contingencies and Miscellaneous</b>	<b>321,500</b>	<b>321,500</b>
4.1	Contingencies	231,500	231,500
4.2	Mid and Final Evaluations	60,000	60,000
4.3	Audits	30,000	30,000
	<b>Total</b>	<b>20,000,000</b>	<b>20,000,000</b>

### IV. Execution

- 4.01** The PEU will be adequately staffed with the necessary number of officers throughout the four year estimated execution period of the Programme including: (i) a Program Manager who will have overall responsibility for the PEU as well as the coordination and execution of all the components and activities under the Programme; (ii) a Procurement Officer who will be in charge of designing and implementing the procurement plan to ensure that it is executed on time and within budget, (iii) a Finance Officer; (iv) an Energy Efficiency technical officer who will develop and review the

technical specifications of all EE and EC activities; and (v) one Administrative Assistant.

- 4.02** The PEU will be responsible for the following, among others: (i) prepare reports providing evidence that the conditions have been met as well as other reports that the Bank may need in order to approve disbursements; and (ii) once the disbursement of the Programme is completed, compile and prepare the required information and performance indicators so that the Bank and the Government can follow up, measure and evaluate the results of the Programme.
- 4.03** In addition to the PEU and in order to establish an inter-institutional coordination with other participating public agencies and/or ministries in the Programme, an Energy Efficiency and Conservation Programme Steering Committee (EECPSC) will be established by the Government within the MEM to provide the necessary strategic direction, policy and inter-agency coordination between the various actors that will participate in the EE and EC measures. The EECPSC will be chaired by the Permanent Secretary (PS) of the MEM. For ensuring an effective implementation process, an Energy Efficiency and Conservation Working Committee (EECWC) will be created and each participating public agency will appoint a technical representative to the EECWC.
- 4.04** The implementation of the Programme will be governed by the Operational Manual of the Programme (OMP), which will include, among others, information regarding responsibilities of the PEU and its members, the composition and responsibilities of the EECPSC and the EECWC.