

***General Conditions Applicable to the African
Development Bank
Loan Agreements and Guarantee Agreements
(Non Sovereign Entities)***

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ARTICLE I APPLICATION TO LOAN AGREEMENTS AND GUARANTEE AGREEMENTS

SECTION 1.01 Application of General Conditions

- a) These General Conditions set forth the terms and conditions applicable to any Loan Agreement, Guarantee Agreement and any other agreement to which the Bank is a party and which provides that these General Conditions are applicable, entered into between the Bank and:
- (i) any Public entity established in the territory of a Regional Member State, or
 - (ii) one or more political or administrative sub-divisions of one or more Regional Member States, or
 - (iii) one or more eligible international organizations.
- (b) For purposes of these General Conditions, a Public Entity is deemed established in a territory of a regional Member State if its registered office and main center of activities are located in a regional Member State.
- (c) If repayment of the Loan is not guaranteed under a Guarantee Agreement, references in other sections of these General Conditions to the Guarantor and the Guarantee Agreement shall be disregarded.
- (c) Additional conditions may be included in the Loan Agreement, or the Guarantee Agreement having regard to the nature of the Project.

SECTION 1.02 Inconsistency with Loan Agreement and Guarantee Agreement

If any provision of any Loan Agreement, Guarantee Agreement or any other agreement to which these General Conditions are applicable is inconsistent with a provision of these General Conditions, the provision of the Loan Agreement, Guarantee Agreement or of the other agreement, as the case may be, shall prevail.

ARTICLE II DEFINITIONS - REFERENCES AND HEADINGS

SECTION 2.01 Definitions

Except as otherwise provided, the following terms and expressions have the following meanings wherever used in these General Conditions, the Loan Agreement or the Guarantee Agreement:

"Assets" means all types of assets including property, revenue and claims of any kind.

"Bank" means the African Development Bank.

"Bank Agreement" means the Agreement Establishing the African Development Bank adopted on the 4th day of August 1963, as amended from time to time.

"Bank Managed Fund" means resources of special funds established by the Bank or made available to the Bank by one or more Member State(s) or entity (ies), in the form of a trust or other legal vehicle for the purpose of lending activities. Bank Managed Fund does not include resources of special funds made available to the Bank or lent under terms and conditions which expressly exclude the application of these general conditions.

"Borrower" means the party to the Loan Agreement to whom the Loan is made.

"Category of Expenditure" means any category of goods, works and services of the Project to be financed from the resources of the Loan.

"Closing Date" means the date specified in the Loan Agreement or such other later date as shall be agreed upon in writing among the Bank, the Borrower, and the Guarantor after which the Bank may terminate the

right of the Borrower to request disbursements of the Loan.

“Coercive Practices” means 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.

“Co-financing” means any financing specified in the Loan Agreement to be provided for the Project by a financier (other than the Bank, the Fund or any Bank Managed Fund).

“Collusive Practices” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

“Corrupt Practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another.

"Currency" includes the currency of a country, the Special Drawing Right of the International Monetary Fund, the Unit of Account of the Bank and any other unit of account which represents a debt service obligation of the Bank to the extent of such obligation.

"Currency of a Country" means the coin or currency which is legal tender in that country.

"Date of Entry into Force" means the date on which the Loan Agreement or the Guarantee Agreement shall enter into force as provided in Section 12.01.

"Date of the Loan Agreement" or "Date of the Guarantee Agreement" means the date specified in the Loan Agreement, as the date of the Loan Agreement or the date specified in the Guarantee Agreement, as the date of the Guarantee Agreement.

"Executing Agency" means the entity, whether a legal person or not, which is designated for the implementation of the Project under the Loan Agreement. If more than one such entity is designated in the Loan Agreement, an “Executing Agency” refers separately to each such entity.

“Fraudulent Practice” means 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.

"Fund" means the African Development Fund.

“General Conditions” means these General Conditions.

"Guarantor" means the party to the Guarantee Agreement entered into with the Bank.

"Guarantee Agreement" means the agreement entered into between the Bank and the Guarantor, to guarantee the Loan; as such agreement may be amended from time to time. Guarantee Agreement includes all schedules and agreements supplemental to the Guarantee Agreement as well as these General Conditions as applied thereto if the Guarantor is a Public Entity or the General Conditions Applicable to Loan and Guarantee Agreements (Sovereign Loans and Guarantees) of the Bank if the Guarantor is a Member State.

“Hedging Agreement” means any derivative agreement entered into between the Bank and the Borrower and/or the Guarantor in connection to any financial obligations to the Bank related to a loan.

"Interest Period" means the interest period defined in the Loan Agreement.

"Lien" means any collateral or security provided for the payment of a debt, including mortgages, pledges, charges, privileges and priorities of any kind.

"Loan" means the maximum amount of the resources granted by the Bank as specified in the Loan Agreement.

"Loan Account" means the account opened by the Bank on its books in the name of the Borrower to record the Loan as well as disbursements and repayments of the Loan.

"Loan Agreement" means the agreement entered into between the Bank and the Borrower providing for

the Loan; as such agreement may be amended from time to time. Loan Agreement includes these General Conditions as applied thereto, and all schedules and agreements supplemental to the Loan Agreement.

"Loan Currency" means the Currency or Currencies selected by the Borrower for the Loan, and the payment obligations thereunder.

"Loan Savings" means any undisbursed amount of the Loan available (i) when the Project has been fully terminated without any significant change from the initial Project description or its design and disbursements have been effected in respect of all goods, works, and services thereunder, or (ii) when the Project nearing completion is progressing satisfactorily according to the implementation schedule with arrangements finalized for procurement of all goods, works and services and provisions made for outstanding payments.

"Member State" means a member State of the Bank.

"Project" means the Project or Program for which the Loan is granted, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between the Bank and the Borrower.

"Public Entity" means any Legal Entity in which a Regional Member State and/or its political or administrative sub-division hold more than fifty per cent (50%) of the shares and/or of the voting rights.

"Single Currency Loans" mean the lending products introduced by the Bank with effect from October 1, 1997, as amended from time to time.

"Special Commitment" means any Special Commitment entered into or to be entered into by the Bank pursuant to Section 5.02.

"Taxes" means all taxes, imposts, levies, fees and duties of any nature, whether in effect at the Date of the Loan Agreement, the Date of the Guarantee Agreement or thereafter imposed.

"Unit of Account" or the abbreviation "UA" means the Bank's Unit of Account specified in Article 5, paragraph 1(b) of the Bank Agreement.

SECTION 2.02 References

References in these General Conditions to Articles or Sections are to Articles or Sections of these General Conditions, except as otherwise provided herein.

SECTION 2.03 Headings

The headings of the Articles, Sections and sub-sections and the Table of Contents are inserted for convenience of reference only and are not part of these General Conditions.

ARTICLE III

LOAN ACCOUNT - SERVICE CHARGE - COMMITMENT CHARGE - SPECIAL COMMITMENT CHARGE AND REPAYMENT

SECTION 3.01 Loan Account

The amount of the Loan shall be entered in the books of the Bank and such amount may be disbursed to the Borrower as provided in the Loan Agreement and in these General Conditions.

SECTION 3.02 Commitment Charge

(a) The Bank may charge a Commitment Charge on terms and conditions to be provided in the Loan Agreement and in these General Conditions.

- (b) The Borrower shall pay the Commitment Charge on the undisbursed amount of the Loan at the rate specified in the Loan Agreement. Such Commitment Charge shall begin to accrue sixty (60) days from the Date of the Loan Agreement, or on such other date as the Bank shall from time to time determine. With respect to any amount under the Loan, the Commitment Charge shall accrue until (i) the date on which such amount is disbursed to the Borrower or (ii) the date on which such amount is cancelled or (iii) the Closing Date, whichever date comes first. The Commitment Charge shall be payable on each interest payment date commencing on the first interest payment date following the Date of Entry into Force. The commitment charge shall be expressed in the Currency loaned.
- (c) Any Commitment Charge as stated in paragraph (b) of this Section which has become due and payable during the provisional effectiveness of the Loan Agreement, as provided in Section 12.01 shall remain due and payable to the Bank notwithstanding the non-entry into force, the cancellation or the termination of the Loan Agreement.

SECTION 3.03 Interest

- (a) The Borrower shall pay interest at the rate specified in the Loan Agreement on the amount of the Loan disbursed and outstanding from time to time. Interest shall accrue from the respective dates on which such amounts are disbursed.
- (b) The Bank may establish an alternate interest rate which shall be applicable if for any reason, including, but not limited to, financial market disruption, the Bank determines that it has become impossible to calculate the interest rate in the manner agreed upon in the Loan Agreement. In such case, the Borrower shall have the right to prepay the Loan without thereby incurring any penalty or prepayment costs.
- (c) In establishing such alternate interest rate, the Bank shall consult with the Borrower, in order to decide on a substitution formula allowing the Bank to keep the same margin as the margin defined in the Loan Agreement. This formula shall apply retroactively from the first day of the Interest Period during which this impossibility to compute the interest rate has been notified, up to the total reimbursement of the principal of the Loan, interests, prepayment costs, Special Commitment Charge, Commitment Charge and other charges due under the Loan Agreement, or up to the date of notification by the Bank of the cessation of the event which caused the application of the alternate interest rate.

SECTION 3.04 Application of Payment

Except as the Bank may otherwise decide, all payments by the Borrower shall be applied, as the case may be, in the following order: Commitment Charge, Special Commitment Charge, other charges, prepayment costs, interest and principal.

SECTION 3.05 Computation of Interest and Commitment Charge

Interest and Commitment Charge shall be computed on a daily basis in accordance with the provisions of the Loan Agreement.

SECTION 3.06 Repayment and Prepayment

- (a) Except as provided in Section 4.04(e), the Borrower shall repay the principal amount of the Loan which has been disbursed in accordance with the provisions of the Loan Agreement.
- (b) Upon payment of all accrued interest, Commitment Charge, Special Commitment Charge and other charges, and any prepayment costs calculated in accordance with Section 3.06(c), except as provided in Section 4.04(d)(ii), and after giving not less than forty-five (45) days notice to the Bank (such notice period to commence the day after the Bank's receipt of said notice), the Borrower shall have the right to repay, as of a date acceptable to the Bank, in advance of maturity: (i) the entire principal amount of the Loan then outstanding, or (ii) the entire principal amount of any one or more maturities which, unless otherwise specified by the Borrower in the prepayment notice, shall be applied pro-rata to all outstanding Loan maturities.
- (c) The prepayment costs payable under paragraph (b) of this Section on prepayment of any maturity shall, subject to the specific terms governing Single Currency Loans, be an amount reasonably determined by the Bank to represent any cost to the Bank of redeploying the amount to be prepaid

from the date of prepayment to the maturity date, provided the Bank may, in its sole discretion, waive the requirement of payment of any prepayment costs.

- (d) Each request for prepayment notified to the Bank by the Borrower in accordance with this Section shall be irrevocable and the amount to be prepaid shall automatically become due on the date accepted by the Bank.

SECTION 3.07 Place of Payment

The principal of interest, prepayment costs, Special Commitment Charge, Commitment Charge and other charges on the Loan shall be paid at such place(s) as the Bank shall indicate.

SECTION 3.08 Payments Falling Due on Public Holidays

Any payment or other obligation which is due under the Loan Agreement or the Guarantee Agreement to be effected on a non-working day or a public holiday, according to the relevant local law, shall be considered made or fulfilled if it is effected on the first working day thereafter, without any penalty or additional costs to the Borrower or the Guarantor.

SECTION 3.09 Promissory Notes

At the request of the Bank, the Borrower shall, within the specified period, execute and deliver to the Bank, in such form as the Bank shall prescribe, promissory notes or other negotiable instruments, guaranteed, if necessary, by the Guarantor, representing the obligation of the Borrower to repay the principal of the Loan together with interest, Special Commitment Charge, Commitment Charge and other charges thereon.

SECTION 3.10 Restrictions

The repayment of the principal as well as the payment of interest, prepayment costs, Special Commitment Charge and other charges relating to the Loan shall not be prevented or hindered by any restrictions, regulations, controls or moratoria of any kind imposed under the legislation of the Borrower or of the Guarantor, or in force in its territory.

**ARTICLE IV
CURRENCY PROVISIONS**

SECTION 4.01. Currencies in which Disbursement is to be made

- (a) Subject to the Bank's right of Currency substitution in accordance with Section 4.04, disbursements from the Loan Account shall be made in the Loan Currency in an amount equivalent to the expenditures to be financed out of the proceeds of the Loan.
- (b) In the case of expenditures incurred in a Currency or Currencies other than the Loan Currency, if the Borrower requests payment in the Currency or Currencies of the expenditures, the Bank will, provided such expenditures are in readily available Currency or Currencies, exchange such Currency or Currencies in such manner as the Bank may deem appropriate. The equivalent disbursement amount shall be determined by the Bank including the exchange costs that were or would have been incurred by the Bank in using the Loan Currency to meet the request. The costs of such Currency exchange shall be communicated to the Borrower.

SECTION 4.02 Loan Account Currency

- (a) Except as provided in Section 4.02 (b), the Loan Account shall be maintained in the Loan Currency and shall record the equivalent as of the date of disbursement and repayment in the Loan Currency of the amounts in various Currencies disbursed and repaid under the Loan from time to time. All amounts so recorded shall be the equivalent in the Loan Currency of the Currency or Currencies disbursed or repaid, except that if the Bank has exchanged the Currency disbursed from another Currency in order to provide for such disbursement, then the equivalent in the Loan Currency of the amount of such other Currency paid by the Bank shall be recorded in the Loan Account instead.
- (b) For loans made in several Currency tranches, the Loan Account shall be divided into multiple sub-

accounts, each one to be maintained in the Loan Currency of each tranche. Each sub-account shall record the equivalent as of the date of disbursement and repayment in the respective Loan Currency of the amounts in various Currencies disbursed or repaid, except that if the Bank has exchanged the Currency disbursed with another Currency in order to provide for such disbursement then the equivalent of the amount of such other Currency paid by the Bank shall be recorded in the sub-account instead.

SECTION 4.03. Currency in Which Payments to the Bank are Payable

- (a) Except as provided in Section 4.04(g), repayment of principal and payment of prepayment costs, interest, Special Commitment Charge, Commitment Charge and other charges shall be made in the Loan Currency.
- (b) If the Borrower so requests, the Bank may, acting on behalf of the Borrower, and on such terms and conditions as the Bank shall determine, purchase the Loan Currency for the purpose of the repayment of principal and payment of prepayment costs, interest, Special Commitment Charge, Commitment Charge and other charges, upon timely payment by the Borrower of sufficient funds for that purpose in a Currency or Currencies acceptable to the Bank; provided, however, that such repayment or payment shall be deemed to have been paid only when and to the extent that the Bank has received the payment in the Loan Currency.

SECTION 4.04 Temporary Currency Substitution

- (a) If the Bank reasonably determines that an extraordinary situation, whether factual or legal, has arisen under which the Bank is unable to provide the Loan Currency for purposes of funding Single Currency Loans, then the Bank shall promptly notify the Borrower of its inability to access or procure the Loan Currency after becoming aware of such inability. If within sixty (60) days following such notification the Bank and the Borrower cannot agree on a substitute Currency, the Borrower may cancel the undisbursed portion of the Loan for which an agreement has not been reached as to the currency of substitution.
- (b) For each payment, the date of conversion between the Loan Currency and the substitute currency shall be the date of disbursement of the substitute currency.
- (c) The interest rate applicable to Loan amounts disbursed in the substitute currency shall be the interest rate applicable to similar single currency loans in such substitute currency at the time of disbursement. The Bank shall duly notify the Borrower of such interest rate.
- (d) During the period of operation of the Currency substitution:
 - (i) the substitute Currency shall be deemed to be the Loan Currency for purposes of these General Conditions, the Loan Agreement and the Guarantee Agreement;
 - (ii) no prepayment costs shall be payable on prepayment of the Loan;
 - (iii) repayment of principal and payment of interest, prepayment costs, Special Commitment Charge, Commitment Charge and other charges shall be made in the Loan Currency and/or in such temporary substitute Currency or Currencies as the Bank shall have selected; and
 - (iv) the Bank shall reasonably determine the guiding principles for the conversion of amounts from the Loan Currency to the substitute Currency.
- (e) The Bank may, by notice to the Borrower, modify the principal amount of any one or more maturities of the Loan provided for in the Loan Agreement, maturing after the establishment of any such substitute Currency to reflect changes in value as provided for in Section 4.04(d)(iv).
- (f) The Currency substitution shall be terminated as soon as practicable once the Bank becomes able to provide again the original Loan Currency.
- (g) All funds disbursed in a substitute Currency shall be repaid in the substitute Currency.

Section 4.05 Valuation of Currencies

For the purposes of the Loan Agreement, the Guarantee Agreement or any other agreement to which these General Conditions apply, whenever it shall be necessary to determine the value of one Currency in terms of another Currency or Currencies or in terms of the Unit of Account, such value shall be as reasonably determined by the Bank. The Bank shall notify the Borrower thereof.

ARTICLE V DISBURSEMENT OF THE LOAN

SECTION 5.01 Disbursement of the Loan

The Borrower shall be entitled to request from the Bank the disbursement of funds for amounts expended or to be expended for purposes of the Project, in accordance with the provisions of the Loan Agreement and these General Conditions, provided that, except with the consent of the Bank, no disbursements shall be made: (a) on account of expenditures procured in violation of the Bank's procurement rules; or (b) subject to the terms of the Loan Agreement, to finance expenditures incurred prior to the Date of the Loan Agreement.

SECTION 5.02 Special Commitment by the Bank

The Bank may, at the request of the Borrower and upon such terms and conditions as shall be agreed upon between the Bank and the Borrower enter into special commitments in writing to pay amounts to the Borrower or others in respect of expenditures to be financed out of the proceeds of the Loan notwithstanding any subsequent suspension or cancellation by the Bank or the Borrower. The Borrower shall pay a charge (special commitment charge) at the rate specified in the Loan Agreement.

SECTION 5.03 Requests for Disbursement or for Special Commitment

If the Borrower seeks disbursement of any amount from the Loan Account or requests the Bank to enter into a Special Commitment, the Borrower shall deliver to the Bank a written request in such form, and containing such statements, agreements, undertakings and documents as the Bank shall reasonably request. Requests for disbursement, including the documentation required pursuant to this Article, shall be made promptly and in conformity with the disbursement rules and procedures determined by the Bank from time to time.

SECTION 5.04 Payment by the Bank

The Loan funds disbursed or to be disbursed shall be payable by the Bank to, or on the order of, the Borrower in accordance with the terms of the Loan Agreement.

SECTION 5.05 Reallocation and Loan Savings

- (a) The Bank may, at the request of the Borrower, and in accordance with its policies as applicable from time to time, modify the allocation of expenditures of the Project to be financed from the Loan.
- (b) The reallocation of the Loan funds from one Category of Expenditures to another or within the same Category of Expenditures shall not, however, be made if such reallocation would, in the opinion of the Bank, (i) compromise the execution of the Project, or (ii) substantially modify the nature or objectives of the Project.
- (c) Loan Savings may be allocated in accordance with the policy of the Bank as determined from time to time.

SECTION 5.06 Evidence of Authority to Sign Requests for Disbursement

The Borrower shall provide the Bank with evidence of the authority of the person or persons authorized to sign requests for disbursement and the authenticated specimen signature(s) of any such persons.

SECTION 5.07 Supporting Evidence

The Borrower shall provide the Bank with such documents and other evidence as the Bank shall request in

support of any request for disbursement, in accordance with its disbursement rules and procedures.

SECTION 5.08. Sufficiency of Requests and Documents

Each request for disbursement and the accompanying documents and other evidence shall be sufficient in form and substance to satisfy the Bank that the Borrower is entitled to obtain the disbursement of the amount requested for and that the said amount is to be used only for the purposes specified in the Loan Agreement.

SECTION 5.09 Treatment of Taxes

If permitted by the Loan Agreement, the use of any proceeds of the Loan to pay for Taxes levied by, or in the territory of, the Member State in respect of the importation, manufacture, procurement or supply of any goods, works or consultancy services is subject to the Bank's policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Bank at any time determines that the amount of any such Tax is excessive, or that such Tax is discriminatory or otherwise unreasonable, the Bank may, by notice to the Borrower, decline to finance any such amount, as required to ensure consistency with such policy of the Bank.

**ARTICLE VI
CANCELLATION AND SUSPENSION**

SECTION 6.01 Cancellation by the Borrower

- (a) The Borrower may by notice to and after consultation with the Bank, cancel the whole or part of the Loan which has not been disbursed, except that the Borrower may not so cancel any amount of the Loan in respect of which the Bank has entered into a Special Commitment.
- (b) For purposes of paragraph (a) of this Section, the Borrower shall give sixty (60) days notice to the Bank of its intention to cancel all or part of the Loan and its reasons for so doing. The Bank shall notify the Borrower of the date of receipt of such notice and shall consult with the Borrower on the reasons for its request for cancellation. Unless the parties otherwise agree, the cancellation shall take effect sixty (60) days from the date of receipt by the Bank of the Borrower's cancellation notice.

SECTION 6.02 Suspension by the Bank

- 1) If any of the following events has occurred and is continuing, the Bank may, by notice to the Borrower and the Guarantor, suspend in whole or in part the right of the Borrower to request for and receive disbursements from the Loan Account:

Payment Failure

- (a) The Borrower has failed to make payment when due (notwithstanding the fact that such payment may have been made by the Guarantor or a third party) of principal, interest, prepayment costs, commitment charge or any other amount due to the Bank or the Fund: (i) under the Loan Agreement, (ii) under any other agreement between the Bank and the Borrower, (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Bank to any third party with the agreement of the Borrower, or (iv) under any agreement between the Borrower and the Fund or between the Borrower and any Bank Managed Fund.
- (b) The Guarantor has failed to make payment of principal, interest, prepayment costs, commitment charge or any other amount due to the Bank or the Fund: (i) under the Guarantee Agreement, (ii) under any other agreement between the Guarantor and the Bank, (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Bank to any third party with the agreement of the Guarantor, or (iv) under any agreement between the Guarantor and the Fund or between the Guarantor and any Bank Managed Fund.

Performance Failure

- (c) The Borrower or the Guarantor has failed to perform any other obligation under the Loan Agreement or the Guarantee Agreement or any Hedging Agreement, or the Bank determines that the Project objectives cannot be achieved.

Cross-suspension

- (d) The Bank, the Fund or any Bank Managed Fund has suspended in whole or in part the right of the Borrower or the Guarantor to request or receive disbursements under any agreement with the Bank, the Fund or any Bank Managed Fund because of a failure by the Borrower or the Guarantor to perform any of its obligations under such agreement or any guarantee agreement with the Bank, the Fund or such Bank Managed Fund.

Extraordinary Situations

- (e) As a result of events which have occurred after the Date of the Loan Agreement, an extraordinary situation has arisen which makes it improbable that the Project can be carried out or that the Borrower or the Guarantor will be able to perform its obligations under the Loan Agreement or the Guarantee Agreement.
- (f) An extraordinary situation has arisen under which any further disbursements under the Loan would be inconsistent with the provisions of Article 46 of the Bank Agreement.

Membership

- (g) The Member State in the territory of which the Borrower or the Guarantor is established has been suspended from membership in, or ceased to be a Member State of, the Bank.

Events Prior to Effectiveness

- (h) After the Date of the Loan Agreement and prior to the Date of Entry into Force, any event has occurred which would have entitled the Bank to suspend the Borrower's right to request for and receive disbursements from the Loan Account if the Loan Agreement had been effective on the date such event occurred.

Misrepresentation

- (i) Any representation made by the Borrower or the Guarantor in or pursuant to the Loan Agreement, the Guarantee Agreement or any Hedging Agreement, or any statement or other information provided in connection therewith, and intended to be relied upon by the Bank in making the Loan or executing the transaction under a Hedging Agreement, has been incorrect in any respect.

Co-financing

- (j) Any of the following events occurs with respect to any Co-financing:
 - (i) If the Loan Agreement specifies a date by which the agreement with such financier providing for the Co-financing is to become effective, such co-financing agreement has failed to become effective by that date, or such later date as the Bank has established by notice to the Borrower and the Guarantor; provided, however, that the provisions of this sub-paragraph shall not apply if the Borrower and the Guarantor establish to the satisfaction of the Bank that adequate funds for the Project are available from other sources on terms and conditions consistent with the obligations of the Borrower and the Guarantor under the Loan Agreement and the Guarantee Agreement.

- (ii) Subject to sub-paragraph (iii) of this paragraph: (A) the right to withdraw the proceeds of the Co-financing has been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the relevant co-financing agreement; or (B) the Co-financing has become due and payable prior to its agreed maturity.

- (iii) Sub-paragraph (ii) of this subsection shall not apply if the Borrower and the Guarantor establish to the satisfaction of the Bank that: (A) such suspension, cancellation, termination or prematuring was not caused by the failure of the recipient of the Co-financing to perform any of its obligations under the relevant agreement; and (B) adequate funds for the Project are available from other sources on terms and conditions consistent with the obligations of the Borrower and the Guarantor under the Loan Agreement and the Guarantee Agreement.

(k) *Condition of Borrower*

- (i) Any material adverse change in the condition of the Borrower which materially affects the financial ability of the Borrower to repay the Loan has occurred.

- (ii) The Borrower has become unable to pay its debts as they mature or any action or proceeding has been taken by the Borrower or by others whereby any of the Assets of the Borrower shall or may be distributed among its creditors.

- (iii) Any action has been taken for the dissolution, disestablishment or suspension of operations of the Borrower.

- (iv) The Borrower has ceased to exist in the same legal form as that prevailing as of the Date of the Loan Agreement.

- (v) In the opinion of the Bank, the legal character, ownership or control of the Borrower has changed from that prevailing as of the date of the Loan Agreement so as to materially and adversely affect the ability of the Borrower to perform any of its obligations arising under or entered into pursuant to the Loan Agreement, or to achieve the objectives of the Project.

(l) *Condition of Guarantor if Guarantor is a Public Entity*

- (i) Any material adverse change in the condition of the Guarantor which materially affects the financial ability of the Guarantor to repay the Loan, has occurred.

- (ii) The Guarantor has become unable to pay its debts as they mature or any action or proceeding has been taken by the Guarantor or by others whereby any of the Assets of the Guarantor shall or may be distributed among its creditors.

- (iii) Any action has been taken for the dissolution, disestablishment or suspension of operations of the Guarantor.
- (iv) The Guarantor has ceased to exist in the same legal form as that prevailing as of the Date of the Guarantee Agreement.
- (v) In the opinion of the Bank, the legal character, ownership or control of the Guarantor has changed from that prevailing as of the date of the Guarantee Agreement so as to materially and adversely affect the ability of the Guarantor to perform any of its obligations arising under or entered into pursuant to the Guarantee Agreement.

Corrupt, Coercive, Collusive or Fraudulent Practice

- (m) At any time, with respect to the negotiation, execution or implementation of the Loan Agreement, including with respect to the procurement or execution of any contract to be financed in full or in part from the proceeds of the Loan, the Bank determines that any person or entity has engaged in a Corrupt Practice, a Coercive Practice, a Collusive Practice or a Fraudulent Practice, without the Borrower or the Guarantor having taken timely and appropriate action satisfactory to the Bank to remedy the situation or to address such practices when they occur; or

Other Events of Suspension

- (n) Any other event specified in the Loan Agreement for the purposes of this Section has occurred.
- 2) The right of the Borrower to disbursement of the Loan funds shall continue to be suspended in whole or in part, as the case may be, i) until the Bank determines that event or events which gave rise to such suspension has ceased to exist, unless the Bank, subject to such terms and conditions as it may specify, restores in whole or in part, as the case may be the right of the Borrower to disbursement of the Loan, or ii) until cancellation of the Loan as provided in Section 6.03.

SECTION 6.03 Cancellation by the Bank

- 1) The Bank may, by notice to the Borrower and the Guarantor, cancel the whole or part of the Loan, as the case may be, if:
 - (a) *Interruption of the Project*: for at least two consecutive years Project operations have ceased. For purposes of the present paragraph, Project operations shall be deemed to have ceased if no disbursement has been made for a continuous period of two years;
 - (b) *Suspension*: the right of the Borrower to disbursement of the Loan, has been suspended with respect to any amount of the Loan for a continuous period of thirty (30) days;
 - (c) *Amount not Required*: at any time, the Bank determines, after consultation with the Borrower, that an amount of the Loan will not be required to finance any Project costs previously allocated to be financed out of the Loan proceeds;
 - (d) *Misprocurement*: at any time, the Bank determines that the procurement of any item is inconsistent with the procedures provided for in the Loan Agreement or applicable rules of procurement of the Bank and establishes the amount of expenditures in respect of such item which would otherwise have been eligible for financing out of the proceeds of the Loan;
 - (e) *Corrupt, Coercive, Collusive or Fraudulent Practice*: at any time, with respect to the negotiation, execution or implementation of the Loan Agreement, including with respect to the procurement or execution of any contract to be financed in full or in part from the proceeds of the Loan, the Bank determines that any person or entity has engaged in a Corrupt Practice, a Coercive Practice, a Collusive Practice or a Fraudulent Practice, without the Borrower or the Guarantor having taken timely and appropriate action satisfactory to the Bank to remedy the situation or to address such practices when they occur;
 - (f) *Closing Date*: on the day following the Closing Date, an amount of the Loan shall not have been disbursed;
 - (g) *Cancellation of Guarantee*: the Bank has received prior notice from the Guarantor pursuant to Section 6.06 (b) with respect to an amount of the Loan ; or
 - (h) *Modification of the Project*: the Borrower has modified the nature or the objectives of the Project financed from the resources of the Loan, without the prior approval of the Bank.

Upon the giving of such notice, such amount of the Loan shall be cancelled on the date decided by the Bank and indicated in the notice, provided that : (i) in the case of paragraph (a) above, the Borrower shall be given not less than three (3) months notice in writing within which it may submit all or any outstanding disbursement requests for settlement by the Bank prior to Loan cancellation, and (ii) in the case of paragraph (c) above, a consultation with the Borrower is carried out as indicated in sub-section (2) below.

- 2) Consultation as required in paragraph (c) of sub-section (1) above must be carried out within sixty (60) days after the date the Bank gives notice of its intention to cancel such amount of the Loan not required to finance any Project costs previously allocated to be financed out of the Loan proceeds. In the absence of an agreement to the contrary within such sixty (60) day period, the cancellation will become effective on the date of expiry of the above-mentioned period.

SECTION 6.04 Amounts Subject to Special Commitment not Affected by Cancellation or Suspension by the Bank.

No cancellation or suspension by the Bank shall apply to amounts subject to any Special Commitment except as expressly provided in such Special Commitment.

SECTION 6.05. Effectiveness of the Provisions of the Loan Agreement and the Guarantee Agreement after Suspension or Cancellation

Notwithstanding any cancellation or suspension, as provided for in Sections 6.01, 6.02 and 6.03 above, the provisions of the Loan Agreement and the Guarantee Agreement shall continue in full force and effect.

SECTION 6.06. Cancellation of Guarantee

- (a) If the Borrower has failed to make payment of principal or interest or any other payment required under the Loan Agreement (otherwise than as a result of any act or omission to act of the Guarantor), and such payment has been made by the Guarantor, the Guarantor may, after consultation with the Bank, and by notice to the Bank and the Borrower, terminate its obligations under the Guarantee Agreement with respect to any amount of the Loan undisbursed from the Loan Account on the date of receipt of such notice by the Bank and not subject to any Special Commitment. Upon receipt of such notice by the Bank, and subject to paragraph (b) below, the Guarantor's obligations in respect of such amount shall terminate.
- (b) For the purposes of paragraph (a) of this Section, the Guarantor shall give prior notice to the Bank of its intention to terminate its obligations under the Guarantee Agreement. The Bank and the Guarantor shall have sixty (60) days from the date of receipt of the notice by the Bank to consult each other. If at the expiry of this notice period there is no agreement between the parties, the Guarantor may notify the Bank of the termination of its obligations.

**ARTICLE VII
ACCELERATION TO MATURITY**

SECTION 7.01 Events of Acceleration

If any of the following events occurs and continues for the period specified, as the case may be, the Bank may, at its option, by notice to the Borrower and the Guarantor, declare all or part of the principal of the Loan then outstanding to be due and payable immediately together with the interest, prepayment costs, Special Commitment Charge, Commitment Charge and other charges thereon and upon any such notice, such principal together with the interest, prepayment costs, Special Commitment Charge, Commitment Charge and other charges thereon shall become due and payable immediately from the date of such notification:

Payment Default

- (a) A default occurs in the payment of principal or interest or any other payment required under the Loan Agreement or under the Guarantee Agreement and such default shall continue for a period of thirty (30) consecutive days.
- (b) A default occurs in the payment by the Borrower of principal or interest or any other amount due to the Bank, the Fund or a Bank Managed Fund: (i) under any other loan or guarantee agreement between the Bank and the Borrower, or (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Bank to any third party with the agreement of the Borrower, or (iii) under any loan or guarantee agreement between the Fund or a Bank Managed Fund and the Borrower, and such default shall continue for a period of thirty (30) consecutive days.
- (c) A default occurs in the payment by the Guarantor of principal or interest or any other amount due to the Bank, the Fund or a Bank Managed Fund: (i) under any other loan or guarantee agreement between the Guarantor and the Bank, or (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Bank to any third party with the agreement of the Guarantor, or (iii) under any loan or guarantee agreement between the Guarantor and the Fund or a Bank Managed Fund, and such default shall continue for a period of thirty (30) consecutive days.

Performance Default

- (d) A default occurs in the performance of any other obligation on the part of the Borrower or the Guarantor under the Loan Agreement, the Guarantee Agreement or any Hedging Agreement, and such default shall continue for a period of sixty (60) days after notice thereof has been given by the Bank to the Borrower and the Guarantor.

Co-financing

- (e) The event specified in Section 6.02(1) (j) (ii) (B) has occurred, subject to the provision of paragraph (j) (iii) of that Section.

Condition of Borrower or the Guarantor

- (f) Any event specified in Section 6.02(1) (k) (ii) to (v) or Section 6.02(1) (l) (ii) to (v) has occurred.

Additional Event

- (g) Any other event specified in the Loan Agreement for the purposes of this Section has occurred and shall continue for the period, if any, specified in the Loan Agreement.

ARTICLE VIII TAXES

SECTION 8.01 Taxes

- (a) The principal of, and interest, Special Commitment charge, commitment charge and other charges on, the Loan shall be paid without deduction for, and free from, any taxes levied in the territory of the country of the Borrower.
- (b) The Loan Agreement and the Guarantee Agreement and any other agreement to which these General Conditions apply, shall be free from any taxes levied in the territory of the country of the Borrower on, or in connection with, the execution, delivery or registration thereof.
- (c) The immunities, exemptions and privileges from taxation referred to in this Section 8.01 and in Article 57 of the Bank Agreement shall ensure to and be for the sole benefit of the Bank and shall therefore not be the basis for a claim to or request for similar entitlement by a consultant, contractor or other third party engaged by the Borrower or Guarantor in connection with the Project.

ARTICLE IX PROJECT IMPLEMENTATION - COOPERATION AND INFORMATION- FINANCIAL AND OTHER INFORMATION - NEGATIVE PLEDGE (PARI PASSU)

SECTION 9.01 Project Implementation

The Borrower shall carry out the Project and/or cause the Executing Agency to carry out the Project:

- (a) with due diligence and efficiency;
- (b) in conformity with all applicable laws and regulations;
- (c) in conformity with appropriate administrative, technical, financial, economic, environmental and social standard and practices; and
- (d) in accordance with the provisions of the Loan Agreement and these General Conditions, as well as any performance arrangement to be entered into between the Borrower and the Executing Agency or any member thereof.

SECTION 9.02 Cooperation and Information

- (a) The Bank and the Borrower and the Guarantor, as the case may be, shall cooperate fully to ensure that the purposes of the Loan will be accomplished. To that end, the Bank, the Borrower and the Guarantor shall:
- (i) from time to time, at the request of any one of them, exchange views with regard to the progress of the Project, the purposes of the Loan, and the performance of their respective obligations under the Loan Agreement and the Guarantee Agreement and provide to the other party all such information related thereto as it shall reasonably request; and
 - (ii) upon receiving knowledge thereof, promptly inform each other of any condition which interferes with, or threatens to interfere with, the matters referred to in paragraph (i) above.
- (b) The Borrower and the Guarantor shall ensure that no action which would prevent or interfere with the execution of the Project or with the performance of the Borrower's obligations under the Loan Agreement is taken or permitted to be taken by the Borrower or the Guarantor or any of its political or administrative subdivisions or any of the entities owned or controlled by, or operating for the account or benefit of, the Borrower or the Guarantor or such subdivisions.
- (c) The Borrower and the Guarantor shall afford all reasonable opportunity for representatives of the Bank to visit any part of the territory of their country for purposes related to the Loan and enable the Bank's representatives to visit any facilities and construction sites included in the Project and to examine the goods financed out of the proceeds of the Loan and any plants, installations, sites, works, buildings, property, equipment, records and documents relevant to the performance of the obligations of the Borrower under the Loan Agreement.
- (d) The Borrower shall permit staff and other representatives of the Bank including members of the Bank's Compliance Review and Mediation Unit or its Independent Review Mechanism to perform their functions including conducting investigations, as necessary. In this connection, the Borrower shall provide such representatives of the Bank relevant information and facilitate the examination of records, accounts and other documents or interview relevant persons, as determined by the Bank.
- (e) The Borrower shall, for the purposes of each Project financed by the Bank, take all necessary steps to indicate in a conspicuous manner that the Project is financed by the Bank.

SECTION 9.03. Financial and Other Information

The Borrower and the Guarantor shall provide to the Bank the information that the Bank shall request relating to their respective organizational structure, operations, financial situation and, in particular, financial statements.

SECTION 9.04. Negative Pledge

- (a) In providing a Loan, the Bank may require that the Regional Member State, or a public institution of the Regional Member State in whose territory the Borrower is located or incorporated, provides a Guarantee and/or request that the Borrower provides such other assurances to the effect that the Borrower shall fulfill its obligations to the Bank. Such securities may be enforced in accordance with their governing law. The taking of a security from the Borrower by the Bank shall not constitute, or be construed as, a waiver by the Bank of its status as a preferential Creditor in the Country of the Borrower or elsewhere.
- (b) The Borrower and the Guarantor undertake that, except as the Bank shall otherwise agree:
- (i) if such Borrower or Guarantor shall create any Lien on any of its Assets as security for any debt, such Lien will equally and ratably secure the payment of the principal of, and interest, prepayment costs, Special Commitment Charge, Commitment Charge and other charges on, the Loan and in the creation of any such Lien express provision will be made to that effect, at no cost to the Bank; and

- (ii) if any statutory Lien shall be created on any Assets of such Borrower or Guarantor as security for any debt, such Borrower or Guarantor shall grant at no cost to the Bank, an equivalent Lien satisfactory to the Bank to secure the payment of the principal of, and interest, prepayment costs, Special Commitment Charge, Commitment Charge and other charges on, the Loan.
- (c) The foregoing provisions of paragraph (b) of this Section shall not apply to: (i) any Lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase of such property; or (ii) any Lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after the date on which it is originally incurred.

SECTION 9.05. Insurance

The Borrower shall insure or cause to be insured the goods to be financed out of the proceeds of the Loan against hazards incidental to the acquisition, transportation, delivery, installation and use thereof during the entire period of Project implementation until completion. Any indemnity for such insurance shall be payable in a freely usable Currency to replace or repair such goods.

SECTION 9.06. Use and Procurement of Goods, Works and Services

- (a) Except as the Bank shall otherwise agree, the Borrower shall, until Project completion, cause all goods, works and services financed out of the proceeds of the Loan to be used exclusively for the purposes of the Project.
- (b) The procurement of goods, works and services required for the execution of the Project shall be effected by the Borrower in accordance with the relevant rules of procurement of the Bank, which shall form an integral part of the Loan Agreement.
- (c) The Borrower shall be legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contracts. The contract shall be between the Borrower and the supplier of goods, works or services. The Bank shall not be a party to the contracts.
- (d) Upon the award of any contract for goods, works or services to be financed out of the proceeds of the Loan, the Borrower shall, and the Bank may, publish a description thereof, the name and nationality of the party to which the contract was awarded and the contract value.

SECTION 9.07 Land Acquisition

The Borrower shall take (or cause to be taken) all actions necessary to acquire as and when needed all land and rights in respect thereto as shall be required for carrying out the Project and shall promptly provide to the Bank, upon its request, evidence satisfactory to the Bank that such land and rights in respect of land are available for purposes related to the Project.

SECTION 9.08. Plans and Schedules

The Borrower shall promptly provide, or cause to be provided, to the Bank upon their preparation, copies of any plans, specifications, reports, contract documents, construction, and procurement schedules for the Project, and any material modifications thereof or additions thereto, in such detail as the Bank shall reasonably request.

SECTION 9.09. Accounts, Records and Audit

- (a) The Borrower shall, and shall cause the Executing Agency to:
 - (i) maintain records and procedures adequate to record and monitor the progress of the Project (including its costs and the benefits to be derived from it, according to indicators acceptable to the Bank), to identify the goods, works and services financed out of the proceeds of the Loan, and to disclose their use in the Project;
 - (ii) provide to the Bank reports in form and substance satisfactory to the Bank on the execution of the Project, including recommendations to ensure the continued effective and efficient execution of the Project with a view to achieve its objective, at such intervals as provided by the applicable

Bank policy and in accordance with the directives which the Bank shall from time to time issue to that end; and

- (iii) provide to the Bank at regular intervals all such information and reports as the Bank shall reasonably request concerning the Project, its cost and, where appropriate, the benefits to be derived from it, the participation of Project beneficiaries in the implementation and supervision of the Project, the expenditure of the proceeds of the Loan and the goods, works and services financed out of such proceeds.
- (b) The records and accounts shall be kept in accordance with the Bank's guidelines for financial reporting and auditing of Projects and shall be audited and certified for each financial year by an independent auditor satisfactory to the Bank whose terms of reference have been approved by the Bank. The Borrower shall use its best efforts to ensure that the Bank has unrestricted access to the records and working papers of such independent auditors as shall be necessary for the Bank to independently assure itself of the accountability for its funds. The Borrower shall provide the audited financial statements to the Bank as promptly as possible and, in any event, not later than six (6) months after the end of the relevant financial year.
- (c) The Borrower shall, and shall cause the Executing Agency to, keep all records (contracts, orders, invoices, bills, receipts and other documents) evidencing expenditures financed with the Loan until the later of: (i) one year after the Bank has received the audited financial statements covering the period during which the last disbursement of the Loan was made or (ii) two years after the Closing Date. The Borrower shall enable the Bank's representatives to examine such records.

SECTION 9.10. Completion Report

Promptly after completion of the Project, but in any event not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Bank and the Borrower, the Borrower shall prepare and provide to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution and initial operation of the Project, its cost and the benefits derived and to be derived from it, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement, the accomplishment of the purposes of the Loan and the plan designed to ensure the sustainability of the Project's achievements.

SECTION 9.11 Maintenance

The Borrower shall at all times operate and maintain in good working order, or cause to be operated and maintained in good working order, any facilities relevant to the Project, and shall promptly make or cause to be made all necessary repairs and renewals thereof.

SECTION 9.12. Financial Resources

The Borrower shall take all appropriate steps to ensure that the financial resources required for the implementation of the Project shall be made available on a timely basis. To that end the Borrower shall:

- (a) make (or, as the case may be, cause the beneficiary of the Loan to make) regularly in its annual budget, the allocations required to finance its share of the Project costs as provided in the Loan Agreement;
- (b) in accordance with the terms of the Loan Agreement, provide evidence that it has available all other additional resources required for the implementation of the Project; and
- (c) Provide supplementary financing required in case of Project cost overruns.

ARTICLE X ENFORCEABILITY OF LOAN AGREEMENT AND GUARANTEE AGREEMENT - FAILURE TO EXERCISE RIGHTS - SETTLEMENT OF DISPUTES - APPLICABLE LAW

SECTION 10.01. Enforceability

- (a) The rights and obligations of the Bank, the Borrower and the Guarantor under the Loan Agreement

and the Guarantee Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State or political subdivision thereof to the contrary. Neither the Bank nor the Borrower nor the Guarantor shall be entitled in any proceeding under this Article to assert any claim that any provision of these General Conditions or of the Loan Agreement or the Guarantee Agreement is invalid or unenforceable for any reason.

- (b) The Borrower represents that it has full legal capacity and authority to execute the Loan Agreement, and that the Loan Agreement is enforceable in accordance with its terms.
- (c) The Guarantor represents that it has full legal capacity and authority to execute the Guarantee Agreement, and that the Guarantee Agreement is enforceable in accordance with its terms.

SECTION 10.02. Obligations of the Guarantor

Except as provided in Section 6.06, the obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance and only to the extent of such performance. Such obligations shall not require any prior notice to, demand upon or action against the Borrower or any prior notice to or demand upon the Guarantor with regard to any default by the Borrower. Such obligations shall not be impaired by any of the following:

- (a) any extension of time, forbearance or concession given to the Borrower;
- (b) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or in respect of any security for the Loan;
- (c) any modification or amplification of the provisions of the Loan Agreement contemplated by the terms thereof; or
- (d) any failure of the Borrower to comply with any requirement of any law of the Guarantor.

SECTION 10.03. Failure to Exercise Rights

No delay in exercising, or omission to exercise, any right, power or remedy accruing to the Bank under the Loan Agreement or Guarantee Agreement upon any default on the part of the other party shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action taken by the Bank in respect of any default, or any acquiescence by it, shall affect or impair any right, power or remedy that it may have in respect of any other default.

SECTION 10.04. Settlement of Disputes

- (a) Except for liens and other securities taken under Section 9.04 where the Bank can decide to enforce its rights in accordance with the law governing the creation of such securities, any controversy between the parties to the Loan Agreement and the Guarantee Agreement and any claim by a party against the other party arising under the Loan Agreement and the Guarantee Agreement will be settled amicably. If no amicable settlement is reached within ninety (90) days from the date notification is given by one party of a request for submission of the dispute to an amicable settlement, the dispute may be submitted to arbitration, as provided hereunder, by either party.
- (b) Except as otherwise specified in this Section, the arbitration shall be conducted in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. The parties to such arbitration shall be the Bank on the one side and the Borrower and/or the Guarantor on the other side.
- (c) The arbitral tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Bank; a second arbitrator shall be appointed by the Borrower and the Guarantor, or, if they shall not agree, by the Guarantor, and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by the two arbitrators first appointed by the parties. The appointing authority for the purposes of the UNCITRAL Arbitration Rules shall be the Secretary-General of the Permanent Court of Arbitration at the Hague. If within thirty (30) days from the date of notification of the submission to arbitration, either side fails to appoint an arbitrator, such arbitrator shall be appointed by the appointing authority. If within sixty (60) days after the notice instituting the

- arbitration proceeding, the two arbitrators shall not have agreed upon an Umpire, any party may request the appointing authority to designate the Umpire. In case any arbitrator appointed in accordance with this Section resigns, dies or becomes unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.
- (d) The arbitral tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedures. All decisions of the Arbitral Tribunal shall be by majority vote.
 - (e) Any award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Loan Agreement and the Guarantee Agreement. Each party shall abide by and comply with any award rendered by the arbitral tribunal in accordance with the provisions of this Section.
 - (f) Notwithstanding any provision of the UNCITRAL Arbitration Rules to the contrary, the arbitral tribunal shall not be authorized to take or provide, and the Borrower and the Guarantor shall not be authorized to seek from any judicial authority, any interim measures of protection or pre-award relief against the Bank.
 - (g) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Loan Agreement and Guarantee Agreement or of any claim by any party against any other party arising thereunder.
 - (h) Service of any notice or process in connection with any proceeding under this section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 11.01. The parties to the Loan Agreement and Guarantee Agreement waive any and all other requirements for the service of any such notice or process.
 - (i) In any proceeding arising out of the Loan Agreement or the Guarantee Agreement, the certificate of the Bank as to any amount due to the Bank under the Loan Agreement or the Guarantee Agreement shall be *prima facie* evidence of such debt, absent manifest error.
 - (j) Notwithstanding the provisions of this Section, nothing contained in these General Conditions or in the Loan Agreement or the Guarantee Agreement shall operate or be regarded as a waiver, renunciation or other modification of any right, privilege, or immunity of the Bank under the Bank Agreement, under international conventions or under any other applicable laws.

SECTION 10.05 Applicable Law

Unless otherwise provided in the Loan Agreement or the Guarantee Agreement, the law to be applied to the Loan Agreement and to the Guarantee Agreement shall be public international law, the sources of which shall be taken for these purposes to include:

- (a) any relevant treaty obligations that are binding reciprocally on the parties to these agreements;
- (b) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognized as having codified or ripened into binding rules of customary law applicable to states and to international financial institutions, as appropriate;
- (c) international custom, as evidence of a practice accepted as law; and
- (d) general principles of law applicable to multilateral economic development activities.

ARTICLE XI MISCELLANEOUS PROVISIONS

SECTION 11.01 Notices and Requests

Any notice or request required or permitted to be given or made under the Loan Agreement or Guarantee Agreement and any other agreement between any of the parties contemplated by the Loan Agreement or Guarantee Agreement shall be in writing. Except as otherwise provided in Section 12.01, such notice or request shall be deemed to have been duly given or made when delivered by hand or by mail, telegram, cable, telex or facsimile (or, if permitted under the Loan Agreement or Guarantee Agreement by other electronic means) to the party to which it is required or permitted to be given or made at such party's address specified in the Loan Agreement or Guarantee Agreement or at such other address as such party has designated by notice to the party giving the notice or making the request. Deliveries made by facsimile transmission shall also be confirmed by mail.

SECTION 11.02. Evidence of Authority

The Borrower and the Guarantor shall provide to the Bank sufficient evidence of the authority of the person(s) who will, on behalf of the Borrower or the Guarantor, take any action or execute any documents required or permitted to be taken or executed by the Borrower under the Loan Agreement or by the Guarantor under the Guarantee Agreement, and the authenticated specimen signature of such person(s).

SECTION 11.03. Amendment of Loan Agreement and Guarantee Agreement

- (a) The Loan Agreement and Guarantee Agreement may be amended in writing by mutual agreement of the parties thereto.
- b) No provision of the Loan Agreement and Guarantee Agreement may be amended unless prior authorization of the Bank is obtained.
- (c) Any modification of the provisions of the Loan Agreement or the Guarantee Agreement may be agreed to on behalf of the Borrower or the Guarantor by written instrument executed on behalf of the Borrower or the Guarantor by the representative of the Borrower or the Guarantor designated in the Loan Agreement or the Guarantee Agreement or any person thereunto authorized in writing by such representative; provided that, in the opinion of the representative, the modification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Loan Agreement or of the Guarantor under the Guarantee Agreement. The Bank may accept the execution by the representative or other person of any such instrument as conclusive evidence that in the opinion of the representative any modification of the provisions of the Loan Agreement or the Guarantee Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower or of the Guarantor thereunder. If the amendment requires ratification by the Borrower or the Guarantor, then, the stipulations of section 12.01 relating to the entry into force, shall apply.
- (d) The President or such other duly authorized Bank officer, shall, pursuant to and in accordance with the Board of Directors' approval, if necessary, sign the amended Loan Agreement or Guarantee Agreement on behalf of the Bank.
 - (e) The date of entry into force of the amendment shall be notified by the Bank to the Borrower and the Guarantor.

SECTION 11.04. Execution in Counterparts

The Loan Agreement and the Guarantee Agreement may each be executed in several counterparts, each of which shall be an original.

SECTION 11.05. Assignment of the Loan Agreement and the Guarantee Agreement

Neither party may assign or transfer any of its rights or obligations under the Loan Agreement or the Guarantee Agreement, without the prior consent of the other party.

SECTION 12.01 Entry into Force

The Loan Agreement and the Guarantee Agreement shall enter into force on the date of their signature by the Bank and the Borrower or Guarantor.

SECTION 12.02 Operational Conditions Precedent to Disbursements

- (a) The Bank shall withhold disbursements from the Loan until the Borrower and Guarantor have provided to the Bank, to its satisfaction:
- (i) one or more legal opinions satisfactory to the Bank by counsel acceptable to the Bank, or if the Bank so wishes, a certificate acceptable to the Bank, from an official of the Borrower or the Guarantor, establishing:
 - 1. that the Loan Agreement has been signed on behalf of the Borrower, by a duly authorized representative and that it has, in accordance with its internal legal rules, in particular its statutory provisions, been approved or accepted, or as the case may be, authorized, and that it constitutes for the Borrower a valid and enforceable obligation without any restriction or reservation; or
 - 2. that the Guarantee Agreement has been signed on behalf of the Guarantor, by a duly authorized representative and that it has, in accordance with its internal legal rules, in particular its statutory provisions, been approved or accepted, or as the case may be, authorized, and that it constitutes for the Guarantor a valid and enforceable obligation without any restriction or reservation; and
 - 3. any other matter specified in the Loan Agreement or the Guarantee Agreement or reasonably requested by the Bank in connection with the Loan Agreement or the Guarantee Agreement for the purpose of this section ; and
 - (ii) An original or certified copy of the instrument authorising the conclusion of, the Loan Agreement, and the Guarantee Agreement shall be transmitted to the Bank along with the legal opinions; and
 - (iii) Any other legal document to be provided to the Bank in accordance with the provisions of the Loan Agreement or the Guarantee Agreement.
- (b) In addition, the Loan Agreement may provide for certain operational conditions to be satisfied by the Borrower and/or Guarantor. and the Bank shall, in such event, be at liberty to withhold the first disbursement and/or any other disbursement unless and until such operational conditions have been satisfied and, in the case of continuing obligations, no disbursements may be forthcoming for the duration of default in compliance with any such operational conditions.
- (c) The Bank may also request the Borrower to represent and warrant before each disbursement that there has been no material adverse change in the condition of the Borrower since the Date of the Loan Agreement.
- (d) When the Loan is accompanied with a Guarantee Agreement from a Regional Member State or with any other guarantee or security, no disbursement of the Loan shall be made in the absence of an entry into force of the Guarantee Agreement or the transmission to the Bank of an evidence of the validity of the guarantee or of such other security given by the Borrower.

SECTION 12.03. Termination of Loan Agreement and Guarantee Agreement for Failure to Comply with the Conditions to the First Disbursement

If the operational conditions to the first disbursement have not been fulfilled within one hundred and eighty (180) days from the Date of the Loan Agreement, the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall terminate immediately upon notice by the Bank to the Borrower to that effect. The Bank may, after consideration of the reasons for the delay, establish a later date for the purposes of this Section. The Bank shall promptly notify the Borrower and the

Guarantor of such later date.

SECTION 12.04 Termination of Loan Agreement on Full Payment

If and when the entire principal amount of the Loan disbursed from the Loan Account and the prepayment costs, if any, on the prepayment of the Loan and all interest, Special Commitment Charge, Commitment Charge and other charges which have accrued on the Loan have been fully paid, the Loan Agreement and all obligations of the parties there under shall forthwith terminate.