



# General Conditions

General Conditions  
applicable to Loan, Guarantee and Grant  
Agreements of the African Development  
Bank and the African Development Fund



African Development Bank  
African Development Fund



# General Conditions

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



African Development Bank

*February 2009*





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African Development Bank  
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Guarantee Agreements  
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## TABLE OF CONTENTS

<b>ARTICLE I</b>	<b>7</b>
<b>APPLICATION TO LOAN AGREEMENTS AND GUARANTEE AGREEMENTS</b>	<b>7</b>
SECTION 1.01 Application of General Conditions	7
SECTION 1.02 Inconsistency with Loan and Guarantee Agreements	7
<b>ARTICLE II</b>	<b>8</b>
<b>DEFINITIONS - REFERENCES AND HEADINGS</b>	<b>8</b>
SECTION 2.01 Definitions	8
SECTION 2.02 References	12
SECTION 2.03 Headings	12
<b>ARTICLE III</b>	<b>12</b>
<b>LOAN ACCOUNT - SERVICE CHARGE - COMMITMENT CHARGE SPECIAL COMMITMENT CHARGE AND REPAYMENT</b>	<b>12</b>
SECTION 3.01 Loan Account	12
SECTION 3.02 Commitment Charge	12
SECTION 3.03 Interest	12
SECTION 3.04 Application of Payment	13
SECTION 3.05 Computation of Interest and Commitment Charge	13
SECTION 3.06 Repayment and Prepayment	13
SECTION 3.07 Place of Payment	14
SECTION 3.08 Payments Falling due on Public Holidays	14
SECTION 3.09 Promissory Notes	14
SECTION 3.10 Restrictions	14
<b>ARTICLE IV</b>	<b>15</b>
<b>CURRENCY PROVISIONS</b>	<b>15</b>
SECTION 4.01 Currencies in which Disbursement is to be made	15
SECTION 4.02 Loan Account Currency	15
SECTION 4.03 Currency in which Payments to the Bank are payable	16
SECTION 4.04 Temporary Currency Substitution	16
SECTION 4.05 Valuation of Currencies	18
<b>ARTICLE V</b>	<b>18</b>
<b>DISBURSEMENT OF THE LOAN</b>	<b>18</b>
SECTION 5.01 Disbursement of the Loan	18
SECTION 5.02 Special Commitment by the Bank	18



SECTION 5.03	Requests for Disbursement or for Special Commitment	18
SECTION 5.04	Payment by the Bank	19
SECTION 5.05	Reallocation and Loan Savings	19
SECTION 5.06	Evidence of Authority to Sign Requests for Disbursement	19
SECTION 5.07	Supporting Evidence	19
SECTION 5.08	Sufficiency of Requests and Documents	19
SECTION 5.09	Treatment of Taxes	20
<b>ARTICLE VI</b>		<b>20</b>
<b>CANCELLATION AND SUSPENSION</b>		<b>20</b>
SECTION 6.01	Cancellation by the Borrower	20
SECTION 6.02	Suspension by the Bank	20
SECTION 6.03	Cancellation by the Bank	24
SECTION 6.04	Amounts Subject to Special Commitment not Affected by Cancellation or Suspension by the Bank.	26
SECTION 6.05	Effectiveness of the Provisions of the Loan Agreement and Guarantee Agreement after Suspension or Cancellation	26
SECTION 6.06	Cancellation of Guarantee	26
<b>ARTICLE VII</b>		<b>27</b>
<b>ACCELERATION TO MATURITY</b>		<b>27</b>
SECTION 7.01	Events of Acceleration	27
<b>ARTICLE VIII</b>		<b>28</b>
<b>TAXES</b>		<b>28</b>
SECTION 8.01	Taxes	28
<b>ARTICLE IX</b>		<b>29</b>
<b>PROJECT IMPLEMENTATION - COOPERATION AND INFORMATION</b>		
<b>FINANCIAL AND ECONOMIC DATA - NEGATIVE PLEDGE (PARI PASSU )</b>		<b>29</b>
SECTION 9.01	Project Implementation	29
SECTION 9.02	Cooperation and Information	29
SECTION 9.03	Financial and Economic Data	30
SECTION 9.04	Negative Pledge	31
SECTION 9.05	Insurance	32
SECTION 9.06	Use and Procurement of Goods, Works and Services	32
SECTION 9.07	Land Acquisition	32
SECTION 9.08	Plans and Schedules	33

SECTION 9.09	Accounts, Records and Audit	33
SECTION 9.10	Completion Report	34
SECTION 9.11	Maintenance	34
SECTION 9.12	Financial Resources	34

---

**ARTICLE X** **35**

**ENFORCEABILITY OF LOAN AGREEMENT AND  
GUARANTEE AGREEMENT - FAILURE TO EXERCISE RIGHTS**

**SETTLEMENT OF DISPUTES - APPLICABLE LAW** **35**

SECTION 10.01	Enforceability	35
SECTION 10.02	Obligations of the Guarantor	35
SECTION 10.03	Failure to Exercise Rights	36
SECTION 10.04	Settlement of Disputes	36
SECTION 10.05	Applicable Law	38

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**ARTICLE XI** **39**

**MISCELLANEOUS PROVISIONS** **39**

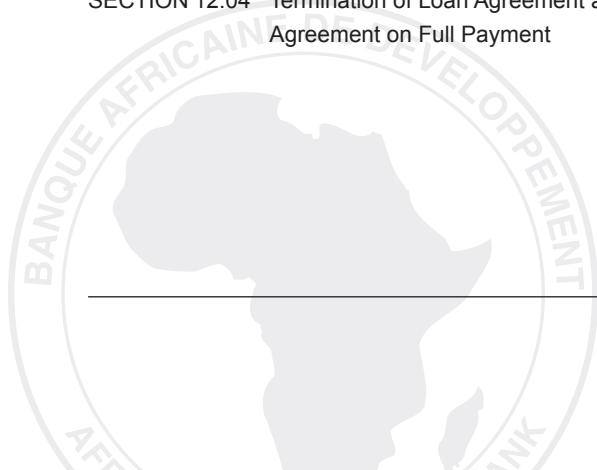
SECTION 11.01	Notices and Requests	39
SECTION 11.02	Evidence of Authority	39
SECTION 11.03	Amendment of Loan Agreement and Guarantee Agreement	39
SECTION 11.04	Execution in Counterparts	40
SECTION 11.05	Assignment of the Loan Agreement and the Guarantee Agreement	40

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**ARTICLE XII** **41**

**ENTRY INTO FORCE - OPERATIONAL CONDITIONS – TERMINATION** **41**

SECTION 12.01	Entry into Force	41
SECTION 12.02	Operational Conditions Precedent to Disbursements	42
SECTION 12.03	Termination of Loan Agreement and Guarantee Agreement for Failure to comply with the Operational Conditions to the First Disbursement	42
SECTION 12.04	Termination of Loan Agreement and Guarantee Agreement on Full Payment	43







## **ARTICLE I**

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### **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:
  - i) any Loan Agreement entered into between the Bank and one or more Regional Member States;
  - ii) any Guarantee Agreement entered into between the Bank and a Regional Member State in connection with the conclusion of a loan; and
  - iii) any other agreement to which the Bank is a party and which provides that these General Conditions are applicable.
- (b) If the Loan Agreement is entered into between a Regional Member State and the Bank, references in 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 and Guarantee Agreements**

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, the Guarantee Agreement or the other agreement, as the case may be, shall prevail.



## **ARTICLE II**

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### **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, on 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.

“External Debt” means any debt which is or may become payable otherwise than in the Currency of the Regional Member State, which is the Borrower or the Guarantor.

“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.

“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 these General Conditions as applied thereto, and all schedules and agreements supplemental to the Guarantee Agreement.

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

“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.

“Incurring of Debt” means the assumption and guarantee of any debt and any renewal, extension, or modification of the terms of the debt or of the assumption or guarantee thereof.

“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 there under.

“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 there under, 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.

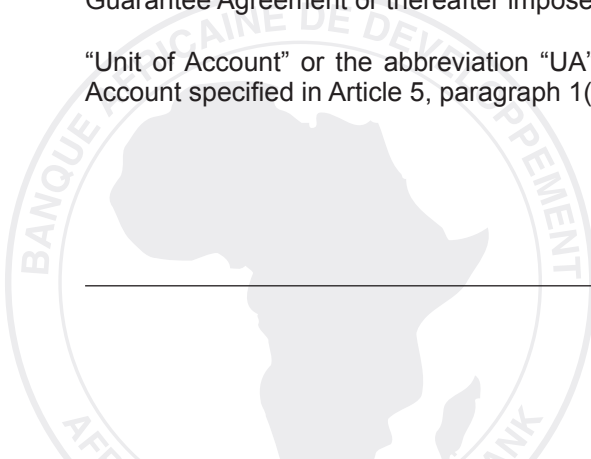
“Public Assets” means Assets of such Member State, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, such Member State or any such subdivision, including gold and foreign exchange Assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for such Member State.

“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**

The Bank may charge a Commitment Charge on terms and conditions to be provided in 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**

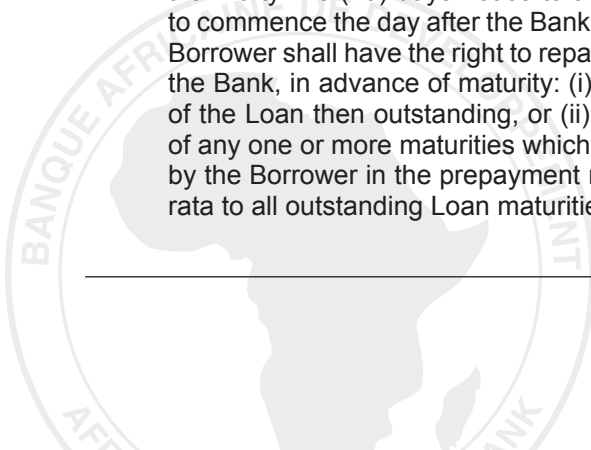
Except as the Bank may otherwise decide, all payments by the Borrower shall be applied, as the case may be, in the following order: Commitment Charge, Special Commitment Charge, other charges, prepayment costs, interest and principal.

#### **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, Commitment Charge, Special 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, Commitment Charge, Special Commitment Charge and other charges thereon.

### **SECTION 3.10 Restrictions**

The repayment of the principal as well as the payment of interest, prepayment costs, Commitment Charge, 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**

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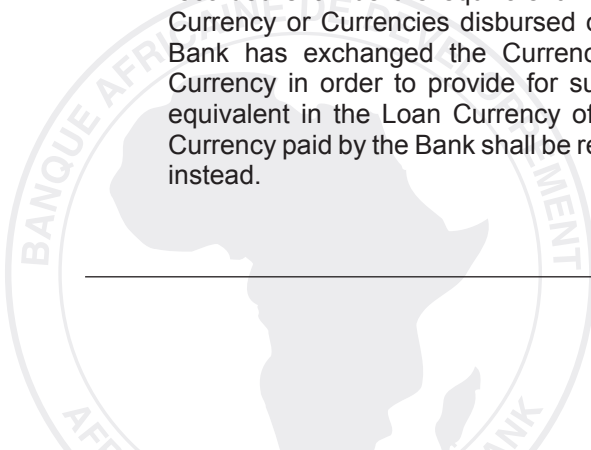
### **CURRENCY PROVISIONS**

#### **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, Commitment Charge, Special 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, Commitment Charge, Special 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, commitment charge, Special 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 or 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**

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#### **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**

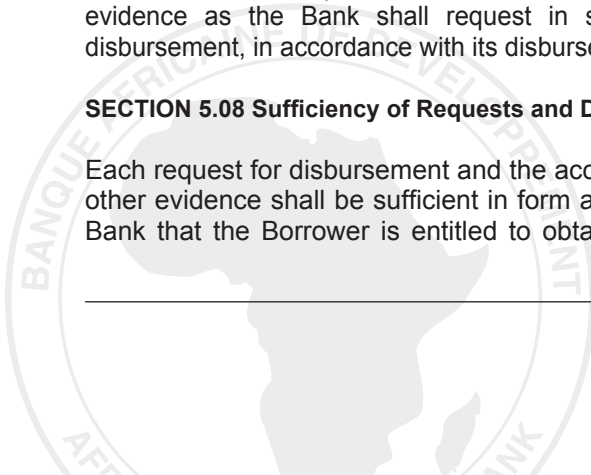
The Borrower shall provide the Bank with evidence of the authority of the person or persons authorized to sign requests for disbursement and the authenticated specimen signature(s) of any such persons.

#### **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**

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##### **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 Fund, the Bank or any Bank Managed Fund has suspended in whole or in part the right of the Borrower or the Guarantor to request for and 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 the said 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 Borrower or the Guarantor 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.

***Corrupt, Coercive, Collusive or Fraudulent Practice***

- (k) 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;



### ***Other Events of Suspension***

- (l) 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**

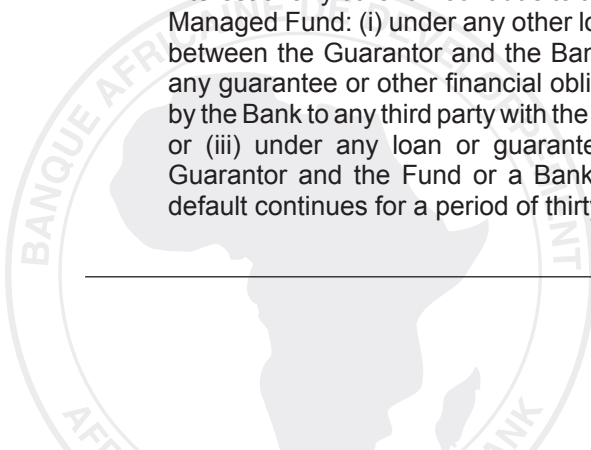
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#### **SECTION 7.01 Events of Acceleration**

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, Commitment Charge, Special Commitment Charge and other charges thereon and upon any such notice, such principal together with the interest, prepayment costs, commitment charge, Special 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 continues 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 continues 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 continues 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 continues for a period of sixty (60) consecutive 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.

### ***Additional Event***

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

## **ARTICLE VIII**

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### **TAXES**

#### **SECTION 8.01 Taxes**

- (a) The principal of, and interest, Commitment Charge, Special Commitment Charge and other charges on, the Loan shall be paid without deduction for, and free from, any taxes levied by, or in the territory of, the Member State which is the Borrower or the Guarantor.
- (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 by, or in the territory of, the Member State which is the Borrower or the Guarantor 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 enure 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 ECONOMIC DATA NEGATIVE PLEDGE (PARI PASSU )**

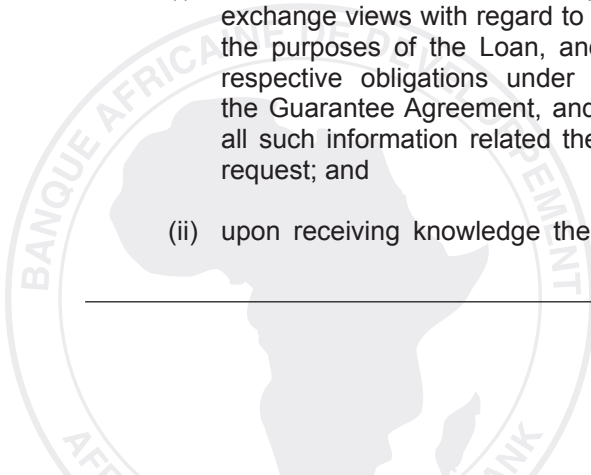
#### **SECTION 9.01 Project Implementation**

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, 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 or the Guarantor shall afford all reasonable opportunity for representatives of the Bank to visit any part of its territory 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 with 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 Economic Data**

The Member State which is the Borrower or the Guarantor shall promptly provide to the Bank all such information as the Bank shall reasonably request with respect to financial and economic conditions in its territory,

including its balance of payments and its External Debt as well as that of its political or administrative subdivisions and of any entity owned or controlled by, or operating for the account or benefit of, such Member State or any such subdivision, and of any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for such Member State.

#### **SECTION 9.04 Negative Pledge**

- (a) It is the policy of the Bank, in making loans to, or with the guarantee of, its Member States not to seek, in normal circumstances, special security from the Member State concerned. However, the Borrower or the Guarantor shall ensure that no other External Debt shall have priority over its loan or guarantee obligation in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such Member State.
- (b) Accordingly, if any Lien is created on any Public Assets, as security for any External Debt, which will or might result in a priority for the benefit of the creditor of such External Debt in the allocation, realization or distribution of foreign exchange, such Lien shall, unless the Bank shall otherwise agree, ipso facto and at no cost to the Bank, equally and ratably secure the principal of, and interest, Commitment Charge, Special Commitment Charge and other charges on, the Loan, and the Member State of the Bank which is the Borrower or the Guarantor, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on Assets of any of its political or administrative subdivisions, such Member State shall promptly and at no cost to the Bank secure the principal of, and interest, Commitment Charge, Special Commitment Charge and other charges on, the Loan by an equivalent Lien on other Public Assets satisfactory to the Bank.
- (c) The foregoing provisions 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**

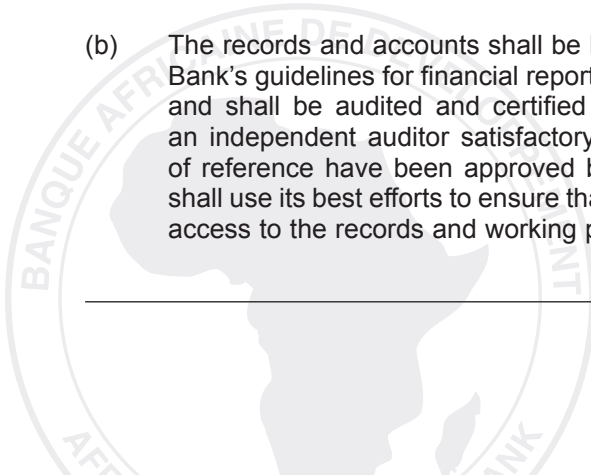
The Borrower shall take (or cause to be taken) all actions necessary to acquire as and when needed all land and rights in respect thereto as shall be required for carrying out the Project and shall promptly provide to the Bank, upon its request, evidence satisfactory to the Bank that such land and rights 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 and 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 periodic 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 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 has agreed that its obligations under the Loan Agreement shall constitute obligations to the Bank, within the meaning of Article 44 of the Bank Agreement.
- (c) The Guarantor has agreed that its obligations under the Guarantee Agreement shall constitute obligations to the Bank, within the meaning of Article 44 of the Bank Agreement.

#### **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) Any controversy between the parties to the Loan Agreement or the Guarantee Agreement and any claim by any such party against any other such party arising under the Loan Agreement or 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 or 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 such 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 or the 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**

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**

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### **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 the 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.

## **ARTICLE XII**

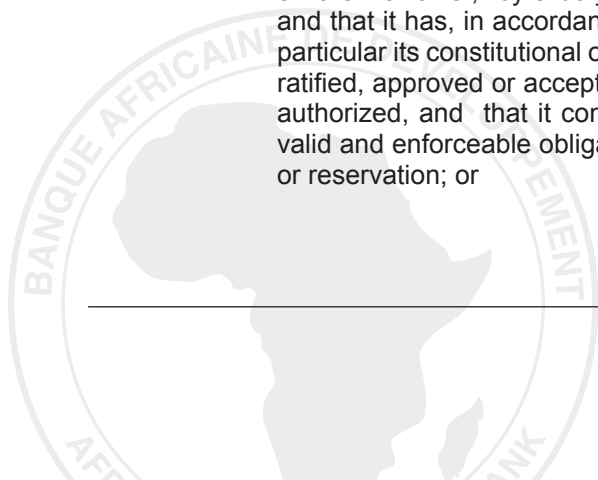
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### **ENTRY INTO FORCE - OPERATIONAL CONDITIONS**

#### **TERMINATION**

#### **SECTION 12.01 Entry into Force**

- (a) The Loan Agreement and the Guarantee Agreement shall enter into force on the date of the dispatch of the notification by the Bank to the Borrower or to the Guarantor, of the entry into force of the Loan Agreement or of the Guarantee Agreement following its acceptance of the documents provided in accordance with paragraph (b) of this sub-section. Pending such notification of entry into force, the Loan agreement or the Guarantee Agreement shall have provisional effect.
  
- (b) The documents to be provided by the Borrower or the Guarantor for the purposes of paragraph (a) of this section are:
  - (i) evidence of the ratification, approval or acceptance of the Loan Agreement or the Guarantee Agreement;
  
  - (ii) evidence, as the case may be, of the authorisation to enter into the Loan Agreement and the Guarantee Agreement in accordance with internal rules, in particular constitutional or statutory provisions, of the Borrower and the Guarantor;
  
  - (iii) 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 Member State which is 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 rules, in particular its constitutional or statutory provisions, been ratified, 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 rules, in particular its constitutional or statutory provisions, been ratified, 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.
- (iv) An original or certified copy of the instruments of ratification, approval or acceptance, or as the case may be, the instruments authorising the conclusion of, the Loan Agreement, and the Guarantee Agreement shall be transmitted to the Bank along with the legal opinions; and
- (v) Any other legal document to be provided to the Bank in accordance with the provisions of the Loan Agreement or the Guarantee Agreement.

#### **SECTION 12.02 Operational Conditions Precedent to Disbursements**

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.

#### **SECTION 12.03 Termination of Loan Agreement and Guarantee Agreement for Failure to Comply with the Operational 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 and Guarantee 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, Commitment Charge, Special Commitment Charge and other charges which have accrued on the Loan have been fully paid, the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall forthwith terminate







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**AFRICAN DEVELOPMENT BANK**  
Website : [www-afdb.org](http://www-afdb.org)







# General Conditions

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



African Development Bank

*February 2009*





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



## TABLE OF CONTENTS

<b>ARTICLE I</b>	<b>7</b>
<b>APPLICATION TO LOAN AGREEMENTS AND GUARANTEE AGREEMENTS</b>	<b>7</b>
SECTION 1.01 Application of General Conditions	7
SECTION 1.02 Inconsistency with Loan Agreement and Guarantee Agreement	7
<b>ARTICLE II</b>	<b>8</b>
<b>DEFINITIONS - REFERENCES AND HEADINGS</b>	<b>8</b>
SECTION 2.01 Definitions	8
SECTION 2.02 References	11
SECTION 2.03 Headings	12
<b>ARTICLE III</b>	<b>12</b>
<b>LOAN ACCOUNT - SERVICE CHARGE - COMMITMENT CHARGE SPECIAL COMMITMENT CHARGE AND REPAYMENT</b>	<b>12</b>
SECTION 3.01 Loan Account	12
SECTION 3.02 Commitment Charge	12
SECTION 3.03 Interest	13
SECTION 3.04 Application of Payment	13
SECTION 3.05 Computation of Interest and Commitment Charge	13
SECTION 3.06 Repayment and Prepayment	14
SECTION 3.07 Place of Payment	14
SECTION 3.08 Payments Falling Due on Public Holidays	15
SECTION 3.09 Promissory Notes	15
SECTION 3.10 Restrictions	15
<b>ARTICLE IV</b>	<b>15</b>
<b>CURRENCY PROVISIONS</b>	<b>15</b>
SECTION 4.01 Currencies in which Disbursement is to be made	15
SECTION 4.02 Loan Account Currency	16
SECTION 4.03 Currency in Which Payments to the Bank are Payable	16
SECTION 4.04 Temporary Currency Substitution	17
SECTION 4.05 Valuation of Currencies	18
<b>ARTICLE V</b>	<b>18</b>
<b>DISBURSEMENT OF THE LOAN</b>	<b>18</b>
SECTION 5.01 Disbursement of the Loan	18



SECTION 5.02	Special Commitment by the Bank	19
SECTION 5.03	Requests for Disbursement or for Special Commitment	19
SECTION 5.04	Payment by the Bank	19
SECTION 5.05	Reallocation and Loan Savings	19
SECTION 5.06	Evidence of Authority to Sign Requests for Disbursement	20
SECTION 5.07	Supporting Evidence	20
SECTION 5.08	Sufficiency of Requests and Documents	20
SECTION 5.09	Treatment of Taxes	20
<b>ARTICLE VI</b>		<b>21</b>
<b>CANCELLATION AND SUSPENSION</b>		<b>21</b>
SECTION 6.01	Cancellation by the Borrower	21
SECTION 6.02	Suspension by the Bank	21
SECTION 6.03	Cancellation by the Bank	26
SECTION 6.04	Amounts Subject to Special Commitment not Affected by Cancellation or Suspension by the Bank.	28
SECTION 6.05	Effectiveness of the Provisions of the Loan Agreement and the Guarantee Agreement after Suspension or Cancellation	28
SECTION 6.06	Cancellation of Guarantee	28
<b>ARTICLE VII</b>		<b>29</b>
<b>ACCELERATION TO MATURITY</b>		<b>29</b>
SECTION 7.01	Events of Acceleration	29
<b>ARTICLE VIII</b>		<b>30</b>
<b>TAXES</b>		<b>30</b>
SECTION 8.01	Taxes	30
<b>ARTICLE IX</b>		<b>31</b>
<b>PROJECT IMPLEMENTATION - COOPERATION AND INFORMATION</b>		
<b>FINANCIAL AND OTHER INFORMATION</b>		
<b>NEGATIVE PLEDGE (PARI PASSU)</b>		<b>31</b>
SECTION 9.01	Project Implementation	31
SECTION 9.02	Cooperation and Information	31
SECTION 9.03	Financial and Other Information	33
SECTION 9.04	Negative Pledge	33
SECTION 9.05	Insurance	34
SECTION 9.06	Use and Procurement of Goods, Works and Services	34
SECTION 9.07	Land Acquisition	34

SECTION 9.08	Plans and Schedules	35
SECTION 9.09	Accounts, Records and Audit	35
SECTION 9.10	Completion Report	36
SECTION 9.11	Maintenance	36
SECTION 9.12	Financial Resources	37

**ARTICLE X** **37**

**ENFORCEABILITY OF LOAN AGREEMENT AND GUARANTEE AGREEMENT  
FAILURE TO EXERCISE RIGHTS - SETTLEMENT OF DISPUTES -**

<b>APPLICABLE LAW</b>		<b>37</b>
SECTION 10.01	Enforceability	37
SECTION 10.02	Obligations of the Guarantor	38
SECTION 10.03	Failure to Exercise Rights	38
SECTION 10.04	Settlement of Disputes	38
SECTION 10.05	Applicable Law	40

**ARTICLE XI** **41**

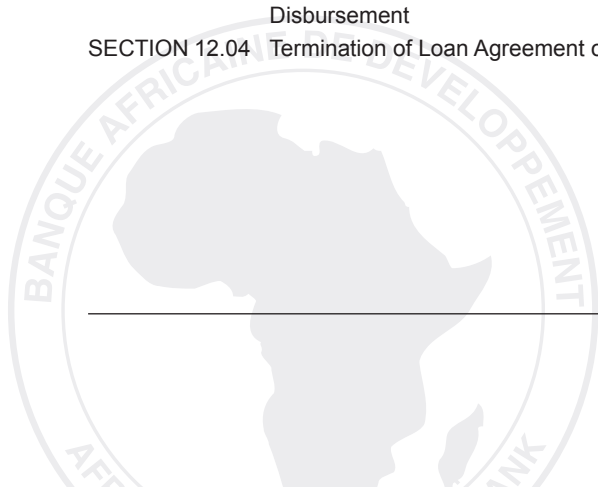
**MISCELLANEOUS PROVISIONS** **41**

SECTION 11.01	Notices and Requests	41
SECTION 11.02	Evidence of Authority	41
SECTION 11.03	Amendment of Loan Agreement and Guarantee Agreement	42
SECTION 11.04	Execution in Counterparts	42
SECTION 11.05	Assignment of the Loan Agreement and the Guarantee Agreement	43

**ARTICLE XII** **43**

**ENTRY INTO FORCE - OPERATIONAL CONDITIONS – TERMINATION** **43**

SECTION 12.01	Entry into Force	43
SECTION 12.02	Operational Conditions Precedent to Disbursements	43
SECTION 12.03	Termination of Loan Agreement and Guarantee Agreement for Failure to Comply with the Conditions to the First Disbursement	45
SECTION 12.04	Termination of Loan Agreement on Full Payment	45







## **ARTICLE I**

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### **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**

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### **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.

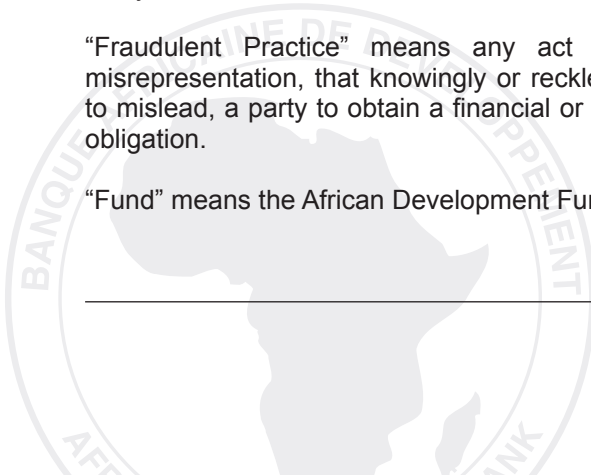
“Date of Entry into Force” means the date on which the Loan Agreement or the Guarantee Agreement shall enter into force as provided in Section 12.01.

“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**

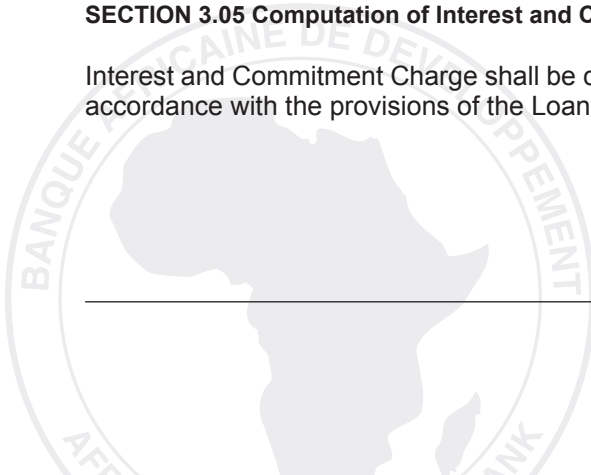
- (a) The Borrower shall pay interest at the rate specified in the Loan Agreement on the amount of the Loan disbursed and outstanding from time to time. Interest shall accrue from the respective dates on which such amounts are disbursed.
- (b) The Bank may establish an alternate interest rate which shall 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**

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#### **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**

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### **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**

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#### **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**

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### **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**

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### **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)**

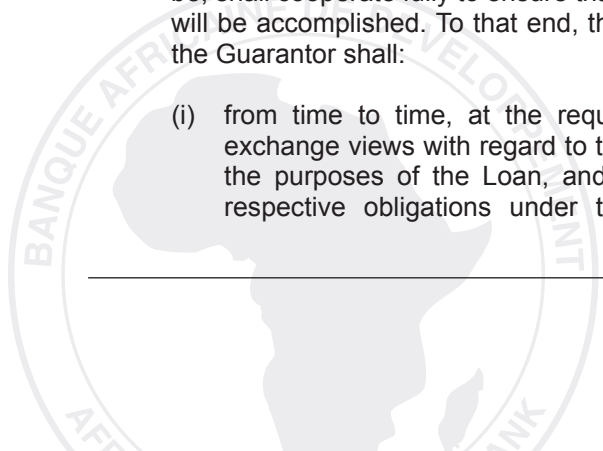
#### **SECTION 9.01 Project Implementation**

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

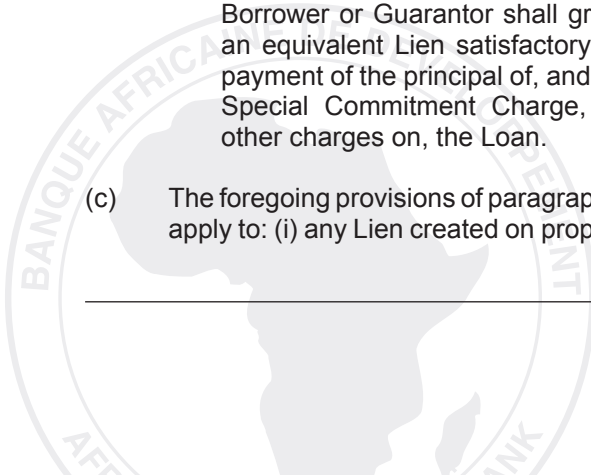
- (ii) upon receiving knowledge thereof, promptly inform each other of any condition which interferes with, or threatens to interfere with, the matters referred to in paragraph (i) above.
- (b) The Borrower and the Guarantor shall ensure that no action which would prevent or interfere with the execution 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**

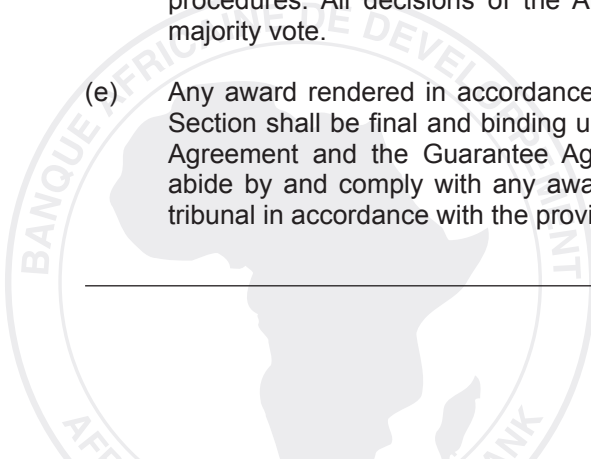
No delay in exercising, or omission to exercise, any right, power or remedy accruing to the Bank under the Loan Agreement or Guarantee Agreement upon any default on the part of the other party shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such 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**

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### **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.

## **ARTICLE XII**

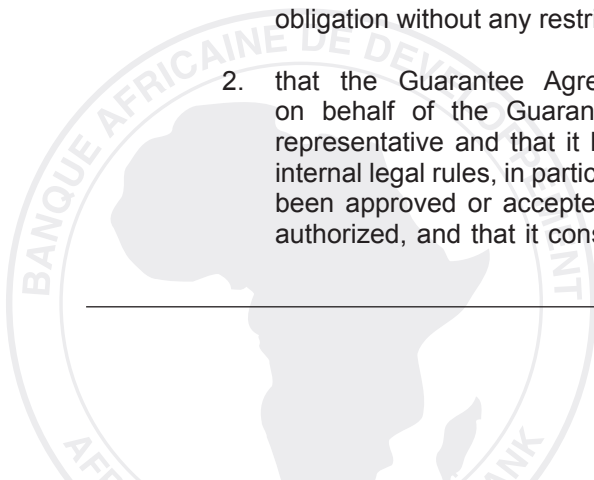
### **ENTRY INTO FORCE - OPERATIONAL CONDITIONS TERMINATION**

#### **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.









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**AFRICAN DEVELOPMENT BANK**  
Website : [www-afdb.org](http://www-afdb.org)





# General Conditions

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



African Development Fund

*February 2009*





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



## TABLE OF CONTENTS

<b>ARTICLE I</b>	<b>7</b>
<b>APPLICATION TO LOAN AGREEMENTS AND GUARANTEE AGREEMENTS</b>	<b>7</b>
SECTION 1.01 Application of General Conditions	7
SECTION 1.02 Inconsistency with Loan and Guarantee Agreements	7
<b>ARTICLE II</b>	<b>7</b>
<b>DEFINITIONS - REFERENCES AND HEADINGS</b>	<b>7</b>
SECTION 2.01 Definitions	7
SECTION 2.02 References	11
SECTION 2.03 Headings	11
<b>ARTICLE III</b>	<b>11</b>
<b>LOAN ACCOUNT- SERVICE CHARGE - COMMITMENT CHARGE SPECIAL COMMITMENT CHARGE AND REPAYMENT</b>	<b>11</b>
SECTION 3.01 Loan Account	11
SECTION 3.02 Commitment Charge	12
SECTION 3.03 Service Charge	12
SECTION 3.04 Application of Payment	12
SECTION 3.05 Computation of Service Charge and Commitment Charge	12
SECTION 3.06 Repayment and Prepayment	13
SECTION 3.07 Place of Payment	13
SECTION 3.08 Payments Falling Due on Public Holidays	13
SECTION 3.09 Restrictions	13
<b>ARTICLE IV</b>	<b>14</b>
<b>CURRENCY PROVISIONS</b>	<b>14</b>
SECTION 4.01 Currencies in which Disbursement is to be made.	14
SECTION 4.02 Loan Account Currency	14
SECTION 4.03 Currency in which Payments to the Fund are Payable	15
SECTION 4.04 Temporary Currency Substitution	15
SECTION 4.05 Valuation of Currencies	16
<b>ARTICLE V</b>	<b>16</b>
<b>DISBURSEMENT OF THE LOAN</b>	<b>16</b>
SECTION 5.01 Disbursement of the Loan	16





SECTION 5.02	Special Commitment by the Fund	17
SECTION 5.03	Requests for Disbursement or for Special Commitment	17
SECTION 5.04	Payment by the Fund	17
SECTION 5.05	Reallocation and Loan Savings	17
SECTION 5.06	Project Preparation Facility	18
SECTION 5.07	Evidence of Authority to Sign Requests for Disbursement	18
SECTION 5.08	Supporting Evidence	18
SECTION 5.09	Sufficiency of Requests and Documents	18
SECTION 5.10	Treatment of Taxes	18
<b>ARTICLE VI</b>		<b>19</b>
<b>CANCELLATION AND SUSPENSION</b>		<b>19</b>
SECTION 6.01	Cancellation by the Borrower	19
SECTION 6.02	Suspension by the Fund	19
SECTION 6.03	Cancellation by the Fund	23
SECTION 6.04	Amounts Subject to Special Commitment not Affected by Cancellation or Suspension by the Fund.	24
SECTION 6.05	Effectiveness of the Provisions of the Loan Agreement and the Guarantee Agreement after Suspension or Cancellation	24
SECTION 6.06	Cancellation of Guarantee	25
<b>ARTICLE VII</b>		<b>25</b>
<b>ACCELERATION TO MATURITY</b>		<b>25</b>
SECTION 7.01	Events of Acceleration	25
<b>ARTICLE VIII</b>		<b>27</b>
<b>TAXES</b>		<b>27</b>
SECTION 8.01	Taxes	27
<b>ARTICLE IX</b>		<b>27</b>
<b>PROJECT IMPLEMENTATION- COOPERATION AND INFORMATION</b>		
<b>FINANCIAL AND ECONOMIC DATA - NEGATIVE PLEDGE (PARI PASSU)</b>		<b>27</b>
SECTION 9.01	Project Implementation	27
SECTION 9.02	Cooperation and Information	28
SECTION 9.03	Financial and Economic Data	29
SECTION 9.04	Negative Pledge	29
SECTION 9.05	Insurance	30
SECTION 9.06	Use and Procurement of Goods, Works and Services	30

SECTION 9.07	Land Acquisition	31
SECTION 9.08	Plans and Schedules	31
SECTION 9.09	Accounts, Records and Audit	31
SECTION 9.10	Completion Report	33
SECTION 9.11	Maintenance	33
SECTION 9.12	Financial Resources	33

## **ARTICLE X** **34**

### **ENFORCEABILITY OF LOAN AGREEMENT AND GUARANTEE AGREEMENT FAILURE TO EXERCISE RIGHTS - SETTLEMENT OF DISPUTES**

#### **APPLICABLE LAW** **34**

SECTION 10.01	Enforceability	34
SECTION 10.02	Obligations of the Guarantor	34
SECTION 10.03	Failure to Exercise Rights	35
SECTION 10.04	Settlement of Disputes	35
SECTION 10.05	Applicable Law	37

## **ARTICLE XI** **37**

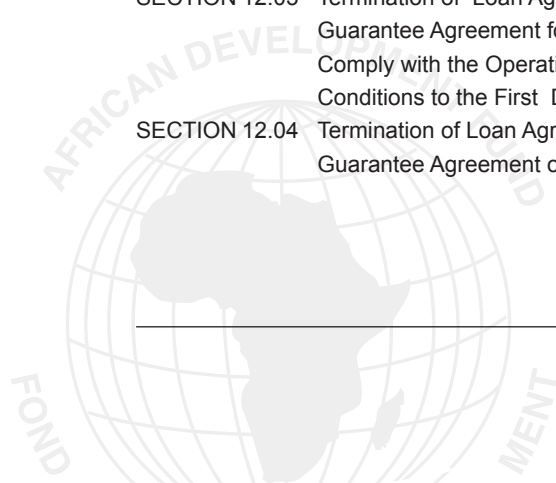
### **MISCELLANEOUS PROVISIONS** **37**

SECTION 11.01	Notices and Requests	37
SECTION 11.02	Evidence of Authority	38
SECTION 11.03	Amendment of Loan Agreement and Guarantee Agreement	38
SECTION 11.04	Execution in Counterparts	39
SECTION 11.05	Assignment of the Loan Agreement and the Guarantee Agreement	39

## **ARTICLE XII** **39**

### **ENTRY INTO FORCE - OPERATIONAL CONDITIONS – TERMINATION** **39**

SECTION 12.01	Entry into Force	39
SECTION 12.02	Operational Conditions Precedent to Disbursements	41
SECTION 12.03	Termination of Loan Agreement and Guarantee Agreement for Failure to Comply with the Operational Conditions to the First Disbursement	41
SECTION 12.04	Termination of Loan Agreement and Guarantee Agreement on Full Payment	41





## **ARTICLE I**

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### **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:
  - i) any Loan Agreement entered into between the Fund and one or more Regional Member State;
  - ii) any Guarantee Agreement entered into between the Fund and a Regional Member State in connection with the conclusion of a loan; and
  - iii) any other agreement to which the Fund is a party and which provides that these General Conditions are applicable.
- (b) If the Loan Agreement is entered into between a Regional Member State and the Fund, references in 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 and Guarantee Agreements**

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, the Guarantee Agreement or the other agreement, as the case may be, shall prevail.

## **ARTICLE II**

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### **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 Fund, the Borrower and the Guarantor, on which the Fund 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, and the Unit of Account of the Fund and any other unit of account which represents a debt service obligation of the Fund 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.

“Disbursement Currency” means the Currency selected by the Borrower for disbursements from the Loan, and the payment obligations thereunder.

“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.

“External Debt” means any debt which is or may become payable otherwise than in the Currency of the Regional Member State, which is the Borrower or the Guarantor.

“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.

“Fund Agreement” means the Agreement Establishing the African Development Fund adopted on the 29th day of November, 1972, as amended from time to time.



“General Conditions” means these General Conditions.

“Guarantee Agreement” means the agreement entered into between the Fund and the Guarantor, to guarantee the Loan, as such agreement may be amended from time to time. Guarantee Agreement includes these General Conditions as applied thereto, and all schedules and agreements supplemental to the Guarantee Agreement.

“Guarantor” means the party to the Guarantee Agreement entered into with the Fund.

“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 Fund as specified in the Loan Agreement.

“Loan Account” means the account opened by the Fund 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 Fund 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 Unit of Account.

“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 Fund and the Borrower.

“Public Assets” means Assets of such Member State, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, such Member State or any such subdivision, including gold and foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for such Member State.

“Special Commitment” means any special commitment entered into or to be entered into by the Fund 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 Fund’s Unit of Account specified in Article 1 paragraph 1 of the Fund 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**

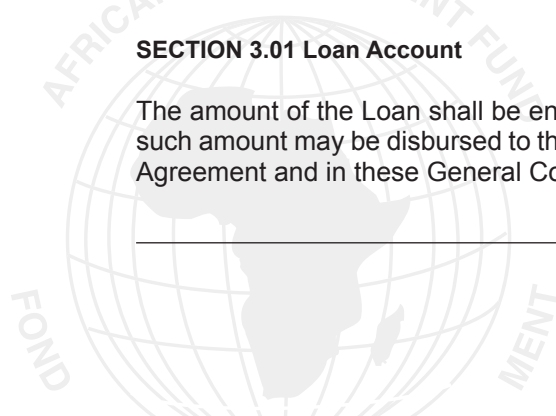
The headings of the Articles, Sections and sub-sections and the Table of Contents are inserted for convenience of reference only and are not part of these General Conditions.

## **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 Fund 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 Borrower shall pay a Commitment Charge on the undisbursed amount of the Loan at the rate specified in the Loan Agreement. Such Commitment Charge shall begin to accrue one hundred and twenty (120) days from the Date of the Loan Agreement, or from such other date as the Fund shall from time to time determine, to the respective dates on which amounts of the Loan are disbursed to the Borrower or are cancelled or the Closing date, whichever of such dates comes first. The Commitment Charge shall be payable on each service charge payment date commencing on the first service charge payment date following the expiry of the above one hundred and twenty (120) day period. The Commitment Charge shall be expressed in Units of Account.
- (b) Any Commitment Charge, as stated in paragraph (a) of this Section, which is due and payable, shall remain due and payable to the Fund notwithstanding the non-entry into force, cancellation or the termination of the Loan Agreement.

### **SECTION 3.03 Service Charge**

- (a) The Borrower shall pay a Service Charge at the rate specified in the Loan Agreement on the amount of the Loan disbursed and outstanding from time to time. The Service Charge shall accrue from the respective dates on which such amounts are disbursed.
- (b) The Service Charge shall be expressed in Units of Account.

### **SECTION 3.04 Application of Payment**

Except as the Fund 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, Service Charge, other charges and principal.

### **SECTION 3.05 Computation of Service Charge and Commitment Charge**

Service Charge and Commitment Charge shall be computed on a daily basis using a factor of three hundred and sixty-five (365) days per year.

### **SECTION 3.06 Repayment and Prepayment**

- (a) Except as provided in Section 4.04, 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 Service Charge, Special Commitment Charge, Commitment Charge and other charges, and after giving not less than forty-five (45) days notice to the Fund (such notice period to commence the day after the Fund's receipt of said notice), the Borrower shall have the right to repay, as of a date acceptable to the Fund, 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) Each request for prepayment notified to the Fund 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 Fund.

### **SECTION 3.07 Place of Payment**

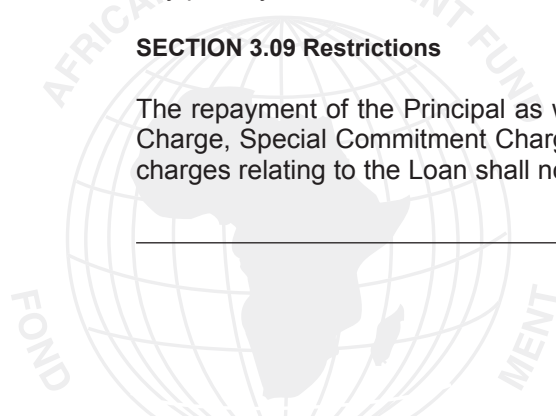
The principal of the Service Charge, Special Commitment Charge, Commitment Charge and other charges on the Loan shall be paid at such place(s) as the Fund shall indicate.

### **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 Restrictions**

The repayment of the Principal as well as the payment of the Service Charge, Special Commitment Charge, 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**

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### **CURRENCY PROVISIONS**

#### **SECTION 4.01 Currencies in which Disbursement is to be made**

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

#### **SECTION 4.02 Loan Account Currency**

The Loan Account shall be maintained in the Loan Currency and in the Disbursement Currency and shall record the equivalent in the Loan Currency and Disbursement Currency as of the date of disbursement and repayment 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 and Disbursement Currency of the Currency or Currencies disbursed or repaid, except that if the Fund has exchanged the Currency disbursed from another Currency in order to provide for such disbursement, then the equivalent in the Loan Currency and Disbursement Currency of the amount of such other Currency paid by the Fund shall be recorded in the Loan Account instead.

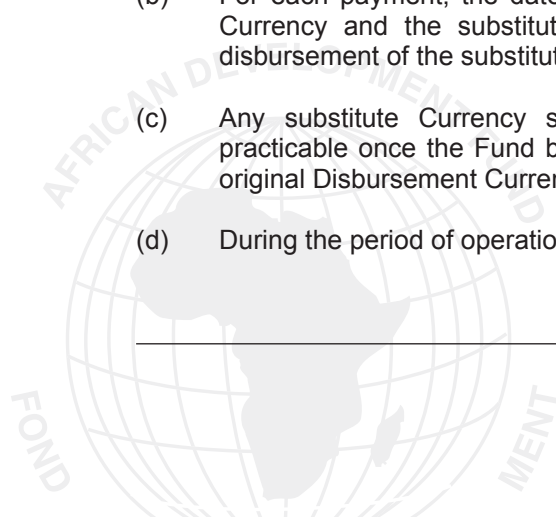
### **SECTION 4.03 Currency in which Payments to the Fund are Payable**

- (a) Except as provided in Section 4.04(e), repayment of Principal and payment of Service Charge, Special Commitment Charge, Commitment Charge and other charges shall be made in the Disbursement Currency.
- (b) If the Borrower so requests, the Fund may, acting on behalf of the Borrower, and on such terms and conditions as the Fund shall determine, purchase the Disbursement Currency for the purpose of the repayment of principal and payment of Service Charge, 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 Fund; provided, however, that such repayment or payment shall be deemed to have been paid only when and to the extent that the Fund has received the payment in the Disbursement Currency.

### **SECTION 4.04 Temporary Currency Substitution**

- (a) If the Fund reasonably determines that an extraordinary situation, whether factual or legal, has arisen under which the Fund is unable to provide the Disbursement Currency, then the Fund shall promptly notify the Borrower of its inability to access or procure the Disbursement 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) Any substitute Currency shall be terminated as soon as practicable once the Fund becomes able to provide again the original Disbursement Currency.
- (d) During the period of operation of any such substitute Currency:  

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- (i) the substitute Currency shall be deemed to be the Disbursement Currency for purposes of these General Conditions, the Loan Agreement and the Guarantee Agreement;
  - (ii) no prepayment cost 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 Fund shall reasonably determine the guiding principles for the conversion of amounts from the Loan Currency to the substitute Currency.
- (e) 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 or 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 Fund. The Fund shall notify the Borrower thereof.

### **ARTICLE V**

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#### **DISBURSEMENT OF THE LOAN**

#### **SECTION 5.01 Disbursement of the Loan**

The Borrower shall be entitled to request from the Fund 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 Fund, no disbursements shall be made: (a) on account of expenditures procured in violation of the Fund'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 Fund**

The Fund may, at the request of the Borrower and upon such terms and conditions as shall be agreed upon between the Fund 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 Fund 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 Fund to enter into a Special Commitment, the Borrower shall deliver to the Fund a written request in such form, and containing such statements, agreements, undertakings and documents as the Fund 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 Fund from time to time.

## **SECTION 5.04 Payment by the Fund**

The Loan funds disbursed or to be disbursed shall be payable by the Fund 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 Fund 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 Fund, (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 Fund as determined from time to time.

#### **SECTION 5.06 Project Preparation Facility**

Where the Fund has provided an advance to the Borrower for the preparation of the Project under the Fund's Project Preparation Facility, the Fund shall withdraw from the Loan Account on or after the Date of Entry into Force of the Loan Agreement the full amount of the outstanding balance of the advance as well as any accrued Service Charge. The Fund shall disburse the amount so withdrawn to itself and shall cancel the remaining unwithdrawn amount of the advance.

#### **SECTION 5.07 Evidence of Authority to Sign Requests for Disbursement**

The Borrower shall provide the Fund 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 5.08 Supporting Evidence**

The Borrower shall provide the Fund with such documents and other evidence as the Fund shall request in support of any request for disbursement, in accordance with its disbursement rules and procedures.

#### **SECTION 5.09 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 Fund 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 5.10 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 Fund's policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Fund at any time determines that the

amount of any such Tax is excessive, or that such Tax is discriminatory or otherwise unreasonable, the Fund may, by notice to the Borrower, decline to finance any such amount, as required to ensure consistency with such policy of the Fund.

## **ARTICLE VI**

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### **CANCELLATION AND SUSPENSION**

#### **SECTION 6.01 Cancellation by the Borrower**

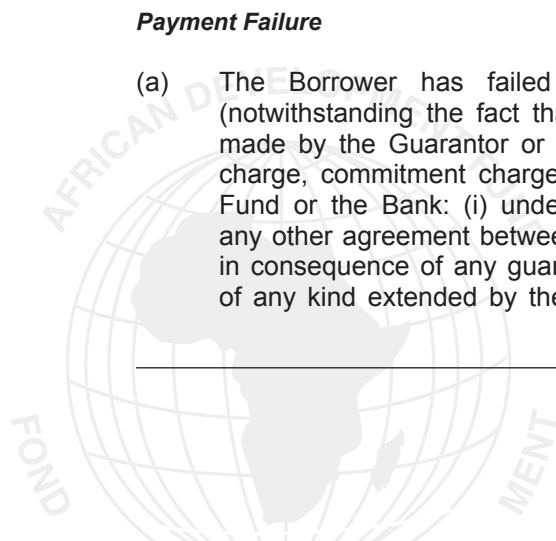
- (a) The Borrower may by notice to and after consultation with the Fund, cancel the whole or part of the Loan which has not been disbursed, except that the Borrower may not so cancel any amount of the Loan in respect of which the Fund has entered into a Special Commitment.
- (b) For purposes of paragraph (a) of this Section, the Borrower shall give sixty (60) days notice to the Fund of its intention to cancel all or part of the Loan and its reasons for so doing. The Fund 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 Fund of the Borrower's cancellation notice.

#### **SECTION 6.02 Suspension by the Fund**

- 1) If any of the following events has occurred and is continuing, the Fund 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, service charge, commitment charge or any other amount due to the Fund or the Bank: (i) under the Loan Agreement, (ii) under any other agreement between the Fund and the Borrower, (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the





agreement of the Borrower, or (iv) under any agreement between the Borrower and the Bank or between the Borrower and any Bank Managed Fund.

- (b) The Guarantor has failed to make payment of principal, service charge, commitment charge or any other amount due to the Fund or the Bank : (i) under the Guarantee Agreement, (ii) under any other agreement between the Guarantor and the Fund, (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Guarantor, or (iv) under any agreement between the Guarantor and the Bank 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 the Fund 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 for and 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 the said 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.

### **Membership**

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

### **Events Prior to Effectiveness**

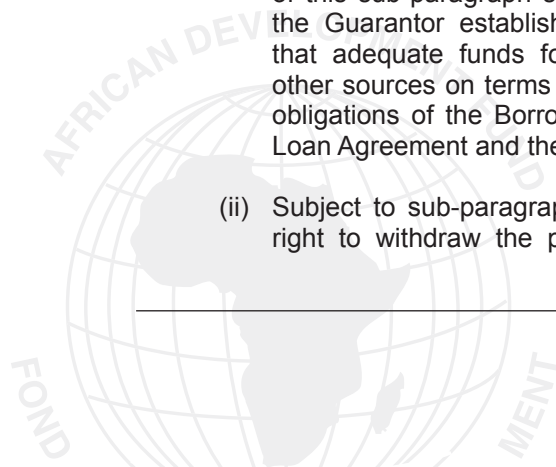
- (g) After the Date of the Loan Agreement and prior to the Date of Entry into Force, any event has occurred which would have entitled the Fund to suspend the Borrower's right to request for and receive disbursements from the Loan Account if the Loan Agreement had been effective on the date such event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

### **Misrepresentation**

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

### **Co-financing**

- (i) 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 Fund 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 Fund 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 Fund 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.

***:Corrupt, Coercive, Collusive or Fraudulent Practice***

- (j) 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 Fund 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 Fund to remedy the situation or to address such practices when they occur; or

***Other Events of Suspension***

- (k) 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 Fund determines that event or events which gave rise to such suspension has ceased to exist, unless the Fund, 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 Fund

- 1) The Fund 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) *Amounts not Required*: at any time, the Fund 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 Fund 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 Fund 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 Fund 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 Fund 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 Fund 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 Fund.

Upon the giving of such notice, such amount of the Loan shall be cancelled on the date decided by the Fund 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 Fund 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 Fund 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 Fund**

No cancellation or suspension by the Fund 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 service charge 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 Fund, and by notice to the Fund 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 Fund and not subject to any Special Commitment. Upon receipt of such notice by the Fund, 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 Fund of its intention to terminate its obligations under the Guarantee Agreement. The Fund and the Guarantor shall have sixty (60) days from the date of receipt of the notice by the Fund to consult each other. If at the expiry of this notice period there is no agreement between the parties, the Guarantor may notify the Fund of the termination of its obligations.

## **ARTICLE VII**

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### **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 Fund 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 Service Charge, Special Commitment Charge, Commitment Charge and other charges thereon and upon any such notice, such principal together with the service charge, 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 service charge 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 service charge or any other amount due to the Fund, the Bank or a Bank Managed Fund: (i) under any other loan or guarantee agreement between the Fund and the Borrower, or (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Borrower, or (iii) under any loan or guarantee agreement between the Bank 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 service charge or any other amount due to the Fund, the Bank or a Bank Managed Fund: (i) under any other loan or guarantee agreement between the Guarantor and the Fund, or (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Guarantor, or (iii) under any loan or guarantee agreement between the Guarantor and the Bank 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 or the Guarantee Agreement, and such default shall continue for a period of sixty (60) consecutive days after notice thereof has been given by the Fund to the Borrower and the Guarantor.

### ***Co-financing***

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

### ***Additional Event***

- (f) 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**

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### **SECTION 8.01 Taxes**

- (a) The principal of, and Service Charge, Special Commitment Charge, Commitment Charge and other charges on, the Loan shall be paid without deduction for, and free from, any taxes levied by, or in the territory of, the Member State which is the Borrower or the Guarantor.
- (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 by, or in the territory of, the Member State which is the Borrower or the Guarantor 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 49 of the Fund Agreement shall enure to and be for the sole benefit of the Fund 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 ECONOMIC DATA - NEGATIVE (PLEDGE (PARI PASSU**

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### **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 Fund, 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 Fund, 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.

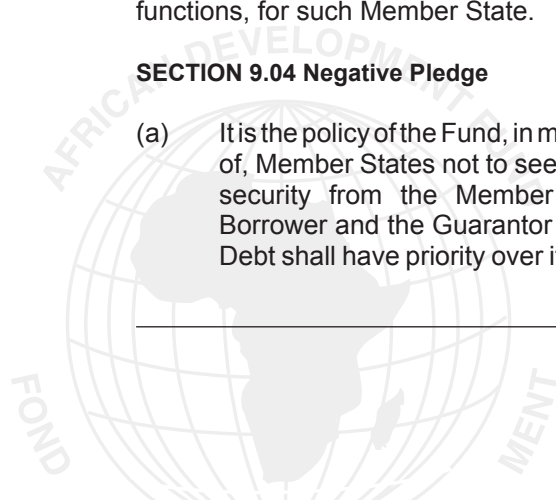
- (c) The Borrower or the Guarantor shall afford all reasonable opportunity for representatives of the Fund to visit any part of its territory for purposes related to the Loan and enable the Fund's representatives to visit any facilities and construction sites included in the Project and to examine the 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 including members of the Compliance Review and Mediation Unit or the Independent Review Mechanism to perform their functions including conducting investigations, as necessary. In this connection, the Borrower shall provide such representatives of the Fund with relevant information and facilitate the examination of records, accounts and other documents or interview relevant persons, as determined by the Fund.
- (e) The Borrower shall, for the purposes of each Project financed by the Fund, take all necessary steps to indicate in a conspicuous manner that the Project is financed by the Fund.

### **SECTION 9.03 Financial and Economic Data**

The Member State which is the Borrower or the Guarantor shall promptly provide to the Fund all such information as the Fund shall reasonably request with respect to financial and economic conditions in its territory, including its balance of payments and its External Debt as well as that of its political or administrative subdivisions and of any entity owned or controlled by, or operating for the account or benefit of, such Member State or any such subdivision, and of any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for such Member State.

### **SECTION 9.04 Negative Pledge**

- (a) It is the policy of the Fund, in making loans to, or with the guarantee of, Member States not to seek, in normal circumstances, special security from the Member State concerned. However, the Borrower and the Guarantor shall ensure that no other External Debt shall have priority over its loans in the allocation, realization



or distribution of foreign exchange held under the control or for the benefit of such Member State.

- (b) Accordingly, if any Lien shall be created on any Public Assets, as security for any External Debt, which will or might result in a priority for the benefit of the creditor of such External Debt in the allocation, realization or distribution of foreign exchange, such Lien shall, unless the Fund shall otherwise agree, ipso facto and at no cost to the Fund, equally and ratably secure the principal of, and Service Charge, Special Commitment Charge, Commitment Charge and other charges on, the Loan, and the Member State which is the Borrower or the Guarantor, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on Assets of any of its political or administrative subdivisions, such Member State shall promptly and at no cost to the Fund secure the principal of, and Service Charge, Special Commitment Charge, Commitment Charge and other charges on, the Loan by an equivalent Lien on other Public Assets satisfactory to the Fund.
- (c) The foregoing provisions 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 Fund 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 Fund, 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 Fund 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 Fund 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**

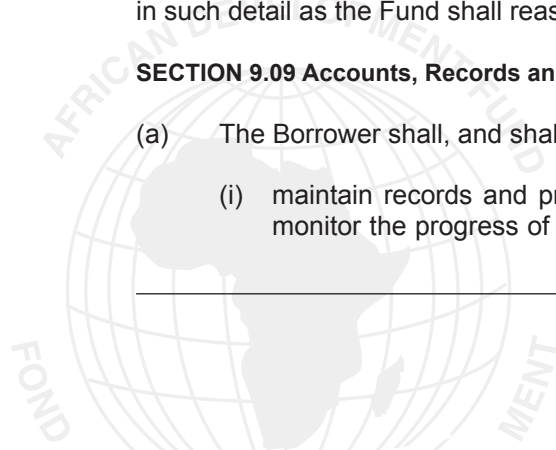
The Borrower shall take (or cause to be taken) all actions necessary to acquire as and when needed all land and rights in respect thereto as shall be required for carrying out the Project and shall promptly provide to the Fund, upon its request, evidence satisfactory to the Fund that such land and rights 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 Fund upon their preparation, copies of any plans, specifications, reports, contract documents and construction and procurement schedules for the Project, and any material modifications thereof or additions thereto, in such detail as the Fund 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 Fund), 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 Fund reports in form and substance satisfactory to the Fund 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 Fund policy and in accordance with the directives which the Fund shall from time to time issue to that end; and
  - (iii) provide to the Fund at regular intervals all such information and reports as the Fund 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 Fund'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 Fund whose terms of reference have been approved by the Fund. The Borrower shall use its best efforts to ensure that the Fund has unrestricted access to the records and working papers of such independent auditors as shall be necessary for the Fund to independently assure itself of the accountability for its funds. The Borrower shall provide the audited financial statements to the Fund 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 Fund 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 Fund'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 Fund and Borrower, the Borrower shall prepare and provide to the Fund a report, of such scope and in such detail as the Fund 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 Fund 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.

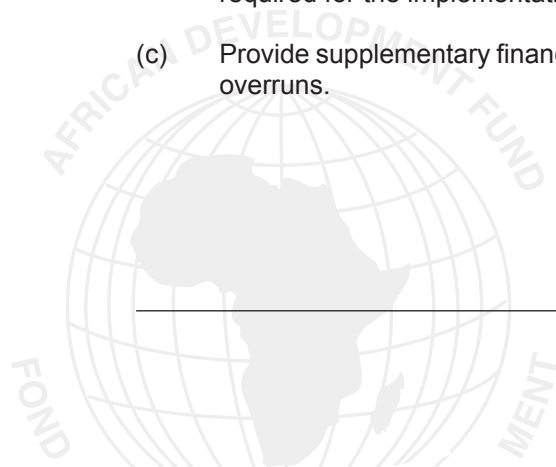
## **SECTION 9.11 Maintenance**

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 Fund, 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 Fund 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 has agreed that its obligations under the Loan Agreement shall constitute obligations to the Bank, within the meaning of Article 44 of the Bank Agreement.
- (c) The Guarantor has agreed that its obligations under the Guarantee Agreement shall constitute obligations to the Bank, within the meaning of Article 44 of the Bank Agreement.

**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;

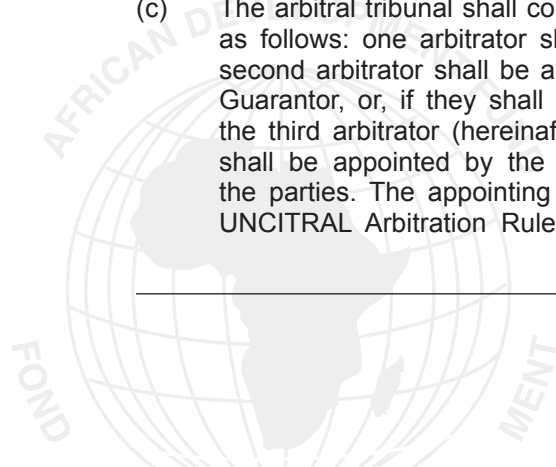
- (c) any modification or amplification of the provisions of the Loan Agreement contemplated by the terms thereof; or
- (d) any failure of the Borrower to comply with any requirement of any law of the Guarantor.

### **SECTION 10.03 Failure to Exercise Rights**

No delay in exercising, or omission to exercise, any right, power or remedy accruing to the Fund 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 Fund 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) Any controversy between the parties to the Loan Agreement or the Guarantee Agreement and any claim by any such party against any other such party arising under the Loan Agreement or 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 Fund 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 Fund; 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 or the Guarantor shall not be authorized to seek from any judicial authority, any interim measures of protection or pre-award relief against the Fund.
- (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 or the 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 Fund as to any amount due to the Fund 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 Fund under the Fund Agreement, under international conventions or under any other applicable laws.

#### **SECTION 10.05 Applicable Law**

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.

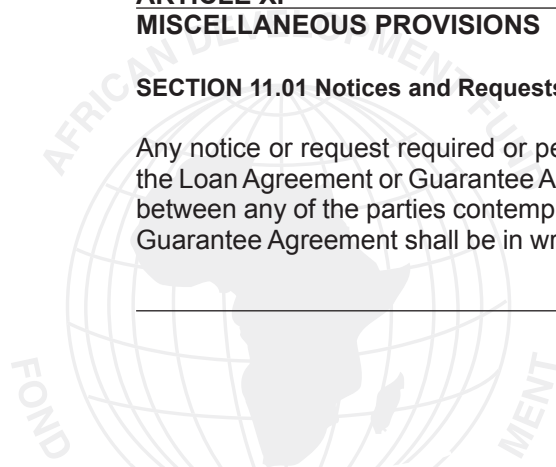
### **ARTICLE XI**

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#### **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 the 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 shall have 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 Fund 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 Fund 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 Fund 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 there under. 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 Fund.
- (e) The date of entry into force of the amendment shall be notified by the Fund 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**

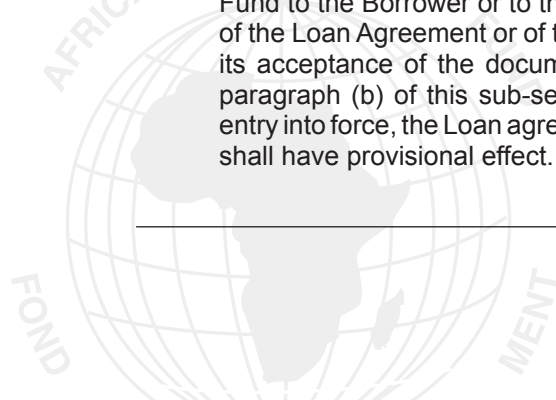
Neither party may assign or transfer any of its rights or obligations under the Loan Agreement or the Guarantee Agreement, without the prior consent of the other party.

### **ARTICLE XII**

#### **ENTRY INTO FORCE - OPERATIONAL CONDITIONS TERMINATION**

#### **SECTION 12.01 Entry into Force**

- (a) The Loan Agreement and the Guarantee Agreement shall enter into force on the date of the dispatch of the notification by the Fund to the Borrower or to the Guarantor, of the entry into force of the Loan Agreement or of the Guarantee Agreement following its acceptance of the documents provided in accordance with paragraph (b) of this sub-section. Pending such notification of entry into force, the Loan agreement or the Guarantee Agreement shall have provisional effect.



- (b) The documents to be provided by the Borrower or the Guarantor for the purposes of paragraph (a) of this section are:
- (i) evidence of the ratification, approval or acceptance of the Loan Agreement or the Guarantee Agreement,
  - (ii) evidence, as the case may be, of the authorisation to enter into the Loan Agreement and the Guarantee Agreement in accordance with internal rules, in particular constitutional or statutory provisions, of the Borrower and the Guarantor;
  - (iii) one or more legal opinions satisfactory to the Fund by counsel acceptable to the Fund, or if the Fund so wishes, a certificate acceptable to the Fund, from an official of the Member State which is 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 rules, in particular its constitutional or statutory provisions, been ratified, 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 rules, in particular its constitutional or statutory provisions, been ratified 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 Fund in connection with the Loan Agreement or the Guarantee Agreement for the purpose of this section.

An original or certified copy of the instruments of ratification, approval or acceptance, or as the case may

be, the instruments authorising the conclusion of, the Loan Agreement, and the Guarantee Agreement shall be transmitted to the Fund along with the legal opinions; and

- (iv) Any other legal document to be provided to the Fund in accordance with the provisions of the Loan Agreement or the Guarantee Agreement.

#### **SECTION 12.02 Operational Conditions Precedent to Disbursements**

The Loan Agreement may provide for certain operational conditions to be satisfied by the Borrower and/or Guarantor and the Fund 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.

#### **SECTION 12.03 Termination of Loan Agreement and Guarantee Agreement for Failure to Comply with the Operational 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 there under shall terminate immediately upon notice by the Fund to the Borrower to that effect. The Fund may, after consideration of the reasons for the delay, establish a later date for the purposes of this Section. The Fund shall promptly notify the Borrower and the Guarantor of such later date.

#### **SECTION 12.04 Termination of Loan Agreement and Guarantee Agreement on Full Payment**

If and when the entire principal amount of the Loan disbursed from the Loan Account and all Service Charge, Special Commitment Charge, Commitment Charge and other charges which have accrued on the Loan have been fully paid, the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall forthwith terminate







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**AFRICAN DEVELOPMENT FUND**  
**Website : [www.afdb.org](http://www.afdb.org)**







# General Conditions

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



African Development Fund

*February 2009*



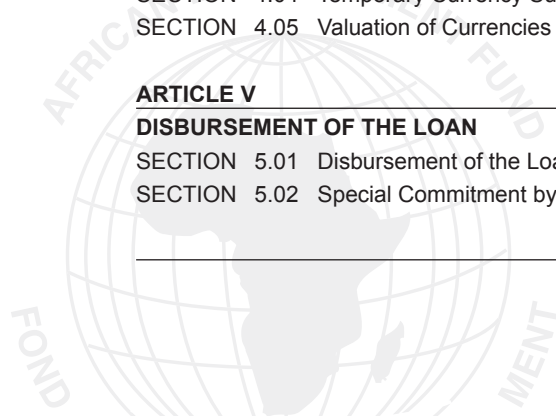


**General Conditions Applicable to the  
African Development Fund  
Loan Agreements and Guarantee  
Agreements  
(Non Sovereign Entities)**



## TABLE OF CONTENTS

<b>ARTICLE I</b>	<b>7</b>
<b>APPLICATION TO LOAN AGREEMENTS AND GUARANTEE AGREEMENTS</b>	<b>7</b>
SECTION 1.01 Application of General Conditions	7
SECTION 1.02 Inconsistency with Loan and Guarantee Agreements	7
<b>ARTICLE II</b>	<b>8</b>
<b>DEFINITIONS - REFERENCES AND HEADINGS</b>	<b>8</b>
SECTION 2.01 Definitions	8
SECTION 2.02 References	11
SECTION 2.03 Headings	11
<b>ARTICLE III</b>	<b>12</b>
<b>LOAN ACCOUNT - SERVICE CHARGE - COMMITMENT CHARGE SPECIAL COMMITMENT CHARGE AND REPAYMENT</b>	<b>12</b>
SECTION 3.01 Loan Account	12
SECTION 3.02 Commitment Charge	12
SECTION 3.03 Service Charge	12
SECTION 3.04 Application of Payment	13
SECTION 3.05 Computation of Service Charge and Commitment Charge	13
SECTION 3.06 Repayment and Prepayment	13
SECTION 3.07 Place of Payment	13
SECTION 3.08 Payments Falling Due on Public Holidays	14
SECTION 3.09 Restrictions	14
<b>ARTICLE IV</b>	<b>14</b>
<b>CURRENCY PROVISIONS</b>	<b>14</b>
SECTION 4.01 Currencies in which Disbursement is to be made.	14
SECTION 4.02 Loan Account Currency	15
SECTION 4.03 Currency in which Payments to the Fund are Payable	15
SECTION 4.04 Temporary Currency Substitution	15
SECTION 4.05 Valuation of Currencies	16
<b>ARTICLE V</b>	<b>17</b>
<b>DISBURSEMENT OF THE LOAN</b>	<b>17</b>
SECTION 5.01 Disbursement of the Loan	17
SECTION 5.02 Special Commitment by the Fund	17



SECTION 5.03	Requests for Disbursement or for Special Commitment	17
SECTION 5.04	Payment by the Fund	18
SECTION 5.05	Reallocation and Loan Savings	18
SECTION 5.06	Project Preparation Facility	18
SECTION 5.07	Evidence of Authority to Sign Requests for Disbursement	18
SECTION 5.08	Supporting Evidence	18
SECTION 5.09	Sufficiency of Requests and Documents	19
SECTION 5.10	Treatment of Taxes	19
<b>ARTICLE VI</b>		<b>19</b>
<b>CANCELLATION AND SUSPENSION</b>		<b>19</b>
SECTION 6.01	Cancellation by the Borrower	19
SECTION 6.02	Suspension by the Fund	20
SECTION 6.03	Cancellation by the Fund	24
SECTION 6.04	Amounts Subject to Special Commitment not Affected by Cancellation or Suspension by the Fund.	26
SECTION 6.05	Effectiveness of the Provisions of the Loan Agreement and the Guarantee Agreement after Suspension or Cancellation	26
SECTION 6.06	Cancellation of Guarantee	26
<b>ARTICLE VII</b>		<b>27</b>
<b>ACCELERATION TO MATURITY</b>		<b>27</b>
SECTION 7.01	Events of Acceleration	27
<b>ARTICLE VIII</b>		<b>28</b>
<b>TAXES</b>		<b>28</b>
SECTION 8.01	Taxes	28
<b>ARTICLE IX</b>		<b>29</b>
<b>PROJECT IMPLEMENTATION - COOPERATION AND INFORMATION</b>		
<b>FINANCIAL AND OTHER INFORMATION</b>		
<b>NEGATIVE PLEDGE ( PARI PASSU )</b>		<b>29</b>
SECTION 9.01	Project Implementation	29
SECTION 9.02	Cooperation and Information	29
SECTION 9.03	Financial and other Information	31
SECTION 9.04	Negative Pledge	31
SECTION 9.05	Insurance	32
SECTION 9.06	Use and Procurement of Goods, Works and Services	32
SECTION 9.07	Land Acquisition	33

SECTION 9.08	Plans and Schedules	33
SECTION 9.09	Accounts, Records and Audit	33
SECTION 9.10	Completion Report	34
SECTION 9.11	Maintenance	34
SECTION 9.12	Financial Resources	35

---

**ARTICLE X** **35**

**ENFORCEABILITY OF LOAN AGREEMENT AND GUARANTEE AGREEMENT FAILURE TO EXERCISE RIGHTS - SETTLEMENT OF DISPUTES APPLICABLE LAW** **35**

SECTION 10.01	Enforceability	35
SECTION 10.02	Obligations of the Guarantor	36
SECTION 10.03	Failure to Exercise Rights	36
SECTION 10.04	Settlement of Disputes	36
SECTION 10.05	Applicable Law	38

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**ARTICLE XI** **39**

**MISCELLANEOUS PROVISIONS** **39**

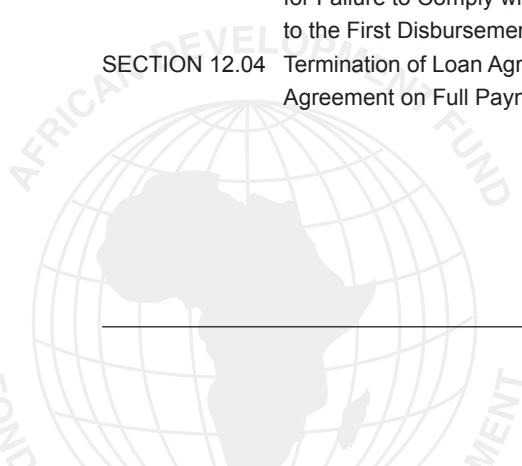
SECTION 11.01	Notices and Requests	39
SECTION 11.02	Evidence of Authority	39
SECTION 11.03	Amendment of Loan Agreement and Guarantee Agreement	40
SECTION 11.04	Execution in Counterparts	41
SECTION 11.05	Assignment of the Loan Agreement and the Guarantee Agreement	41

---

**ARTICLE XII** **41**

**ENTRY INTO FORCE - OPERATIONAL CONDITIONS – TERMINATION** **41**

SECTION 12.01	Entry into Force	41
SECTION 12.02	Operational Conditions Precedent to Disbursements	41
SECTION 12.03	Termination of Loan Agreement and Guarantee Agreement for Failure to Comply with the Operational Conditions to the First Disbursement	43
SECTION 12.04	Termination of Loan Agreement and Guarantee Agreement on Full Payment	43







## **ARTICLE I**

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### **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 Fund is a party and which provides that these General Conditions are applicable, entered into between the Fund 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.
- (d) 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 and Guarantee Agreements**

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, the Guarantee Agreement or the other agreement, as the case may be, shall prevail.



## **ARTICLE II**

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### **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 Fund, the Borrower and the Guarantor, on which the Fund 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 Fund and any other unit of account which represents a debt service obligation of the Fund to the extent of such obligation.

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

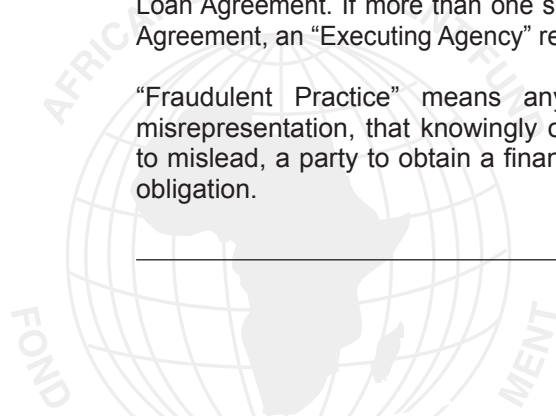
“Date of Entry into Force” means the date on which the Loan Agreement or the Guarantee Agreement shall enter into force as provided in Section 12.01.

“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.

“Disbursement Currency” means the Currency selected by the Borrower for disbursements from the Loan, and the payment obligations thereunder.

“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.

“Fund Agreement” means the Agreement Establishing the African Development Fund adopted on the 29th day of November, 1972, as amended from time to time.

“General Conditions” means these General Conditions.

“Guarantor” means the party to the Guarantee Agreement entered into with the Fund.

“Guarantee Agreement” means the agreement entered into between the Fund 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 Fund if the Guarantor is a Member State.

“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 Fund as specified in the Loan Agreement.

“Loan Account” means the account opened by the Fund 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 Fund 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 Unit of Account.

“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 Fund 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.

“Special Commitment” means any special commitment entered into or to be entered into by the Fund 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.

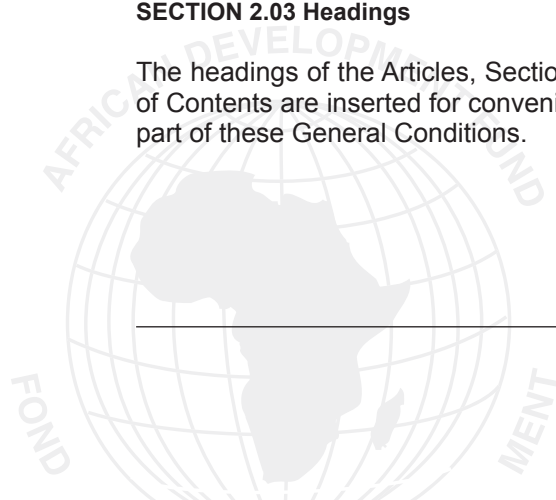
“Unit of Account” or the abbreviation “UA” means the Fund’s Unit of Account specified in Article 1 paragraph 1 of the Fund Agreement.

## **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 Fund 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 Borrower shall pay a Commitment Charge on the undisbursed amount of the Loan at the rate specified in the Loan Agreement. Such Commitment Charge shall begin to accrue one hundred and twenty (120) days from the Date of the Loan Agreement, or from such other date as the Fund shall from time to time determine, to the respective dates on which amounts of the Loan are disbursed to the Borrower or are cancelled or the Closing date, whichever of such dates comes first. The Commitment Charge shall be payable on each service charge payment date commencing on the first service charge payment date following the expiry of the above one hundred and twenty (120) day period. The Commitment Charge shall be expressed in Units of Account.
- (b) Any Commitment Charge, as stated in paragraph (a) of this Section, which is due and payable, shall remain due and payable to the Fund notwithstanding the non-entry into force, cancellation or the termination of the Loan Agreement.

**SECTION 3.03 Service Charge**

- (a) The Borrower shall pay a Service Charge at the rate specified in the Loan Agreement on the amount of the Loan disbursed and outstanding from time to time. The service charge shall accrue from the respective dates on which such amounts are disbursed.
- (b) The Service Charge shall be expressed in Units of Account.

### **SECTION 3.04 Application of Payment**

Except as the Fund 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, Service Charge, other charges and principal.

### **SECTION 3.05 Computation of Service Charge and Commitment Charge**

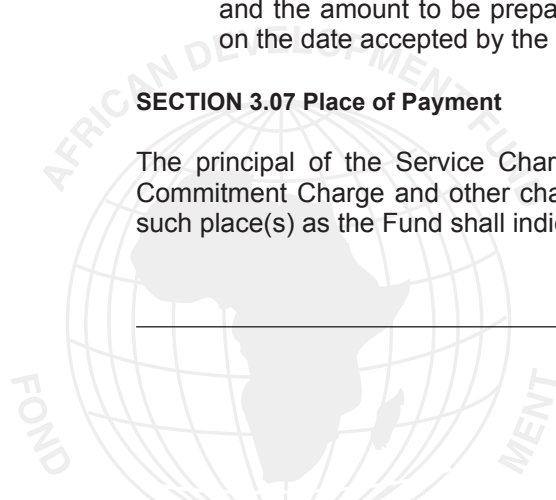
Service Charge and Commitment Charge shall be computed on a daily basis using a factor of three hundred and sixty-five (365) days per year.

### **SECTION 3.06 Repayment and Prepayment**

- (a) Except as provided in Section 4.04, 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 Service Charge, Special Commitment Charge, Commitment Charge and other charges, and after giving not less than forty-five (45) days notice to the Fund (such notice period to commence the day after the Fund's receipt of said notice), the Borrower shall have the right to repay, as of a date acceptable to the Fund, 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) Each request for prepayment notified to the Fund 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 Fund.

### **SECTION 3.07 Place of Payment**

The principal of the Service Charge, Special Commitment Charge, Commitment Charge and other charges on the Loan shall be paid at such place(s) as the Fund 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 Restrictions**

The repayment of the principal as well as the payment of the Service Charge, Special Commitment Charge, 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**

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#### **SECTION 4.01 Currencies in which Disbursement is to be made**

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

## **SECTION 4.02 Loan Account Currency**

The Loan Account shall be maintained in the Loan Currency and in the Disbursement Currency and shall record the equivalent in the Loan Currency and Disbursement Currency as of the date of disbursement and repayment 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 and Disbursement Currency of the Currency or Currencies disbursed or repaid, except that if the Fund has exchanged the Currency disbursed from another Currency in order to provide for such disbursement, then the equivalent in the Loan Currency and Disbursement Currency of the amount of such other Currency paid by the Fund shall be recorded in the Loan Account instead.

## **SECTION 4.03 Currency in which Payments to the Fund are Payable**

- (a) Except as provided in Section 4.04(e), repayment of principal and payment of Service Charge, Special Commitment Charge, Commitment Charge and other charges shall be made in the Disbursement Currency.
- (b) If the Borrower so requests, the Fund may, acting on behalf of the Borrower, and on such terms and conditions as the Fund shall determine, purchase the Disbursement Currency for the purpose of the repayment of principal and payment of Service Charge, 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 Fund; provided, however, that such repayment or payment shall be deemed to have been paid only when and to the extent that the Fund has received the payment in the Disbursement Currency.

## **SECTION 4.04 Temporary Currency Substitution**

- (a) If the Fund reasonably determines that an extraordinary situation, whether factual or legal, has arisen under which the Fund is unable to provide the Disbursement Currency, then the Fund shall promptly notify the Borrower of its inability to access or procure the Disbursement 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) Any substitute Currency shall be terminated as soon as practicable once the Fund becomes able to provide again the original Disbursement Currency.
- (d) During the period of operation of any such substitute Currency:
  - (i) the substitute Currency shall be deemed to be the Disbursement Currency for purposes of these General Conditions, the Loan Agreement and the Guarantee Agreement;
  - (ii) no prepayment cost 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 Fund shall reasonably determine the guiding principles for the conversion of amounts from the Loan Currency to the substitute Currency.
- (e) 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 or 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 Fund. The Fund shall notify the Borrower thereof.

## **ARTICLE V**

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### **DISBURSEMENT OF THE LOAN**

#### **SECTION 5.01 Disbursement of the Loan**

The Borrower shall be entitled to request from the Fund 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 Fund, no disbursements shall be made:

- (a) on account of expenditures procured in violation of the Fund'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 Fund**

The Fund may, at the request of the Borrower and upon such terms and conditions as shall be agreed upon between the Fund 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 Fund 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 Fund to enter into a Special Commitment, the Borrower shall deliver to the Fund a written request in such form, and containing such statements, agreements, undertakings and documents as the Fund 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 Fund from time to time.



#### **SECTION 5.04 Payment by the Fund**

The Loan funds disbursed or to be disbursed shall be payable by the Fund 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 Fund 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 Fund, (i) compromise the execution of the Project, or (ii) substantially modify the nature or objectives of the Project.
- (c) Loan Saving may be allocated in accordance with the policy of the Fund as determined from time to time.

#### **SECTION 5.06 Project Preparation Facility**

Where the Fund has provided an advance to the Borrower for the preparation of the Project under the Fund's Project Preparation Facility, the Fund shall withdraw from the Loan Account on or after the Date of Entry into Force of the Loan Agreement the full amount of the outstanding balance of the advance as well as any accrued service charge. The Fund shall disburse the amount so withdrawn to itself and shall cancel the remaining unwithdrawn amount of the advance.

#### **SECTION 5.07 Evidence of Authority to Sign Requests for Disbursement**

The Borrower shall provide the Fund 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 5.08 Supporting Evidence**

The Borrower shall provide the Fund with such documents and other evidence as the Fund shall request in support of any request

for disbursement, in accordance with its disbursement rules and procedures.

### **SECTION 5.09 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 Fund 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 5.10 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 which the Borrower is established, in respect of the importation, manufacture, procurement or supply of any goods, works or consultancy services is subject to the Fund's policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Fund at any time determines that the amount of any such Tax is excessive, or that such Tax is discriminatory or otherwise unreasonable, the Fund may, by notice to the Borrower, decline to finance any such amount, as required to ensure consistency with such policy of the Fund.

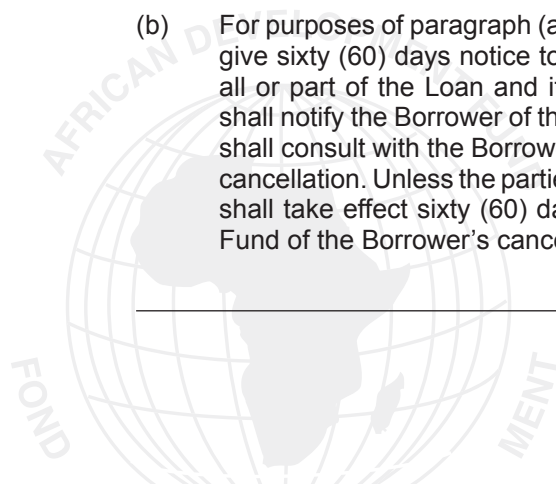
## **ARTICLE VI**

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### **CANCELLATION AND SUSPENSION**

#### **SECTION 6.01 Cancellation by the Borrower**

- (a) The Borrower may by notice to and after consultation with the Fund, 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 Fund 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 Fund of its intention to cancel all or part of the Loan and its reasons for so doing. The Fund 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 Fund of the Borrower's cancellation notice.



## **SECTION 6.02 Suspension by the Fund**

- 1) If any of the following events has occurred and is continuing, the Fund 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, service charge, commitment charge or any other amount due to the Fund or the Bank: (i) under the Loan Agreement, (ii) under any other agreement between the Fund and the Borrower, (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Borrower, or (iv) under any agreement between the Borrower and the Bank or between the Borrower and any Bank Managed Fund.
- (b) The Guarantor has failed to make payment of Principal, Service Charge, Commitment Charge or any other amount due to the Fund or the Bank : (i) under the Guarantee Agreement, (ii) under any other agreement between the Guarantor and the Fund, (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Guarantor, or (iv) under any agreement between the Guarantor and the Bank 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 the Fund 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 for and 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 the said 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.

### ***Membership***

- (f) 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***

- (g) 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 Fund 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.

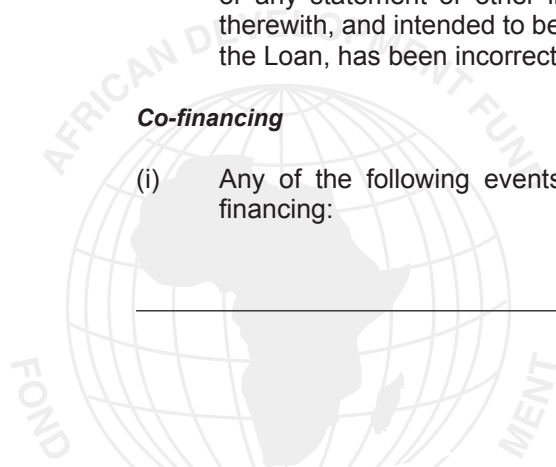
### ***Misrepresentation***

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

### ***Co-financing***

- (i) Any of the following events occurs with respect to any Co-financing:

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- (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 Fund 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 Fund 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 Fund 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.
- (j) 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 Fund, 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.
- (k) 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 Fund, 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***

- (l) 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 Fund 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 Fund to remedy the situation or to address such practices when they occur; or

***Other Events of Suspension***

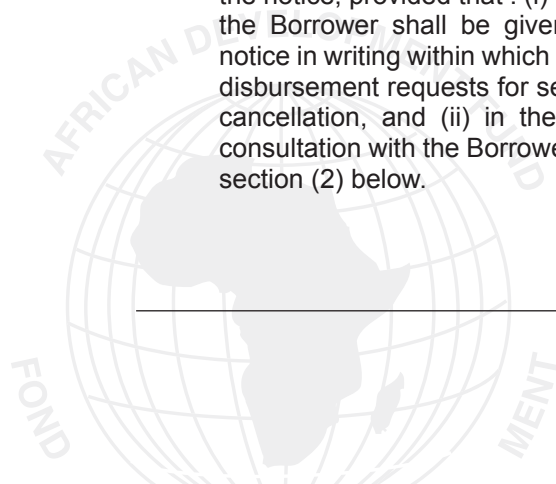
- (m) Any other event specified in the Loan Agreement for the purposes of this Section has occurred.
- 2) The right of the Borrower to disbursement of the Loan funds shall continue to be suspended in whole or in part, as the case may be, i) until the Fund determines that event or events which gave rise to such suspension has ceased to exist, unless the Fund, 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 Fund**

- 1) The Fund 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) Amounts not Required: at any time, the Fund 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 Fund 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 Fund 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 Fund 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 Fund 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 Fund 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 Fund.

Upon the giving of such notice, such amount of the Loan shall be cancelled on the date decided by the Fund 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 Fund 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 Fund 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 Fund.**

No cancellation or suspension by the Fund 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 service charge 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 Fund, and by notice to the Fund 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 Fund and not subject to any Special Commitment. Upon receipt of such notice by the Fund, 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 Fund of its intention to terminate its obligations under the Guarantee Agreement. The Fund and the Guarantor shall have sixty (60) days from the date of receipt of

the notice by the Fund to consult each other. If at the expiry of this notice period there is no agreement between the parties, the Guarantor may notify the Fund of the termination of its obligations.

## **ARTICLE VII**

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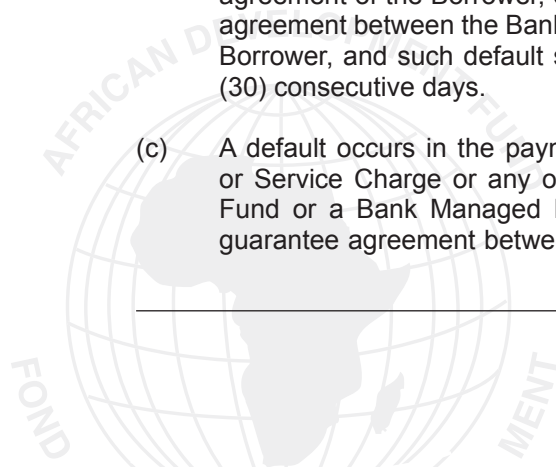
### **ACCELERATION TO MATURITY**

#### **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 Fund 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 Service Charge, Special Commitment Charge, Commitment Charge and other charges thereon and upon any such notice, such principal together with the Service Charge, 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 service charge 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 service charge 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 Fund and the Borrower, or (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Borrower, or (iii) under any loan or guarantee agreement between the Bank 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 Service Charge 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 Fund, or



(ii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Guarantor, or (iii) under any loan or guarantee agreement between the Guarantor and the Bank 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 or the Guarantee Agreement, and such default shall continue for a period of sixty (60) days after notice thereof has been given by the Fund to the Borrower and the Guarantor.

***Co-financing***

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

***Condition of Borrower or the Guarantor***

- (f) Any event specified in Section 6.02(1)(j)(ii) to (v) or Section 6.02(1)(k)(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**

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**SECTION 8.01 Taxes**

- (a) The principal of, and Service Charge, Special Commitment Charge, Commitment Charge and other charges on, the Loan shall be paid without deduction for, and free from, any taxes levied by, or in the territory of the country of 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 49 of the Fund Agreement shall enure to and be for the sole benefit of the Fund 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**

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### **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 Fund, 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 Fund, 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 or the Guarantor shall afford all reasonable opportunity for representatives of the Fund to visit any part of its territory for purposes related to the Loan and enable the Fund'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 including members of the Compliance Review and Mediation Unit or the Independent Review Mechanism to perform their functions including conducting investigations, as necessary. In this connection, the Borrower shall provide such representatives of the Fund relevant information and facilitate the examination of records, accounts and other documents or interview relevant persons, as determined by the Fund.

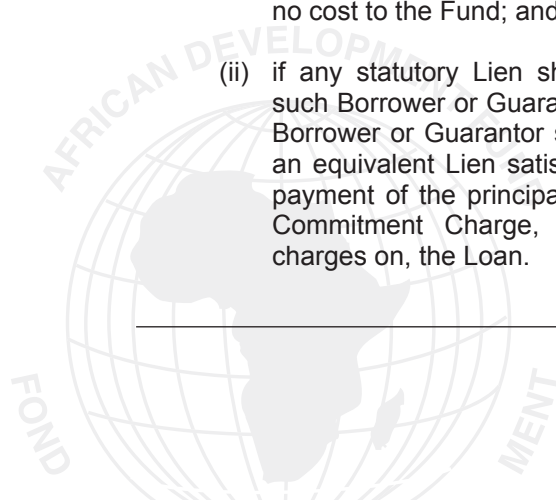
- (e) The Borrower shall, for the purposes of each Project financed by the Fund, take all necessary steps to indicate in a conspicuous manner that the Project is financed by the Fund.

### **SECTION 9.03 Financial and Other Information**

The Borrower and the Guarantor shall provide to the Fund the information that the Fund 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 Fund 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 Fund. Such securities may be enforced in accordance with their governing law. The taking of a security from the Borrower by the Fund shall not constitute, or be construed as, a waiver by the Fund 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 Fund 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 Service Charge, 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 Fund; 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 Fund, an equivalent Lien satisfactory to the Fund to secure the payment of the principal of, and Service Charge, 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 Fund 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 Fund, 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 Fund 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 Fund 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**

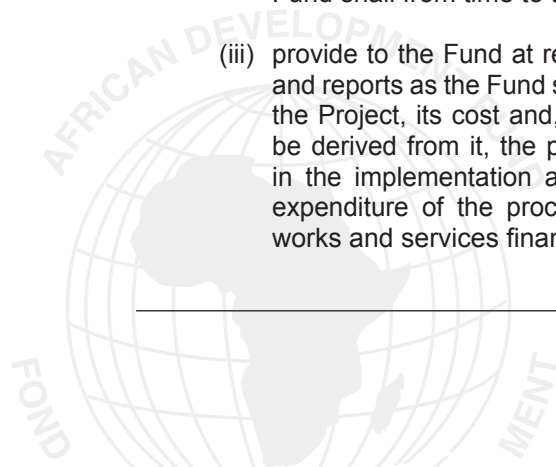
The Borrower shall take (or cause to be taken) all actions necessary to acquire as and when needed all land and rights in respect thereto as shall be required for carrying out the Project and shall promptly provide to the Fund, upon its request, evidence satisfactory to the Fund that such land and rights 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 Fund upon their preparation, copies of any plans, specifications, reports, contract documents and construction and procurement schedules for the Project, and any material modifications thereof or additions thereto, in such detail as the Fund 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 Fund), 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 Fund reports in form and substance satisfactory to the Fund 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 Fund policy, and in accordance with the directives which the Fund shall from time to time issue to that end; and
  - (iii) provide to the Fund at regular intervals all such information and reports as the Fund 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 Fund'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 Fund whose terms of reference have been approved by the Fund. The Borrower shall use its best efforts to ensure that the Fund has unrestricted access to the records and working papers of such independent auditors as shall be necessary for the Fund to independently assure itself of the accountability for its funds. The Borrower shall provide the audited financial statements to the Fund 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 Fund 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 Fund'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 Fund and Borrower, the Borrower shall prepare and provide to the Fund a report, of such scope and in such detail as the Fund 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 Fund 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:

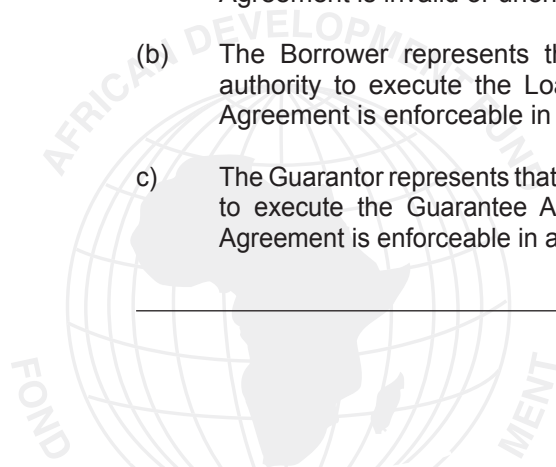
- (a) make (or, as the case may be, cause the beneficiary of the Loan to make) regularly in its annual budget, the allocations required to finance its share of the Project costs as provided in the Loan Agreement;
- (b) in accordance with the terms of the Loan Agreement, provide evidence that it has available 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 Fund, 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 Fund 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**

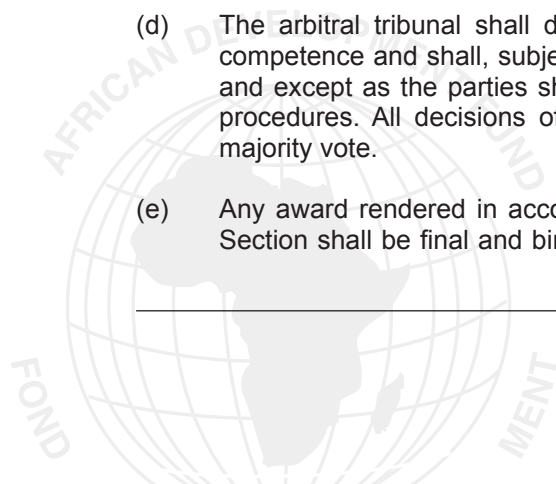
No delay in exercising, or omission to exercise, any right, power or remedy accruing to the Fund under the Loan Agreement or Guarantee Agreement upon any default on the part of the other party shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action taken by the Fund 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 Fund 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 Fund 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 Fund; 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 Fund.
- (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 Fund as to any amount due to the Fund 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 Fund under the Fund 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**

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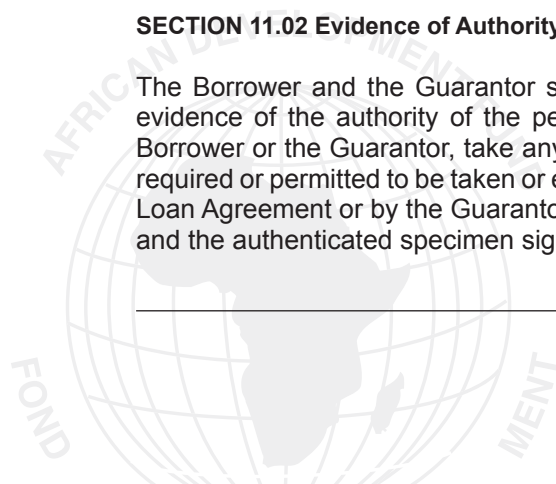
### **MISCELLANEOUS PROVISIONS**

#### **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 the 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 Fund 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 Fund 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 Fund 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 Fund.
- (e) The date of entry into force of the amendment shall be notified by the Fund 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.

### **ARTICLE XII**

#### **ENTRY INTO FORCE - OPERATIONAL CONDITIONS TERMINATION**

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##### **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 Fund and the Borrower or Guarantor.

##### **SECTION 12.02 Operational Conditions Precedent to Disbursements**

- (a) The Fund shall withhold disbursements from the Loan until the Borrower and Guarantor have provided to the Fund , to its satisfaction:
- (i) one or more legal opinions satisfactory to the Fund by counsel acceptable to the Fund, or if the Fund so wishes, a certificate acceptable to the Fund, 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 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 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 Fund in connection with the Loan Agreement or the Guarantee Agreement for the purpose of this section.
  - (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 Fund along with the legal opinions; and
  - (iii) Any other legal document to be provided to the Fund 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 Fund 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 Fund 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 Fund 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 Operational 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 Fund to the Borrower to that effect. The Fund may, after consideration of the reasons for the delay, establish a later date for the purposes of this Section. The Fund shall promptly notify the Borrower and the Guarantor of such later date.

**SECTION 12.04 Termination of Loan Agreement and Guarantee Agreement on Full Payment**

If and when the entire principal amount of the Loan disbursed from the Loan Account and all Service Charge, Special Commitment Charge, Commitment Charge and other charges which have accrued on the Loan have been fully paid, the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall forthwith terminate.





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**AFRICAN DEVELOPMENT FUND**  
Website : [www.afdb.org](http://www.afdb.org)



# General Conditions

General Conditions Applicable  
to Protocols of Agreement  
for Grants of the  
African Development Fund



African Development Fund

*February 2009*





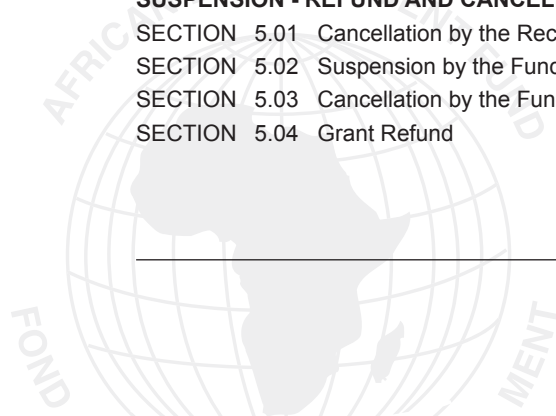


**General Conditions Applicable  
to Protocols of Agreement  
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## TABLE OF CONTENTS

<b>ARTICLE I</b>	<b>7</b>
<b>APPLICATION TO PROTOCOL OF AGREEMENTS FOR GRANTS</b>	<b>7</b>
SECTION 1.01 Application of General Conditions	7
SECTION 1.02 Inconsistency with the Protocol of Agreement	7
<b>ARTICLE II</b>	<b>7</b>
<b>DEFINITIONS - REFERENCES AND HEADINGS</b>	<b>7</b>
SECTION 2.01 Definitions	7
SECTION 2.02 References	10
SECTION 2.03 Headings	10
<b>ARTICLE III</b>	<b>10</b>
<b>GRANT</b>	<b>10</b>
SECTION 3.01 Grant	10
SECTION 3.02 Currencies in Which Disbursement is to be Made.	10
SECTION 3.03 Valuation of Currencies	10
<b>ARTICLE IV</b>	<b>11</b>
<b>DISBURSEMENT OF THE GRANT</b>	<b>11</b>
SECTION 4.01 Disbursement of the Grant	11
SECTION 4.02 Requests for Disbursement	11
SECTION 4.03 Payment by the Fund	11
SECTION 4.04 Reallocation	12
SECTION 4.05 Project Preparation Facility	12
SECTION 4.06 Evidence of Authority to Sign Requests for Disbursement	12
SECTION 4.07 Supporting Evidence	12
SECTION 4.08 Sufficiency of Requests and Documents	12
SECTION 4.09 Treatment of Taxes	13
<b>ARTICLE V</b>	<b>13</b>
<b>SUSPENSION - REFUND AND CANCELLATION</b>	<b>13</b>
SECTION 5.01 Cancellation by the Recipient	13
SECTION 5.02 Suspension by the Fund	13
SECTION 5.03 Cancellation by the Fund	16
SECTION 5.04 Grant Refund	18



SECTION 5.05	Effectiveness of the Provisions of the Protocol of Agreement after Suspension or Cancellation	18
<b>ARTICLE VI</b>		<b>19</b>
<b>TAXES</b>		<b>19</b>
SECTION 6.01	Taxes	19
<b>ARTICLE VII</b>		<b>19</b>
<b>PROJECT IMPLEMENTATION - COOPERATION AND INFORMATION</b>		<b>19</b>
SECTION 7.01	Project Implementation	19
SECTION 7.02	Cooperation and Information	20
SECTION 7.03	Insurance	21
SECTION 7.04	Use and Procurement of Goods, Works and Services	21
SECTION 7.05	Land Acquisition	22
SECTION 7.06	Plans and Schedules	22
SECTION 7.07	Accounts, Records and Audit	22
SECTION 7.08	Completion Report	23
SECTION 7.09	Maintenance	23
SECTION 7.10	Financial Resources	24
<b>ARTICLE VIII</b>		<b>24</b>
<b>ENFORCEABILITY OF PROTOCOL OF AGREEMENT</b>		
<b>FAILURE TO EXERCISE RIGHTS - SETTLEMENT OF DISPUTES AND</b>		
<b>APPLICABLE LAW</b>		<b>24</b>
SECTION 8.01	Enforceability	24
SECTION 8.02	Failure to Exercise Rights	25
SECTION 8.03	Settlement of Disputes	25
SECTION 8.04	Applicable Law	27
<b>ARTICLE IX</b>		<b>27</b>
<b>MISCELLANEOUS PROVISIONS</b>		<b>27</b>
SECTION 9.01	Notices and Requests	27
SECTION 9.02	Evidence of Authority	28
SECTION 9.03	Amendment of the Protocol of Agreement	28
SECTION 9.04	Execution in Counterparts	29
SECTION 9.05	Assignment of the Protocol of Agreement	29

<b>ARTICLE X</b>	<b>29</b>
<b>ENTRY INTO FORCE - OPERATIONAL CONDITIONS - TERMINATION</b>	<b>29</b>
SECTION 10.01 Entry into Force	29
SECTION 10.02 Operational Conditions Precedent to Disbursements	29
SECTION 10.03 Termination of Protocol of Agreement for Failure to Comply with the Operational Conditions to the First Disbursement	29
SECTION 10.04 Termination of Protocol of Agreement	30





## **ARTICLE I**

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### **APPLICATION TO PROTOCOL OF AGREEMENTS FOR GRANTS**

#### **SECTION 1.01 Application of General Conditions**

- (a) These General Conditions set forth the terms and conditions applicable to any Protocol of Agreement or other agreement in connection with the provision of a Grant by the Fund, and entered into with:
- (i) one or more Member States,
  - (ii) one or more legal entities established in the territory of a Regional Member State or
  - (iii) one or more eligible international organizations.
- (b) Additional conditions may be included in the Protocol of Agreement, having regard to the nature of the Project.

#### **SECTION 1.02 Inconsistency with the Protocol of Agreement**

If any provision of the Protocol of 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 Protocol of Agreement or any other agreement, as the case may be, shall prevail.

## **ARTICLE II**

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### **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 or the Protocol of Agreement:

“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.

“Category of Expenditure” means any category of goods, works and services of the Project to be financed from the resources of the Grant.

“Closing Date” means the date specified in the Protocol of Agreement or such other later date as shall be agreed upon in writing between the Fund and the Recipient, on which the Fund may terminate the right of the Recipient to request disbursements of the Grant.

“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 Protocol of 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 Fund and any other unit of account which represents a debt service obligation of the Fund to the extent of such obligation.

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

“Date of the Protocol of Agreement” means the date specified in the Protocol of Agreement, as the date of the Protocol of Agreement.

“Executing Agency” means the entity, whether a legal person or not, which is designated for the implementation of the Project under the Protocol of Agreement. If more than one such entity is designated in the Protocol of 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.

“Fund Agreement” means the Agreement Establishing the African Development Fund adopted on the 29th day of November, 1972, as amended from time to time.

“General Conditions” means these General Conditions.

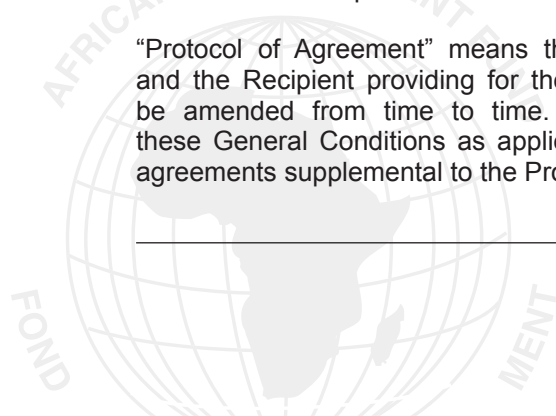
“Grant” means the maximum amount of the resources granted by the Fund as specified in the Protocol of Agreement.

“Grant Savings” means any undisbursed amount of the Grant 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 Grant is granted, as described in the Protocol of Agreement and as the description thereof may be amended from time to time by agreement between the Fund and the Recipient.

“Protocol of Agreement” means the agreement between the Fund and the Recipient providing for the Grant, as such agreement may be amended from time to time. Protocol of Agreement includes these General Conditions as applied thereto, and all schedules and agreements supplemental to the Protocol of Agreement.



“Recipient” means the party to the Protocol of Agreement to whom the Grant is made.

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

“Unit of Account” or the abbreviation “UA” means the Fund’s Unit of Account specified in Article 1 paragraph 1 of the Fund 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**

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### **GRANT**

#### **SECTION 3.01 Grant**

The Grant shall be expressed in Units of Account.

#### **SECTION 3.02 Currencies in Which Disbursement is to be Made.**

Disbursements of the Grant Funds shall be made either in the respective Currencies in which the cost of goods and services have been paid or are payable, or in such other Currency or Currencies as the Fund shall from time to time determine.

#### **SECTION 3.03 Valuation of Currencies**

- (a) The value, in terms of Units of Account, of the funds disbursed by the Fund in one or more currencies shall be reasonably determined by the Fund as of the date of each disbursement of each currency

- (b) For the purposes of the Protocol of 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, such value shall be as reasonably determined by the Fund and the Recipient shall be notified thereof.

## **ARTICLE IV**

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### **DISBURSEMENT OF THE GRANT**

#### **SECTION 4.01 Disbursement of the Grant**

The Recipient shall be entitled to request from the Fund the disbursement of funds for amounts expended or to be expended for purposes of the Project, in accordance with the provisions of the Protocol of Agreement and these General Conditions, provided that, except with the consent of the Fund, no disbursements shall be made:

- (a) on account of expenditures procured in violation of the Fund's procurement rules; or
- (b) subject to the terms of the Protocol of Agreement, to finance expenditures incurred prior to the Date of the Protocol of Agreement.

#### **SECTION 4.02 Requests for Disbursement**

If the Recipient seeks disbursement of any amount from the Grant, the Recipient shall deliver to the Fund a written request in such form, and containing such statements, agreements, undertakings and documents as the Fund 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 Fund from time to time.

#### **SECTION 4.03 Payment by the Fund**

The Grant funds disbursed or to be disbursed shall be payable by the Fund to, or on the order of, the Recipient in a manner consistent with the terms of the Protocol of Agreement.

#### **SECTION 4.04 Reallocation**

- (a) The Fund may, at the request of the Recipient, 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 Grant.
- (b) The reallocation of the Grant 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 Fund, (i) compromise the execution of the Project, or (ii) substantially modify the nature or objectives of the Project.
- (c) Grant Saving may be allocated in accordance with the policy of the Fund as determined from time to time.

#### **SECTION 4.05 Project Preparation Facility**

Where the Fund has provided an advance to the Recipient for the preparation of the Project under the Fund's Project Preparation Facility and the Project is subsequently financed by the Grant, the advance shall be repaid or refinanced in accordance with the terms of Letter of Agreement granting such advance.

#### **SECTION 4.06 Evidence of Authority to Sign Requests for Disbursement**

The Recipient shall provide the Fund 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 4.07 Supporting Evidence**

The Recipient shall provide the Fund with such documents and other evidence as the Fund shall request in support of any request for disbursement, in accordance with its disbursement rules and procedures.

#### **SECTION 4.08 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 Fund that the Recipient is entitled to obtain disbursement of the

amount requested for and that the said amount is to be used only for the purposes specified in the Protocol of Agreement.

#### **SECTION 4.09 Treatment of Taxes**

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

### **ARTICLE V**

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#### **SUSPENSION - REFUND AND CANCELLATION**

##### **SECTION 5.01 Cancellation by the Recipient**

- (a) The Recipient may by notice to and after consultation with the Fund, cancel the whole or part of the Grant which has not been disbursed, in relation to any Protocol of Agreement.
- (b) For purposes of paragraph (a) of this Section, the Recipient shall give sixty (60) days notice to the Fund of its intention to cancel all or part of the Grant and its reasons for so doing. The Fund shall notify the Recipient of the date of receipt of such notice and shall consult with the Recipient 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 Fund of the Recipient's cancellation notice.

##### **SECTION 5.02 Suspension by the Fund**

- 1) If any of the following events has occurred and is continuing, the Fund may, by notice to the Recipient, suspend in whole or in part the right of the Recipient to request for and receive disbursements under the Grant, provided that the events listed in subsections (a), (c) and (g) below shall not apply to grants



financing technical assistance services excluded from sanctions under the Fund's policy on loan arrears recovery:

***Payment Failure***

- (a) The Recipient has failed to make payment when due (notwithstanding the fact that such payment may have been made by a guarantor or a third party) of principal, service charge, commitment charge or any other amount due to the Fund or the Bank: (i) under any loan or guarantee agreement between the Fund and the Recipient, (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Fund to any third party with the agreement of the Recipient, or (iii) under any loan agreement or guarantee agreement between the Recipient and the Bank or between the Recipient and any Bank Managed Fund.

***Performance Failure***

- (b) The Recipient has failed to perform other obligation under the Protocol of Agreement, or the Fund determines that the Project objectives cannot be achieved.

***Cross-suspension***

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

***Extraordinary Situations***

- (d) As a result of events which have occurred after the Date of the Protocol of Agreement, an extraordinary situation has arisen which shall make it improbable that the Project can be carried out or that the Recipient will be able to perform its obligations under the Protocol of Agreement.

### **Membership**

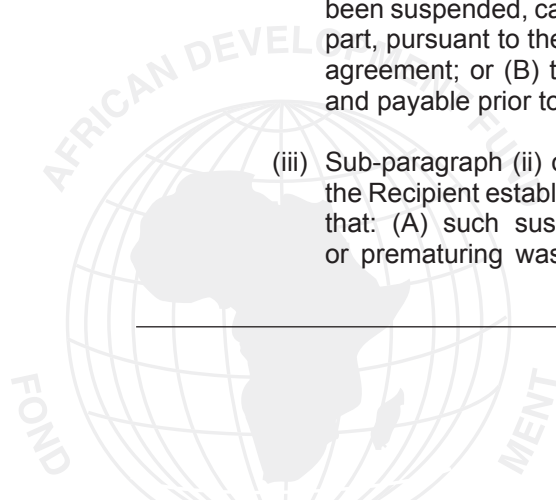
- (e) The Recipient has been suspended from membership in, or ceased to be a Member State of, the Bank.

### **Misrepresentation**

- (f) Any representation made by the Recipient in or pursuant to the Protocol of Agreement, or any statement or other information provided in connection therewith, and intended to be relied upon by the Fund in making the Grant, has been incorrect in any respect.

### **Co-financing**

- (g) Any of the following events occurs with respect to any Co-financing:
  - (i) If the Protocol of 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 Fund has established by notice to the Recipient; provided, however, that the provisions of this sub-paragraph shall not apply if the Recipient establishes to the satisfaction of the Fund that adequate funds for the Project are available from other sources on terms and conditions consistent with the obligations of the Recipient under the Protocol of 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 Recipient establishes to the satisfaction of the Fund 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 Recipient under the Protocol of Agreement.

***Corrupt, Coercive, Collusive or Fraudulent Practice***

- (h) At any time, with respect to the negotiation, execution or implementation of the Protocol of 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 Grant, the Fund determines that any person or entity has engaged in a Corrupt Practice, a Coercive Practice, a Collusive Practice or a Fraudulent Practice, without the Recipient having taken timely and appropriate action satisfactory to the Fund to remedy the situation or to address such practices when they occur; or

***Other Events of Suspension***

- (i) Any other event specified in the Protocol of Agreement for the purposes of this Section has occurred.
- 2) The right of the Recipient to disbursement of the Grant funds shall continue to be suspended in whole or in part, as the case may be, i) until the Fund determines that event or events which gave rise to such suspension has ceased to exist, unless the Fund, 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 Recipient to disbursement of the Grant, or ii) until cancellation of the Grant as provided in Section 5.03.

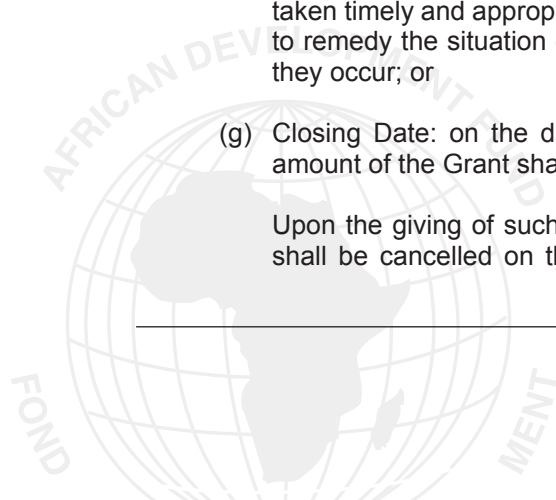
**SECTION 5.03 Cancellation by the Fund**

- 1) The Fund may, by notice to the Recipient, cancel the whole or part of the Grant, as the case may be, if:
  - (a) Interruption of the Project: for at least two consecutive years Project operations has 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) Modification of Project by Recipient: the Recipient has modified the nature or the objectives of the Project without the prior approval of the Fund;
- (c) Suspension: the right of the Recipient to disbursement of the Grant has been suspended with respect to any amount of the Grant for a continuous period of thirty (30) days;
- (d) Amounts not Required: at any time, the Fund determines, after consultation with the Recipient, that an amount of the Grant will not be required to finance any Project costs previously allocated to be financed out of the Grant proceeds;
- (e) Misprocurement: at any time, the Fund determines that the procurement of any item is inconsistent with the procedures provided for in the Protocol of Agreement or applicable rules of procurement of the Fund 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 Grant;
- (f) Corrupt, Coercive, Collusive or Fraudulent Practice: at any time, with respect to the negotiation, execution or implementation of the Protocol of 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 Grant, the Fund determines that any person or entity has engaged in a Corrupt Practice, a Coercive Practice, a Collusive Practice or a Fraudulent Practice, without the Recipient having taken timely and appropriate action satisfactory to the Fund to remedy the situation or to address such practices when they occur; or
- (g) Closing Date: on the day following the Closing Date, an amount of the Grant shall not have been disbursed.

Upon the giving of such notice, such amount of the Grant shall be cancelled on the date decided by the Fund and



indicated in the notice, provided that: (i) in the case of paragraph (a) above, the Recipient 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 Fund prior to Grant cancellation, and (ii) in the case of paragraph (c) above, a consultation with the Recipient 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 Fund gives notice of its intention to cancel such amount of the Grant not required to finance any Project costs previously allocated to be financed out of the Grant 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 5.04 Grant Refund**

If the Fund determines that an amount has been disbursed under the Grant has been used in violation of the provisions of the Protocol of Agreement or these General Conditions, the Recipient shall, upon notice by the Fund to the Recipient, promptly refund such amount to the Fund.

Such inconsistent use shall include, without limitation, any of the following events:

- a) Misprocurement: Any event specified in Section 5.03(1) (e).
- b) Corrupt, Coercive, Collusive or Fraudulent Practice: Any event specified in Section 5.03(1)(f)

#### **SECTION 5.05 Effectiveness of the Provisions of the Protocol of Agreement after Suspension or Cancellation**

Notwithstanding any cancellation or suspension, as provided for in Sections 5.01, 5.02 and 5.03 above, the provisions of the Protocol of Agreement shall continue in full force and effect.

## **ARTICLE VI**

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### **TAXES**

#### **SECTION 6.01 Taxes**

- (a) The Protocol of Agreement, and any other agreement to which these General Conditions apply, shall be free from any taxes levied by, or in the territory of, the Recipient on or in connection with the execution, delivery or registration thereof.
- (b) The immunities, exemptions and privileges from taxation referred to in this Section 6.01 and in Article 49 of the Fund Agreement shall enure to and be for the sole benefit of the Fund 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 Recipient in connection with the Project.

## **ARTICLE VII**

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### **PROJECT IMPLEMENTATION - COOPERATION AND INFORMATION**

#### **SECTION 7.01 Project Implementation**

The Recipient 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 Protocol of Agreement and these General Conditions, as well as any performance arrangement to be entered into between the Recipient and the Executing Agency or any member thereof.

## **SECTION 7.02 Cooperation and Information**

- (a) The Fund and the Recipient shall cooperate fully to ensure that the purposes of the Grant will be accomplished. To that end, the Fund and the Recipient shall:
  - (i) from time to time, at the request of any of them, exchange views with regard to the progress of the Project, the purposes of the Grant, and the performance of their respective obligations under the Protocol of 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 Recipient shall ensure that no action which would prevent or interfere with the execution of the Project or with the performance of the Recipient's obligations under the Protocol of Agreement is taken or permitted to be taken by the Recipient 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 Recipient or such subdivisions.
- (c) The Recipient shall afford all reasonable opportunity for representatives of the Fund to visit any part of its territory for purposes related to the Grant and enable the Fund'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 Grant and any plants, installations, sites, works, buildings, property, equipment, records and documents relevant to the performance of the obligations of the Recipient under the Protocol of Agreement.
- (d) The Recipient shall permit staff and other representatives including members of the Compliance Review and Mediation Unit or the Independent Review Mechanism to perform their functions including conducting investigations, as necessary. In this connection, the Borrower shall provide such representatives of the Fund relevant information and facilitate the examination

of records, accounts and other documents or interview relevant persons, as determined by the Fund.

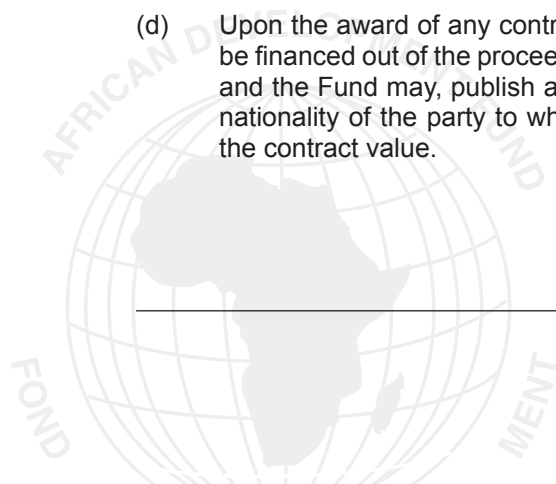
- (e) The Recipient shall, for the purposes of each Project financed by the Fund, take all necessary steps to indicate in a conspicuous manner that the Project is financed by the Fund.

### **SECTION 7.03 Insurance**

The Recipient shall insure or cause to be insured the goods to be financed out of the proceeds of the Grant 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 7.04 Use and Procurement of Goods, Works and Services**

- (a) Except as the Fund shall otherwise agree, the Recipient shall, until Project completion, cause all goods, works and services financed out of the proceeds of the Grant 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 Recipient in accordance with the relevant rules of procurement of the Fund, which shall form an integral part of the Loan Agreement.
- (c) The Recipient shall be legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contracts. The contract shall be between the Recipient and the supplier of goods, works or services. The Fund 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 Grant, the Recipient shall, and the Fund may, publish a description thereof, the name and nationality of the party to which the contract was awarded and the contract value.



## **SECTION 7.05 Land Acquisition**

The Recipient 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 Fund, upon its request, evidence satisfactory to the Fund that such land and rights in respect of land are available for purposes related to the Project.

## **SECTION 7.06 Plans and Schedules**

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

## **SECTION 7.07 Accounts, Records and Audit**

- (a) The Recipient 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 Fund), to identify the goods, works and services financed out of the proceeds of the Grant, and to disclose their use in the Project;
  - (ii) provide to the Fund reports in form and substance satisfactory to the Fund 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 Fund policy and in accordance with the directives which the Fund shall from time to time issue to that end; and
  - (iii) provide to the Fund at regular intervals all such information and reports as the Fund 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 Grant and the goods, works and services financed out of such proceeds.

- (b) The records and accounts shall be kept in accordance with the Fund'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 Fund whose terms of reference have been approved by the Fund. The Recipient shall use its best efforts to ensure that the Fund has unrestricted access to the records and working papers of such independent auditors as shall be necessary for the Fund to independently assure itself of the accountability for its funds. The Recipient shall provide the audited financial statements to the Fund as promptly as possible and, in any event, not later than six (6) months after the end of the relevant financial year.
- (c) The Recipient shall, and shall cause the Executing Agency to, keep all records (contracts, orders, invoices, bills, receipts and other documents) evidencing expenditures financed with the Grant until the later of: (i) one year after the Fund has received the audited financial statements covering the period during which the last disbursement of the Grant was made and (ii) two years after the Closing Date. The Recipient shall enable the Fund's representatives to examine such records.

#### **SECTION 7.08 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 Fund and Recipient, the Recipient shall prepare and provide to the Fund a report, of such scope and in such detail as the Fund 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 Recipient and the Fund of their respective obligations under the Protocol of Agreement, the accomplishment of the purposes of the Grant and the plan designed to ensure the sustainability of the Project's achievements.

#### **SECTION 7.09 Maintenance**

The Recipient 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 7.10 Financial Resources**

The Recipient 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 Recipient shall:

- (a) make (or, as the case may be, cause the beneficiary of the Grant to make) regularly in its annual budget, the allocations required to finance its share of the Project costs as provided in the Protocol of Agreement;
- (b) in accordance with the terms of the Protocol of 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 VIII**

#### **ENFORCEABILITY OF PROTOCOL OF AGREEMENT - FAILURE TO EXERCISE RIGHTS - SETTLEMENT OF DISPUTES AND APPLICABLE LAW**

##### **SECTION 8.01 Enforceability**

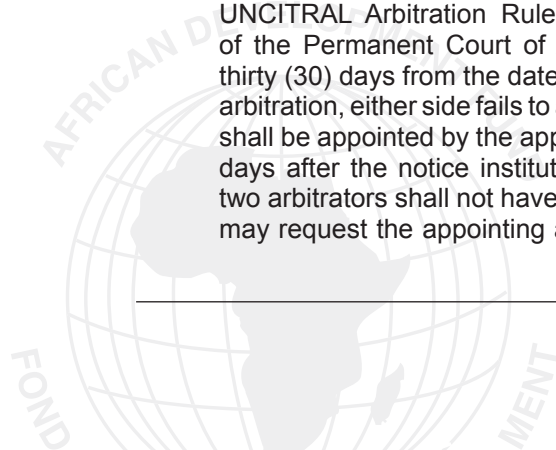
- (a) The rights and obligations of the Fund and the Recipient under the Protocol of Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State or political subdivision thereof to the contrary. Neither the Fund nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of these General Conditions or of the Protocol of Agreement is invalid or unenforceable for any reason.
- (b) The Recipient represents that it has full legal capacity and authority to execute the Protocol of Agreement, and that the Protocol of Agreement is enforceable in accordance with its terms.

## **SECTION 8.02 Failure to Exercise Rights**

No delay in exercising, or omission to exercise, any right, power or remedy accruing to the Fund under the Protocol of 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 Fund in respect of any default, or any acquiescence by, shall affect or impair any right, power or remedy that it may have in respect of any other default.

## **SECTION 8.03 Settlement of Disputes**

- (a) Any controversy between the parties to the Protocol of Agreement and any claim by any such party against any other such party arising under the Protocol of 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 Fund on the one side and the Recipient on the other side.
- (c) The arbitral tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Fund; 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 do 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 Protocol of 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 Recipient shall not be authorized to seek from any judicial authority, any interim measures of protection or pre-award relief against the Fund.
- (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 Protocol of 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 9.09. The parties to the Protocol of Agreement waive any and all other requirements for the service of any such notice or process.
- (i) In any proceeding arising out of the Protocol of Agreement, the certificate of the Fund as to any amount due to the Fund under the Protocol of 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 Protocol of Agreement shall operate or be regarded as a waiver, renunciation or other modification of any right, privilege, or immunity of the Fund under the Fund Agreement, under international conventions or under any other applicable laws.

#### **SECTION 8.04 Applicable Law**

The Law to be applied to the Protocol of 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 IX**

#### **MISCELLANEOUS PROVISIONS**

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##### **SECTION 9.01 Notices and Requests**

Any notice or request required or permitted to be given or made under the Protocol of Agreement and any other agreement between any of the parties contemplated by the Protocol of Agreement shall be in writing. 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 Protocol of 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 Protocol of 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 9.02 Evidence of Authority**

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

#### **SECTION 9.03 Amendment of the Protocol of Agreement**

- (a) The Protocol of Agreement may be amended in writing by mutual agreement of the parties thereto.
- (b) No provision of the Protocol of Agreement may be amended unless prior authorization of the Fund is obtained.
- (c) Any modification of the provisions of the Protocol of Agreement may be agreed to on behalf of the Recipient by written instrument executed on behalf of the Recipient by the representative of the Recipient designated in the Protocol of 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 Recipient under the Protocol of Agreement. The Fund 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 Protocol of Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Recipient thereunder.
- (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 Protocol of Agreement on behalf of the Fund.
- (e) The date of entry into force of the amendment shall be notified by the Fund to the Recipient.

## **SECTION 9.04 Execution in Counterparts**

The Protocol of Agreement may be executed in several counterparts, each of which shall be an original.

## **SECTION 9.05 Assignment of the Protocol of Agreement**

The Recipient may not assign or transfer any of its rights or obligations under the Protocol of Agreement without the prior consent of the Fund.

## **ARTICLE X**

### **ENTRY INTO FORCE - OPERATIONAL CONDITIONS TERMINATION**

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#### **SECTION 10.01 Entry into Force**

The Protocol of Agreement shall enter into force on the date of its signature by the Fund and the Recipient.

#### **SECTION 10.02 Operational Conditions Precedent to Disbursements**

The Protocol of Agreement may provide for certain operational conditions to be satisfied by the Recipient and the Fund 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.

#### **SECTION 10.03 Termination of Protocol of Agreement for Failure to Comply with the Operational 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 Protocol of Agreement, the Protocol of Agreement and all obligations of the parties thereunder shall terminate immediately upon notice by the Fund to the Recipient to that effect. The Fund may, after consideration of the reasons for the delay, establish a later date for the purposes of this Section. The Fund shall promptly notify the Recipient of such later date.



**SECTION 10.04 Termination of Protocol of Agreement**

The Protocol of Agreement and all obligations of the parties thereunder shall forthwith terminate upon approval by the Fund of the project completion report. The Fund shall promptly notify that date to the Recipient.







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