

OFID GENERAL CONDITIONS APPLICABLE TO PUBLIC SECTOR LOAN AGREEMENTS

JUNE 2019



OFID The OPEC Fund for International Development

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Article I PRELIMINARY PROVISIONS

I.01 Name and Purpose

These General Conditions set forth certain terms and conditions generally applicable to Loans made by OFID as part of its public sector lending activity, and shall be referred to as “OFID General Conditions Applicable to Public Sector Loan Agreements, June 2019”.

I.02 Application

The General Conditions shall apply to any public sector loan agreement to such extent, and subject to such modifications, as may be provided in the relevant Loan Agreement. In particular, in these General Conditions, the following terms shall apply as follows:

- (a) the term “Service Charges” shall apply to Loan Agreements in which such charges are payable by the Borrower. Where no such charges are payable, the term shall be disregarded;
- (b) the terms “front-end and/or commitment fees and any other fees or charges” shall apply, respectively, to Loan Agreements in which front-end and/or commitment fees and any other fees or charges are payable by the Borrower. Where no such fees or charges are payable, the terms shall be disregarded; and
- (c) the term “Loan Administrator” shall apply to Loans that are administered by a Loan Administrator other than OFID. Where a Loan is administered by OFID, Article 8 as well as any reference to “Loan Administrator” shall be disregarded.

I.03 Conflict with Loan Agreement

In case of conflict or variance between any provision in these General Conditions and a provision in a Loan Agreement, the relevant provision in the Loan Agreement shall govern.

Article 2

DEFINITIONS AND INTERPRETATION

2.01 Definitions

Except where the context otherwise requires, the following terms have the following meanings wherever used in these General Conditions or in the Loan Agreement:

- (a) “Authorized Representative” means the person or entity named as such in the Loan Agreement that is duly authorized to represent the Borrower and to take any binding action on behalf of the Borrower in connection with the Loan Agreement;
- (b) “Board” means the Governing Board of OFID;
- (c) “Business Day” means a day on which: (i) commercial banks are open for the transaction of business in the Dollar inter-bank market in London or, for Euro-denominated loans, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer System is open for business; (ii) commercial banks and foreign exchange markets settle payments in Dollars in New York; and (iii) OFID is open for business in Vienna, Austria;
- (d) “Closing Date” means the date specified in the Loan Agreement as the date on which the Borrower’s right to request withdrawals from the Loan shall terminate, or any extension of such date as OFID may determine pursuant to Section 6.08;
- (e) “Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party in order to influence improperly the actions of a party;
- (f) “Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (g) “Contract” means any contract for the procurement of a certain class of Goods, including, *inter alia*, works or professional services and other services;
- (h) “Corrupt Practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement of Goods or the execution of a Contract, and includes, *inter alia*, bribery, extortion or coercion that involve threat of injury to person, property or reputation;
- (i) “Date of the Agreement” means the date on which the Loan Agreement is signed by the parties;
- (j) “Date of Effectiveness” means the date defined in Section 3.01;
- (k) “Disbursement Procedures (Handbook for Public Sector Borrowers)” means OFID Disbursement Procedures approved in November 2014 (as amended from

time to time), a copy of which was furnished to the Borrower on the Date of the Agreement;

- (l) “Eligible Expenditure” means any expenditure financed out of the proceeds of the Loan; provided that OFID has ascertained that the payment for such expenditure is: (i) for financing reasonable cost of Goods as described in Schedule 2, and (ii) made on or after the Eligible Expenditure Commencement Date and prior to the Closing Date;
- (m) “Eligible Expenditure Commencement Date” means the date on which the Loan is approved by the Board or any other date specified in the Loan Agreement, being the date after which any expenditure for financing reasonable cost of Goods shall prima facie constitute Eligible Expenditure;
- (n) “Executing Agency” means, where the Borrower is a State or a Government, the government department or other legal entity or institution identified in the Loan Agreement as the agency that will execute the Project;
- (o) “External Debt” means any debt which is or may become payable other than in Local Currency;¹
- (p) “Fraudulent Practice” means a misrepresentation of facts in order to influence the selection of a supplier of Goods or the execution of a Contract to the detriment of the Borrower, and includes collusive practices among individuals or entities involved in the procurement of Goods or the execution of a Contract, to deprive the Borrower and bidders of the benefits of free, open and fair competition;
- (q) “Goods” means equipment, supplies, works and professional and other services required for the execution of the Project;
- (r) “Government” means the central government of the Project Country;
- (s) “Internal Debt” means the Borrower’s local debt or debt which is or may become payable in Local Currency;
- (t) “Lien” means, *inter alia*, mortgages, pledges, charges, privileges and priority of any kind;
- (u) “Loan” means the loan provided for in the Loan Agreement;
- (v) “Loan Administrator” means the financial institution named in the Loan Agreement, which shall administer the Loan on such terms as may be agreed upon between such loan administrator and OFID;
- (w) “Loan Agreement” means the loan agreement between OFID and the Borrower, which term shall include these General Conditions as applied thereto, and all Schedules and agreements supplemental to the loan agreement;

¹ This definition may not apply in cases where the Borrower adopts/uses a foreign currency as Local Currency. In such cases, OFID and the Borrower will agree on a definition for the purpose of the specific Loan.

- (x) “Loan Currency” means the currency in which the Loan is denominated;
- (y) “Loan Proceeds” means the funding provided by OFID pursuant to the Loan Agreement;
- (z) “Local Currency” means the currency of the Project Country;
- (aa) “Procurement Documents” means all documents relating to the procurement of Goods, including bidding documents, bids, bids evaluation reports, contracts, and any related supporting documents;
- (ab) “OFID” means the OPEC Fund for International Development, established by the Member States of the Organization of the Petroleum Exporting Countries (OPEC) by virtue of the Agreement signed in Paris on January 28, 1976, as amended;
- (ac) “OFID Account” means such bank account the particulars of which shall be communicated by OFID to the Borrower from time to time;
- (ad) “Procurement Guidelines” means the Procurement Guidelines under Loans Extended by OFID approved on November 2, 1982 (as amended from time to time), a copy of which was furnished to the Borrower on the Date of the Agreement;
- (ae) “Project” means the project or program for which the Loan is made as described in Schedule 1 or, as the context may require, any part of the project;
- (af) “Project Country” means the country where the Project is to be executed;
- (ag) “Public Assets” means the assets of the Borrower or of any political or administrative subdivision thereof or of any entity owned or controlled by or operating for the account or benefit of the Borrower, or any such subdivision, including gold and other foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Borrower;
- (ah) “Public Debt” means Internal Debt and External Debt;
- (ai) “Schedule” means a schedule in the Loan Agreement;
- (aj) “Service Charge” means, with respect to certain Loans, a charge at the rate specified in the Loan Agreement, which shall be paid by the Borrower in respect of the principal amount of the Loan withdrawn and outstanding. The purpose of the Service Charge is to cover OFID’s expenses related to the Loan;
- (ak) “State” means a sovereign entity or a political or administrative sub-division thereof; and
- (al) “Taxes” mean, *inter alia*, imposts, levies, fees and duties of any nature, whether in effect on the Date of the Agreement or thereafter imposed.

2.02 Interpretation

In these General Conditions and any Loan Agreement, unless the context otherwise requires:

- (a) the headings of the articles, sections, Schedules and the table of contents are inserted for reference only and shall not be taken into consideration in interpreting the General Conditions or the Loan Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a party is a reference to a party to the Loan Agreement; a reference to an article or section in the Loan Agreement is a reference to that article or section in the Loan Agreement; and a reference to an article or section in the General Conditions is a reference to that article or section in these General Conditions; and
- (d) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document but disregarding any amendment, supplement, replacement or novation made in breach of the General Conditions or the relevant Loan Agreement.

Article 3 EFFECTIVENESS

3.01 Date of Effectiveness

After the Borrower has fulfilled the conditions of effectiveness stipulated in the Loan Agreement to the satisfaction of OFID, the Loan Agreement shall enter into full force and effect on a specified date as shall be communicated by OFID to the Borrower. The date so specified shall be the Date of Effectiveness of the Loan Agreement.

3.02 Event before Effectiveness

- (a) OFID shall not be obliged to declare the Loan Agreement effective if any event occurs before the Date of Effectiveness which would have entitled OFID to suspend the Borrower's right to withdraw any amount of the Loan Proceeds pursuant to Section 9.01 had the Loan Agreement been effective.
- (b) OFID may declare the Loan Agreement effective when the event ceases to exist, unless the Loan Agreement is terminated pursuant to Section 11.06 (a) of these General Conditions.

Article 4

COVENANTS AND EXEMPTIONS

4.01 Loan Priority

The Borrower undertakes to ensure that no other External Debt shall have priority over the Loan with respect to the allocation, realization or distribution of foreign exchange held under the control or for the benefit of the Borrower.

4.02 Liens

If any Lien shall be created on any Public Assets as security for any Public Debt, which will or might result in a priority for the benefit of the creditor of the Public Debt in the allocation, realization or distribution of foreign exchange or the Borrower's funds, the Lien shall, *ipso facto*, and at no cost to OFID, equally and rateably secure the principal of, interest, Service Charges, front-end and/or commitment fees, and any other fees or charges on, the Loan, and the Borrower, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided that if for any constitutional or other legal reason that provision cannot be made with respect to any Lien created on specific Public Assets, the Borrower shall promptly and at no cost to OFID secure the principal of, interest, Service Charges and front-end and/or commitment fees on, the Loan, by an equivalent Lien on other Public Assets satisfactory to OFID.

4.03 Excepted Liens

The Borrower's undertaking described in Section 4.02 shall not apply to:

- (a) any Lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of that property or as security for the payment of debt incurred for the purpose of financing the purchase of such property; and
- (b) any Lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

4.04 On-Lending/Transfer of Loan Proceeds

Where the proceeds of the Loan are agreed to be made available to an Executing Agency, the Borrower undertakes to OFID to on-lend/transfer the Loan Proceeds to such Executing Agency on loan, grant or other basis and in accordance with such terms and conditions as may be stipulated in the Loan Agreement.

4.05 Fraud and Corruption

The Borrower irrevocably and unconditionally undertakes to OFID to ensure that the implementation of the Project (including the procurement of Goods and the execution of any

Contract) does not involve Corrupt Practice, Coercive Practice, Collusive Practice or Fraudulent Practice and that the Borrower shall put in place all necessary measures to prevent such practices.

4.06 Exemption from Taxes

All Taxes in the Project Country, whether in connection with the execution, delivery or registration of the Loan Agreement or any supplementary agreement between the parties shall be borne by the Borrower. The principal of, interest, Service Charges and any other fees or charges on, the Loan, shall be paid without deduction for, and free from, any Taxes whatsoever.

4.07 Confidentiality

All OFID documents, records, correspondence and similar material shall be considered as confidential by the Borrower and shall be exempt from any form of disclosure in the Project Country, unless otherwise agreed by OFID.

4.08 Expropriation and Similar Measures

OFID assets shall not be subject to any form of expropriation or nationalization, sequestration, custody or seizure in the Project Country. Similarly, the repayment of the principal and the payment of interest, Service Charges and any other fees or charges on the Loan shall not be prevented or hindered by restrictions, regulations, controls or moratoria of any kind imposed by virtue of any law or decree in the Project Country.

Article 5
FINANCIAL AND OTHER TERMS

5.01 Loan Account

The principal amount of the Loan shall be credited to an account opened in OFID’s books in respect of the Loan for the benefit of the Borrower (“Loan Account”). The Borrower may withdraw the proceeds of the Loan in accordance with the provisions of the Loan Agreement and these General Conditions.

5.02 Interest; Computation of Interest and Other Charges

- (a) *Interest.* Interest shall be payable on the principal amount of the Loan withdrawn and outstanding from time to time. Interest shall accrue beginning on the respective dates on which amounts shall be withdrawn from the Loan Account.

- (b) *Computation of Interest and Other Charges.* Interest and other charges applicable to amounts of the Loan withdrawn and outstanding shall be computed on the basis of actual 360-day year of twelve 30-day months.

5.03 Commitment Fees; Front-End Fees

If approved by OFID Governing Board, the Borrower shall pay:

- (a) commitment fees on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.
- (b) front-end fees at the rate specified in the Loan Agreement.

5.04 Financial and Economic Data

The Borrower shall provide OFID with all such information as OFID shall reasonably request at any time until the Loan is fully repaid regarding the financial and economic conditions in its territory, including its balance of payments and External Debt and those of its political or administrative subdivisions and of any entity owned or controlled by, or operating for the account or benefit of, the Borrower or any such subdivision, as well as those of any institution performing the functions of a central bank or exchange stabilization fund, or similar functions for the Borrower.

5.05 Prepayment

- (a) The Borrower may, by not less than forty-five (45) days' notice to OFID, prepay all or part of the principal amount of the Loan together with any outstanding interest, Service Charge, and any other fees or charges in advance of maturity.
- (b) In case of partial prepayment, OFID shall, at its discretion, revise the amortization schedule of the Loan Agreement in order that subsequent repayments shall be made as and when due in accordance with the new amortization schedule.
- (c) *Prepayment Premium.* OFID reserves the right to charge a prepayment premium on any amount of the Loan to be prepaid. The prepayment premium shall be an amount reasonably determined by OFID to represent the cost to OFID of redeploying the amount to be prepaid from the date of prepayment to the maturity date of such amount, but shall in any case not exceed one per cent (1%) of the total amount to be prepaid.

5.06 Repayment

The Borrower shall repay the principal amount of the Loan withdrawn and outstanding to OFID in instalments in accordance with the provisions of the Loan Agreement.

5.07 Place and Currency of Payment

The Borrower shall prepay (as the case may be) or repay the principal, and pay the interest, Service Charges and any other fees or charges to OFID at such place as OFID may reasonably request. OFID may, in its sole discretion, request payment to be made in a currency other than the Loan Currency according to the market exchange rate prevailing at the time and place of payment.

5.08 Business Day

All payments due under the Loan Agreement shall be effected on a Business Day. Where the day on or by which a payment is due to be made is not a Business Day, the payment shall be made on the next succeeding Business Day.

5.09 Bank Charges

All charges imposed on payments due under the Loan Agreement shall be off-set based on a shared principle, whereby each party bears the charges imposed by its bank and the bank's corresponding bank.

Article 6

WITHDRAWAL OF LOAN PROCEEDS

6.01 Withdrawal for Eligible Expenditures

After the Loan Agreement has been declared effective, and unless the Borrower and OFID otherwise agree, the Loan may be disbursed from time to time in accordance with the Disbursement Procedures to meet Eligible Expenditure based on the allocation set out in Schedule 2.

6.02 Application for Withdrawal

Applications for withdrawal of the Loan Proceeds shall be prepared in conformity with the Disbursement Procedures. Where the Loan is administered by a Loan Administrator, applications for withdrawal shall be prepared in two original conformed copies, one of which shall be submitted to OFID by the Authorized Representative of the Borrower; the other to the Loan Administrator. Every withdrawal application shall be accompanied with such documents and other evidence sufficient in form and substance to satisfy OFID and, where applicable, the Loan Administrator that the Borrower is entitled to withdraw the amount applied for and that the amount shall be used exclusively to cover the cost of Eligible Expenditure.

6.03 Withdrawal Conditions

Notwithstanding any contrary provision in these General Conditions or the Loan Agreement, no disbursement shall be made unless all the disbursement conditions specified either in the Loan Agreement or the Disbursement Procedures have been fulfilled to OFID's satisfaction.

6.04 Currency of Withdrawal

Except as OFID shall otherwise agree, Loan disbursements may be made in the currencies in which Eligible Expenditures have been paid or are payable. Where a withdrawal is requested in a currency other than the Loan Currency, the disbursement shall be effected on the basis of the actual Loan Currency cost incurred by OFID in meeting the request. OFID shall act in the purchase of currencies as the Borrower's agent. Disbursements for Eligible Expenditure in the Local Currency, if any, shall be made in the Loan Currency according to the official rate of exchange as of that date, and in the absence of such a rate, according to a reasonable rate as OFID shall, from time to time, decide upon.

6.05 Special Commitment

At the Borrower's request, OFID may, at its sole discretion, enter into special commitments in writing and on such terms and conditions as the Borrower and OFID shall agree upon to pay amounts for Eligible Expenditure in line with Section 5.4 of the Disbursement Procedures ("Special Commitment").

6.06 Refund After Withdrawal

The Borrower shall, upon OFID's request, refund to OFID Account any part of the withdrawn amount used to finance non-Eligible Expenditure within sixty (60) days of such request.

6.07 Sanctions

OFID shall be under no obligation to make any disbursement/withdrawal under the Loan if such disbursement/withdrawal is prohibited or restricted by a decision of the United Nations Security Council or a decision of any international or regional organization, or if OFID encounters difficulty transferring the amount through its banking intermediaries.

6.08 Withdrawal End Date

The Borrower's right to withdraw the Loan Proceeds shall terminate on the Closing Date or on such later date as OFID shall determine further to the Borrower's request. The extended date shall promptly be communicated to the Borrower.

Article 7

PROJECT EXECUTION

7.01 Execution Standard

The Borrower shall:

- (a) execute the Project with due diligence and efficiency and in conformity with:
 - (i) sound administrative, economic, financial, technical, social and environmental practices; and
 - (ii) the provisions of the Loan Agreement and these General Conditions;
- (b) make available, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the Loan, for the execution of the Project; and
- (c) the Borrower shall ensure that the activities of its departments and agencies or units with respect to the execution of the Project are conducted and coordinated in accordance with sound administrative, economic, financial, social and environmental policies and procedures.

7.02 Insurance

The Borrower undertakes to take out adequate insurance for the Goods to be procured under the Project against hazards incident to the acquisition, transportation, delivery and storage thereof to the place of use or installation. With respect to such Goods, any insurance indemnity shall be payable in a freely useable currency to replace or repair the Goods. In addition, the Borrower shall take out such other insurances on the Goods as OFID may reasonably request.

7.03 Procurement and Use of Goods

- (a) *Procurement of Goods.* Except as OFID shall otherwise agree, the procurement of Goods shall be in conformity with the Procurement Guidelines or with such other procedures conforming substantially thereto as may be acceptable to OFID, including the guidelines or other instruments of like effect issued by the Project Country or the Loan Administrator. Where relevant, reference to the cost of Goods shall be deemed to include the cost of importing such Goods into the Project Country and delivery to the Project site.
- (b) *Use and Maintenance of Goods and Facilities.* Any Goods procured under the Project shall be used exclusively for the purposes of the Project. The Borrower shall ensure the proper operation and maintenance of all Goods procured and facilities related to the Project.

7.04 Project Documents

The Borrower shall furnish to OFID and, where applicable, to the Loan Administrator, promptly upon their preparation, the Procurement Documents, as well as the procurement plan, implementation schedule, and any other Project-related technical document, as well as any material modifications thereof or additions thereto, in such detail as OFID and the Loan Administrator shall reasonably request.

7.05 Project Records, Information and Inspection.

The Borrower shall:

- (a) maintain records, policies and procedures adequate to record and monitor the progress of the Project on an on-going basis (including its cost and the benefits to be derived from it), to identify the Goods and to disclose their use in the Project and shall provide such records to OFID if requested;
- (b) maintain records adequate to reflect in accordance with sound and consistently maintained accounting standards, the operations, resources and utilization of Eligible Expenditures and, where the Borrower is a State or a Government, of the departments or agencies of the Borrower responsible for the implementation of the Project and shall make such records available to OFID and the Loan Administrator upon request of either party;
- (c) afford representatives of OFID and the Loan Administrator (if any) reasonable opportunity (including providing, upon request, an entry visa to the country free of charge) to visit any part of its territory for purposes related to the Loan, including the Project facilities and construction sites, and to examine any Goods and any records and documents related thereto;
- (d) furnish to OFID and the Loan Administrator all such information, as well as quarterly and other reports, as OFID and the Loan Administrator shall reasonably request, concerning the Project in general, its implementation in conformity with the Loan Agreement and proof of utilization of the Loan Proceeds for Eligible Expenditures;
- (e) 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 after consultation between the Borrower, OFID and the Loan Administrator prepare and furnish to OFID and the Loan Administrator:
 - (i) a Project completion report of such scope and in such detail as OFID and the Loan Administrator 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 OFID of their respective

obligations under the Loan Agreement and the accomplishment of the purposes of the Loan; and

- (ii) a plan designed to ensure the sustainability of the Project's achievements;
- (f) audit the Project and, in particular, the Loan Proceeds in accordance with international accounting guidelines and principles, and furnish OFID with copies of the financial statements of accounts, financial reports and audited financial statements as OFID may reasonably request, provided always that all reports to be provided to OFID pursuant to this Section shall be expressed in United States Dollars. By notice to the Borrower, OFID shall have the right to audit the utilization of the Loan Proceeds and the Borrower undertakes to fully cooperate with OFID's representatives in carrying out this function; and
- (g) ensure that all records and documents referred to in this Section 7.05 are maintained for a minimum of five (5) years after Project completion.

7.06 Cooperation and Consultation in Project Implementation

The Borrower and OFID shall cooperate fully with each other to ensure the achievement of the Project objectives. Specifically, they shall exchange views and information on the implementation of the Project and performance of the Loan and promptly inform each other of any condition that interferes with or threatens to interfere with performance of obligations under the Loan Agreement.

7.07 Projects in Disputed Areas

Where a Project is being executed in an area that becomes disputed, neither the provision of the Loan to the Borrower nor the designation of the area in the Loan Agreement is intended to constitute an acknowledgment of either disputing party's rights to the area nor a statement of opinion in relation to the dispute. The provision of the Loan is also not intended to be a determination of the rights of the disputing parties to such area.

7.08 Application to Executing Agency

All references to the Borrower in Article 7 shall, *mutatis mutandis*, be construed as including references to the Executing Agency.

7.09 Refund of Unutilized Loan Proceeds

Promptly after Project completion, but in any event not later than six (6) months after the Closing Date, or such later date as OFID may in its sole discretion agree to, the Borrower shall refund to OFID Account any withdrawn but unutilized balance of the Loan Proceeds.

Article 8

LOAN ADMINISTRATOR

8.01 Privileges of Loan Administrator

Where a Loan is administered by a Loan Administrator, the Borrower shall, in addition to discharging any obligations toward such Loan Administrator as provided for in these General Conditions:

- (a) cooperate fully with such Loan Administrator to ensure that the purposes of the Loan are or will be accomplished;
- (b) exchange views with OFID and the Loan Administrator regarding the progress of the Project and the achievement of the purposes of the Loan; and
- (c) promptly inform OFID and the Loan Administrator of any condition which interferes with, or threatens to interfere with, the progress of the Project or the performance by the Borrower of its obligations under the Loan Agreement.

8.02 Consultation in Respect of Loan Administration and the Loan Agreement

The Borrower shall consult with OFID before agreeing with the Loan Administrator on amendments to any condition related to the execution or administration of the Project. No such amendments shall be deemed to be approved by OFID without the prior written approval of OFID.

8.03 Incorporation of Loan Administrator's Conditions in Loan Agreement

Notwithstanding anything in Article 8 to the contrary, the Borrower shall, in so far as is consistent with the Loan Agreement, abide vis-à-vis OFID by all such conditions related to the execution and administration of the Project as the Borrower accepts in its loan agreement signed or to be signed with the Loan Administrator for the partial financing of the Project; references to the Loan Administrator in such agreement being deemed for the purposes of this Section to be references to OFID.

Article 9

SUSPENSION, CANCELLATION AND ACCELERATION OF MATURITY

9.01 Suspension

OFID may, by notice to the Borrower, suspend the Borrower's right to make withdrawals from the Loan if:

- (a) a default occurs and is continuing for up to one hundred and eighty (180) days in the payment of any instalment of the principal, interest, Service Charges, front-end and/or commitment fees and any other fees or charges under the Loan Agreement or under any other agreement by virtue of which the Borrower has received a loan from OFID;
- (b) a default occurs in the performance of any obligation on the part of the Borrower under the Loan Agreement, other than a default covered under paragraph (a) above, and such default is continuing for up to one hundred and eighty (180) days after notice thereof has been furnished by OFID to the Borrower; or
- (c) OFID has ascertained the occurrence of Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices or other unlawful act in connection with the procurement of Goods or the execution of any Contract, or in other aspects of Project implementation and the Borrower has not taken timely and appropriate action satisfactory to OFID to address such practices or act;
- (d) the Borrower's right to make withdrawals under a loan with a co-financier for the Project has been suspended or cancelled, or becomes due and payable prior to its agreed maturity *unless* the Borrower shows to the satisfaction of OFID that:
 - (i) such suspension, cancellation or full acceleration was not as a result of its failure to perform its obligations under the co-financing agreement; and
 - (ii) adequate funds for the Project are available from other sources on terms and conditions consistent with the Borrower's obligations under the Loan Agreement;
- (e) OFID has suspended the Borrower's rights to make withdrawals under any other agreement with OFID due to the Borrower's failure to meet its obligations under that agreement or OFID has suspended or cancelled the withdrawal rights of a borrower under a loan agreement guaranteed by the Borrower due to failure of that borrower to perform any of its obligations under such loan agreement;
- (f) OFID determines after the Effective date that, prior to such date but after the signature of the Loan Agreement, an event occurred which would have entitled OFID to suspend or cancel the Borrower's rights to make withdrawals under the Loan Agreement had the event occurred after such Effective Date;
- (g) OFID determines that any representation made or information provided by the Borrower and intended to be relied upon by OFID in providing the Loan, or any representation made by the Borrower in or further to the Loan Agreement, is incorrect in any material respect;
- (h) the Borrower has assigned or transferred in whole or in part, without OFID's consent, any of its obligations arising from the Loan Agreement to a third party or disposed any property or assets financed in whole or in part out of the proceeds of the Loan;

- (i) OFID considers that there is a material change in the legal status, structure and operations of the Executing Agency, which affects the Executing Agency's ability to implement the Project or which makes the achievement of Project objectives improbable;
- (j) OFID has suspended all operations in the Project Country;
- (k) the Borrower is in breach of any other agreement with OFID; or
- (l) any other event specified in the Loan Agreement occurs.

9.02 Cancellation

- (a) *Cancellation by the Borrower.* The Borrower may, by notice to OFID, cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice.
- (b) *Cancellation by OFID.* OFID may, by notice to the Borrower, partially or fully terminate the Borrower's right to make withdrawals from the Loan if:
 - (i) the Borrower's right to make withdrawals under the Loan Agreement (or any other loan agreement with OFID) has been suspended for a continuous period of thirty (30) days;
 - (ii) an extraordinary situation arises which makes it improbable for the Project to be successfully carried out or for the Borrower to be able to perform its obligations under the Loan Agreement; or
 - (iii) there remains any undisbursed amount of the Loan after Project completion or after the Closing Date.
- (c) *Cancellation of Loan for Failure to Sign Agreements.* By notice to the Borrower, OFID may cancel the Loan if the Loan Agreement and any document connected thereto are not signed within twelve (12) months from the date OFID approved the Loan. At the Borrower's request, but at its sole discretion, OFID may exceptionally extend the period within which signature shall take place.
- (d) *Application of Cancellation.* Unless otherwise agreed between the Borrower and OFID, upon any cancellation of any part of the Loan, the several maturities of the principal amount of the Loan shall be reduced in the same proportion as the cancellation bears to the full amount of the Loan before such cancellation.

9.03 Loan Acceleration

If any of the events specified under this Section occur, then at any subsequent time during the continuance of that event, OFID may by notice to the Borrower declare all or part of the principal of the Loan then outstanding to be due and payable immediately together with the

interest, Service Charges, front-end and/or commitment fees and any other fees or charges thereon, and in that case the principal, together with the interest and all charges and fees, shall become due and payable immediately:

- (a) any event specified in Section 9.01 (a) through (d), and (g) through (i) or Section 9.02 (b)(i) and (ii) occur; or
- (b) OFID declares the principal of a loan then outstanding under another loan agreement between the Borrower and OFID or under a loan agreement guaranteed by the Borrower, to be due and payable immediately, together with the interest, Service Charges, front-end and/or commitment fees and any other fees or charges; or
- (c) 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.

9.04 Effectiveness of Provisions after Suspension, Cancellation or Acceleration.

Notwithstanding any suspension, cancellation or acceleration of the Loan under Article 9 of these General Conditions, all the provisions of the Loan Agreement shall continue in full force and effect except as otherwise agreed to by OFID.

9.05 Amounts Subject to Special Commitment

Cancellation or suspension of the Borrower's withdrawal rights shall not apply to amounts subject to irrevocable Special Commitment but shall apply to amounts subject to any other kind of Special Commitment unless otherwise stated in the instrument of Special Commitment.

Article 10 PRIORITY OF LOAN AGREEMENT AND GOVERNING LAW; ENFORCEABILITY AND DISPUTE RESOLUTION

10.01 Priority of Loan Agreement and Governing Law

The Loan Agreement and all documents executed in connection therewith, including these General Conditions, and their validity, enforcement and interpretation, and all disputes arising under any such document, shall be governed by the provisions of the Loan Agreement and the applicable principles of international law.

10.02 Enforceability

The rights and obligations of the parties to the Loan Agreement and all documents executed in connection therewith shall be valid and enforceable in accordance with their terms notwithstanding any provision in any local law in the Project Country to the contrary. No party shall be entitled in any proceedings under this Article to assert any claim that any provision of the Loan Agreement or its supplemental documents is invalid or unenforceable for any reason.

10.03 Dispute Resolution

Any dispute, controversy or claim arising out of or relating to the Loan Agreement or documents executed in connection therewith, or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of such documents that is not resolved within ninety (90) days through negotiation shall, upon request of either party, be submitted to an arbitral tribunal for binding decision in accordance with the following:

- (a) arbitration proceedings may be instituted by the Borrower against OFID or vice versa. In all cases, arbitration proceedings shall be instituted by a notice furnished by the claimant to the respondent. The notice shall contain a statement of the controversy, the nature of claim, the relief sought and the name of the arbitrator appointed by the claimant for the proceedings;
- (b) the arbitral tribunal shall consist of three arbitrators to be appointed as follows: one by the claimant; a second by the respondent and the third (“Umpire”) by agreement of the two arbitrators. If within thirty (30) days after notice of the institution of arbitration proceedings the respondent fails to appoint an arbitrator, such arbitrator shall be appointed by the President of the International Court of Justice upon the request of the party instituting the proceedings. If the two arbitrators fail to agree on the Umpire within sixty (60) days after the date of the appointment of the second arbitrator, such Umpire shall be appointed by the President of the International Court of Justice at the request of either party. 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 the original arbitrator was appointed and such successor shall have all the powers and duties of the original arbitrator;
- (c) the arbitration shall be held in a State (not being the Project Country, the Borrower’s territory or the territory of any Member State of OFID) that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, United States of America, on June 10, 1958. The Umpire shall fix the date and venue to convene the arbitral tribunal. The arbitral tribunal shall determine the date and venue of subsequent proceedings. The English Language shall be used throughout the arbitral proceedings;

- (d) the arbitral tribunal shall determine all questions of procedure and questions relating to its competence (subject to the provisions of this Section and except as the parties shall otherwise agree);
- (e) the tribunal shall accord the parties a fair hearing and make all decisions based on a majority vote. The award of the tribunal, which shall be in writing and may be rendered even if one party defaults, shall be final and binding on both parties to the proceedings. The parties shall each be provided with a signed counterpart of the award and shall take all necessary actions to comply with the award;
- (f) service of any notice or process in connection with any proceedings under this Article or in connection with proceedings to enforce an award rendered pursuant to this Article shall be made in accordance with the provisions of Section 11.02;
- (g) the parties shall fix the remuneration of members of the tribunal and any persons required or retained for the conduct of the proceedings. Where they fail to agree before the tribunal convenes, the tribunal shall fix the remuneration based on what is reasonable under the circumstances. The arbitral tribunal shall decide on whether the cost of arbitration, including the remuneration, shall be borne by either or both parties to the proceedings and the procedure for payment of such costs. Each party shall however defray its own expenses;
- (h) If the arbitral award is not complied with within thirty (30) days after the signed counterpart is delivered, the party seeking enforcement may: (i) enter judgment upon the award or institute a proceeding to enforce it in any court of competent jurisdiction against the non-complying party; (ii) enforce the award by execution; or (iii) pursue any other appropriate remedy against the non-complying party for the enforcement of the award and of the provisions of the Loan Agreement.

Article II

MISCELLANEOUS

II.01 Failure to Exercise Rights

No delay by OFID in exercising, or any omission to exercise, any right under the Loan Agreement upon any default, shall impair any such right or be construed as a waiver thereof; nor shall OFID's action in respect of any default affect or impair any of OFID's rights in respect of any other or subsequent default.

II.02 Notices and Requests

Any notice or request required or permitted to be given or made under the Loan Agreement or any document executed in connection therewith shall be in writing. Such notice or request shall be deemed to have been duly given or made when it has been delivered by hand, mail

or telefax to the party to which it is required to be given or made, at the party's address specified in the Loan Agreement or at any other address as the party shall have specified in writing to the party giving the notice or making the request.

II.03 Authority to Take Action

Any action required or permitted to be taken, and any documents required or permitted to be executed under the Loan Agreement on behalf of the Borrower shall be taken or executed by the Authorized Representative of the Borrower or any other person authorized in writing by such Authorized Representative. To this end, the Borrower shall submit satisfactory evidence to OFID confirming the authority of the person or persons who will take any action or sign any document pursuant to the Loan Agreement on its behalf, including authenticated specimen signature of such person or persons.

II.04 Amendment

Any modification of the Loan Agreement may be proposed by either party and shall be agreed to on behalf of the Borrower by written instrument executed by the Authorized Representative of the Borrower or in any other manner as OFID may determine.

II.05 English Language

Any document delivered pursuant to the Loan Agreement shall be in the English language. Documents in any other language shall be accompanied by an English language translation thereof certified as being an approved translation and such approved translation shall be conclusive.

II.06 Termination

- (a) *Termination for Failure to Become Effective.* The Loan Agreement and all obligations of the parties thereto shall terminate if the Loan Agreement shall not have become effective within the period specified in the Loan Agreement, unless OFID, after consideration of the reasons for the delay, extends the period within which the Loan Agreement shall become effective.
- (b) *Termination for Failure to Make First Disbursement.* The Loan Agreement and all obligations of the parties thereto shall terminate if the first disbursement has not been made within twelve (12) months from the Date of Effectiveness, unless otherwise agreed by OFID in writing.
- (c) *Termination on Full Payment.* When the entire principal amount of the Loan withdrawn, accrued interest, Service Charges, front-end and/or commitment fees and any other fees or charges payable thereon have been fully paid and received into OFID Account, the Loan Agreement and all obligations of the parties thereunder (except confidentiality obligations) shall forthwith terminate.

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