Trust Fund for East Timor
CGD Project Agreement

(Second Small Enterprises Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION
acting as Trustee of the Trust Fund for East Timor

and

CAIXA GERAL DE DEPOSITOS, S. A.

Dated October 29, 2001
WHEREAS (A) pursuant to Resolution No. 99-8 of the Executive Directors of the International Bank for Reconstruction and Development (the Bank) and Resolution No. IDA99-5 of the Executive Directors of the Association, as amended by Resolutions No. 99-8/1 and No. IDA99-5/1, the Executive Directors established the Trust Fund for East Timor (TFET) to assist in the emergency reconstruction and recovery program in East Timor and appointed the Association as trustee of the TFET;


(C) by the Trust Fund for East Timor Grant Agreement of even date herewith between East Timor as administered by the United Nations Transitional Administration in East Timor (the Recipient) and the Association, acting as Trustee of the Trust Fund for East Timor (the Trustee), the Trustee has agreed to make available to the Recipient the amount of seven million five hundred thousand United States Dollars ($7,500,000), on the terms and conditions set forth in the Grant Agreement, but only on condition that CGD agree to undertake such obligations toward the Trustee as are set forth in this Agreement; and

(D) by a Credit Implementation Agreement to be entered into between the Recipient and CGD, part of the proceeds of the Grant provided for under the Trust Fund for East Timor Grant Agreement will be made available to CGD on the terms and conditions set forth in said Credit Implementation Agreement; and

WHEREAS CGD, in consideration of the Trustee’s entering into the Grant Agreement with the Recipient, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Grant Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II
Execution of the Project;  
Management and Operations of CGD

Section 2.01. (a) CGD declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Grant Agreement, and, to this end, shall carry out Part A of the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified and experienced management and personnel, and in accordance with its Statutes.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient, the Trustee and CGD shall otherwise agree, CGD shall carry out Part A of the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. (a) CGD undertakes that, unless the Recipient and the Trustee shall otherwise agree, Loans will be made in accordance with the procedures and on the terms and conditions set forth or referred to in Schedule 1 to this Agreement.

(b) CGD shall exercise its rights in relation to each Sub-Project in such manner as to: (i) protect the interests of the Recipient, the Trustee and of CGD; (ii) comply with its obligations under this Agreement; and (iii) achieve the purposes of Part A of the Project.

Section 2.03. (a) CGD shall carry out the obligations set forth in Sections 8.03, 8.04, 8.05, 8.06, 8.07 and 8.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition) in respect of the CGD Project Agreement and Part A of the Project.

(b) Without limitation to the provisions of paragraph (a) of this Section, CGD shall provide the Recipient and the Trustee with monthly reports on the progress of Part A of the Project.

Section 2.04. CGD shall duly perform all its obligations under the Credit Implementation Agreement. Except as the Recipient and the Trustee shall otherwise agree, and as may be permitted under the Credit Implementation Agreement, CGD shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Credit Implementation Agreement or any provision thereof.

Section 2.05. (a) CGD shall, at the request of the Trustee, exchange views with the Recipient and the Trustee with regard to the progress of Part A of the Project, the performance of its obligations under this Agreement and under the Credit Implementation Agreement and other matters relating to the purposes of the Grant.

(b) CGD shall promptly inform the Recipient and the Trustee of any condition that interferes or threatens to interfere with the progress of Part A of the Project, the accomplishment of the purposes of the Grant, or the performance by CGD of its obligations under this Agreement and under the Credit Implementation Agreement.

ARTICLE III
Financial Covenants

Section 3.01. (a) CGD shall establish not later than November 1, 2001, and thereafter maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Trustee, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to Part A of the Project.

(b) CGD shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Trustee, consistently applied, by independent auditors acceptable to the Trustee;

(ii) furnish to the Trustee as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year as so audited, and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Trustee shall have reasonably requested; and

(iii) furnish to the Trustee such other information concerning such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Trustee may from time to time reasonably request.

ARTICLE IV
Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Grant Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Trustee and of CGD thereunder shall terminate on the date on which the Grant Agreement shall terminate in accordance with its terms, and the Trustee shall promptly notify CGD thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.
ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or facsimile to the party to which it is required or permitted to be given or made at such party’s address hereinafter specified or at such other addresses as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Trustee:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address: Telex: Facsimile:

INDEVAS 248423 (MCI) or (202) 477-6391
Washington, D.C. 64145 (MCI)

For CGD:

Caixa Geral de Depositos, S.A.
Rua Dr. Jose Maria Marques
Edificio BNU
Dili, East Timor

Facsimile:

670 390 323 994

Section 5.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of CGD or by CGD on behalf of the Recipient under the Grant Agreement, may be taken or executed by the General Manager of BNU Timor, or by such other person or persons as the General Manager shall designate in writing, and CGD shall furnish to the Trustee sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Sydney, Australia and Dili, East Timor as of the day and year first above written.
INTERNATIONAL DEVELOPMENT ASSOCIATION
   As Trustee of the Trust Fund for East Timor

By
   /s/ Sarah F. Cliffe
   Authorized Representative

CAIXA GERAL DE DEPOSITOS, S.A.

By
   /s/ Joao Manuel Tubal Goncalves
   Authorized Representative

SCHEDULE 1

Procedures for and Terms and Conditions of Loans

1. Loans shall be made on terms and conditions acceptable to the Recipient and the Trustee which shall include:
   (a) repayment of the principal amount not to exceed 36 calendar months, including a grace period not to exceed 90 consecutive calendar days, provided, however, that no repayment date shall fall beyond December 31, 2004;
   (b) interest accrued on the aggregate and unpaid disbursed amount of the Loan at a rate of 14 per cent per annum payable on a monthly basis;
   (c) a front-end fee of 1.5 per cent of the principal amount of the Loan;
   (d) repayment of the principal amount of the Loan and of the accrued interest to be in equal monthly installments; and
   (e) a surcharge on overdue repayments.

2. Except as the Recipient and the Trustee shall otherwise agree, the approved principal amount of the Loan shall be not less than $1,000 and not more than $50,000.

3. No expenditures for goods or services required for a Sub-Project shall be eligible for financing out of the proceeds of the Grant unless the Loan for such Sub-Project shall have been a Loan for which the Trustee has authorized withdrawals from the Grant Account and such expenditures shall have been made not earlier than ninety days prior to the date on which the
Trustee shall have received the request and information required under paragraph 3(a) of this Schedule in respect of such Loan.

4. (a) In connection with each request for authorization to make withdrawals from the Grant Account, CGD shall provide in respect of a Loan: (i) a summary description of the Borrower and the Sub-Project, including a description of the expenditures proposed to be financed out of the proceeds of the Grant, and (ii) the terms and conditions of the Loan, including the schedule of amortization therefor.

(b) Applications and requests made pursuant to the provisions of sub-paragraph (a) of this paragraph shall be presented to the Trustee on or before September 30, 2003.

5. Loans shall be made on terms whereby CGD shall obtain, by written contract with the Borrower or by other appropriate legal means, rights adequate to protect the interests of the Recipient and the Trustee and CGD, including, in the case of any Loan the right to:

(a) require the Borrower to carry out and operate the Sub-Project with due diligence and efficiency and in accordance with sound technical, financial, managerial, environmental and social standards and practices, and to maintain adequate records;

(b) require that: (i) the goods, works and consultants’ services to be financed out of the proceeds of the Grant shall be procured at a reasonable price, account being taken also of other relevant factors such as time of delivery and efficiency and reliability of the goods and availability of maintenance facilities and spare parts therefor, and, in the case of consultants’ services, of their quality and the competence of the parties rendering them; and (ii) such goods, works and services shall be used exclusively in the carrying out of the Sub-Project;

(c) inspect, by itself or jointly with representatives of the Recipient and the Trustee if the Trustee shall so request, such goods, works, plants and construction included in the Sub-Project, the operation thereof, and any relevant records and documents;

(d) require that the Borrower shall (i) take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound business practice, and, without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Grant to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Borrower to replace or repair such goods; or (ii) shall make such other provisions as shall be acceptable to the Recipient, Trustee and CGD;

(e) obtain all such information as the Recipient and the Trustee or CGD shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Borrower and to the benefits to be derived from the Sub-Project; and

(f) suspend or terminate the right of the Borrower to the use of the proceeds of the Grant upon failure by such Borrower to perform its obligations under its contract with CGD.*

SCHEDULE 2
Implementation Program

1. CGD shall adopt and, thereafter, apply in the implementation of Part A of the Project, the CGD Project Manual, acceptable to the Recipient and the Trustee, which shall include the description of: (i) the criteria for the selection of SME Sub-projects and the terms and conditions of Loans set forth in Schedule 1 to this Agreement; (ii) the environmental criteria applicable to SME Sub-project design including environmental impact mitigation, (iii) implementation arrangements; and (iv) reporting requirements, financial management procedures and audit procedures as set forth in Article 3 of this Agreement.

2. CGD shall make Loans which shall be funded up to 90% out of the proceeds of the Grant made available by the Recipient to CGD, and the remainder funded out of CGD’s own funds.

3. In making Loans, CGD may retain for its own use the front-end fee and the interest paid on Loans, referred to in paragraph 1 of Schedule 1 to this Agreement, and the repaid portion of the Loan funded out of CGD’s own funds referred to in paragraph 2 of this Schedule.

4. Except as the Recipient and the Trustee shall otherwise agree, CGD shall ensure that at least $2,000,000 of the proceeds of the Grant is used for purposes of Loans to agribusiness enterprises.

5. With the prior agreement of the Recipient and the Trustee, CGD may make Loans to other financial institutions, including micro-finance organizations, for on-lending under terms and conditions to be approved by the Recipient and the Trustee.

6. Except as the Recipient and the Trustee shall otherwise agree, proceeds of repayments of Loans shall be relented on the same terms and conditions as set forth or referred to in Schedule 1 to this Agreement.

7. CGD:

   (a) shall take all measures necessary to ensure repayments under Loans; and

   (b) shall, whenever repayments fall below 80% of outstanding repayments in any one calendar month: (i) prepare an action plan to improve Loan repayments, acceptable to the Recipient and the Trustee; and (ii) at the request of the Trustee, not make any new Loans until such action plan has been implemented.

8. CGD shall:

   (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Trustee, the carrying out of Part A of the Project and the achievement of the objectives thereof;

   (b) prepare, under terms of reference satisfactory to the Recipient and the Trustee, and furnish to the Recipient and the Trustee, on or about October 1, 2002, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of Part A of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the
period following such date; and

(c) review with the Recipient and the Trustee, by November 1, 2002, or such later dates as the Trustee shall request, the respective reports referred to in subparagraph (b) of this paragraph, and, thereafter, take all measures required to ensure the efficient completion of Part A of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said reports and the Recipient and Trustee’s views on the matter.