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GRANT NUMBER H467-TG

Financing Agreement

(Second Economic Recovery and Governance Grant)

between

REPUBLIC OF TOGO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated April 23, 2009

FINANCING AGREEMENT

AGREEMENT dated April 23, 2009, entered into between REPUBLIC OF TOGO (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”) for the purpose of providing financing in support of the Program (as defined in the Appendix to this Agreement). The Association has decided to provide this financing on the basis, *inter alia*, of: (a) the actions which the Recipient has already taken under the Program and which are described in Section I of Schedule 1 to this Agreement; and (b) the Recipient’s maintenance of an appropriate macro-economic policy framework.

WHEREAS, the Recipient and the Association therefore hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in the Financing Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to thirteen million six hundred thousand Special Drawing Rights (SDR 13,600,000) (the “Grant”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in support of the Program in accordance with Section II of Schedule 1 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Payment Dates are June 15 and December 15 in each year.
- 2.05. The Payment Currency is Euro.

ARTICLE III — PROGRAM

- 3.01 The Recipient declares its commitment to the Program and its implementation. To this end:
- (a) the Recipient and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program;
 - (b) prior to each such exchange of views, the Recipient shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request; and
 - (c) without limitation upon the provisions of paragraphs (a) and (b) of this Section, the Recipient shall exchange views with the Association on any proposed action to be taken after the disbursement of the Financing which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program including any action specified in Section I of Schedule 1 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

- 4.01. The Additional Event of Suspension consists of the following, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part of it, will be carried out.

ARTICLE V — EFFECTIVENESS

- 5.01. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. The Recipient's Representative is the Minister of the Recipient at the time responsible for finance.

6.02. The Recipient's Address is:

Ministry of Economy and Finance
Immeuble CASEF
B.P. 387 Lomé, Togo

Facsimile:

228-221-0905

6.03. The Association's Address is:

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

Cable address:

Telex:

Facsimile:

INDEVAS
Washington, D.C.

248423(MCI) or
64145(MCI)

1-202-477-6391

AGREED in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF TOGO

By /s/ Adjì Otèth Ayassor

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Madani M. Tall

Authorized Representative

SCHEDULE 1

Program Actions; Availability of Financing Proceeds

Section I. Actions Taken Under the Program

The actions already taken by the Recipient under the Program include the following:

Public Finance Management

- The Recipient has published, in the Recipient's Government website for reforms, the 2008 budget execution report, and submitted to the National Assembly the draft version of the 2009 budget law before the end of the 2008 Fiscal Year and in line with the I-PRSP priorities.
- The Recipient has completed the process of re-organization and strengthening of the Recipient's Treasury, in line with the WAEMU Directive N° 06/97/CM/UEMOA on General Regulations on Public Accounting, including creation of a General Payments Office (*Paierie Générale*), a General Revenue Office (*Recette Générale*) and a Treasury Central Accounting Agency within the Treasury.
- The Recipient has created and staffed an internal audit and inspection unit (*Inspection Générale des Finances*) under the Minister of Economy and Finance, and nominated the Inspector General (*Inspecteur Général des Finances*).

Public Procurement

- The Recipient has transmitted to the National Assembly the draft procurement law consistent with the WAEMU Directives N° 04/2005/CM/UEMOA on Procurement and Payment Procedures under Public Contracts and Concessions within WAEMU, and N° 05/2005/CM/UEMOA on Control and Regulatory Functions under Public Contracts and Concessions within WAEMU.

Phosphate Sector

- The Recipient has published the results of a reconciliation exercise between the Fiscal Year 2007 revenues generated from phosphate sales and revenues (royalties, corporate taxes and other taxes) received by the Recipient's Treasury in Fiscal Year 2007.

Cotton Sector

- The Recipient has taken appropriate measures to recover amounts overbilled by some suppliers to SOTOCO, as confirmed by the Billing Verification Task Force (*Mission de Vérification*).

- The Recipient has adopted a new cotton producer price mechanism to cotton producers, reflecting changes in international prices.

Financial Sector

- The Recipient has raised the net worth of the three banks under restructuring (BTCL, BIA Togo and UTB) to the WAEMU prudential ratio (Cooke ratio of 8 percent) by exchanging the banks' non-performing loans with government-issued bonds.

Energy Sector

- The Recipient has entered into a 5 year performance contract with CEET, designed to improve CEET's management's efficiency, and strengthen its long term financial sustainability.

Section II. Availability of Financing Proceeds

- A. General.** The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of this Section and such additional instructions as the Association may specify by notice to the Recipient.
- B. Allocation of Financing Amounts.** The Financing shall be withdrawn in a single tranche. The allocation of the amounts of the Financing to this end is set out in the table below:

Allocations	Amount of the Financing Allocated (expressed in SDR)
Single Tranche:	13,600,000
TOTAL AMOUNT	13,600,000

- C. Deposits of Financing Amounts.** Except as the Association may otherwise agree:
1. The Recipient shall open, prior to furnishing to the Association the first request for withdrawal from the Financing Account, and thereafter maintain a dedicated deposit account for the withdrawal of the funds of the Grant ("Deposit Account"), designated by the Recipient and acceptable to the Association:
 2. The Recipient shall ensure that upon each deposit of an amount of the Financing into the Deposit Account, an equivalent amount is accounted for in the Recipient's budget management system, in a manner acceptable to the Association.
- D. Audit.** Upon the Association's request, the Recipient shall:

1. have the Deposit Account audited by independent auditors acceptable to the Association, in accordance with consistently applied auditing standards acceptable to the Association;
2. furnish to the Association as soon as available, but in any case not later than four months after the date of the Association's request for such audit, a certified copy of the report of such audit, of such scope and in such detail as the Association shall reasonably request; and
3. furnish to the Association such other information concerning the Deposit Account and their audit as the Association shall reasonably request.

E. Excluded Expenditures. The Recipient undertakes that the proceeds of the Financing shall not be used to finance Excluded Expenditures. If the Association determines at any time that an amount of the Financing was used to make a payment for an Excluded Expenditure, the Recipient shall, promptly upon notice from the Association, refund an amount equal to the amount of such payment to the Association. Amounts refunded to the Association upon such request shall be cancelled.

F. Closing Date. The Closing Date is December 31, 2009.

APPENDIX

Section I. Definitions

1. “BIA Togo” means Banque Internationale pour l’Afrique, a Togolese commercial bank, incorporated on July 24, 1981 and registered under the WAMU Banking Law of 1990 as a limited company under the number T 0005 P.
2. “BTCT” means *Banque Togolaise pour le Commerce et l’Industrie*, a Togolese commercial bank, incorporated on April 30, 1970 and registered under the WAMU Banking Law of 1990 as a limited company under the number T 0024K, pursuant to the *Arrêté* 26/MEF/DE, dated February 6, 1996.
3. “Billing Verification Task Force” means the audit carried out by the auditor (CKA-PriceWaterhouseCoopers Consortium) hired by the Recipient under contract No. 001/MEF/DE dated March 17, 2008 to verify possible amounts overbilled by certain suppliers to SOTOCO.
4. “CEET” means *Compagnie Energie Electricité du Togo*, the state-owned company of the Recipient, established and operating under Law 90-26 of December 4, 1990, responsible for production and distribution of electricity to end users.
5. “Deposit Account” means the Deposit Account referred to in Schedule 1 to this Agreement.
6. “Excluded Expenditure” means any expenditure:
 - (a) for goods or services supplied under a contract which any national or international financing institution or agency other than the Association or the Bank has financed or agreed to finance, or which the Association or the Bank has financed or agreed to finance under another financing, credit, grant or loan;
 - (b) for goods included in the following groups or sub-groups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Recipient:

Group	Sub-group	Description of Item
112		Alcoholic beverages
121		Tobacco, un-manufactured, tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitutes)

525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, non-monetary (excluding gold ores and concentrates)

- (c) for goods intended for a military or paramilitary purpose or for luxury consumption;
 - (d) for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Recipient or international agreements to which the Recipient is a party;
 - (e) on account of any payment prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and
 - (f) under a contract with respect to which the Association determines that corrupt, fraudulent, collusive or coercive practices were engaged in by representatives of the Recipient or other recipient of the Financing proceeds during the procurement or execution of such contract, without the Recipient (or other such recipient) having taken timely and appropriate action satisfactory to the Association to remedy the situation.
7. "Fiscal Year" means the period from January 1 to December 31.
8. "General Conditions" means the "International Development Association General Conditions for Credits and Grants", dated July 1, 2005 (as amended through October 15, 2006) with the modifications set forth in Section II of this Appendix.

9. "I-PRSP" means the Government's "Interim Poverty Reduction Strategy Paper" adopted in March 2008.
10. "Program" means the program of actions, objectives and policies designed to promote growth and achieve sustainable reductions in poverty and set forth or referred to in the letter dated March 19, 2009 from the Recipient to the Association declaring the Recipient's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during its execution.
11. "Single Tranche" means the amount of the Financing allocated to the category entitled "Single Tranche" in the table set forth in Part B of Section II of Schedule 1 to this Agreement.
12. "SOTOCO" means *Société Togolaise de Coton*, the state-owned cotton company of the Recipient, established and operating under Law 90-26 of December 4, 1990, responsible at the national level, for marketing and ginning of cotton and selling of cotton fiber.
13. "UTB" means *Union Togolaise de Banque*, a Togolese commercial bank fully owned by the Togolese Government, incorporated on June 30, 1964 and registered, under the WAMU Banking Law of 1990, as a limited company under the number T 0009 T.
14. "WAEMU" means the West African Economic and Monetary Union.
15. "WAMU" means the West African Monetary Union.

Section II. Modifications to the General Conditions

The modifications to the "International Development Association General Conditions for Credits and Grants", dated July 1, 2005 (as amended through October 15, 2006) are as follows:

1. The last sentence of paragraph (a) of Section 2.03 (relating to Applications for Withdrawal) is deleted in its entirety.
2. Sections 2.04 (*Designated Accounts*) and 2.05 (*Eligible Expenditures*) are deleted in their entirety, and the remaining Sections in Article II are renumbered accordingly.
3. Sections 4.01 (*Project Execution Generally*), and 4.09 (*Financial Management; Financial Statements; Audits*) are deleted in their entirety, and the remaining Sections in Article IV are renumbered accordingly.
4. Paragraph (a) of Section 4.05 (renumbered as such pursuant to paragraph 3 above and relating to *Use of Goods, Works and Services*) is deleted in its entirety.

5. Paragraph (c) of Section 4.06 (renumbered as such pursuant to paragraph 3 above) is modified to read as follows:

“Section 4.06. Plans; Documents; Records

... (c) The Recipient shall retain all records (contracts, orders, invoices, bills, receipts and other documents) evidencing expenditures under the Financing until two years after the Closing Date. The Recipient shall enable the Association’s representatives to examine such records.”

6. Section 4.07 (renumbered as such pursuant to paragraph 3 above) is modified to read as follows:

“Section 4.07. Program Monitoring and Evaluation

... (c) The Recipient shall prepare, or cause to be prepared, and furnish to the Association not later than six months after the Closing Date, a report of such scope and in such detail as the Association shall reasonably request, on the execution of the Program, the performance by the Recipient and the Association of their respective obligations under the Legal Agreements and the accomplishment of the purposes of the Financing.”

7. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:

- (a) The definition of the term “Eligible Expenditure” is modified to read as follows:

“‘Eligible Expenditure’ means any use to which the Financing is put in support of the Program, other than to finance expenditures excluded pursuant to the Financing Agreement.”

- (b) The term “Financial Statements” and its definition as set forth in the Appendix are deleted in their entirety.

- (c) The term “Project” is modified to read “Program” and its definition is modified to read as follows:

“‘Program’ means the program referred to in the Financing Agreement in support of which the Financing is made.” All references to “Project” throughout these General Conditions are deemed to be references to “Program”.