

CONFORMED COPY

LOAN NUMBER 7736-GT

Loan Agreement

(Second Programmatic Fiscal and Institutional Development Policy Loan)

between

REPUBLIC OF GUATEMALA

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated December 7, 2009

LOAN AGREEMENT

Agreement dated December 7, 2009, entered into between REPUBLIC OF GUATEMALA (“Borrower”) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (“Bank”) for the purpose of providing financing in support of the Program (as defined in the Appendix to this Agreement). The Bank has decided to provide this financing on the basis, inter alia, of: (a) the actions which the Borrower has already taken under the Program and which are described in Section I of Schedule 1 to this Agreement; and (b) the Borrower’s maintenance of an appropriate macro-economic policy framework. The Borrower and the Bank 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 this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — LOAN

- 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, the amount of three hundred and fifty million dollars (\$350,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.07 of this Agreement (“Loan”).
- 2.02. The Borrower may withdraw the proceeds of the Loan in support of the Program in accordance with Section II of Schedule 1 to this Agreement.
- 2.03. The Front-end Fee payable by the Borrower shall be equal to one quarter of one percent (0.25%) of the Loan amount.
- 2.04. The interest payable by the Borrower for each Interest Period shall be at a rate equal to LIBOR for the Loan Currency plus the Fixed Spread; provided, that upon a Conversion of all or any portion of the principal amount of the Loan, the interest payable by the Borrower during the Conversion Period on such amount shall be determined in accordance with the relevant provisions of Article IV of the General Conditions. Notwithstanding the foregoing, if any amount of the

Withdrawn Loan Balance remains unpaid when due and such non-payment continues for a period of thirty days, then the interest payable by the Borrower shall instead be calculated as provided in Section 3.02 (d) of the General Conditions.

- 2.05. The Payment Dates are May 15 and November 15 in each year.
- 2.06. The principal amount of the Loan shall be repaid in accordance with the provisions of Schedule 2 to this Agreement.
- 2.07. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management: (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency; (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Variable Rate to a Fixed Rate, or vice versa; and (iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on the Variable Rate.
- (b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a "Conversion", as defined in the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.
- 2.08. Without limitation upon the provisions of paragraph (a) of Section 2.07 of this Agreement and unless otherwise notified by the Borrower to the Bank in accordance with the provisions of the Conversion Guidelines, the interest rate basis applicable to consecutive withdrawals from the Loan Account which in the aggregate equal one hundred and fifty million Dollars (\$150,000,000) shall be converted from the initial Variable Rate to a Fixed Rate for the full maturity of such amount in accordance with the provisions of the General Conditions and of the Conversion Guidelines.
- 2.09. Without limitation upon the provisions of Section 5.08 of the General Conditions (renumbered as such pursuant to paragraph 4 of Section II of the Appendix to this Agreement and relating to *Cooperation and Consultation*), the Borrower shall promptly furnish to the Bank such information relating to the provisions of this Article II as the Bank may, from time to time, reasonably request.

ARTICLE III — PROGRAM

- 3.01 The Borrower declares its commitment to the Program and its implementation. The Loan may serve to finance all budgetary expenditures of the Borrower in support of the Program, except for Excluded Expenditures, as set forth in this Agreement. To this end, and further to Section 5.08 of the General Conditions:
- (a) the Borrower and the Bank 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 Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request; and
 - (c) without limitation upon the provisions of paragraphs (a) and (b) of this Section, the Borrower shall promptly inform the Bank of any situation that 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 BANK

- 4.01. The Additional Events of Suspension consist of the following:
- (a) A situation has arisen which shall make it improbable that the Program, or a significant part of it, will be carried out.
 - (b) The Borrower's macroeconomic policy framework has become inconsistent with the objectives of the Program.
 - (c) An action has been taken or a policy has been adopted to reverse any action or policy under the Program, including any action listed under Section I of Schedule 1 to this Agreement, in a manner that would, in the opinion of the Bank, adversely affect the achievement of the objectives of the Program.

- 4.02. The Additional Events of Acceleration consist of the following:
- (a) Any event specified in paragraph (c) of Section 4.01 of this Agreement occurs and is continuing for a period of 30 days after notice of the event has been given by the Bank to the Borrower.
 - (b) Any of the events specified in paragraphs (a) and (b) of Section 4.01 of this Agreement occurs.

ARTICLE V — EFFECTIVENESS

- 5.01. Without prejudice to the provisions of the General Conditions, the Effectiveness Deadline is the date ninety (90) days after the date of this Agreement, but in no case later than the eighteen (18) months after the Bank's approval of the Loan which expire on January 28, 2011.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

- 6.01. The Borrower's Representative is its Minister of Public Finance.
- 6.02. The Borrower's Address is:

Ministerio de Finanzas Públicas
8a Avenida y 21 Calle
Centro Cívico, Zona 1
Guatemala, Guatemala, C.A.

Telephone:	Facsimile:
(502) 22485002	(502) 22485005
(502) 22485080	(502) 22485084

- 6.03. The Bank's Address is:
- International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:	Telex:	Facsimile:
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INTBAFRAD
Washington, D.C.

248423(MCI) or
64145(MCI)

1-202-477-6391

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

REPUBLIC OF GUATEMALA

By /s/ José Francisco Villagrán de León
Authorized Representative

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT**

By /s/ Laura Frigenti
Authorized Representative

SCHEDULE 1**Program Actions; Availability of Loan Proceeds**

Section I. Actions under the Program. The actions taken by the Borrower under the Program include the following:

1. The Borrower has taken actions to maintain fiscal space for priority spending, including the implementation of, *inter alia*: (a) a direct tax on business income to offset the decline in tax collections due to the expiration of the IETAAP in the year 2008; (b) mandatory use of the software application for income tax withholding to enhance income tax collection; and (c) cross-checks between value-added tax declarations and income tax submissions to reduce tax evasion.
2. The Borrower has completed the supervision of at least three risk profiles (out of the following four: liquidity, credit, operational, and market) under the Banking Superintendency's risk-based consolidated supervision manual, in Financial Groups controlling at least half of the total bank assets of the domestic financial system.
3. The Borrower has carried out the standardization of its Central Bank debt instruments and the establishment of regular issuance to facilitate the market development of an interest rate yield curve, through the implementation of: (a) coordinated, weekly auctions of securities by its Central Bank and the MOF with broad participation of the financial sector, non-financial private sector and public sector; and (b) electronic issuance of 7-day securities.
4. The Congress of the Republic has approved legislation (*Decreto* 51-2007, the *Ley de Garantías Mobiliarias*, and reforms under *Decreto* No. 46-2008) to provide firms, particularly micro, small and medium enterprises, with the possibility of using their movable assets as collateral while keeping possession of the assets.
5. The Borrower has implemented the following mechanisms to enhance the control and transparency of the majority of public trust funds: (a) monthly reporting of financial accounts to the MOF and its General Auditor's office; and (b) annual external audits of public trust funds.
6. In order to facilitate public access to information and transparency: (a) an access to information and transparency law has been approved by Congress of the Republic and is effective; and (b) the MOF has implemented the SAIP.

7. The Borrower: (a) has issued and is implementing Executive Decree 394-2008 for the internal reorganization of functions and responsibilities in the MOF to fully absorb, operate and upgrade the financial management and procurement framework systems SIAF and *Guatecompras*; and (b) has included provisions and technical indicators in its 2010 budget guidelines in order to start implementation of a results-informed budget system in central government entities.
8. The Borrower: (a) is implementing a transparent monitoring and evaluation system in the municipalities benefiting from *Mi Familia PROGRESA* that allows for the verification of conditions for cash transfers being met by families in the program; and (b) has received an external evaluation of risks under *Mi Familia PROGRESA*, related to design, instruments, conditionality, information flows, beneficiaries' feedback and coordination with other institutions.
9. The Borrower, through SAT, has implemented a customs management system (SAQB'E) on cargo management and on the release and clearance of imported/exported goods and merchandise in transit, in at least three major customs entry points, managing over 30 percent of the Borrower's total customs traffic.

Section II. Availability of Loan Proceeds

- A. General.** The Borrower may withdraw the proceeds of the Loan in accordance with the provisions of this Section and such additional instructions as the Bank may specify by notice to the Borrower.
- B. Allocation of Loan Amounts.** The Loan shall (except for amounts required to pay the Front-end Fee) be withdrawn in various portions of the Single Tranche. The allocation of the amounts of the Loan to this end is set out in the table below:

<u>Allocations</u>	Amount of the Loan Allocated (expressed in Dollars)
Single Tranche	349,125,000
Front-end Fee	875,000
TOTAL AMOUNT	350,000,000

- C. Deposits of Loan Amounts.** Except as the Bank may otherwise agree:
1. all withdrawals from the Loan Account shall be deposited by the Bank into an account designated by the Borrower and acceptable to the Bank; and
 2. the Borrower shall ensure that upon each deposit of an amount of the Loan into this account, an equivalent amount is accounted for in the Borrower's budget management system, in a manner acceptable to the Bank.
- D. Excluded Expenditures.** The Borrower undertakes that the proceeds of the Loan shall not be used to finance Excluded Expenditures. If the Bank determines at any time that an amount of the Loan was used to make a payment for an Excluded Expenditure, the Borrower shall, promptly upon notice from the Bank, refund an amount equal to the amount of such payment to the Bank. Amounts refunded to the Bank upon such request shall be cancelled.
- E. Closing Date.** The Closing Date is December 31, 2010.

SCHEDULE 2

Amortization Schedule

The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (“Installment Share”). If the proceeds of the Loan have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by the Bank by multiplying: (a) Withdrawn Loan Balance as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayable amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Principal Payment Date	Installment Share (Expressed as a Percentage)
On each May 15 and November 15 Beginning May 15, 2018 through and including May 15, 2035	2.78%
Ending November 15, 2035	2.70%

2. If the proceeds of the Loan have not been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:
- (a) To the extent that any proceeds of the Loan have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the Withdrawn Loan Balance as of such date in accordance with paragraph 1 of this Schedule.
 - (b) Any amount withdrawn after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by the Bank by multiplying the amount of each such withdrawal by a fraction, the numerator of which is the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (“Original Installment Share”) and the denominator of which is the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such amounts repayable to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. (a) Amounts of the Loan withdrawn within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.
 - (b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, if at any time the Bank adopts a due date billing system under which invoices are issued on or after the respective Principal Payment Date, the provisions of such sub-paragraph shall no longer apply to any withdrawals made after the adoption of such billing system.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the Withdrawn Loan Balance to an Approved Currency, the amount so converted in the Approved Currency that is repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by the Bank by multiplying such amount in its currency of denomination immediately prior to the Conversion by either: (i) the exchange rate that reflects the amounts of principal in the Approved Currency payable by the Bank under the Currency Hedge Transaction relating to the Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.
5. If the Withdrawn Loan Balance is denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

APPENDIX

Section I. Definitions

1. “Banking Superintendency” means the Borrower’s supreme body (*Superintendencia de Bancos*) responsible for the regulation and supervision of banks, which body was established and is operating pursuant to the provisions of the Borrower’s Legislative Decree No. 18-2002 (*Ley de Supervisión Financiera*) effective on June 1, 2002.

“Congress of the Republic” or *Congreso de la República* means the Borrower’s legislative branch of government.

“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 Bank or the Association has financed or agreed to finance, or which the Bank or the Association has financed or agreed to finance under another loan, credit, or grant;
- (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 Bank by notice to the Borrower:

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 Borrower or international agreements to which the Borrower 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) with respect to which the Bank determines that corrupt, fraudulent, collusive or coercive practices were engaged in by representatives of the Borrower or other recipient of the Loan proceeds, without the Borrower (or other such recipient) having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur.

“Executive Decree 394-2008” means the Borrower’s *Acuerdo Gubernativo 394-2008* of December 23, 2008 which contains the Organic Regulations of the Internal Ministry of Public Finance (*Reglamento Orgánico Interno del Ministerio de Finanzas Públicas*).

“Financial Group” means a grouping of financial entities registered and regulated by the Banking Superintendency pursuant to the legal and financial criteria provided in Article 27 of the Borrower’s Legislative Decree No. 19-2002 (*Ley de Bancos y Grupos Financieros*) effective June 1, 2002.

“General Conditions” means the “International Bank for Reconstruction and Development General Conditions for Loans”, dated July 1, 2005 (as amended through February 12, 2008) with the modifications set forth in Section II of this Appendix.

“Guatecompras” means *Sistema de Información de Contrataciones y Adquisiciones del Estado*, the transparent web-based government procurement system of the Borrower, pursuant to Decree 57-92 of the Congress of the Republic (*Ley de Contrataciones del Estado*).

1. “IETAAP” means *Impuesto Extraordinario y Temporal en Apoyo a los Acuerdos de Paz*, the Borrower’s Extraordinary and Temporary Tax in Support of the Peace Accords instituted by the Borrower through its Decree 19-04 as published in the Official Gazette on June 29, 2004.
2. “*Mi Familia PROGRESA*” means the Borrower’s conditional cash transfer program to support low income families, as defined in the Borrower’s Governmental Accord (*Acuerdo Gubernativo*) No. 117-2008 of April 16, 2008.

3. “MOF” means *Ministerio de Finanzas Públicas*, the Borrower’s Ministry of Public Finance.
4. “Official Gazette” or “*Diario de Centroamérica*” means the Borrower’s official newspaper.

“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 June 15, 2009 from the Borrower to the Bank declaring the Borrower’s commitment to the execution of the Program, and requesting assistance from the Bank in support of the Program during its execution.

“SAIP” means *Sistema de Acceso a Información Pública*, the Borrower’s System of Access to Public Information, as established pursuant to the provisions of the Law of Access to Public Information, issued by means of the Borrower’s Decree No. 57-2008, dated October 23, 2008.

“SAT” means the Borrower’s agency responsible for the supervision of tax administration established and operating pursuant to the provisions of the Borrower’s Legislative Decree No. 1-98, dated January 12, 1998 (*Ley Orgánica de la Superintendencia de Administración Tributaria*) and published in the Official Gazette on February 13, 1998.

“SIAF” means *Sistema Integrado de Administración Financiera*, the Borrower’s Integrated Financial Management System established through the Borrower’s Governmental Accord (*Acuerdo Gubernativo*) No. 217-95 of May 17, 1995, which has the objective of improving the efficiency, accountability and transparency of financial management of the Borrower’s public sector.

“Single Tranche” means the amount of the Loan allocated to the category entitled “Single Tranche” in the table set forth in Part B of Section II of Schedule 1 to this Agreement.

Section II. Modifications to the General Conditions

The modifications to the General Conditions 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. Paragraph (a) of Section 2.05 (renumbered as such pursuant to paragraph 2 above) is modified to read as follows:

“Section 2.05. Refinancing Preparation Advance; Capitalizing Front-end Fee and Interest

(a) If the Loan Agreement provides for the repayment out of the proceeds of the Loan of an advance made by the Bank or the Association (“Preparation Advance”), the Bank shall, on behalf of such Loan Party, withdraw from the Loan Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Loan Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Bank shall pay the amount so withdrawn to itself or the Association, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.”

4. Sections 5.01 (*Project Execution Generally*), and 5.09 (*Financial Management; Financial Statements; Audits*) are deleted in their entirety, and the remaining Sections in Article V are renumbered accordingly.
5. Paragraph (a) of Section 5.05 (renumbered as such pursuant to paragraph 4 above and relating to *Use of Goods, Works and Services*) is deleted in its entirety.
6. Paragraph (c) of Section 5.06 (renumbered as such pursuant to paragraph 4 above) is modified to read as follows:

“Section 5.06. Plans; Documents; Records

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

7. Paragraph (c) of Section 5.07 (renumbered as such pursuant to paragraph 4 above) is modified to read as follows:

Section 5.07. Program Monitoring and Evaluation

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

8. 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 “Conversion Date” is modified to read as follows:

“‘Conversion Date’ means, in respect of a Conversion, the Execution Date (as herein defined) or such other date as requested by the Borrower and accepted by the Bank, on which the Conversion enters into effect, and as further specified in the Conversion Guidelines.”
 - (b) The definition of the term “Eligible Expenditure” is modified to read as follows:

“‘Eligible Expenditure’ means any use to which the Loan is put in support of the Program, other than to finance expenditures excluded pursuant to the Loan Agreement.”
 - (c) The term “Financial Statements” and its definition are deleted in their entirety.
 - (d) The term “Project” is modified to read “Program” and its definition is modified to read as follows (and all references to “Project” throughout these General Conditions are deemed to be references to “Program”):

“‘Program’ means the program referred to in the Loan Agreement in support of which the Loan is made.”
 - (e) The term “Program Preparation Advance” (renamed as such pursuant to subparagraph 8 (d) above) is modified to read “Preparation Advance” and its definition is modified to read as follows:

“‘Preparation Advance’ means the advance referred to in the Loan Agreement and repayable in accordance with Section 2.05.”