

concluye 6 30.6.2002

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**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA**

**AND**

**THE GOVERNMENT OF THE SWISS CONFEDERATION**

**ON THE GRANTING OF A MIXED FINANCING**

**FOR THE PROJECT  
FORTALECIMIENTO DE LA RED AMBIENTAL NACIONAL,  
WITH THE INSTITUTO DE HIDROLOGÍA,  
METEOROLOGÍA Y ESTUDIOS AMBIENTALES (IDEAM)**

*The Government of the Republic of Colombia, represented by the Ministry of Finance and Public Credit, and*

*The Government of the Swiss Confederation, represented by the State Secretariat for Economic Affairs*

*in order to promote economic and social progress in Colombia and to further implement economic cooperation between Colombia and Switzerland*

*according to the regulations of the "Acuerdo entre el Gobierno de Suiza y el Gobierno de Colombia sobre la Línea de Financiamiento Mixto", dated December 3, 1990 and*

*following the "Declaración de Intenciones sobre la Cooperación en el Marco del Medio Ambiente entre el Gobierno de la República de Colombia y el Gobierno de la Confederación Suiza", signed December 2<sup>nd</sup>, 1994 in Bogotá*

*have agreed as follows:*

## **Article 1**

### **Definitions**

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings :

- 1) "Government of Colombia" means the Government of the Republic of Colombia
- 2) "Swiss Government" means the Government of the Swiss Confederation;
- 3) "Contracting Parties" means the Government of Colombia and the Swiss Government;
- 4) "MoF" means the Ministry of Finance and Public Credit (Ministerio de Hacienda y Crédito Público) of Colombia;
- 5) "IDEAM" means the Instituto de Hidrología, Meteorología y Estudios Ambientales in Bogotá/ Colombia;
- 6) "seco" means the State Secretariat for Economic Affairs of Switzerland;
- 7) "Swiss Bank" means the Credit Suisse First Boston, Zürich;
- 8) "Agreement" means the present Agreement for a mixed financing for the Project;
- 9) "Project" means the project fortalecimiento de la red ambiental nacional, carried out by IDEAM;
- 10) "Loan Agreement" means the agreement between the Government of Colombia and the Swiss Bank;
- 11) "Framework Agreement" means the "Acuerdo entre el Gobierno de Suiza y el Gobierno de Colombia sobre la Línea de Financiamiento Mixto", of Dec. 3, 1990.

## **Article 2**

### **Objective of the Mixed Financing**

The Project aims at strengthening and modernizing the environmental monitoring network of Colombia. The mixed financing shall put at the disposition of IDEAM funds for the procurement of instruments for meteorological and hydrological measuring, environmental analysis and data transmission. These instruments allow IDEAM to collect and monitor environmental data which are used for numerous activities like disaster prevention, agriculture, transport (air, sea, river, land), construction, industry, energy, water supply and treatment, tourism, urban development and pollution control and others. The Project thus helps IDEAM, together with the other entities of the Sistema Nacional Ambiental, to work out environmental policies, norms, criteria, strategies, studies and action programs.

## **Article 3**

### **Amount and Composition of the Mixed Financing**

- 3.1 The Agreement covers a mixed financing to the amount of 11'595'534.50 Swiss Francs, under the framework agreement "Acuerdo entre el Gobierno de Suiza y el Gobierno de Colombia sobre la Línea de Financiamiento Mixto", signed on December 3, 1990 in Bogotá. The provisions of the Framework Agreement shall equally and fully apply to the present Agreement.
- 3.2 According to the Framework Agreement, this amount is divided into two parts:
  - i) A grant of 4'058'437.10 Swiss Francs (35%) financed by the Swiss Government.
  - ii) A commercial bank loan of 7'537'097.40 Swiss Francs (65%) financed by the Swiss Bank under a Loan Agreement.

## **Article 4**

### **Use and Administration of the Mixed Financing**

- 4.1 The mixed financing shall be utilized for the purchase of Swiss goods and services in relation with the execution of the Project, according to the result of IDEAMs public tender no. 012 of 2001.
- 4.2 The total amount of the mixed financing mentioned in Art. 3 shall be available for financing 85% of the contract value of Swiss supplies of goods and services excluding any import tariffs, fiscal levies and taxes in force in the Republic of Colombia. 15% of the contract value shall be paid by the MoF through IDEAM as down-payment (10%) and intermediate payments (5%), after coming into force of the supply contracts.
- 4.3 The inclusion of any supply contract within the scope of the Agreement shall be subject to prior approval by the MoF, **seco** and the Swiss Bank. The supply contracts shall mention the financing under the Swiss-Colombian mixed financing and have to be guaranteed under the Swiss Export Risk Guarantee.

- 4 The MoF may, by written notice to **seco**, cancel any amount of the mixed financing not yet committed in the form of approved supply contracts. After a period of 36 months from coming into force of the present Agreement, any portion of the mixed financing under this Agreement not committed shall be cancelled, unless otherwise agreed by the Contracting Parties.
- 5 The Swiss Confederation shall grant to the Republic of Colombia the amount mentioned in Art. 3 paragraph 2, lit. i) provided that the Government of Colombia and the Swiss Bank shall have concluded a Loan Agreement with regard to the Swiss Bank loan mentioned in Art. 3, paragraph 2, lit. ii). In the Loan Agreement, the MoF authorizes the Swiss Bank to make payments on behalf of IDEAM to the Swiss suppliers - under specified conditions and according to the supply contracts - and charge it to the mixed financing.
- 6 All payments from the Swiss Bank to the Swiss suppliers under the mixed financing shall be made in the same proportion of 35% and 65% with respect to the contributions of the Swiss Government and the Swiss Bank.

## **Article 5**

### **Accounts and Notifications**

- 1 The MoF and the Swiss Bank shall keep the accounts to be opened in the name of the Agreement and carry on all correspondence therewith. The accounts shall disclose the withdrawals under the mixed financing and the respective payments for debt service.
- 2 All notifications by the Swiss Bank in connection with the Agreement shall be deemed to have been duly given if made to Ministerio de Hacienda y Crédito Público, Dirección General de Crédito Público, Carrera 7ª No. 6-40, Piso 8º, Bogotá, Colombia, Fax: ++57-1-286 42 87, Telex 43289 MHCPC CO.
- 3 All notifications and remittances by the MoF shall be deemed to have been duly given if made to: Credit Suisse First Boston, P.O. Box 900/ Üetlibergstrasse 231, CH-8070 Zürich, Switzerland, Fax: ++41-1-333 79 80, Telex 812412 cs ch.

## **Article 6**

### **Repayment of the Loan**

- 1 All payments of interest and repayments of principal under the Loan Agreement shall be paid by the MoF in full, free and clear of any present or future fiscal levy, taxes, rights and restrictions whatsoever in force in the Republic of Colombia.
  - 2 The Government of Colombia recognizes that the amounts due under the Loan Agreement have to be paid by assignments made in the national budget. The Government of Colombia shall therefore undertake every year the necessary and convenient steps in order to assure the inclusion of these assignments in the national budget and timely pay all amounts due under the Loan Agreement.
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## **Article 7**

### **Implementation, Monitoring and Evaluation**

- 1 The Government of Colombia shall take or cause to take any action, including the provision of funds, facilities, services and other measures, necessary or appropriate to carry out the Project. The Government of Colombia takes all the measures within its scope so that IDEAM includes into its annual budget the allocations required for the operation and maintenance of the equipments financed under the Agreement.
- 2 The Government of Colombia through IDEAM shall maintain separate records for the Project, adequate to identify the goods and services financed out of the Agreement and to disclose the use thereof.
- 3 The Contracting Parties shall exchange views at regular intervals on the progress of the Project, on the performance of their respective obligations under the Agreement, and on the overall economic situation and the development prospects of Colombia. The Government of Colombia shall furnish to the Swiss Government or to consultants mandated by the Swiss Government all such relevant information as the Swiss Government shall reasonably expect concerning the Project. A report on the current status of the Project should be provided by IDEAM every 12 months to **seco**.
- 4 The Government of Colombia through IDEAM shall, after the full disbursement of the mixed financing, furnish to the Swiss Government a final evaluation report on the execution of the Project and the accomplishment of the purpose of this Agreement. The issues to be covered by this final report will be mutually agreed upon between the Contracting Parties.
- 5 The Government of Colombia agrees that the Swiss Government may undertake, at its own cost, an independent ex-post evaluation of the Project.
- 6 The Contracting Parties shall promptly inform each other and, to the extent reasonably practicable, consult with each other, regarding proposed amendments to the Agreement, suspension of contracts and any event which interferes or threatens to interfere with the successful implementation of the Agreement. At the request of either Party, a special joint review shall be conducted.

## **Article 8**

### **Settlement of Disputes**

- 1 As from the entry into force of the present Agreement, disputes as to the interpretation or application of the provisions of the Agreement which will not have been settled in a satisfactory way by means of diplomatic negotiations within a period of three months shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator. The two designated arbitrators shall appoint a third arbitrator as Chairman who shall be a national of a third country.
  - 2 If either Contracting Party has not appointed the arbitrator and has not followed the
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invitation of the other Contracting Party to make the appointment within one month, the arbitrator shall be appointed upon the request of the other Contracting Party by the President of the International Court of Justice.

- 3 If both arbitrators cannot come to an agreement about the choice of a third arbitrator (Chairman) within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
- 4 If in the cases specified under provisions 8.2 and 8.3 of the Agreement, the President of the International Court of Justice is prevented from carrying out the said function, or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented, or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge in Court who is not a national of either Contracting Party.
- 5 Subject to other provisions made by the Contracting Parties, the arbitral tribunal shall determine its procedure. The arbitral tribunal shall apply Swiss law.
- 6 The decisions of the arbitral tribunal will be binding for each Contracting Party.

## **Article 9**

### **Democratic Principles and Human Rights**

- 1 The respect of democratic principles and fundamental human rights, as specified in particular in the Universal Human Rights Declaration, inspire the domestic and international policies of the Contracting Parties, and represent an essential element, as important as the objectives of the present Agreement.
- 2 If essential elements of the Agreement are not respected, each Contracting Party may take appropriate measures. However, and except in case of exceptional emergency, the Party taking measures should notify the other Party and provide all the necessary pieces of information for a thorough examination of the situation with a view to finding a solution. The measures chosen shall in priority be such as to cause the least disruption of the operation of the Agreement and the execution of approved supply contracts, and are immediately notified to the other Party.

## **Article 10**

### **Good Procurement Practices**

The Contracting Parties share a common concern in the fight against corruption, which jeopardizes good governance and the proper use of resources needed for development, and, in addition, endangers fair and open competition based on price and quality. They declare, therefore, their intention of combining their efforts to fight corruption. In particular, they declare that any offer, gift, payment, remuneration or benefit of any kind whatsoever, made to

Whomsoever, directly or indirectly, in order to be awarded the present Agreement, or a supply contract, will be construed as an illegal act or corrupt practice. Any act of this kind constitutes sufficient grounds to justify annulment of the present Agreement, the procurement or resulting award, or for taking any other corrective measures foreseen by applicable law.

## **Article 11**

### **Authorities in Charge**

The following institutions are authorized by their respective Governments to act on their behalf and shall be responsible for the implementation of the Agreement:

For the Swiss Government:

State Secretariat for Economic Affairs (**seco**)  
Directorate for Development and Transition  
Infrastructure Project Financing Division  
Effingerstrasse 1  
CH-3003 Berne/ Switzerland  
Fax: ++41-31-324 09 65.

For the Government of Colombia:

Ministerio de Hacienda y Crédito Público (MoF)  
Dirección General de Crédito Público  
Carrera 7ª No. 6-40, Piso 8º  
Bogotá, Colombia,  
Fax: ++57-1-286 42 87.

The Contracting Parties shall send all notifications in connection with the present Agreement to these addresses, and keep each other informed about changes of these addresses.

## **Article 12**

### **Amendments to the Agreement**

Amendments to the present Agreement will be effected exclusively by way of exchange of letters between the Contracting Parties.

## **Article 13**

### **Transfer of Rights**

The **seco** shall not transfer, neither partially nor totally, its rights according to the Agreement (to a third person) without the Colombian Government's prior consent. Such consent is not to be unreasonably withheld.

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## Article 14

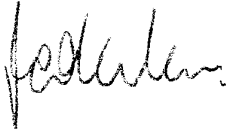
### Entry into Force and Termination

- 4.1 The present Agreement shall enter into force on the date of its reciprocal signature by the duly authorised representatives of the Contracting Parties.
- 4.2 Without prejudice to the provisions of Art 10, the Agreement shall remain in force until all obligations under it have been fulfilled.

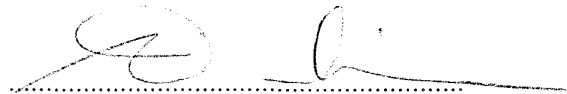
done in Bogota, on June 30., 2002 in two original copies in English.

For the Government of Colombia

For the Swiss Government



.....  
Name: FEDERICO FAJARDO VÉLEZ  
Position: MINISTER OF FINANCE AND  
PUBLIC CREDIT, ACTING



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Name: V. Christe  
Position: Subjefe de Negocios