



**FUNDS**

**TRANSFER**

**AGREEMENT**





**FUNDS TRANSFER AGREEMENT**

This Agreement sets forth the terms and conditions under which Banco do Brasil's New York Branch (the "Bank") agrees to perform various funds transfer services described below on behalf of any customer (individually, the "Customer"). These terms and conditions shall constitute part of the general terms and conditions governing accounts of the Customer at the Bank. The giving of a Payment Order shall constitute conclusive evidence of the Customer's acceptance and agreement to the terms and conditions hereof.

**1. AUTHORITY TO EXECUTE PAYMENT ORDERS.** The Bank is authorized to honor or execute, and to charge to a deposit account of the Customer at the Bank as designated by the Customer, or, if not so designated, any account of the Customer at the Bank (an "Authorized Account"), without limitation as to amount, each and every instruction ("Payment Order") of the Customer to pay, or to instruct [by Payment Order] another bank to pay, a specified amount of money to a designated beneficiary. For purposes of this Agreement, the term "Payment Order" shall include a request for amendment or cancellation of a Payment Order. The term "Authorized Representatives" shall mean those employees of the Customer who may be authorized, pursuant to the general terms and conditions governing accounts of the Customer at the Bank, to initiate a Payment Order. In executing a Payment Order, i.e., issuing a Payment Order intended to carry out a Payment Order received, the Bank shall use one of the funds transfer systems known as Fedwire, CHIPS or SWIFT, in each case as the Bank may, in its discretion, select.

**2. LIMITED OBLIGATION TO EXECUTE: INSUFFICIENT FUNDS.** The Bank is not obligated by this Agreement to honor or execute any Payment Order. If at the time of processing a Payment Order the amount of available funds then on deposit in the Authorized Account plus the available amount of credit, if any, which the Bank has previously agreed to extend to the Customer is less than the amount of such Payment Order, the Bank may reject the Payment Order on the basis of the Authorized Account having insufficient funds. If the Bank determines not to reject a Payment Order on the basis of the Authorized Account not containing sufficient funds, the Bank may, but is not obligated to, (a) extend credit to the Customer by creating an overdraft in the Authorized Account or (b) transfer funds from other accounts of the Customer into the Authorized Account, in either case only to the extent of any deficiency.

**3. REJECTION AND RETURN OF PAYMENT ORDERS.** If the Bank determines, at its discretion, not to honor or execute a Payment Order received from the Customer, it shall endeavor to notify the Customer of such determination, using the same means of communication used by the Customer to transmit the Payment Order to the Bank or by communicating with the Customer in accordance with the procedures for notice contained in Paragraph 25, but shall have no liability by reason of its delay in providing, or failure to provide, such notice. The Customer agrees the foregoing constitutes a commercially reasonable means of notice. The Customer understands that the Bank shall have no obligation to notify the Customer of the rejection of Payment Orders communicated to the Bank by a means or in a manner that does not comply with Paragraph 6. The Bank shall use reasonable efforts to notify the Customer promptly if any Payment Order is

returned to the Bank after its execution but shall have no liability by reason of its delay in providing, or failure to provide, such notice.

**4. SECURITY PROCEDURES.** The Customer acknowledges that the security procedures designed to verify that a Payment Order is that of the Customer, as selected pursuant to the Bank's notification form, "Funds Transfer Security Procedures", provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances. If the Bank accepts a Payment Order in compliance with such security procedures, such Payment Order shall be deemed to be a Payment Order of the Customer and the Customer shall, to the fullest extent permitted by applicable law, be obligated to pay the Bank the amount of the Payment Order whether or not such Payment Order was sent or authorized by the Customer. If signature comparison is used as a part of such security procedures, the Bank shall be deemed to have complied with that part of such procedures, if, on the basis of such comparison, it believes the signatures compared are those of the same person. The confidentiality of any number, code, password or test key or other identifier assigned or given to the Customer by the Bank as part of any security procedure (as same may be amended from time to time) shall be safeguarded by the Customer and distributed by the Customer only on a need-to-know basis to authorized personnel who are involved in sending Payment Orders to the Bank and who have agreed to maintain the confidentiality of such information. The Customer shall immediately notify the Bank of any breach of such confidentiality requirements. The Customer agrees that any action taken by the Bank beyond the security procedures referred to in this paragraph in an attempt to detect an unauthorized Payment Order, or in an attempt to detect errors in the transmission or content of a Payment Order, shall not be deemed a part of the security procedures agreed to either under this Agreement or otherwise, regardless of how often such action may be taken by the Bank. The Customer shall not be excused from its obligation to pay the amount of a Payment Order by reason of the Bank's failure to take such action. The Customer also agrees that failure of the Bank to use or comply with any security procedure provided for herein shall not excuse the Customer from its obligation to pay the Bank the amount of a Payment Order sent or authorized by the Customer or for which the Customer is otherwise liable.

**5. PROCEDURES GENERALLY AND PROCESSING OF PAYMENT ORDERS, AMENDMENTS AND CANCELLATIONS.** Payment Orders may be communicated to the Bank only by a means authorized by the Bank and may be given or directed only to the Funds Transfer Department of the Bank. If a Payment Order is not received by the Bank during that part of a business day when the Bank in New York is open for funds transfer activity (in accordance with its applicable cutoff time(s) established from time to time) (or is received sufficiently close to such cutoff time(s) so that the Bank determines that it is not able to process and act on it before such cutoff time(s)), it may be deemed to have been received in the morning of the following business day. Regardless of the time of receipt of a Payment Order, if the Bank determines to act on a Payment Order, it shall do so at such time as it in its sole discretion shall determine. The Bank is not obligated to amend or cancel a Payment Order, but if in its sole discretion it determines to do so it may condition its action upon (a) compliance with applicable security procedures and (b) receipt of an indemnity and bond or security acceptable to the Bank. Any amendment or can-

cellation of a Payment Order by the Bank shall relieve the Bank of any obligation to act on the original Payment Order amended or cancelled. The Customer understands that it must strictly follow the Bank's applicable administrative procedures concerning proper communication of Payment Orders, as such procedures may be modified from time to time and as communicated to the Customer, including the use of phone numbers, names, addresses and times of day specified by the Bank. The Customer further understands that Payment Orders communicated to the Bank in a manner other than that specified by the Bank may fail to come to the attention of appropriate Bank personnel and may result in consequences not intended by the Customer, but by which the Customer will be bound. The Customer agrees the Bank shall have no liability with respect to such consequences. In addition, the Customer agrees that the Bank is not required to act upon any instruction or notice received from the Customer, including without limitation any instruction as to the time or means of, or funds transfer system to be used in, executing or paying a Payment Order or, except as otherwise expressly provided in this Agreement, to provide any notice or advice to the Customer or any third person.

#### **6. PAYMENT ORDERS FAILING TO IDENTIFY BENEFICIARY'S BANK OR INTERMEDIARY BANKS.**

(a) No Beneficiary's Bank or Intermediary Bank Identified. If a Payment Order does not designate the beneficiary's bank intended to receive such Payment Order, the Bank will not attempt to identify the bank where the beneficiary maintains an account and will seek further instructions from the Customer prior to acting on the Payment Order. If a Payment Order does not designate an intermediary bank where the Bank deems it appropriate, the Bank will select an intermediary bank, and the Customer agrees that the Bank shall have no liability as a result of such selection (in the absence of gross negligence or willful misconduct by the Bank in making such selection).

(b) Use of Correspondents, Agents and Systems. The Bank may execute any Payment Order through the use of correspondents, agents, subagents, and funds transfer and communications systems, and the Customer agrees that the Bank shall (in the absence of gross negligence or willful misconduct by the Bank in making such selection ) have no liability as a result of such selection. To the fullest extent permitted by law, (i) such correspondents, agents, subagents and systems shall be deemed to be agents of the Customer, and the Bank shall not be liable for any errors, negligence, suspension or default of any of them or for any failure to identify the beneficiary of any mispayment by any of them, and (ii) the Bank shall not be liable for any errors, mutilations, delay, misdelivery or failure of delivery in the transmission of any Payment Order or for any suspension of any means of communication or for any imposition of any censorship, exchange control or other restriction, all such risk being borne by the Customer.

**7. STATEMENTS OF ACCOUNT ACTIVITY AND NOTIFICATION OF ERRORS.** The Bank shall provide the Customer with periodic statements or individual advice describing each Payment Order executed on behalf of the Customer. Such statements or advice shall be delivered on a monthly or more frequent basis as determined by the Bank. Within a reasonable time not exceeding 30 business days of receipt of such a statement or the next business day following the receipt of an individual advice, the Customer shall notify the Bank of any discrepancies, unauthorized transactions or

other errors. If such notification is communicated orally, it shall be confirmed promptly in writing. The Customer will be deemed to receive any information that is mailed by the Bank five business days after such information is mailed. To the fullest extent permitted by applicable law, (i) the Bank shall have no liability to the Customer for any loss of interest or otherwise on any Payment Order described in a statement or individual advice if the Customer fails to notify the Bank of a discrepancy, unauthorized transaction or other error with respect to such Payment Order within the time limits described above; and (ii) the Customer shall be precluded from asserting that the Bank is not entitled to payment on any Payment Order if the Customer fails to notify the Bank of any objection to such payment within six months after the Customer receives a statement or individual advice from the Bank describing such Payment Order.

**8. RELIANCE ON IDENTIFYING NUMBERS.** In executing or otherwise acting on Payment Orders, the Bank shall rely upon identifying account or identification numbers of a beneficiary, beneficiary's bank or intermediary bank rather than names. Likewise, payment of a Payment Order may be made by a beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. The Bank shall have no duty to detect any inconsistency between the name and number contained in a Payment Order. Accordingly, the Customer is responsible for such inconsistencies and shall indemnify and hold the Bank harmless from and against any loss, liability, expense or damage it may incur as a result of such inconsistency, including, without limitation, attorneys' fees and disbursements and expenses of litigation.

**9. PROVISIONS RELATING TO THE CUSTOMER'S PAYMENT.** The Customer agrees as follows:

(a) The Customer shall pay the Bank the amount of each Payment Order executed by the Bank pursuant to this Agreement on the date of such execution, and at such time on such date, as the Bank in its discretion shall determine. The Bank may, without prior notice or demand, obtain payment of any such amount by charging an Authorized Account or, as provided in Paragraph 2, other account of the Customer. The Customer agrees to pay the Bank on demand for any overdrafts in any of its accounts arising by operation of this Agreement, together with interest thereon at the rate applicable to intraday or overnight overdrafts, as the case may be, pursuant to the relevant terms and conditions governing accounts of the Customer at the Bank.

(b) The Bank may credit an Authorized Account in any amount to which the Customer may be entitled by reason of the return of a Payment Order executed by the Bank or the amendment or cancellation of a Payment Order.

(c) The Customer recognizes that from time to time the Bank may

- charge its accounts for amounts credited thereto, whether provisionally or not, including by way of illustration and not by way of limitation, charges made as a result of the cancellation or amendment of a Payment Order or the failure of a funds transfer system to settle as anticipated.

**10. BANK LIABILITY; CUSTOMER INDEMNITY.** The Bank shall be responsible only for performing the services expressly provided for in this Agreement, shall be liable only for its negligence or failure to act in good faith in performing those services, and shall not

be liable to any third party or for any act or omission of the Customer or any third party. In no event shall the Bank be liable for special, punitive, indirect or consequential damages, nor shall any action or inaction on the part of the Bank constitute a waiver by it of any cause of action or defense to recovery under applicable law. The maximum period for which the Bank shall be liable for interest on any amount to be refunded or paid to the Customer with respect to an unauthorized, erroneous or other Payment Order is thirty days. The Customer shall indemnify and hold the Bank harmless from and against any loss, liability, expense or damage, including without limitation attorneys' fees and disbursements and expenses of litigation, resulting from any claim of any third party relating to any Payment Order or the services provided for in this Agreement.

**11. RECORDS AND PROCEDURES.** The Customer may change an Authorized Account or Authorized Representative from time to time by giving the Bank written notice thereof certified by an officer of the Customer (other than any person to be named Authorized Representative in such notice) whose signature is verified in accordance with procedures established by the Bank. Any such notice purporting to be certified by an officer of the Customer and whose signature is so verified shall be deemed to have been certified by such officer and to have been executed on behalf of, and shall be binding upon, the Customer. No such notice shall become operative before it is acknowledged in writing by the Bank. The Bank shall have a reasonable time to update its records and to acknowledge any such notice received.

**12. INFORMATION REQUESTS.** Upon request the Customer will provide the Bank with any transaction information necessary for the Bank to handle inquiries and tracing, or otherwise to comply with applicable laws and regulations relating to Payment Orders and funds transfers, including but not limited to, dollar amounts, account(s) affected, dates and names of beneficiaries and third parties involved in the transfer.

**13. FEES.** The Bank may charge, and the Customer shall pay to the Bank promptly, the Bank's usual and customary fees as set by the Bank from time to time for services provided under this Agreement. The Bank's fees will be set forth in its fee schedule and updated from time to time. Unless otherwise agreed in writing, the Bank is authorized to collect such fees by making appropriate charges to an Authorized Account or, if necessary, to other Customer accounts.

**14. ADDITIONAL PROVISIONS APPLYING IF CUSTOMER IS A BANK.** If the Customer is a bank (as defined in Uniform Commercial Code Article 4A), and under applicable law the Customer is not deemed the originator of the funds transfer to which a Payment Order relates, the Customer agrees to indemnify and hold the Bank harmless for any loss or liability owed to such originator to the extent that such loss or liability would not have been incurred if the Customer had been the originator.

**15. SCOPE OF AGREEMENT.** This Agreement applies only to funds transfers involving and Payment Orders denominated in U.S. Dollars and where the Authorized Account is denominated in U.S. Dollars. Special arrangements involving other currencies may be made from time to time by contacting the Customer's account officer at the Bank.



**16. DISCLAIMER OF LIABILITY.** The Bank shall have no responsibility for losses or failure or delays in acting caused by fire or other catastrophe; mechanical, computer or electrical failures; an act of God or other circumstances beyond its control. Circumstances beyond the Bank's control include, without limitation, declared or undeclared war, asset freezes, exchange controls, censorship, nationalization, confiscation, expropriation, blockade, revolution, or any law, decree, moratorium, regulation, compulsion or control of public authority or of domestic or foreign government, de jure or de facto. In addition, the Bank shall have no responsibility for losses or for failure or delays in acting if such action would have resulted in the Bank's having exceeded any limitation upon its intraday net funds position established pursuant to present or future Federal Reserve Board guidelines or in the Bank's otherwise violating any provision of any present or future risk control program of the Federal Reserve Board or any rule or regulation of any other governmental authority. The obligation, if any, of the Bank with respect to any funds transfer or Payment Order, or the return of funds to the Customer shall be suspended while any of the above-described situations exist.

**17. NO WAIVER** Nothing in this Agreement shall constitute or be construed as constituting a waiver by the Bank of any cause of action or right of setoff or any other right or remedy.

**18. TERMINATION.** This Agreement shall remain in full force and effect until either party shall give written notice of its termination to the other. Notwithstanding any notice of termination, this Agreement shall remain effective in respect of any transaction occurring, and liability arising, prior to such termination.

**19. GOVERNING LAW.** This Agreement and the relationship of the parties with respect to funds transfers shall be governed by and interpreted in accordance with the laws of the State of New York including without limitation Article 4A of the Uniform Commercial Code, and, as applicable, operating circulars of any Federal Reserve Bank, federal laws and regulations as amended, including without limitation Regulation J. Subpart B of the Federal Reserve Board, fundtransfer system rules and general commercial bank practices applicable to funds transfer and related activities.

**20. ENTIRE AGREEMENT; AMENDMENTS.** The Customer agrees that its accounts at the Bank are maintained subject to such terms and conditions as the Bank may establish from time to time. This Agreement and any modifications made pursuant to it constitute the complete and exclusive expression of the terms of the Agreement between the parties, and supersedes all prior or contemporaneous proposals, understandings, representations, conditions, warranties, covenants, and all other communications between the parties relating to the subject matter of this Agreement. The parties further agree that this Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the parties or by any prior performance between the parties pursuant to this Agreement or otherwise. In the event of any inconsistency between the terms of this Agreement and any other account agreement between the Bank and the Customer, the terms of this Agreement shall govern. Any part of this Agreement may be amended from time to time by the Bank by mailing appropriate notice to the Customer at the Customer's last address as reflected in the Bank's records or by posting notice for a reasonable time in any conspicuous place at the office where the



Authorized Account is maintained. Any such amendment shall become effective upon receipt of written notice of such amendment by the Customer or after a reasonable amount of time following the posting of notice in the aforesaid manner.

**21. ASSIGNMENTS.** No right or obligation under this Agreement may be assigned by the Customer. Subject to the foregoing limitation, this Agreement shall be binding upon, and inure to the benefit of the Customer and the Bank and their respective successors and assigns.

**22. SEVERABILITY.** If any term or provision of this Agreement is declared invalid, illegal or unenforceable by any court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired thereby.

**23. AUTHORITY AND ENFORCEABILITY.** The Customer represents and warrants that it has full power and authority to execute, deliver and perform its obligations under this Agreement, and that this Agreement is a legal, valid and binding obligation of Customer enforceable in accordance with its terms.

**24. NOTICES.** Except as otherwise provided in this Agreement, any written notice or other written communication from a party shall be provided to the other party by U.S. certified mail, postage prepaid, or tested telex, and shall be sent as follows: If to the Customer at its last address as reflected in the Bank's records, and if to the Bank, addressed as follows:

Manager  
Funds Transfer Department  
Banco do Brasil, New York Branch  
600 Fifth Avenue, 3rd Floor  
New York, New York 10020

SWIFT: BRASUS33

or at any other address as shall be advised in writing to the other party in compliance with this Section. Any such communications shall be effective when received. Any notice under Paragraph 12 may be sent only by U.S. mail as provided in this Paragraph 25.

**25. JUDICIAL PROCEEDINGS.** The Customer hereby submits to the non-exclusive jurisdiction of the state and federal courts located in the State of New York, without prejudice to the Bank's right to bring an action in any other forum. The Customer hereby waives personal service of process and consents to service of process by certified or registered mail, return receipt requested, directed to it at its last address as reflected in the Bank's records or such other address designated in writing by the Customer and received by the Bank. The Customer hereby waives trial by jury in any proceeding brought by either party involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Agreement and the Customer's accounts maintained at the Bank and the Customer also waives any objection based on forum non conveniens, improper venue or personal jurisdiction, for any proceeding brought in any federal or state court located in the State of New York.

**EXHIBIT A  
FUNDS TRANSFER SECURITY PROCEDURES**

In connection with funds transfers, the Customer may give any Payment Order in accordance with any one of the procedures below selected by the Customer. The giving of a Payment Order in accordance with such procedure shall be deemed to be Customer's selection of such procedure to be the sole procedure to be used by it and conclusive evidence of the Customer's agreement to the terms and conditions set forth in the Bank's Funds Transfer Agreement as in effect from time to time (capitalized terms used herein being defined therein). Upon request, the Bank will furnish the Customer with a copy of such Agreement.

1. The Customer is authorized to communicate a Payment Order to the Bank by means of SWIFT, tested telex or tested fax. Where either of those means of communication is used, security procedures involving the use of authentication test keys shall be employed. A separate arrangement has been or upon request of the Customer will be entered into between the Customer and the Bank relating to the exchange of authentication test keys.

2. In the event the Customer chooses not to communicate a Payment Order to the Bank pursuant to the security procedure referred to in Paragraph 1, the Customer is authorized to communicate a Payment Order to the Bank by the following means, which method the Customer agrees provides to it a commercially reasonable degree of protection in light of its particular needs and circumstances:

Customer agrees to be bound by any Payment Order, whether or not authorized, issued in its name and accepted by the Bank in compliance with the security procedure selected by it as set forth above, all in accordance with the Funds Transfer Agreement.







# **BANCO DO BRASIL**

**New York Branch**

600 Fifth Avenue, 3rd Floor

New York, NY 10020

Tel: (212) 626-7000

Fax: (212) 626-7045

Telex 220888

Swift BRASUS33