

---

---

LOAN NUMBER 4836-UA

# Loan Agreement

(Second Export Development Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

and

JOINT STOCK COMPANY "THE STATE EXPORT-IMPORT BANK OF UKRAINE"

Dated September 26, 2006

---

---

LOAN NUMBER 4836-UA

**LOAN AGREEMENT**

AGREEMENT, dated September 26, 2006, between the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and the JOINT STOCK COMPANY "THE STATE EXPORT-IMPORT BANK OF UKRAINE" (UKREXIM) (the Borrower).

WHEREAS (A) Ukraine (the Guarantor) and the Borrower, having been satisfied as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, have requested the Bank to assist in the financing of the Project;

(B) by an agreement (the Guarantee Agreement) of even date herewith between the Guarantor and the Bank, the Guarantor has agreed to guarantee the obligations of the Borrower in respect of the Loan and to undertake such other obligations as set forth in the Guarantee Agreement; and

WHEREAS the Bank has agreed, on the basis, *inter alia*, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (as amended through May 1, 2004) with the modifications set forth below to this Agreement (the General Conditions) constitute an integral part of this Agreement

(a) Section 5.08 of the General Conditions is amended to read as follows:

"Section 5.08. *Treatment of Taxes*

Except as otherwise provided in the Loan Agreement, the proceeds of the Loan may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower or the Guarantor on the goods or services to be financed under the Loan, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Bank's policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Bank shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Loan is excessive or otherwise

unreasonable, the Bank may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Loan Agreement as required to be consistent with such policy of the Bank.”

(b) Section 6.03 (c) of the General Conditions is amended by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Beneficiary Enterprise” means an enterprise satisfying the appropriate criteria as set forth in paragraph 4 of the Attachment to the Annex to Schedule 5 to this Agreement to which the Borrower proposes to make or has made a Sub-loan and/or Lease Financing (as defined hereinafter) ;

(b) “Environmental Impact Assessments” or “EIAs” means the assessment to be carried out for Sub-projects (as defined hereinafter) requiring such assessment in accordance with the requirements of the Operations Manual;

(c) “Environmental Review” means the environmental review in the Operations Manual describing the environmental, mitigation, monitoring and institutional measures to be undertaken under the Project to ensure that all environmental concerns are adequately taken into account in the carrying out of the Project;

(d) “Export Development Lease Financing” or “Lease Financing” means a financing provided or to be provided by the PB (as defined hereinafter) out of the proceeds of the Loan allocated from time to time to Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, for purposes of financing all or a portion of the expenditures incurred by a Beneficiary Enterprise for goods, works and services under an Export Development Sub-Project (as defined hereinafter);

(e) “Export Development Sub-loan” or “Sub-loan” means a loan made or proposed to be made by a PB (as defined hereinafter), out of the proceeds of the Loan allocated from time to time to Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, for purposes of financing all or a portion of the expenditures incurred by a Beneficiary Enterprise for goods, works and services under an Export Development Sub-Project (as defined hereinafter);

(f) “Export Development Sub-Project” or “Sub-project” means a specific project, selected in accordance with paragraph 5 of the Attachment to the Annex to Schedule 5 to this Agreement, which is proposed to be carried out by a Beneficiary Enterprise, in whole or in part through the utilization of the proceeds of a Sub-loan or a Lease Financing;

(g) "Financial Monitoring Report" or "FMR" means each report prepared in accordance with Section 4.02 of this Agreement;

(h) "free-limit Lease Financing" means a Lease Financing proposed to be provided in an amount less than the threshold specified for prior Bank review under paragraph 2 (b) of the Attachment to the Annex to Schedule 5 to this Agreement, for an Export Development Sub-project which qualifies to be approved by the Borrower in the absence of such prior review pursuant to the provisions of such paragraph;

(i) "free-limit Sub-loan" means a Sub-loan proposed to be made in an amount less than the threshold specified for prior Bank review under paragraph 2 (b) of Attachment to the Annex to Schedule 5 to this Agreement, for an Export-Development Sub-project which qualifies to be approved by the Borrower in the absence of such prior review pursuant to the provisions of such paragraph;

(j) "International Financial Reporting Standards" or "IFRS" means the accounting standards issued or endorsed by the International Accounting Standards Board;

(k) "Monitoring and Evaluation Indicators" means the agreed performance indicators set forth in a letter of even date herewith to be utilized by the Borrower under the Project to measure the progress in the implementation of the Project and the degree to which the objectives thereof are being achieved;

(l) "National Bank of Ukraine" or "NBU" means the Guarantor's central bank;

(m) "Operations Manual" means the manual developed and agreed by the Borrower and setting forth the detailed Project institutional, implementation, administrative and monitoring arrangements thereunder, including the operational and administrative procedures for PBs (as defined hereinafter), in respect of the preparation, approval, processing, financing, implementation and supervision of Sub-loans and Lease Financing;

(n) "PIU" means the project implementation unit of the Borrower established on October 15, 1996 pursuant to the Borrower's Order No. 255, or any successor to such unit;

(o) "Participating Bank" or "PB" means a private commercial bank registered and licensed according to the national legislation of the Guarantor and selected by the Borrower pursuant to criteria set forth in paragraph A.1 (a) of Annex to Schedule 5 to this Agreement;

(p) "Procurement Plan" means the Borrower's procurement plan, dated June 26, 2006 covering the initial eighteen (18) month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the

provisions of Section 3.02 (b) to this Agreement, to cover succeeding eighteen (18) month periods (or longer) of Project implementation;

(q) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(r) "Statutes" means the Decree No. 29/92 of the President of Ukraine, dated January 3, 1992 "On the Establishment of the State Export-Import Bank of Ukraine"; the Order No. 189 of the President of Ukraine, dated April 27, 2000 "On the Transformation of the State Export-Import Bank of Ukraine into a Joint Stock Company"; the Charter of the Borrower approved by the Resolution No. 1250 of the Cabinet of Ministers of Ukraine, dated September 10, 2000; and such other laws, decrees, license, charters or regulations governing the operations of the Borrower as may be adopted or enacted from time to time;

(s) "Subsidiary Loan" means any loan made pursuant to a Subsidiary Loan Agreement (as defined hereinafter); and

(t) "Subsidiary Loan Agreement" means an agreement entered or to be entered into between the Borrower and a PB pursuant to paragraph 3 (b) of Schedule 5 to this Agreement, as the same may be amended from time to time, and such term includes all schedules supplemental to the Subsidiary Loan Agreement.

## ARTICLE II

### The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement an amount equal to one hundred fifty four million five hundred thousand Dollars (\$154,500,000).

Section 2.02. (a) The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement: for: (i) expenditures made (or, if the Bank shall so agree, to be made) in respect of: the reasonable cost of goods and consultants' services required for Part B of the Project and to be financed out of the proceeds of the Loan; (ii) amounts paid (or, if the Bank shall so agree, to be paid) by a PB on account of withdrawals made by a Beneficiary Enterprise under a Sub-loan or Lease Financing to meet the reasonable cost of goods, works and services required for the Sub-project in respect of which the withdrawal from the Loan Account is requested; and (iii) in respect of the fee referred to in Section 2.04 of this Agreement.

(b) The Borrower may, for the purposes of the Project open and maintain in Dollars a special deposit account, in the Ukreximbank or other bank acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection

against set-off, seizure or attachment. Deposits into, and payments out of, the Special Accounts shall be made in accordance with the provisions of Schedule 6 to this Agreement.

Section 2.03. The Closing Date shall be December 31, 2011 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a front-end fee in an amount equal to one percent (1%) of the amount of the Loan, subject to any waiver of a portion of such fee as may be determined by the Bank from time to time. On or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of such fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent ( $3/4$  of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.06. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

- (i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.
- (ii) "Interest Payment Date" means any date specified in Section 2.07 of this Agreement.
- (iii) "LIBOR Base Rate" means, for each Interest Period, the London interbank offered rate for six-month deposits in dollars for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.

- (iv) "LIBOR Total Spread" means, for each Interest Period: (A) three-fourths of one percent (3/4 of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

(c) The Bank shall notify the Borrower of the LIBOR Base Rate and the LIBOR Total Spread for each Interest Period, promptly upon the determination thereof.

(d) Whenever, in light of changes in market practice affecting the determination of the interest rates referred to in this Section 2.06, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest rates applicable to the Loan upon not less than six (6) months' notice to the Borrower of the new basis. The new basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.07. Interest and other charges shall be payable semiannually in arrears on April 15 and October 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

### **ARTICLE III**

#### **Execution of the Project; Management and Operations of the Borrower**

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and personnel in adequate numbers, and in accordance with its Statutes.

(b) Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Bank and the Borrower shall otherwise agree, the Borrower shall implement the Project in accordance with the Implementation Program set forth in Schedule 5 to this Agreement.

Section 3.02. (a) Except as the Bank shall otherwise agree, procurement of the goods, works, services, Sub-loans and Lease Financing required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with guidelines acceptable to the Bank, and furnish such update to the Bank not later than 12 months after the date of the preceding Procurement Plan, for the Bank's approval.

Section 3.03. Except as the Bank shall otherwise agree, the Borrower shall maintain, until the completion of the Project, the PIU, and ensure that the PIU functions at all times in a manner and with staffing and budgetary resources necessary and appropriate for Project implementation, and satisfactory to the Bank.

## ARTICLE IV

### Financial Covenants

Section 4.01. (a) The Borrower shall maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Bank, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the Project

(b) The Borrower shall:

- (i) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year, or other period agreed to by the Bank, audited, in accordance with consistently applied auditing standards acceptable to the Bank, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Bank): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Bank), as so audited; (B) except as the Bank shall otherwise agree, an unqualified audit



opinion on such statements by said auditors satisfactory to the Bank; and (C) certifications by auditors and the Borrower's management on the continued compliance with the criteria set forth in Section 4.03 of this Agreement; and

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

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) retain, until at least one year after the Bank has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Bank's representatives to examine such records; and
- (iii) ensure that such statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Bank), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 2 (b) of Schedule 5 to this Agreement the Borrower shall prepare and furnish to the Bank a financial monitoring report, in form and substance satisfactory to the Bank, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Loan, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Bank not later than 45 days after the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Bank not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. Except as the Bank shall otherwise agree, the Borrower shall, during the implementation of the Project, take such steps satisfactory to the Bank as shall be necessary to maintain the following indicators of sound financial performance:

(a) minimum risk-weighted capital (as defined by IFRS and NBU) adequacy ratio of at least 10%;

(b) single-insider lending exposure not exceeding 5% of the Borrower's IFRS based regulatory capital; aggregate insider lending exposure not exceeding 30% of the Borrower's IFRS based regulatory capital; single exposure per single borrower not exceeding 25% of the Borrower's IFRS based regulatory capital; total large exposures not exceeding 8 times the Borrower's IFRS based regulatory capital; total foreign currency position not exceeding 35% (including maximum 30% long open currency position and 5% short open currency position); liquid assets<sup>1</sup> not less than 25% of the total assets;

(c) continues to operate on a profitable basis; and

(d) is in compliance with applicable banking regulations and prudential regulations of the Guarantor as duly certified by the Borrower every six months.

## ARTICLE V

### Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional event is specified, namely that the Statutes of the Borrower shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the operations or the financial condition of the Borrower or its ability to carry out the Project or to perform any of its obligations under this Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional event is specified, namely, the event specified in Section 5.01 of this Agreement shall occur.

<sup>1</sup> For the purposes of this paragraph, "liquid assets" are the sum of cash and cash equivalents, correspondent account balances, precious metals, trading securities and interbank placements with maturity not exceeding 30 days, less any of the aforementioned assets pledged to the third parties.

## **ARTICLE VI**

### **Effective Date; Termination**

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (c) of the General Conditions, that:

(a) at least two PBs have been selected in accordance with criteria and in a manner satisfactory to the Bank, and Subsidiary Loan Agreements have been executed on behalf of the Borrower and the selected PBs on terms and conditions satisfactory to the Bank; and

(b) the Guarantee Agreement has been duly authorized or ratified, is effective and is legally binding upon the Guarantor in accordance with its terms.

Section 6.02. The following is specified as an additional matter, within the meaning of Section 12.02 (a) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank, namely that, the Subsidiary Loan Agreements referred to in Section 6.01 have been duly authorized or approved by and are legally binding upon the Borrower and the PBs in accordance with their terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

## **ARTICLE VII**

### **Representative of the Borrower; Addresses**

Section 7.01. The Chairman of the Borrower is designated as the representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

**For the Bank:**

**International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America**

<b>Cable address:</b>	<b>Telex:</b>	<b>Facsimile:</b>
<b>INTBAFRAD Washington, D.C.</b>	<b>248423 (MCI) or 64145 (MCI)</b>	<b>(202) 477-6391</b>

**For the Borrower:**

**Joint Stock Company "The State Export-Import  
Bank of Ukraine"  
127, Gorkogo Str.  
Kyiv, 03150  
Ukraine**

<b>Telex:</b>	<b>Facsimile:</b>
<b>131258 RICA</b>	<b>38044 247 8082</b>

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Kyiv, Ukraine, as of the day and year first above written.

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By

  
Authorized Representative

JOINT STOCK COMPANY "THE STATE  
EXPORT-IMPORT BANK OF UKRAINE"

By

  
Authorized Representative

## SCHEDULE 1

### Withdrawal of the Proceeds of the Loan

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the of the Loan Allocated (Expressed in USD)</u>	<u>% of Expenditures to be Financed</u>
(1) Sub-loans and Lease Financing	150,000,000	100 %
(2) Goods and Services	3,000,000	100%
(3) Front-end Fee	386,250	Amount due under Section 2.04 of this Agreement
(4) Unallocated	<u>1,113,750</u>	
TOTAL	<u>154,500,000</u>	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of: (a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding \$30,000,000 equivalent, may be made in respect of Category (1) on account of payments made for expenditures before that date but after January 1 2006; and (b) unless the Sub-loan or the Lease Financing has been made in accordance with criteria and procedures set forth in the Operations Manual and on terms and conditions referred to in the Attachment to the Annex to Schedule 5 to this Agreement.

3. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure for expenditures for: (a) contracts for goods, works and services under Category (1) costing less than \$4,000,000 equivalent each; (b) services of consulting firms under Category (2) for contracts costing less than \$200,000 equivalent per contract; (c) services of individual consultants under Category (2) for contracts costing less than \$100,000 equivalent per contract; and (d) goods under Category (2).

## SCHEDULE 2

### Description of the Project

The objectives of the Project are to: (a) provide medium and long term working capital and investment finance to private exporting enterprises to assist the Guarantor's private exporting sector; and (b) further improve the ability of the banking sector to provide financial resources to the enterprise sector through development of intermediation by expanding private financial institutions' lending products.

The Project consists of the following Parts, subject to such modifications thereof as the Bank and the Borrower may agree upon from time to time to achieve such objectives, namely:

**Part A: Export Development Credit Facility**

The establishment and operation of a credit facility for the financing, through the provision of Sub-loans and Lease Financing by PBs to Beneficiary Enterprises, enabling such Beneficiary Enterprises to finance the costs related to the carrying out of Export Development Sub-projects.

**Part B: Institutional Strengthening**

Provision of IT related equipment for the Borrower's continued technology upgrading and services for the Borrower's institutional development.

\* \* \*

The Project is expected to be completed by June 30, 2011.

### SCHEDULE 3

#### Amortization Schedule

<u>Date Payment Due</u>	Payment of Principal (Expressed in <u>Dollars</u> )*
On April 15, 2012	3,395,000
October 15, 2012	3,490,000
April 15, 2013	3,585,000
October 15, 2013	3,680,000
April 15, 2014	3,780,000
October 15, 2014	3,885,000
April 15, 2015	3,990,000
October 15, 2015	4,100,000
April 15, 2016	4,210,000
October 15, 2016	4,325,000
April 15, 2017	4,445,000
October 15, 2017	4,565,000
April 15, 2018	4,690,000
October 15, 2018	4,815,000
April 15, 2019	4,945,000
October 15, 2019	5,080,000
April 15, 2020	5,220,000
October 15, 2020	5,360,000
April 15, 2021	5,505,000
October 15, 2021	5,655,000
April 15, 2022	5,810,000
October 15, 2022	5,970,000
April 15, 2023	6,130,000
October 15, 2023	6,300,000
April 15, 2024	6,470,000
October 15, 2024	6,645,000
April 15, 2025	6,825,000
October 15, 2025	7,010,000
April 15, 2026	7,205,000
October 15, 2026	7,415,000
Total	<u>154,500,000</u>

\* The figures in this column represent the amount in Dollars to be repaid, except as provided in Section 4.04 (d) of the General Conditions.



## SCHEDULE 4

### Procurement

#### Section I. General

A. All goods, works and services (other than consultants' services) for Export Development Sub-projects shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits", dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Bank of particular contracts, have the meanings ascribed to them in the Procurement Guidelines.

#### Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods and works manufactured in the territory of the Guarantor and works to be carried out by domestic contractors.

#### B. Other Procurement Procedure

##### 1. Commercial Practices

Contracts for: (a) goods estimated to cost the equivalent of less than \$4,000,000 per contract; and (b) works estimated to cost the equivalent of less than \$4,000,000 per contract, may be awarded in accordance with the established commercial practices of the Beneficiary Enterprise, due account being taken also of other relevant factors such as time of delivery and efficiency and reliability thereof and availability of maintenance and spare parts.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$100,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Quality-based Selection. Services for assignments which the Bank agrees meet the requirements set forth in paragraph 3.2 of the Consultant Guidelines may be procured under contracts awarded on the basis of Quality-based Selection in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$200,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

3. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

4. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

Section IV: Review by the Bank of Procurement Decisions

Except as the Bank shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Bank: (i) all contracts procured on the basis of International Competitive Bidding; (ii) the first contract procured by each PB on the basis of Commercial Practices; and (iii) all contracts procured under Section III of this Schedule shall be subject to prior review. All other contracts shall be subject to post Review by the Bank.

## SCHEDULE 5

### Implementation Program

1. The Borrower shall maintain the Operations Manual in form and content satisfactory to the Bank, shall duly perform all its obligations under the Operations Manual and shall not assign, amend, abrogate or waive the Operations Manual without obtaining the prior approval of the Bank.

2. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators agreed upon between the Borrower and the Bank, the carrying out of the Project and the achievement of the objectives thereof.

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank on a quarterly basis, 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 the Project 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 Bank and the Guarantor by not later than 45 days after the end of each calendar quarter throughout the implementation of the Project, or such later date as the Bank shall request, the report referred to in subparagraph (b) of this paragraph, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matters.

3. For the purposes of carrying out of the Project, the Borrower shall:

(a) select PBs pursuant to criteria set forth in paragraph A.1 of the Annex to this Schedule;

(b) relend to the PBs the equivalent of the proceeds of the Loan allocated from time to time to Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement under Subsidiary Loan Agreements to be entered into between the Borrower and each such PB, under terms and conditions which shall have been approved by the Bank, and which shall include without limitation, those set forth in the Annex to this Schedule;

(c) ensure that, except as the Bank shall otherwise agree, the aggregate amount of all Sub-loans and Lease Financing made provided to any one Beneficiary Enterprise, or group of connected Beneficiary Enterprises, from all PBs shall not exceed the equivalent of \$10,000,000;

(d) monitor the overall execution of the Project and the carrying out by the PBs of their obligations under their respective Subsidiary Loan Agreements in accordance with policies and procedures satisfactory to the Bank;

(e) take or cause to be taken all actions necessary or appropriate on its part to enable the PBs to perform in accordance with the provisions of their respective Subsidiary Loan Agreements all the obligations of the PBs therein set forth, and not take or permit to be taken any action which would prevent or interfere with such performance; and

(f) exercise its rights under the Subsidiary Loan Agreements in such manner as to protect the interests of the Bank and the Guarantor and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, not assign, amend, abrogate or waive any such Agreement or any provision thereof.

**ANNEX  
TO  
SCHEDULE 5**

**Principal Terms and Conditions of the  
Subsidiary Loan Agreements**

The principal terms and conditions set forth in this Annex shall apply for the purposes of paragraph 3 (a) of Schedule 5 to this Agreement.

**A. Eligibility Criteria**

1. A Subsidiary Loan Agreement may be entered into with a PB, duly established and operating in the territory of the Guarantor, in respect of which the Borrower shall have determined, and the Bank shall have agreed, that:

- (a) the PB:
  - (i) is a privately owned, domestically registered and licensed commercial bank and has been in operation for at least the three (3) previous uninterrupted consecutive years;
  - (ii) has minimum assets during each of the last two fiscal years exceeding UAH 500 million equivalent on average, has export loans-to-total loans ratios during each of the last two fiscal years (for which data are available) exceeding a minimum of 10% on average, and has minimum paid-in statutory capital of €10,000,000;
  - (iii) has its annual unqualified audit of its financial statements according to IFRS available for at least two previous years;
  - (iv) is in compliance with applicable banking regulations and prudential regulations of the Guarantor and eligibility criteria in paragraph (v) below as duly certified by the PBs' management every six (6) months and external auditors every twelve (12) months, including *inter alia*, NBU promulgated prudential regulations regarding capital adequacy, large exposures, related lending, and foreign currency exposures;
  - (v) has: risk weighted capital adequacy ratio (CAR) not less than 10% calculated according to IFRS and NBU regulations; single insider lending exposure not exceeding 5% of its IFRS based regulatory capital; aggregate insider lending not exceeding 30% of

its IFRS based regulatory capital; single exposure per single borrower not exceeding 25% of its IFRS based regulatory capital; total large exposure not exceeding 8 times its IFRS based regulatory capital; total foreign currency position not exceeding 35% (including a long open currency position not exceeding 30% and short open currency position not exceeding 5%); liquid assets<sup>2</sup> of not less than 25% of total assets;

- (vi) is operating pursuant to investment and lending policies and procedures acceptable to the Bank, the Borrower, and the Guarantor, and has undertaken to maintain said policies and procedures;
- (vii) has agreed to submit to the Borrower, during the duration of its Subsidiary Loan Agreement with the Borrower, an audit report which: (i) covers two (2) previous years of its operations; (ii) is prepared by an independent and internationally recognized audit firm in accordance with International Auditing Standards and International Financial Reporting Standards; and (iii) except as the Bank shall otherwise agree, contains an unqualified audit opinion;
- (viii) has adequate organization, management, staff and other resources necessary for its efficient operation; and
- (ix) applies appropriate procedures for appraisal, supervision, and monitoring of Export Development Sub-projects, including for the efficient evaluation and supervision of the procurement and environmental elements of Export Development Sub-projects.

**B. Terms**

2. The principal amount to be lent out of the proceeds of the Loan to a PB under its respective Subsidiary Loan Agreement shall: (a) be denominated in Dollars; and (b) be the equivalent of the aggregate amount of the principal of all Sub-loans and Lease Financing to be made out of the proceeds of the Loan pursuant to the Subsidiary Loan Agreement providing for such Subsidiary Loan.

<sup>2</sup> For the purposes of this paragraph, "liquid assets" are the sum of cash and cash equivalents, correspondent account balances, precious metals, trading securities and interbank placements with maturity not exceeding 30 days, less any of the aforementioned assets pledged to the third parties.

3. Each Subsidiary Loan shall: (a) be charged semi-annually, on the principal amount thereof withdrawn and outstanding from time to time, interest at a rate equal to the rate payable under Section 2.06 of this Agreement plus the administrative costs of the Borrower and a credit risk margin acceptable to the Bank; (b) be charged a front-end fee of one percent (1%) (less any waiver) and such other fee that might be charged by the Guarantor to the Borrower; (c) be charged a commitment charge at a rate equal to the rate payable under Section 2.05 of this Agreement, on the principal amount of the Subsidiary Loan not withdrawn from time to time; and (d) be repaid in accordance with an amortization schedule calculated to have a maturity of not more than six (6) years, including a grace period of not more than three (3) years.

4. The right of a PB to use the proceeds of its respective Subsidiary Loan shall be: (a) suspended upon failure of such PB to perform any of its obligations under its respective Subsidiary Loan Agreement or to continue to be in compliance with any of the eligibility criteria set forth in paragraph 1 of Section A of this Annex; and (b) terminated if such right shall have been suspended pursuant to subparagraph (a) hereof for a continuous period of sixty (60) days.

C. Conditions

5. Each respective Subsidiary Loan Agreement shall contain provisions pursuant to which each respective PB shall undertake to:

(a) carry out activities under the Project and conduct its operations and affairs in accordance with appropriate financial standards and practices, with qualified management and staff in adequate numbers, and in conformity with the investment and lending policies and procedures referred to in the Operations Manual, and provide, promptly as needed, the funds, facilities, services and other resources required for the purpose;

- (b) (i) make Sub-loans and Lease Financing to Beneficiary Enterprises on the terms and conditions set forth in the Operations Manual, including, without limitation, the terms and conditions set forth in the Attachment to this Annex;
- (ii) ensure that, except as the Bank shall otherwise agree, the aggregate amount of all Sub-loans and Lease Financing made to any one Beneficiary Enterprise, or group of connected Beneficiary Enterprises, shall not exceed the equivalent of \$10,000,000;
- (iii) exercise its rights in relation to each such Sub-loan and each such Lease Financing in such manner as to protect its interests and the interests of the Borrower, the Guarantor and the Bank, comply

with its obligations under its respective Subsidiary Loan Agreement and achieve the purposes of the Project;

- (iv) not assign, amend, abrogate or waive any of its agreements providing for Sub-loans, or Lease Financing, or any provision thereof, without the prior approval of the Borrower;
  - (v) appraise Sub-projects and supervise, monitor and report on the carrying out by the Beneficiary Enterprises of Sub-projects, in accordance with the Operations Manual;
  - (vi) ensure that each Sub-project shall comply with environmental review procedures set forth in the Operations Manual. To that end, PBs shall require each Beneficiary Enterprise applying for a Sub-loan or Lease Financing to furnish evidence satisfactory to the Bank showing that the Sub-project in respect of which the application has been prepared in accordance with such procedures;
  - (vii) ensure that for Export Development Sub-projects which require an environmental mitigation plan, the Beneficiary Enterprise shall carry out such environmental mitigation plan in a timely manner, requiring such environmental mitigation plan to be in compliance with: (aa) environmental standards satisfactory to the Bank; and (bb) the applicable laws and regulations of the Guarantor relating to health, safety and environmental protection, and shall include adequate information on the carrying out of such environmental management plans in the progress reports referred to in subparagraph (c) (ii) of this paragraph; and
  - (viii) ensure that: (aa) goods, works and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Agreement; and (bb) such goods, works and services shall be used exclusively in the carrying out of the Export Development Sub-project;
- (c) (i) exchange views with and furnish all such information to the Bank or the Borrower, as may be reasonably requested by the Bank and the Borrower, with regard to the progress of its activities under the Project, the performance of its obligations under its respective Subsidiary Loan Agreement, and other matters relating to the purposes of the Project;



- (ii) prepare and submit to the Borrower quarterly reports on Sub-loan and Lease Financing disbursements and repayments, and annual reports on the progress made in achieving the objectives outlined in the business plans submitted with the Sub-loan and Lease Financing applications; and
- (iii) promptly inform the Bank and the Borrower of any condition which interferes or threatens to interfere with the progress of its activities under its respective Subsidiary Loan Agreement;
- (d)
  - (i) maintain records and accounts adequate to reflect, in accordance with sound accounting practices, its operations and financial condition; and
  - (ii) furnish to the Bank such information concerning said records and accounts as the Bank shall from time to time reasonably request;
- (e) except as the Bank and the Borrower may otherwise agree: (i) open and thereafter maintain on its books, in accordance with its normal financial practices and on conditions satisfactory to the Bank, a separate account to which it shall credit, as the case may be, each payment of interest or other charges on, or repayment of principal payments under, any Sub-loan or Lease Financing; and (ii) utilize all amounts so credited to said separate account, to the extent they are not yet required to meet said PB's payment or repayment obligations to the Borrower under its respective Subsidiary Loan Agreement, exclusively to finance additional development projects to further the development of the Guarantor's export sector; and
- (f) assume the credit risk of each Sub-loan and Lease Financing.

**ATTACHMENT TO  
THE ANNEX TO  
SCHEDULE 5**

**Terms and Conditions of Sub-loans  
and Lease Financing**

The provisions of this Attachment shall be for the purposes of paragraph 5 (b) (i) of Part C of the Annex to this Schedule 5.

1. Each Sub-loan and Lease Financing shall be made on terms and conditions, including those relating to the maturity, foreign currency denomination, interest rate and other charges determined in accordance with the PB's investment and lending policies and practices referred to in subparagraph 1 (a) (vi) of Part A of the Annex to Schedule 5 to this Agreement, provided, however, that the interest rate to be charged on the principal amount thereof withdrawn and outstanding from time to time, shall equal to at least to the rate of interest applicable from time to time to the Subsidiary Loan pursuant to the provisions of paragraph 3 of Section B of Annex to Schedule 5 to this Agreement plus the administrative costs and an appropriate credit risk margin.

2. No expenditures for an Export Development Sub-project by a PB shall be eligible for financing out of the proceeds of the Loan unless:

(a) the first two Sub-loans and two Lease Financing by the said PB for such Export Development Sub-projects shall have been approved by the Bank and such expenditures shall have been made not earlier than one hundred and eighty (180) days prior to the date on which the Borrower shall have received the application and information required under paragraph 3 (a) of this Section in respect of such Sub-loan and Lease Financing; or

(b) the Sub-loan and Lease Financing by the said PB for such Export Development Sub-project shall have been, respectively, a free-limit Sub-loan and a free-limit Lease Financing for which the Bank has authorized withdrawals from the Loan Account and such expenditures shall have been made not earlier than one hundred and eighty (180) days prior to the date on which the Borrower shall have received the request and information required under paragraph 3 (a) of this Section in respect of such free-limit Sub-loan and free-limit Lease Financing. For the purposes of this Agreement: (i) a "free-limit Sub-loan" and "free-limit Lease Financing" shall be a Sub-loan and Lease Financing respectively, other than the first two Sub-loans or Lease Financing by each PB, and other than any Sub-loan and Lease Financing to a Beneficiary Enterprise in an amount exceeding the sum of \$5,000,000 equivalent (when added to all other free-limit Sub-loans and free-limit Lease Financing respectively financed or proposed to be financed out of the

proceeds of the Loan to the same Beneficiary Enterprise), the foregoing amount being subject to change from time to time as determined by the Bank.

3. (a) When presenting a Sub-loan and Lease Financing (other than a free-limit Sub-loan and free-limit Lease Financing) to the Bank for approval, the Borrower shall furnish to the Bank an application, in form satisfactory to the Bank, together with:

- (i) a description of the Beneficiary Enterprise and an appraisal of the Export Development Sub-project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan;
- (ii) the proposed terms and conditions of the Sub-loan and Lease Financing, including the schedule of amortization of the Sub-loan and Lease Financing;
- (iii) evidence of compliance with the Operations Manual and specifically with the environmental review procedures set forth in the Operations Manual; and
- (iv) such other information as the Bank shall reasonably request.

(b) Each Sub-loan and Lease Financing shall be approved on the basis of evaluation guidelines adopted by the Borrower satisfactory to the Bank, as set forth in the Operations Manual.

4. (a) Sub-loans and Lease Financing shall be made to the Beneficiary Enterprises which each shall have established and maintained during the duration of its respective Sub-loan and Lease Financing to the satisfaction of the Borrower that:

- (i) it is a Private Enterprise;
- (ii) it is an exporter of goods and services originating in the territory of the Guarantor;
- (iii) except as the Bank and the Borrower shall otherwise agree, it will have a ratio of debt to equity (after receipt of the Sub-loan or Lease Financing) no greater than 80:20;
- (iv) except as the Bank and the Borrower shall otherwise agree, it will not incur any debt unless a forecast of its revenues and expenditures shows that its estimated cash flow for each fiscal year during the term of the debt to be incurred shall be at least

1.3:1 times its estimated debt service requirements in such year on all its debt, including the debt to be incurred; and

- (v) it has a satisfactory financial structure and the organization, management, staff and financial and other resources required for the efficient carrying out of its operations, including the carrying out of the Export Development Sub-project.

(b) For purposes of this paragraph:

- (i) an enterprise shall be considered to be a "Private Enterprise" when more than fifty percent (50%) of the shares or other equity interest thereof is held by persons or companies other than the Guarantor, any agency or subdivision thereof, or any local governmental authority, or entities controlled by the Guarantor or such agencies or subdivisions;
- (ii) the term "debt" means any indebtedness of the Beneficiary Enterprise;
- (iii) debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment, on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into;
- (iv) the term "equity" means the sum of the total unimpaired paid-up capital, retained earnings and reserves of the Beneficiary Enterprise not allocated to cover specific liabilities; and
- (v) the term "debt service requirements" means the aggregate amount of repayments of, and interest and other charges on, debt.

5. The Sub-loans and Lease Financing shall be made for Export Development Sub-projects which are each determined, on the basis of an appraisal carried out in accordance with procedures acceptable to the Bank set forth in the Operations Manual, to:

(a) be technically feasible and economically, financially and commercially viable;

(b) be targeted towards generation of exports consistent with the Beneficiary Enterprise's export growth projections; and

(c) be in compliance with the requirements pertaining to environmental protection applicable under the laws and regulations of the Guarantor and the environmental review procedures set forth in the Operations Manual.

6. Sub-loans and Lease Financing shall be made on terms whereby the PB shall obtain, by written contract with the Beneficiary Enterprise or by other appropriate legal means, rights adequate to protect its interests and those of the Bank, the Borrower, and the Guarantor, including the right to:

(a) require the Beneficiary Enterprise to carry out and operate the facilities financed under the Export Development Sub-project with due diligence and efficiency and in accordance with sound technical, financial and managerial standards and to maintain adequate records;

(b) without limitation to the generality of the provisions of the preceding paragraph (a), require the Beneficiary Enterprise to carry out and operate the Export Development Sub-project with due regard to applicable social impact, ecological, environmental and pollution control standards and in accordance with the provisions of the Operations Manual;

(c) for Export Development Sub-projects which need an environmental mitigation plan, require the Beneficiary Enterprise to carry out such environmental mitigation plan in a timely manner;

(d) require: (i) that the goods, works and services to be financed out of the proceeds of the Sub-loans and Lease Financing shall be procured in accordance with the provisions of Schedule 4 to this Agreement; and (ii) that such goods, works and services shall be used exclusively in the carrying out of the Export Development Sub-project;

(e) inspect, by itself or jointly with representatives of the Bank, if the Bank shall so request, such goods and the sites, works, plants and construction included in the Export Development Sub-project, the operation thereof, and any relevant records and documents;

(f) require that: (i) the Beneficiary Enterprise shall 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 (ii) 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 Sub-loan and Lease Financing to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Beneficiary Enterprise to replace or repair such goods;

(g) obtain all such information as the Bank or the Borrower shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Beneficiary Enterprise and to the benefits to be derived from the Export Development Sub-project; and

(h) suspend or terminate the right of the Beneficiary Enterprise to the use of the proceeds of the Sub-loan and Lease Financing upon failure by such Beneficiary Enterprise to perform its obligations under its contract with the PB.

## **SCHEDULE 6**

### **Special Account**

1. For the purposes of this Schedule:
  - (a) the term “eligible Categories” means Categories (1) and (2) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
  - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services, Sub-loans and Financial Lease required for the Project and to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
  - (c) the term “Authorized Allocation” means the amount of US\$10,000,000 to be withdrawn from the Loan Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Bank shall otherwise agree, the Authorized Allocation shall be limited to the amount of US\$5,000,000 until the aggregate amount of withdrawals from the Loan Account plus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of US\$50,000,000.
2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Bank has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:
  - (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.
  - (b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Bank requests for deposits into the Special Account at such intervals as the Bank shall specify.

- (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Bank from the Loan Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:

- (a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Borrower directly from the Loan Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

- (b) if the Borrower shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

- (c) if, at any time, the Bank shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account pursuant to the provisions of Section 6.02 of the General Conditions; or

- (d) once the total unwithdrawn amount of the Loan allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation.



Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Bank, the Borrower shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Borrower may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.