

CONFORMED COPY

CREDIT NUMBER 2798 UG

Project Agreement

(Private Sector Competitiveness Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

PRIVATE SECTOR FOUNDATION

Dated January 30, 1996

CREDIT NUMBER 2798 UG

PROJECT AGREEMENT

AGREEMENT, dated January 30, 1996, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and PRIVATE SECTOR FOUNDATION (PSF).

WHEREAS (A) by the Development Credit Agreement of even date herewith between The Republic of Uganda (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to eight million three hundred thousand Special Drawing Rights (SDR 8,300,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that PSF agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a Subsidiary Agreement to be entered into between the Borrower and PSF, the proceeds of the Credit provided for under the Development Credit Agreement will be made available as a grant to PSF on the terms and conditions set forth in said Subsidiary Agreement; and

WHEREAS PSF, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the

several terms defined in the Development Credit Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) PSF declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial and business practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and PSF shall otherwise agree, PSF shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) PSF shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement;

(b) PSF shall take all measures necessary to participate in the review of the Project as provided in Section 3.04 of the Development Credit Agreement;

(c) Not later than sixty days prior to the review referred to in (b) above PSF shall prepare and furnish to the Association, for its comments, a report, in such detail as the Association shall reasonably request, on the progress and status of the Project, including an evaluation of the progress achieved in implementing the various components of the Project, and a draft plan containing proposals for remedying any identified deficiencies; and

(d) Following such review, PSF shall promptly take any corrective action deemed necessary to remedy any shortcoming noted in the implementation of the Project, or to implement such other measures as may have been agreed upon between the parties in furtherance of the objectives of the Project. To this end, PSF shall: (i) prepare an action plan, satisfactory to the Association, based on the recommendations stemming from the aforementioned review, and (ii) adopt and implement such plan for the remainder of the Project implementation period.

Section 2.04. PSF shall duly perform all its obligations under the Subsidiary Agreement. Except as the Association shall otherwise agree, PSF shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Agreement or any provision thereof.

Section 2.05. (a) PSF shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Agreement, and other matters relating to the purposes of the Credit.

(b) PSF shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by PSF of its obligations under this Agreement and under the Subsidiary Agreement.

ARTICLE III

Management and Operations of PSF

Section 3.01. (a) PSF shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and business practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

(b) To that end, PSF shall retain: (i) at all times, an Executive Director whose qualifications and terms of reference shall be satisfactory to the Association, and (ii) until the completion of Project implementation, a Project Coordinator whose qualifications and terms of reference shall also be satisfactory to the Association.

Section 3.02. PSF shall at all times operate and maintain its equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound financial and business practices.

Section 3.03. PSF shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) PSF shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) PSF shall:

- (i) have its records, accounts and financial statements, including those pertaining to the Project (balance sheets, statements of income and expenses and related statements), for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Association shall from time to time reasonably request.

ARTICLE V

Effective Date; Termination;
Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of PSF thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date fifteen years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify PSF of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Association:

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

Cable address:

INDEVAS
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For PSF:

Private Sector Foundation
Plot 10
Kalitunsi Road
P.O. Box 9113
Kampala, Uganda

Cable address:

Telex:

2236145

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of PSF may be taken or executed by the Executive Director or such other person or persons as

the Executive Director shall designate in writing, and PSF shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V.K. Jaycox

Regional Vice President
Africa

PRIVATE SECTOR FOUNDATION

By /s/ Stephen K. Katenta-Apuli

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: General

Goods shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B:

Grouping of contracts

To the extent practicable, contracts for goods shall be grouped in bid packages estimated to cost \$100,000 equivalent or more each.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Vehicles, equipment, furniture, and materials estimated to cost \$100,000 equivalent or less per contract up to an aggregate amount not to exceed \$250,000 equivalent; and

(b) printing and advertising contracts estimated to cost \$100,000 equivalent or less per contract up to an aggregate amount not to exceed \$300,000 equivalent; may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. Items, or group of items, required under Part C.1 of the Project, estimated to cost \$100,000 equivalent or less per contract, up to an aggregate amount not to exceed \$2,800,000 equivalent, shall be procured in accordance with the provisions of Part A.2 (a) (v) of Annex 2 to Schedule 2 to this Agreement.

3. International Shopping

Goods estimated to cost \$50,000 equivalent or less per contract up to an aggregate amount not to exceed \$500,000 equivalent, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

4. National Shopping

Goods estimated to cost \$30,000 equivalent or less per contract up to an aggregate amount not to exceed \$300,000 equivalent, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for: bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for: (a) vehicles, equipment, furniture, materials, printing and advertising, and (b) goods in part C of the Project, estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) Notwithstanding the provisions of paragraph 2 (a) above, PSF shall furnish to the Association, for its review, the draft bidding documents for the first three contracts for the procurement of goods.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts

awarded in accordance with the provisions of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines) and in accordance with the Project Implementation Plan. For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Association. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Association shall be used.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Association review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts shall not apply to: (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each, or (b) contracts for the employment of individuals estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Association review shall not apply to: (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Association, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

3. Notwithstanding the provisions of paragraph 2 above, PSF shall furnish to the Association, for its review, the draft letters of invitation for the first three contracts for the employment of consultants under the Project.

SCHEDULE 2

Implementation Program

1. PSF shall be responsible for the implementation of the Project under the overall guidance of a nine-member Project Steering Committee (PSC) which shall include all seven members of the Board of Directors of PSF, and two representatives to be appointed by the Borrower in accordance with Section 3.03 of the Development Credit Agreement.

2. Unless otherwise agreed with the Association, PSC shall in particular be responsible for (a) approving the annual Project work plans; and (b) reviewing the full report on each year's Project performance, including the duly audited financial and operational reports, and the implication of such reports.

3. PSF shall (a) prepare and adopt a detailed and comprehensive plan, satisfactory to the Association, for the implementation of all components of the Project, including detailed action plans for each Project component, (b) take all measures necessary to ensure that the Project is carried out in conformity with the PIP, and (c) not make any material amendment to the PIP without prior consultation with, and the consent of, the Association.

4. PSF shall, with effect from its 1996/97 financial year, review the action plans forming part of the PIP and, by not later than the first day of May preceding the financial year covered in the work plan, furnish to the Association a satisfactory annual work plan for each Project component.

5. In order to assist PSF in the implementation of Part B of the Project, PSF shall, under a contract which shall have been approved by the Association, appoint pursuant to the provisions of Section II of Schedule 1 to this Agreement by not later than

June 30, 1996, a management contractor who shall, inter alia: (a) have operational independence; (b) be responsible for ensuring full compliance with the rules and regulations set out in the PIP, and the eligibility criteria and the terms and conditions referred to in Annex 1 to this Schedule; and (c) prepare and furnish to PSF: (i) quarterly progress reports; and (ii) an annual report which shall serve as a basis for a formal annual performance review to be carried out jointly with the Borrower, PSF and the Association.

6. (a) In order to carry out Part C.1 of the Project, PSF shall enter into share subscription and shareholders' agreements, with Participating Equity Funds under terms and conditions which shall have been approved by the Association, which shall include, inter alia, the terms and conditions set forth in Part A.2 of Annex 2 to this Schedule;

(b) PSF shall ensure that, unless the Association shall otherwise agree, Investments in Investment Enterprises will be made in accordance with the eligibility criteria set forth or referred to in Part B of Annex 2 to this Schedule.

7. PSF shall carry out Part D of the Project through UIA under an agreement, satisfactory to the Association, to be entered into with UIA by not later than June 30, 1996, which shall, inter alia, require UIA to furnish to PSF quarterly progress reports on March 31, June 30, September 30, and December 31 of each year and, not later than the quarter following the end of the year under consideration, comprehensive annual performance reports. PSF shall, jointly with the Borrower and the Association, carry out a formal review of the annual performance report.

Annex 1 to Schedule 2

The Management Contractor (Management Contractor) to be employed by PSF for the implementation of Part B of the Project in accordance with the provisions of paragraph 5 of Schedule 2 to this Agreement, shall ensure that: (a) recipients of grants under Part B.1 of the Project shall meet the eligibility criteria set forth in paragraph 1 below, and (b) such grants shall be made under the terms and conditions described in paragraph 2 below.

1. Eligibility Criteria

In deciding whether an applicant is eligible to obtain financing under Part B.1 of the Project, the Management Contractor shall ensure that the following conditions are met:

- (i) the applicant is an individual entrepreneur, a firm or group of entrepreneurs or firms, duly established and operating under the laws of the Borrower;
- (ii) the applicant is privately owned and operated (and is not fully or partly owned by the Borrower or by entities controlled by the Borrower);
- (iii) the applicant is carrying out operations in the industrial, agricultural or service sectors of the Borrower's economy except that applicants operating in the production of alcoholic beverages, weapons, tobacco, and gambling shall not be eligible; and
- (iv) the applicant has prepared an adequate business plan for the attainment of which the applicant intends to obtain business services which business plan shall, inter alia, include projected increases in sales revenue, the merits of the proposed plan of action relative to alternative courses of action, a description of the financial resources for its

implementation, the anticipated sources of funds, the proposed time frame of implementation, and the benefits expected to be derived.

2. Terms and Conditions for Approving Grants

The Management Contractor shall ensure: (a) that, unless otherwise agreed by PSF and the Association in their periodic semi-annual reviews of progress made in the carrying out of Part B of the Project, no grant(s) for financing one or more technical assistance shall be made to an individual entrepreneur or firm from the proceeds of the Credit, if the aggregate amount of such grant(s) exceeds the equivalent of \$30,000, and (b) that, in any event, the amount of a grant from the proceeds of the Credit, including any financing from sources other than those of the recipient, shall not exceed 50% of the total cost of the proposed technical assistance.

Annex 2 to Schedule 2

PSF shall, by not later than June 30, 1996, establish the Uganda Equity Facility (UEF) referred to in Part C.1 of the Project through which it shall make funds available to Participating Equity Funds operating in the territory of the Borrower which meet the eligibility criteria set forth in paragraph 1 below and under the terms and conditions described in paragraph 2 below.

Part A :

1. Eligibility Criteria for Participating Equity Funds

In deciding whether to invest in a Participating Equity Fund, PSF, as administrator of the UEF, shall ensure that the following conditions are met:

- (i) the Participating Equity Fund shall invest UEF funds only in shares of companies incorporated in the territory of the Borrower;
- (ii) the Participating Equity Fund is sponsored and is managed by reputable operators with substantial equity financing expertise and sufficient knowledge of the business and corporate environment in the territory of the Borrower;
- (iii) the Participating Equity Fund has adopted an investment policy acceptable to PSF and the Association;
- (iv) the Participating Equity Fund has prepared an adequate business plan identifying a credible pipeline of feasible investment opportunities in the territory of the Borrower;
- (v) the Participating Equity Fund is economically viable and has a sound financial structure; and
- (vi) the Participating Equity Fund has suitable procedures and an adequate number of suitably qualified staff to enable it effectively to appraise the financial, technical and economic viability of Investment Enterprises and to monitor the activities of such Enterprises.

2. Terms and Conditions of Share Subscription and Shareholders' Agreements; Use of the proceeds of PSF Share Subscription

(a) Share Subscription and Shareholders' Agreements to be entered into by PSF with Participating Equity Funds pursuant to paragraph 6 (a) of Schedule 2 to this Agreement shall include

provisions whereby: (i) PSF, as administrator of the UEF, shall make investments in Participating Equity Funds in the form of preference shares (99% of the capital subscription) and ordinary shares (1%); (ii) Preference shares, denominated in dollars, shall earn a nominal return of at least 6% annually and shall be redeemable and cumulative; (iii) Ordinary shares, denominated in dollars, will be entitled to dividends and capital gains distributions after the dividends on the preference shares have been paid and the preference shares fully redeemed; (iv) PSF, as administrator of the UEF may write a call option on no more than 90% of its ordinary shares and shall sell such an option in exchange for a nominal premium and/or seniority rights for its preference shares from investors in the Participating Equity Fund; (v) Participating Equity funds undertake to require Investment Enterprises to procure the goods and services to be financed out of the proceeds of the PSF share subscription under procedures necessary to ensure that such goods and services shall be purchased at a reasonable price based on comparison of at least three price quotations, account being taken also of other relevant factors such as time of delivery and efficiency and reliability of the goods and availability of maintenance facilities and spare parts therefor, and, in the case of services, of their quality and the competence of the parties rendering them.

(b) PSF, as administrator of the UEF, shall not invest more than the equivalent of two million dollars (\$2,000,000) in any Participating Equity Fund and, in any event, no investment of more than the equivalent of five hundred thousand dollars (\$500,000) shall be made without the prior approval of the Association.

Part B :

3. Eligibility Criteria for Investment Enterprises

Eligible Investment Enterprises shall be those that meet the following criteria:

- (i) be duly established and operating under the laws of the Borrower;
- (ii) be enterprises carrying out operations in the industrial, agricultural or service sectors of the Borrower's economy, except that enterprises operating in real estate, production of alcoholic beverages, weapons, tobacco, and gambling shall not be eligible;
- (iii) have an adequate number of suitably qualified staff to enable it to carry out its operations including, carrying out its activities with due diligence and efficiency and in accordance with sound technical, financial, managerial and environmental standards required under the laws of the Borrower; and
- (iv) have adequate financial statements and accounts reflecting, in accordance with consistently maintained sound accounting practices, the operations and financial conditions of the Enterprise.

Part C :

4. Procedures

1. Except as the Association shall otherwise agree, PSF:

(a) when presenting an Investment to the Association for authorization to make withdrawals from the Credit Account in

respect of such Investment, shall furnish to the Association an application, in form satisfactory to the Association, which shall contain: (i) a description of the Investment Enterprise and the activities to which the Investment will be utilized; (ii) a description of the expenditures proposed to be financed out of the proceeds of the Credit and documentation indicating that the goods used or to be used in carrying out such activities have been procured in accordance with Part C.2 of Schedule 1 to the Project Agreement ; (iii) an undertaking that such goods shall be used exclusively for the carrying out of the activities of the Investment Enterprise; (iv) a statement that the Investment is consistent with the Investment policy of the Participating Equity Fund; and

(b) shall obtain and furnish to the Association all such information as the Association shall reasonably request relating to the administration, operations and financial condition of the Investment Enterprise and to the benefits to be derived from the Investment.

2. Promptly after the Association shall have:

(a) approved a withdrawal application submitted to the Association pursuant to paragraph 1 (a) above, and

(b) made a disbursement from the proceeds of the Credit for such amounts as shall have been approved by the Association under Category (1) of the table in Schedule 1 to the Development Credit Agreement for an Investment,

the Participating Equity Fund shall, in accordance with the Share Subscription and Shareholders' Agreement referred to in Part A.2 of this Annex, issue to PSF shares in the Participating Equity Fund in an amount equivalent to the amount so disbursed.

