

CONFORMED COPY

CREDIT NUMBER 3815 DRC

Development Credit Agreement

(Private Sector Development and Competitiveness Project)

between

DEMOCRATIC REPUBLIC OF CONGO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 11, 2003

CREDIT NUMBER 3815 DRC

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 11, 2003, between DEMOCRATIC REPUBLIC OF CONGO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) Part A.3 of the Project will be carried out by the African Trade Insurance Agency (ATI) with the Borrower's assistance, and as part of such assistance, the Borrower will make available to ATI part of the proceeds of the Credit as provided in this Agreement; and

(C) the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the project agreement dated June 8, 2001, between the Association and ATI for the Regional Trade Facilitation Project (RFTP), as the same shall be amended to take into account the Project (the Project Agreement);

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985 (as amended through October 6, 1999) (the General Conditions), constitute an integral part of this Agreement.

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) “Agreement Establishing ATI” means that certain Agreement Establishing the African Trade Insurance Agency adopted by the Fifth Summit of Heads of State and Government of the Common Market for Eastern and Southern Africa in Grand Baie, Republic of Mauritius on May 18, 2000, as such Agreement may be amended from time to time;

(b) “ATI” means African Trade Insurance Agency, an Agency established on January 20, 2001, and operating in Nairobi, Kenya, pursuant to the laws of that country;

(c) “ANAPI” means *Agence Nationale de Promotion des Investisseurs*, the Borrower’s investment promotion agency, established and operating under the laws of the Borrower;

(d) “BCC” means *Banque Centrale du Congo*, the Borrower’s Central Bank;

(e) “BCA” means *Banque Continentale Africaine*, a financial institution established and operating under the laws of the Borrower;

(f) “BCCE” means *Banque Congolaise du Commerce Extérieur*, a financial institution established and operating under the laws of the Borrower;

(g) "Beneficiary" means small scale and artisan miners and Eligible Employees, as hereafter defined, as recipient of a Grant (as hereafter defined) extended for the purposes of financing activities, under Part D of the Project;

(h) “Board of Directors” means ATI’s Board of Directors, the policy setting and executive supervisory body as established at any one time and operating under ATI’s statutes and by-laws;

(i) “*Bureau Central de Coordination*” or “BCECO” means an autonomous unit within MINEFB (as hereinafter defined) and operating under the laws of the Borrower;

(j) “*Cadre permanent de Concertation économique*” means the Borrower’s economic cooperation entity established and operating under the laws of the Borrower to facilitate public-private sector dialogue;

(k) “COPIREP” means *Comité de Pilotage de la Réforme des Entreprises Publiques*, the Borrower’s entity in charge of public enterprise reform, established

pursuant to Presidential Decree No: 136/2002 dated October 30, 2002, Official Gazette No: 22; dated November 15, 2002;

(l) “Covered Risks” means the risks specified in Chapter 3 of Part 1 (The Imports Facility) and Part 2 (The Exports Facility) of the Operations Manual (as hereinafter defined) and defined in the general conditions of insurance included in the Standard Form of Insurance Contract (as hereinafter defined), and includes such other risks as may be agreed upon by the Association and ATI at any time;

(m) “Depository” means the party designated as such pursuant to Article 29 (1) of the Agreement Establishing ATI;

(n) “Eligible Employees” means employees eligible to receive severance payments in accordance with the laws of the Borrower, including provisions of the Borrower’s Labor Code, employed by *Gecamines*, BCA, BCCE, NBK (as hereafter defined), OCPT (as hereafter defined);

(o) “Eligible Expenditures” means expenditures in respect of the reasonable cost of works, goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the Eligible Categories in accordance with the provisions of Schedule 1 to this Agreement;

(p) “Environmental Pre-Audit” or “EPA” means the Borrower’s action plan dated April 23, 2003 containing the assessment of potential adverse environmental and social impacts related to Project activities and providing for mitigating measures;

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

(r) “Fiscal Year” means the fiscal year of the Borrower commencing January 1 and ending December 31 in the same year;

(s) “*Franc Congolais*” or “CDF” means the currency of the Borrower;

(t) “*Gecamines*” means *la Générale des Carrières et des Mines*, a mining company established and operating under the laws of the Borrower;

(u) “Grant” means a grant made, or proposed to be made, by the Borrower to a Beneficiary for the implementation of a Subproject (as hereinafter defined) pursuant to the conditions set forth in Section V of Annex 4 to this

Agreement;

(v) “IAPSO” means the Inter-Agency Procurement Services Offices of the United Nations;

(w) “*Inspection Générale de Justice*” et IGJ means the Borrower’s inspection office for the Judiciary;

(x) “Income Account” means an account referred to in paragraph 5 of Part A of Schedule 4 to this Agreement;

(y) “Income Amounts” means the amounts generated as interest and other earnings from the deposits in the Security Trust Account(s) (as hereinafter defined) and includes interest and other earnings generated from the deposits in an Income Account;

(z) “Insurers” means, collectively, the insurers, whether acting alone or participating in a syndicate of insurers, that subscribe to the Insurance Facility (as hereinafter defined) from time to time, and includes any other insurer approved by ATI and the Association at any time;

(aa) “Insurance Contract” means any contract for the provision of insurance against Covered Risks issued under the Insurance Facility to an Insured (as hereinafter defined) by ATI or the Insurers, as the case may be, and which contains terms and conditions substantially similar to those specified in the Standard Form of Insurance Contract (as hereinafter defined);

(bb) “Insurance Facility” and “Insurance” mean, respectively, the insurance facility specified in Schedule 2 to this Agreement and the insurance provided thereunder;

(cc) “MINEFB” means *Ministère de l’Economie, des Finances et du Budget*, the Borrower’s Ministry in charge of Finance;

(dd) “MMH” means *Ministère des Mines et des Hydrocarbures*, the Borrower’s Ministry for Mines and Hydrocarbons;

(ee) “NBK” means *Nouvelle Banque de Kinshasa*, a financial institution established and operating under the laws of the Borrower;

(ff) "NGO" means a non-governmental organization established and operating under the laws of the Borrower;

(gg) "OCPT" means *Office Congolais des Postes et de Telecommunications*, a postal and telecommunication agency established and operating under the laws of the Borrower;

(hh) "Operations Manual" means the manual, dated February 22, 2001 for purposes of carrying out Part A 3. of the Project, for identification, approved by ATI, the Insurers and the Association, which, collectively, consists of Part 1: The Imports Facility, Part 2: The Exports Facility, Part 3: The Environment Operations Manual and Part 4: The Financial Management Manual, and which sets out the operating policies, rules and procedures to be applied and observed by ATI in connection with the operation of the Insurance Facility and related matters, as said manual may be amended by ATI with the approval of the Association and the Insurers;

(ii) "Participation Agreement" means the participation agreement, in form and substance acceptable to the Association, to be entered into between the Borrower and each Participating State (as hereafter defined), as such participation agreement may be amended from time to time;

(jj) "Participating State" means any African state which has either ratified the Agreement Establishing ATI, or deposited an instrument of accession to the Agreement Establishing ATI;

(kk) "Project Account" means the account referred to in Section 3.03 (a) of this Agreement;

(ll) "Project Agreement" means the agreement referred to in Recital (C) to this Agreement;

(mm) "Project Preparation Facility" means the project preparation advance granted by the Association to the Borrower pursuant to the letter agreement signed on behalf of the Association on December 4, 2002, and on behalf of the Borrower on December 5, 2002;

(nn) "Project Implementation Plan" and "PIP" mean the plan of the Borrower referred to in paragraph 3 (a) of Schedule 1 to this Agreement, containing, *inter alia*, procedures to be used for the purpose of implementing the Project, including, financial management and administration procedures, a procurement plan, eligibility criteria for

Subprojects, and monitoring and performance indicators, as the same may be amended from time to time with the approval of the Association, and such term includes any schedules to said Project Implementation Plan;

(oo) “Project Implementation Plan” and “PIP” mean the plan of the Borrower referred to in paragraph 3 (a) of Schedule 1 to this Agreement, containing, *inter alia*, procedures to be used for the purpose of implementing the Project, including, financial management and administration procedures, a procurement plan, eligibility criteria for Subprojects, and monitoring and performance indicators, as the same may be amended from time to time with the approval of the Association, and such term includes any schedules to said Project Implementation Plan;

(pp) “Special Account” means the special deposit account opened for withdrawals by the Borrower in respect of expenditures made under the Project, with the exception of Part A.3 of the Project, and referred to in Section 2.02 (b) of this Agreement;

(qq) “Standard Form of Insurance Contract” means the standard form of Insurance Contract, dated February 22, 2001 for purposes of identification, approved by the Association, the Insurers and ATI for purposes of the Insurance Facility, and which, collectively, includes: (i) an application form, (ii) an insurance offer letter, (iii) general conditions of insurance, which general conditions contain the standard terms and conditions of the Insurance Contracts, and (iv) a commitment letter, as said standard form may be amended from time to time with the approval of the Association, the Insurers and ATI;

(rr) “Security Trust Account” means an interest-bearing, Dollar denominated trust account opened at a Security Trust Account Trustee, on terms and conditions satisfactory to the Association, by ATI in the name of the Borrower, into which all or a part only of the proceeds of the Credit withdrawn by ATI in accordance with the terms and conditions approved by the Association and the Participation Agreement shall be deposited and thereafter to be managed in accordance with the terms and conditions of the relevant Security Trust Agreement;

(ss) “Security Trust Account Trustee” means a commercial bank of recognized standing, approved by the Association, acting as trustee pursuant to a Security Trust Agreement in respect of the funds held in the relevant Security Trust Account, and includes any successor thereto or assignee thereof acceptable to the Insurers and the Association;

(tt) “Security Trust Agreement” means a security agreement, in form and substance satisfactory to the Association, among ATI, the Insurers and a Security Trust Account Trustee, pursuant to which, *inter alia*, the legal title in the funds held in the relevant Security Trust Account is declared to be held by the relevant Security Trust Account Trustee on trust for the Insurers for application in the manner set out therein, as such agreement may be amended from time to time with the approval of the Insurers, ATI, the relevant Security Trust Account Trustee and the Association;

(uu) “Subproject” means any one of the activities under Part D of the Project;

(vv) “Subproject Grant Agreement” means an agreement between, or intended to be concluded between, the Borrower and a Beneficiary, setting forth the terms and conditions under which a Grant shall be made available to the Beneficiary for the purpose of financing a Subproject; and

(ww) “URK/GCM” means *Unité de Réinsertion de Katanga* a decentralized Project implementation unit within *Gecamines* for the Katanga Region to be established under the Project.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to eighty-seven million one hundred thousand Special Drawing Rights (SDR 87,100,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for: (i) amounts paid (or, if the Association shall so agree, amounts to be paid) on account of withdrawals made for the purposes of a Grant to meet the reasonable cost of works, goods and services required for a Subproject pursuant to Part D of the Project in respect of which the withdrawal from the Credit Account is requested; (ii) amounts paid (or, if the Association shall so agree, amounts to be paid) pursuant to the obligations set forth in paragraph 3. of Part A of the Project, and (iii) expenditures made (or if the Association shall so agree, to be made) in respect of the reasonable cost of works, goods and services required for Parts A 1., 2., 4., and 5., B, C, E and F of the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, with exception of Part A 3. of the Project, open and maintain in Dollar a special deposit account (the Special Account) in the name of BCECO in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

(c) For purposes of the Part A 3. of the Project, the Borrower shall cause ATI, pursuant to the Participation Agreement and promptly following the signature of this Agreement, to open one Security Trust Account and one Income Account on behalf of the Borrower and, promptly following receipt thereof from ATI, shall provide to the Association one copy of all account-related documentation.

(d) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be canceled.

Section 2.03. The Closing Date shall be March 31, 2010, or such later date, as the Borrower and the Association shall agree upon.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency

or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on May 1 and November 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each May 1 and November 1, commencing November 1, 2013 and ending May 1, 2043. Each installment to and including the installment payable on May 1, 2023 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate

agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. (a) The Managing Director of ATI and any person or persons whom he or she shall designate in writing is or are designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 (a) of this Agreement, Article V of the General Conditions and Section 3.02 of the Participation Agreement for Part A 3. of the Project.

(b) Without limitation or restriction to the foregoing, the Borrower hereby entrusts ATI with the responsibility for the preparation and delivery of withdrawal applications under the Credit and for the collection of the documents and other evidence to be furnished to the Association in support of such applications for Part A.3 of the Project.

ARTICLE III

Execution of the Project

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 the exception of Part A 3. of the Project, with due diligence and efficiency and in conformity with appropriate administrative, technical, financial practices and due regard to private sector management and environmental concerns, and shall provide, 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 Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project, in accordance with the implementation program set forth in Schedule 4 to this Agreement;

(c) shall duly and punctually perform, in accordance with the provisions of the Agreement Establishing ATI and the Participation Agreement all its obligations therein set forth and shall exercise its rights thereunder in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit; and

(d) shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable ATI to realize the purposes for which it was created under the Agreement Establishing ATI, and shall not take or permit to be taken any action which would prevent or interfere with such realization or the fulfillment of the objectives of the Project.

Section 3.02. Except as the Association shall otherwise agree, procurement of the works, goods and consultants' services required for the Project, with the exception of Part A.3. of the Project, and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. Without limitation to its obligations under Section 3.01 of this Agreement, the Borrower shall, for the purposes of making available its counterpart contribution to the financing of the Project, with the exception of Part A.3 of the Project:

(a) open and maintain, until the completion of the Project, a account in CDF in a commercial bank on terms and conditions satisfactory to the Association;

(b) promptly thereafter, make an initial deposit into the Project Account, in an amount of \$100,000 equivalent to finance the Borrower's initial contribution to the expenditures of the Project;

(c) thereafter, at semiannual intervals, deposit into the Project Account such amounts as are estimated to be required for the ensuing six-month period and as shall be agreed upon between the Recipient and the Association; and

(d) ensure that amounts deposited into the Project Account shall be used exclusively to finance the Borrower's contribution for expenditures under the Project and not otherwise financed from the proceeds of the Credit.

ARTICLE IV

Financial and Other Covenants

Section 4.01. (a) The Borrower shall maintain or cause to be maintained a

financial management system, including records and accounts and prepare financial statements in a format acceptable to the Association, adequate to reflect the operations, resources and expenditures in respect of the Project, with the exception of Part A.3 of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

- (i) have the records, accounts and financial statements referred to in paragraph (a) of this Section and the records and accounts for the Special Account for each Fiscal Year audited, in accordance with auditing standards acceptable to the Association, 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 the financial statements referred to in paragraph (a) of this Section for such year as so audited, and (B) an opinion on such statements, records and accounts and 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 such records and accounts, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

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

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and separate accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and

- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such Fiscal Year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. (a) Without limitation upon the provisions of Section 4.01 of this Agreement, and the Borrower's progress reporting obligations set out in paragraphs 2 and 3 of Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a Financial Monitoring Report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, and projected sources and applications of funds for the Project for the six-month period following the period covered by said report;
- (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 implementation targets; 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 Financial Monitoring Report shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each Financial Monitoring Report shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Effective Date; Termination

Section 5.01. The following event is specified as additional condition to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions: none.

Section 5.02. 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 VI

Representative of the Borrower; Addresses

Section 6.01. Except as provided in Section 2.09 of this Agreement the Minister of the Borrower at the time responsible for financing is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Minister of Economy, Finance and Budget
Ministry of Economy, Finance and Budget
BP 12997
Kinshasa I
Democratic Republic of Congo

Facsimile:
243 88 02 381

For the Association:

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

Cable address:	Telex:	Facsimile:
INDEVAS	248423 (MCI) or	(202) 477 6391

Washington, D.C. 64145 (MCI)

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 capital city of Kinshasa, Democratic Republic of Congo, as of the day and year first above written.

DEMOCRATIC REPUBLIC OF CONGO

By /s/ Mutombo Kyamakosa
Authorized Representative

ASSOCIATION INTERNATIONAL DEVELOPMENT

By /s/ Emmanuel Mbi
Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

A. General

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

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Grants under Part D of the Project	1,450,000	100% of amounts disbursed
(2) Severance payments under expenditures Part E of the Project	13,100,000	100% of incurred
(a) for El. Empl. in Gecamines	10,900,000	
(b) for El Empl in BCA		
(c) for El. Empl. in BCCE		
(d) for El. Empl. in NBK		
(e) for El. Empl in OPTC	5,000,000	
(3) Works 80% expenditures	1,450,000	100% of foreign expenditures and of local
(4) Goods 80% expenditures		100% of foreign expenditures and of local

(a) for Part A.4 of the Project	550,000
(b) other	2,000,000

(5)	Consultants' services and audits		
	(a) for Part A 4. of the Project	500,000	85%
	(b) other	24,000,000	85%
(6)	Training		
	(a) for Part A 4. of the Project	300,000	100%
	(b) other	4,000,000	100%
(7)	Insurance Facility Funding under paragraph 3, Part A of the Project	7,350,000	100% of amounts disbursed
(8)	Operating costs		
	(a) BCECO	750,000	85%
	(b) COPIREP	10,500,000	85%
	(c) other	500,000	85%
(9)	Refunding of Project Preparation Advance	1,100,000	of Amount due pursuant to Section 2.02 (b) of this Agreement
(10)	Unallocated	3,650,000	
	TOTAL	<u>87,100,000</u>	
		=====	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(c) the term “severance payments” means payments made by the Borrower to Eligible Employees, in accordance with procedures approved by the Association, and

(d) the term “operating costs” means the incremental expenses incurred by BCECO on account of Project implementation, management and monitoring, including office supplies, administrative support, communication and utility services, travel and supervision costs, salaries and benefits of selected contractual staff of BCECO or COPIREP, as the case may be, but excluding salaries of officials of the Borrower’s civil service.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures:

(a) prior to the date of this Agreement and the furnishing to the Association, in form and substance satisfactory to the Association, of the Project Implementation Plan;

(b) under Category (1) of the table set forth under paragraph 1 of this Schedule 1, for any Grant, unless such Grant has been made under a Grant Agreement in accordance with the provisions set forth in: (i) a Subproject Grant Manual of the Borrower, in form and substance acceptable to the Association, and (ii) the provisions set forth in Section V of Schedule 4 to this Agreement;

(c) under Category (2) (a) of the table set forth under paragraph 1 of this Schedule 1, for severance payments of Gecamines’ staff, unless the severance payments for *Gecamines*’ staff are based on a social plan, including a disbursement procedures’ schedule, which has been approved by the Borrower’s Minister in charge of Finance, the respective worker/employee representation and the Association;

(d) under Category (2) (b) of the table set forth under paragraph 1 of this Schedule 1, unless the severance payments for BCA staff, are based on a social plan including a disbursement procedures’ schedule, which has been approved by the Borrower’s Minister in charge of Finance, the respective worker/employee representation and the Association;

(e) under Category (2) (c) of the table set forth under paragraph 1 of this Schedule 1, unless the severance payments for BCCE’s staff are based on a social plan including a disbursement procedures’ schedule, which has been approved by the

Borrower's Minister in charge of Finance, the respective worker/employee representation and the Association;

(f) under Category (2) (d) of the table set forth under paragraph 1 of this Schedule 1, unless the severance payments for NKE's staff are based on a social plan including a disbursement procedures' schedule, which has been approved by the Borrower's Minister in charge of Finance, the respective worker/employee representation and the Association;

(g) under Category (2) (e) of the table set forth under paragraph 1 of this Schedule 1, unless the severance payments for OCPT's staff are based on a social plan including a disbursement procedures' schedule, which has been approved by the Borrower's Minister in charge of Finance, the respective worker/employee representation and the Association;

(h) under Category (4) (a), (5) (a) and (6) (a) of the table set forth under paragraph 1 of this Schedule 1, unless the Borrower has provided evidence, in form and substance acceptable to the Association, that the contract providing for technical advisory services to establish, reorganize or update the Borrower's mining registry, as the case may be, has been awarded in accordance with the procedures set forth in paragraph C 2. of Section II of Schedule 3 to this Agreement;

(i) under Category (7) of the table set forth under paragraph 1 of this Schedule 1, unless the following conditions, and such other conditions as shall have been agreed with the Association shall have been fulfilled:

- (i) the Borrower has become a member of ATI by depositing an instrument of accession to the Depository and depositing its initial contribution to the capital stock of ATI in the amount of one hundred thousand Dollars (\$100,000);
- (ii) the Borrower has entered into the Participation Agreement with ATI, in a form and substance acceptable to the Association, and such agreement has been duly executed and delivered on behalf of the Borrower and ATI, and all conditions precedent to its effectiveness, if any have been fulfilled or waived;
- (iii) the Insurance Facility Agreement(s) and Security Trust Agreement(s) shall have been entered into in a form and substance that is acceptable to the Association;

- (iv) ATI has opened one Security Trust Account and one Income Account on behalf of the Borrower and provided one copy of the account-related information to the Association;
- (v) the Project Agreement has been amended to include Part A 3. of the Project within ATI's mandate;
- (vi) legal opinions satisfactory to the Association have been submitted establishing that:

- (A) the Agreement Establishing ATI has been duly ratified by the Borrower by all necessary action, and is legally binding upon the Borrower in accordance with its terms;

- (B) the execution and delivery of the Participation Agreement has been duly authorized or ratified by the Borrower and ATI by all necessary action and is legally binding upon the Borrower and ATI in accordance with its terms; and

- (C) the execution and delivery of the Insurance Facility Agreements have been duly authorized or ratified by ATI, the Insurer and the Security Trust Account Trustee, respectively, and are legally valid and binding upon ATI, the Insurer and the Security Trust Account Trustee, respectively, in accordance with their respective terms; and

- (j) under Category (8) (b) of the table set forth under paragraph 1 of this Schedule 1, unless COPIREP has furnished evidence, in form and substance acceptable to the Association, of the satisfactory functioning of its financial management system in view of administering the Project.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures for works or goods, as the case may be, under contracts costing less than \$100,000 equivalent each, and for expenditures for services under contracts with firms costing less than \$100,000 or with individuals costing less than \$100,000 equivalent each; all under such terms and conditions as the Association shall specify by notice to the Borrower.

SCHEDULE 2

Description of the Project

The objective of the Project is to support the Borrower's policy of the promotion of private-sector led growth through: (a) improving the investment climate; (b) supporting parastatal reform in the telecommunications, energy, finance, transport, and mining sectors, and (c) improving mining competitiveness in the Katanga region of the Borrower.

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

Part A: Improving the Investment Climate

1. Strengthening the judiciary system

(a) Establishment of a national arbitration center through the provision of technical advisory services and the acquisition of equipment;

(b) Provision of technical advisory services to commercial courts;

(c) Strengthening of the *Inspection Générale de Justice* through the provision of technical advisory services, carrying out of works and the acquisition of equipment;

(d) Strengthening of the legal gazette through the provision of technical advisory services and training to selected staff;

(e) Strengthening of selected jurisdictions through the acquisition of equipment, provision of technical advisory services and training, and

(f) Dissemination of legal information through workshops, media and other means adapted at local circumstances.

2. Supporting financial intermediation

(a) Strengthening the administrative and technical capacity of BCC through the carrying out of: (i) an organizational audit, and (ii) information technology and accounting reforms; through the provision of technical and advisory services the provision of training to selected staff and the acquisition of equipment; and

(b) Provision of technical advisory services in liquidating BCA, BCCE and NBK.

3. Insurance Facility

Provision of support for an insurance facility against Covered Risks that will be implemented by ATI in accordance with the Agreement Establishing ATI, with the approval of its Board of Directors.

4. Institutional Strengthening of MMH

(a) Improving the administrative and organizational capacity of MMH and building capacity for social and environmental management in ME, local government agencies, the private sector and selected representatives of civil society through, *inter alia*:

(i) Review and reform of the regulatory framework to enable MMH to create an investor friendly administrative environment and supervise and enforce mining laws and regulations, through the provision of technical advisory services;

(ii) Strengthening of the mining administration in selected regions of the territory of the Borrower, under the authority of MMH, through the provision of technical advisory services and training, and

(iii) Rehabilitation of selected offices, through the carrying out of works.

(b) Improving the reliability of the mining registry in the territory of the Borrower through the establishment of deconcentrated registries, through the provision of technical advisory services, the provision of training for selected staff and the acquisition of equipment.

(c) Improving Information of and Access to Mining Reserves through the carrying out of studies to, *inter alia*:

- (i) improve geodetic information gathering and analysis,
- (ii) improve accuracy of, and access to, mineral resource information, and
- (iii) assess consequences of mining activities, such as environmental and social risks, through the provision of technical advisory services and training for selected staff, and the acquisition of equipment.

5. Improving the Dialogue Between the Borrower and Private Sector Groups.

Promotion of private investment through, *inter alia*:

(a) Supporting ANAPI to become an effective uniform entry agent for investors (*guichet unique*) through the acquisition of equipment and the hiring of additional staff pursuant to the procedures set forth in Section II of Schedule 3 to this Agreement;

(b) Supporting dialogue among public and/or parastatal entities and the private sector through a *Cadre permanent de Concertation économique*, through the acquisition of equipment and the hiring of additional staff pursuant of the procedures set forth in Section II of Schedule 3 to this Agreement; and

(c) Supporting existing private- and parastatal entities active in business promotion, and carrying out of studies in the areas of alleviation of administrative and trade barriers hampering private investment, through the provision of technical advisory services and training for selected staff and the acquisition of equipment.

Part B: Supporting Parastatal Reform in the Telecommunication, Transport, Energy and Mining Sectors

1. Establishment of regulatory agencies in the telecommunication, finance, transport, energy and mining sectors through the provision of technical advisory services, acquisition of equipment, carrying out of works and the provision of training for selected staff in the newly established agencies.

2. Improvement of services provided to the public in the telecommunication, finance, transport, and energy sectors through, *inter alia*:

(a) Facilitation of divestiture of government ownership in enterprises currently dominating each of said sectors, and

(b) Adoption of regulations conducive to foster private investment, through the provision of technical advisory services, the acquisition of equipment and training for selected staff.

3. Facilitation of divestiture of government ownership in *Gecamines* through, *inter alia*, carrying out of studies to: (a) restructure the existing debt, (b) reorganize the administrative and operational management; all through the provision of technical advisory services.

4. Alleviating the social and environmental costs of sector reform through, *inter alia*, the carrying out of baseline studies to: (a) assess the feasibility and costs for environmental clean-up, and (b) establish the costs of a social safety net for selected employees, through the provision of technical advisory services.

5. Strengthening the administrative and financial management capacity of COPIREP through:

(a) The hiring of staff pursuant of the procedures set forth in Section II of Schedule 3 to this Agreement;

(b) The provision of technical advisory services and general training for selected staff at COPIREP, the carrying out of works and the acquisition of equipment;

(c) Establishment of a communication unit in COPIREP; and

(d) Provision of training to selected staff in the regulatory agencies referred to in paragraph 1. of this Part B in procurement, financial management and environmental safeguard policies, their monitoring and enforcement.

Part C: Improving Mining Competitiveness in the Katanga Region

1. Support to private mining enterprise in the Katanga region

Support to private sector mining activity in the Katana region of the Borrower through:

- (a) The provision of technical advisory services in investment opportunity research and counseling;
- (b) Provision of technical and management training;
- (c) Facilitation of dialogue with local community and business representatives and the small-scale mining community, and
- (d) Exploration of the feasibility of commercial exchanges and cooperation with mining activities in Zambia.

2. Strengthening local communities in the provision of social services

Provision of technical advisory services and training to selected community administrators in administrative and financial management, provision of social services and infrastructure management and maintenance.

3. Establishment of development frameworks for the Katanga Region

- (a) Establishing local and regional development plans as reference guidelines for public and private investment programming, outlining priority areas and assessing potential results on the business, social and environmental levels, through the provision of technical advisory services;
- (b) Carrying out of studies to assess;
- (c) The fiscal consequences of the privatization of *Gecamines* and respective administrative, infrastructural and social obligations of the communities; and

(d) The capacity of local and regional community administrations to provide business and social services and infrastructure administration and maintenance, through the provision of technical advisory services.

Part D: Support to Economic Activities in Katanga

Provision of Grants for the carrying out of activities in support of:

1. improvements in the efficiency of artisans and small-scale entrepreneurs in the Katanga region in the Borrower's territory, such as: (a) worker training in technical skills, (b) management training in marketing and production techniques; and (c) acquisition of equipment, and

2. supporting the re-insertion into the economic mainstream of affected Eligible Employees having resided in the Katanga region at the time of leaving employment, through, *inter alia*, (a) technical skills training courses; (b) setting up of equipment rentals and sharing systems; and (c) setting up of operating cost financing systems.

Part E: Retrenchment

Support to Eligible Employees.

Part F: Project Management and administration

1. Establishment of URK/GCM through the provision of technical advisory services and training;

2. Provision of operating costs, technical advisory services and training for selected staff in BCECO to strengthen administration, coordination, monitoring, supervision and evaluation of Project implementation;

3. Furniture of operating costs to COPIREP;

4. Provision of technical advisory services and training for selected staff in COPIREP to strengthen administration, coordination, monitoring, supervision and evaluation of Project implementation; and

5. Provision of training to selected staff in BCECO, COPIREP and URK in environmental safeguard policies, their monitoring and enforcement, procurement methods, financial management and project supervision and evaluation.

* * *

The Project is expected to be completed by September 30, 2009.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Works and Goods

Part A: General

Works and 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 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the provisions of the following Parts of this Section I.

Part B: International Competitive Bidding

1. (a) Except as otherwise provided in Part C of this Section, works and 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.

(b) Works estimated to cost US\$600,000 equivalent or more, including the contract for mining cadastral works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto; and

(c) Goods estimated to cost the \$200,000 equivalent or more 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.

3. Preference for domestically manufactured goods

The provisions of paragraph 2.55 and 2.56 of the guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

4. Grouping of contracts

To the extent practicable, contracts for goods shall be grouped into bid packages estimated to cost \$200,000 equivalent or more each.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Works under Parts C.1 and D of the Project, estimated to cost less than US\$600,000 but more than \$50,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) Good including office equipment; hardware and software, video and surveying instruments estimated to cost less than \$200,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

3. National Shopping

(a) Contracts for small civil works estimated to cost less than US\$50,000 each, would be procured under lump-sum, fixed price contract awarded on the basis of written solicitation issued to at least three qualified civil works contractors, following evaluation of bids received in writing from such qualified contractors. The award would be made to the contractor with the lowest price quotation for the required works.

(b) Goods, including field equipment; environmental monitoring instruments; technical documentation and literature; office equipment; furniture; training material and office supplies other than vehicles, estimated to cost less than \$50,000 equivalent per contract, 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.

5. Procurement through International Agencies

Vehicles may be procured from IAPSO.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be updated and furnished annually 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

With respect to each contract for works and goods 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.

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

Part A: General

1. Consultants' services shall be procured in accordance with: (a) the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 as amended through May 2002, (the Consultant Guidelines), and (b) the provisions of the following Parts of this Section II.

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

2. The following provisions shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph. The short list of consultants for services estimated to cost less than \$100,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Least cost Selection

Services for audits under Article IV of this Agreement and other services of standard nature, including the contract for services related to the design of the MMH facilities, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. Selection Based on Consultant's Qualification

Services for the contracting of investment promotion services, supervision services for cadastral, environmental and geological activities, technical assistance for institutional and regulatory activities related to the telecommunication sector reform, technical assistance, for redeployment activities, social studies, and training, estimated to cost less than \$100,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

3. Individual Consultants

Services for individual consultants: (a) meeting the requirements set forth in paragraph 5.1 of the Consultant Guidelines, and (b) employed under contracts concluded with the Project Implementation Unit, shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

The proposed plan for the selection of consultants under the Project shall be updated and furnished annually to the Association for its review and approval in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with

such selection 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 the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 1, 2 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$100,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

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 Consultant Guidelines shall apply.

SCHEDULE 4

Implementation Program

Section I:

1. The Borrower shall implement the Project in accordance with the procedures, guidelines, timetables and criteria set forth in the Project Implementation Plan and the EPA, and, except as the Association shall otherwise agree, the Borrower shall not amend, or waive any provision of either the PIP or the EPA if, in the opinion of the Association, such amendment or waiver may materially and adversely affect the implementation of the Project.

Coordination and Management

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 set forth in the PIP and summarized in Schedule 6 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof;

(b) Prepare, under terms of reference satisfactory to the Association, and furnish to the Association, annually until the Completion Date, for the first time by September 30, 2004, or such other date as the Association shall agree, for its review and comments, a report integrating the results of the monitoring and evaluation activities performed pursuant to subparagraph (a) of this paragraph 2, on the progress achieved in the carrying out of the Project during the period 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. In particular the report shall detail approved Grants and pending Grant applications; and

(c) review with the Association, within four weeks following the submission of the report referred to in subparagraph (b) of this paragraph said report (Annual Review), 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 said report, the Association's views on the matter and in accordance with the PIP.

Midterm Review

3. The Borrower shall:

(a) By June 30, 2006, or such other date as the Association shall agree upon, carry out jointly with the Association, a midterm review (Midterm Review). The Borrower shall invite the members of sector ministries and agencies affected by the Project to participate, and take all actions it considers necessary to ensure the participation of representatives of community associations concerned by the Project in such Midterm Review. Such Midterm Review shall cover the progress achieved in the implementation of the Project under an agenda encompassing the agenda of the Annual Reviews, and, more specifically, the achievements under Part B of the Project.

(b) No later than one month prior to the Midterm Review, the Borrower shall furnish to the Association, for its review and comments, a report, in such detail as the Association shall reasonably request, on the implementation of the Project.

(c) Following such Midterm Review, the Borrower shall act promptly and diligently in order to take any corrective action deemed necessary by the Association 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 Borrower and the Association in furtherance of the objectives of the Project and in accordance with the PIP.

Section II: Other Covenants

4. The Borrower shall:

(a) within three months of the Effectiveness Date appoint the auditor referred to in Section 4.01 (b) of this Agreement, in accordance with the provisions of Section II of Schedule 3 to this Agreement;

(b) within six months following the Effectiveness Date establish and maintain in the Katanga Region a committee, comprising representatives of the public and the private sector active in the region, to assist URK/GCM with monitoring Project activities and consultative services, respectively;

(c) maintain until the Completion Date, BCECO and COPIREP, each staffed with a management team with qualifications and experience satisfactory to the Association and with qualified support staff in sufficient numbers; and

(d) transfer responsibility for the financial management of the Project from BCECO to COPIREP once an accounting and financial management system has been established in COPIREP, satisfactory to the Association.

Eligibility Criteria for Subprojects

5. General

(a) The Borrower shall make the proceeds of the Credit allocated from time to time to Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement available to Beneficiaries under a Subproject Grant Agreement to be entered into, respectively, between the Borrower and each Beneficiary pursuant to the terms and conditions set forth in the PIP and this Section V; and

(b) without limitation upon the provisions of paragraph 1 of this Schedule, no Subproject shall be eligible for financing out of the proceeds of the Credit unless URK has determined, upon appraisal of a study supporting the Grant application, conducted in accordance with the guidelines set forth in the PIP, that the Subproject and the Beneficiary satisfy the respective eligibility criteria specified in said PIP, that a Subproject Grant Agreement has been executed and is legally binding upon the parties.

6. Terms and Conditions for Subproject Grant Agreements

A Subproject financed by a Grant shall be carried out pursuant to a Subproject Grant Agreement, to be concluded between the Borrower and the Beneficiary - following the approval of the Subproject by URK, in accordance with the provisions set forth in the PIP providing for, *inter alia*, the following:

(a) the obligation to carry out and maintain the Subproject in accordance with the PIP, with due diligence and efficiency and in accordance with appropriate technical, environmental, financial and commercial practices and to maintain adequate records in such form and detail as the Borrower may reasonably request;

(b) the obligation that: (i) works, goods and services to be financed out of the proceeds of the Credit for a Subproject shall be procured according to the provisions of Schedule 3 to this Agreement; and (ii) that such goods, works and services shall be used exclusively for the carrying out of the Subproject;

(c) the right to inspect, by the Borrower or the Association, or jointly with qualified representatives of the Association, or the Borrower, if the Association, or the

Borrower, shall so request, the works, plans, studies and construction sites relevant to the Subproject, and any relevant documents;

(d) the right to appropriate remedies, acceptable to the Association, should the carrying out or the maintenance of the Subproject, as the case may be, not conform to the regulations set forth in the PIP and the Subproject Grant Agreement and thereby unfavorably influence the economic return of the Subproject; and

(e) the right to obtain all such information as the Borrower or the Association shall reasonably request, relating to the administration and financial condition of the Subproject.

7. The Borrower shall exercise its rights under the Subproject Grant Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subproject Grant Agreement or any provision thereof.

SCHEDULE 5

SPECIAL ACCOUNT

1. For the purposes of this Schedule:

(a) the term “eligible Categories” means Categories (1) through (6) and (8) set forth in the table in Schedule 1 to this Agreement;

(b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit 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 an amount equivalent to twelve million Dollars (\$12,000,000) to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to eight million dollars (\$8,000,000) until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR twenty million (SDR 20,000,000).

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 Association 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 Association 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 Association shall, on behalf of the Borrower, withdraw from the Credit 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 Association requests for deposits into the

Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association 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 Association shall, on behalf of the Borrower, withdraw from the Credit 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 Association from the Credit 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 and the 90-Day Advance Accounts, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association 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 Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit 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 Association, 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 Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account or any of the 90-Day Advance Accounts;

(c) if, at any time, the Association 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 Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

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

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures, as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account and any of the 90-Day Advance Accounts as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association 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 Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association 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 Association 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 Association, refund to the Association such outstanding amount.

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

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

SCHEDULE 6

Implementation and Evaluation Indicators

1. Foreign direct investment in the telecommunications, finance, energy, transport and mining sectors reaches one billion Dollars per year by 2009 (from \$200 million in 2002).
2. Private sector participation in *Gecamines*, *Société Nationale d'Electricité*, *Société Nationale des Chemins de Fer du Congo*, *Régie des Voies Aériennes*, *Lignes Aériennes du Congo* and OCPT achieved at Closing Date, whether through public/private partnerships, full privatization, management contracts or other arrangements.
3. Net fiscal contribution from parastatal companies increased by ten million dollars annually.

Hans-Werner Wabnitz

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