

CONFORMED COPY

LOAN NUMBER 4390 UA

Loan Agreement

(Second Enterprise Development Adjustment Loan)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Dated September 15, 1998

LOAN NUMBER 4390 UA

LOAN AGREEMENT

AGREEMENT, dated September 15, 1998, between UKRAINE (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received a letter dated February 24, 1998, from the Borrower describing a program of actions, objectives and policies designed to achieve structural adjustment of the Borrower's enterprise sector (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Bank in support of the Program during the execution thereof;

(B) in addition to the Loan provided for in this Agreement, the following Loans are made or proposed to be made by the Bank to the Borrower in support of an integrated program of structural adjustment of the Borrower's economy: (i) Loan No. 4103-UA (Agriculture Sector Adjustment Loan) in the amount of \$300 million provided for under loan agreement dated November 14, 1996; (ii) Loan No. 4118-UA (Coal Sector Adjustment Loan), provided for under loan agreement dated December 12, 1996; and (iii) proposed Loan in the amount of \$300 million for an Financial Sector Adjustment Program; and

(C) on the basis, inter alia, of the foregoing, the Bank has decided in support of the Program to provide such assistance to the Borrower by making the Loan in three (3) tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995, as amended through December 2, 1997, with the modifications thereto set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 118, is modified to read:

"'Project' means the program, referred to in the Preamble to the Loan Agreement, in support of which the Loan is made.";

(b) The last sentence of Section 3.02 is deleted;

(c) Section 4.01 is modified to read:

"Except as the Bank and the Borrower shall otherwise agree, withdrawals from the Loan Account shall be made in the currency of the deposit account specified in Section 2.02 of the Loan Agreement.";

(d) Section 5.01 is modified to read:

"The Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in accordance with the provisions of the Loan Agreement and of these General Conditions";

(e) The last sentence of Section 5.03 is deleted;

(f) Section 9.07 (c) shall be modified to read:

"(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution of the program referred to in the Preamble to the Loan Agreement, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan."; and

(g) Section 9.05 is deleted and Sections 9.06, 9.07 (as modified above), 9.08 and 9.09 are renumbered, respectively, Sections 9.05, 9.06, 9.07 and 9.08.

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) "Associated Loans" means the loans referred to in Recital (B) of the Preamble to this Agreement.

(b) "Deposit Account" means the account referred to in Section 2.02 (b) of this Agreement.

(c) "IAS" means the International Accounting Standards, published by the International Accounting Standards Committee, as the same may be modified from time to time;

(d) "ISA" means the International Audit Standards Standards for Auditing, published by the International Audit Standards Committee, as the same may be modified from time to time;

(e) "Medium/Large Enterprise" means any publicly owned enterprise of the Borrower, classified according to the Borrower's State Privatization Program as a Group B, C or D enterprise, and any other enterprise with a book value on January 1, 1997 of not less than one million Hryvnia;

(f) "Private Ownership" means the holding of shares in enterprises by other than the Borrower or by its political or administrative or local agencies or entities or by enterprises the majority shares of which is held by the Borrower and/or such agencies or entities;

(g) "Securities Commission" means the Securities and Stock Exchange Commission of the Borrower; and

(h) "SRO" means a self-regulatory organization for the Borrower's capital market, to be established in accordance with the Program.

## ARTICLE II

### The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to three hundred million Dollars (\$300,000,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c), (d), (e) and (f) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Bank, the first request for withdrawal from the Loan Account, and thereafter maintain in its central bank, a deposit account in Dollars on terms and conditions satisfactory to the Bank. All withdrawals from the Loan Account shall be deposited by the Bank into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Loan shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Bank shall have determined at any time that any proceeds of the Loan shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Bank: (i) deposit into the Deposit Account an amount equal to the amount of said payment; or (ii) if the Bank shall so request, refund such amount to the Bank. Amounts refunded to the Bank upon such request shall be credited to the Loan Account for cancellation.

(d) Unless the Bank shall otherwise agree, withdrawals from the Loan Account in any month during the execution of the Program, shall be permitted only up to the Maximum Withdrawal Amount as defined herein. For purposes of this sub-paragraph, the "Maximum Withdrawal Amount" shall be the amount of any withdrawal from the Loan Account which would, when added together with the amount of proceeds withdrawn during such month from the Loan Accounts for any of the Associated Loans, equal the Cumulative Withdrawal Ceiling for such month. The "Cumulative Withdrawal Ceiling" for any month shall be the Monthly Withdrawal Ceiling for such month (as defined herein), plus the cumulative amounts of any Monthly Withdrawal Ceiling for any previous months which remain undisbursed and are carried over to such month pursuant to the provisions of this paragraph. The Monthly Withdrawal Ceiling shall be, for the month of September 1998, equal to two hundred seventy million dollars (\$270,000,000); and for each month thereafter, beginning in November 1998, shall be equal to seventy million dollars (\$70,000,000). In the event that the aggregate amounts of loan proceeds actually disbursed from the Loan Accounts for the Associated Loans in any given month shall be less than the amount of the Monthly Withdrawal Ceiling for such month, the difference between such actual monthly disbursements and the Monthly Withdrawal Ceiling shall be permitted to be carried over as an additional amount which shall be added to the Monthly Withdrawal Ceiling for the next succeeding month. Such carry-over shall continue from month to month as long as any portion of a Monthly Withdrawal Ceiling remains unwithdrawn.

(e) No withdrawals shall be made from the Loan Account: (i) after the aggregate of the proceeds of the Loan withdrawn from the Loan Account shall have reached the equivalent of one hundred million Dollars (\$100,000,000), unless the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank; (ii) with the progress achieved by the Borrower in the carrying out of Program; and (iii) that the actions described in Section I of Schedule 3 to this Agreement have been taken. If, after said exchange

of views, the Bank shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Bank, then the Bank may, by notice to the Borrower, cancel the unwithdrawn amount of the Loan or any part thereof.

(f) No withdrawals shall be made from the Loan Account: (i) after the aggregate of the proceeds of the Loan withdrawn from the Loan Account shall have reached the equivalent of two hundred million Dollars (\$200,000,000), unless the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank; (ii) with the progress achieved by the Borrower in the carrying out of Program; and (iii) that the actions described in Section II of Schedule 3 to this Agreement have been taken. If, after said exchange of views, the Bank shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Bank, then the Bank may, by notice to the Borrower, cancel the unwithdrawn amount of the Loan or any part thereof.

Section 2.03. The Closing Date shall be December 31, 1999, or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.05. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

(i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.

(ii) "Interest Payment Date" means any date specified in Section 2.06 of this Agreement.

(iii) "LIBOR Base Rate" means, for each Interest Period, the London interbank offered rate for six-month deposits in Dollars for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.

(iv) "LIBOR Total Spread" means, for each Interest Period: (A) one half of one percent (1/2 of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

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

(d) Whenever, in light of changes in market practice affecting the determination of the interest rates referred to in this Section 2.05, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest

rates applicable to the Loan upon not less than six (6) months' notice to the Borrower of the new basis. The basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.06. Interest and other charges shall be payable semiannually on March 15 and September 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

### ARTICLE III

#### Particular Covenants

Section 3.01. (a) The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 3 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Bank on any proposed action to be taken after the disbursement of the Loan which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedule 3 to this Agreement.

Section 3.02. Upon the Bank's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(b) furnish to the Bank as soon as available, but in any case not later than six months after the date of the Bank's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(c) furnish to the Bank such other information concerning the Deposit Account and the audit thereof as the Bank shall have reasonably requested.

### ARTICLE IV

#### Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (lp) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

### ARTICLE V

#### Termination

Section 5.01. 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. The Minister of Finance of the Borrower 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:

Ministry of Finance  
1212 Hrushevsky Street  
Kiev, 252008  
Ukraine

Telex:

131450

For the Bank:

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

Cable address:

Telex:

INTBAFRAD  
Washington, D.C.

248423 (MCI) or  
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 District of Columbia, United States of America, as of the day and year first above written.

UKRAINE

By /s/ Yuri M. Shcherbak

Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Paul J. Siegelbaum

Acting Regional Vice President  
Europe and Central Asia

#### SCHEDULE 1

#### Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Loan shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another loan or a credit;

3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Bank by notice to the Borrower:

Group	Subgroup	Description of Items
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728.43	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party);

6. expenditures: (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

7. expenditures under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation.

## SCHEDULE 2

### Amortization Schedule

Date Payment Due	Payment of Principal (expressed in Dollars)*
March 15, 2004	6,310,000
September 15, 2004	6,500,000
March 15, 2005	6,695,000
September 15, 2005	6,895,000

March 15, 2006	7,100,000
September 15, 2006	7,315,000
March 15, 2007	7,535,000
September 15, 2007	7,760,000
March 15, 2008	7,990,000
September 15, 2008	8,230,000
March 15, 2009	8,475,000
September 15, 2009	8,730,000
March 15, 2010	8,995,000
September 15, 2010	9,260,000
March 15, 2011	9,540,000
September 15, 2011	9,825,000
March 15, 2012	10,120,000
September 15, 2012	10,420,000
March 15, 2013	10,735,000
September 15, 2013	11,055,000
March 15, 2014	11,385,000
September 15, 2014	11,730,000
March 15, 2015	12,080,000
September 15, 2015	12,440,000
March 15, 2016	12,815,000
September 15, 2016	13,200,000
March 15, 2017	13,595,000
September 15, 2017	14,000,000
March 15, 2018	14,420,000
September 15, 2018	14,850,000

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

### SCHEDULE 3

#### Actions Referred to in Section 2.02 (e) and (f) of this Agreement

#### Section I: Actions to be Implemented

Pursuant to paragraph (e) of Section 2.02 of this Agreement:

1. Privatization: The Borrower has:

(a) in the period starting with January 1, 1995, transferred to Private Ownership at least 70% of the equity of not less than 8,500 Medium/Large Enterprises;

(b) transferred to Private Ownership at least 40% of the equity of not less than 60 Large Enterprises;

(c) in the period since January 1, 1995, transferred to Private Ownership 100% of the equity of not less than 4,250 Medium/Large Enterprises;

(d) transferred to Private Ownership at least 70% of the equity of not less than 60 grain marketing and distribution enterprises;

(e) transferred to Private Ownership about 2,500 unfinished construction sites, as such sites are identified based on the data maintained by the State Property Fund of Ukraine;

(f) initiated sale of shares in at least 300 grain marketing and distribution enterprises;

(g) finalized documents for privatization, on a case by case basis, of not less than three enterprises; and

(h) issued the remaining regulations required for authorization and management of privatization of enterprises on a case by case basis.



In applying this Part 1 the numbers of enterprises referred to in paragraphs (c) and (d) shall also be counted as part of the 8,500 Medium/Large Enterprises referred to in paragraph (a).

2. Capital Markets: The Borrower has:

(a) made available to the public consolidated shareholder lists of all privatized enterprises;

(b) authorized only licensed securities markets to operate, and adopted rules and procedures for organization of capital market activities within commercial banks;

(c) issued regulations meeting standards approved by the European Union for depositories, custodians and for clearance and settlement;

(d) adopted procedures to ensure that privatization through Initial Public Offering will take the form of de-materialized shares, placed with a depository and sold through regulated trading systems;

(e) submitted to Parliament draft legislation for proposed changes to the tax structure on securities designed to encourage the development of regulated markets for corporate securities; and

(f) adopted the necessary regulation to ensure equal tax treatment for stock exchanges and over the counter market tradings.

3. Accounting Reform: The Borrower has:

(a) prepared, through its Accounting Standards Board, a timetable for the development of a national accounting system consistent with IAS;

(b) ensured the issuance, through the Securities Commission, of instructions to issuers of securities to prepare their annual reporting according to the IAS; and

(c) caused to be prepared by its Chamber of Auditors, in conjunction with national accounting associations, a program to improve professional capacity in the use of the national accounting and auditing systems which are consistent with the IAS and ISA.

4. Deregulation: The Borrower has taken deregulation measures, including:

(a) adoption of a plan by its Council of Ministers for deregulation, based on Presidential Decree No. 79/1998 issued on February 3, 1998;

(b) preparation of proposals to simplify obtaining permits through processes other than business licenses;

(c) preparation of draft regulations for simplification of business licensing procedures;

(d) completion of an analysis of business inspection procedures; and

(e) establishment and operation of a mechanism to continuously review relevant regulations in consultation with the private sector.

Section II: Actions to be Implemented Pursuant to paragraph (f) of Section 2.02 of this Agreement:

1. Privatization: The Borrower has:

(a) in the period starting January 1, 1995, transferred to Private Ownership at least 70% of the equity of not less than 9,500 Medium/Large Enterprises;

(b) transferred to Private Ownership at least 40% of the equity of not less than 100 Large Enterprises, counting those referred to in Section I.1 (b) of this Schedule;

(c) in the period since January 1, 1995, transferred 100% of the Equity of not less than 4,750 Medium/Large Enterprises to Private Ownership;

(d) transferred to Private Ownership at least 70% of the equity of not less than 100 grain marketing enterprises, counting those referred to in Section I.1 (d) of this Schedule;

(e) initiated the sale of shares in at least 450 grain marketing enterprises other than those referred to in paragraph (d) above;

(f) brought to the stage of negotiations with investors, the three cases of privatization referred to in Section I.1 (g) of this Schedule, and initiated privatization on a case by case basis for not less than 10 other enterprises; and

(g) transferred to Private Ownership about 3,600 unfinished construction sites, as such sites are identified based on the data maintained by the State Property Fund of Ukraine.

In applying this Part II.1, the numbers of enterprises referred to in paragraphs (c) and (d) shall also be counted as part of the 9,500 Medium/Large Enterprises referred to in paragraph (a).

2. Capital Market: The Borrower has:

(a) taken adequate measures to enforce the requirement that enterprises transfer their share registries to independent registrars;

(b) ensured that banks have separate departments or subsidiaries for managing their capital market activities;

(c) taken adequate measures to enforce the requirement that all brokers and registrars be member of SRO;

(d) Vested in established SRO authority to issue rules of conduct and to arbitrate disputes between its members and required all securities dealers and registrars to become members of SRO;

(e) applied a system, meeting standards of European Union regulations, for disclosure of information on new share offerings; and

(f) operated with respect to regulated trading, with the participation of the National Bank of Ukraine, systems for depository, clearance and settlement and settlement payment.

3. Accounting Reform: The Borrower has initiated an accounting educational Program, consistent with the IAS and ISA, at least at one graduate-level institution.

4. Deregulation: The Borrower has:

(a) prepared a plan of action for reducing procedural obstacles and improving transparency with respect to business inspections; and

(b) enacted the regulations, referred to in Section I.4 (c) for simplification of business licensing procedures.

