

CONFORMED COPY

LOAN NUMBER 3126 UNI

Adapalm Project Agreement

(Tree Crops Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

ADAPALM (NIGERIA) LIMITED

Dated October 12, 1990

LOAN NUMBER 3126 UNI

ADAPALM PROJECT AGREEMENT

AGREEMENT, dated October 12, 1990, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and ADAPALM (NIGERIA) LIMITED (Adapalm).

WHEREAS (A) by the Loan Agreement of even date herewith between the Federal Republic of Nigeria (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to one hundred six million dollars (\$106,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that Adapalm agrees to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement (the Imo State Subsidiary Loan Agreement) to be entered into between the Borrower and Imo State of Nigeria (Imo State), a portion of the proceeds of the Loan will be made available to Imo State for relending to Adapalm on the terms and conditions to be set forth in a second subsidiary loan agreement (the Adapalm Second Subsidiary Loan Agreement) to be entered into between Imo State and Adapalm; and

WHEREAS Adapalm, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the

obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, wherever used in this Agreement, the several terms defined in the Loan Agreement, the Preamble to this Agreement and the General Conditions (as so defined) have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Adapalm SDU Project Account" means the account referred to in Section 2.01 (b) of this Agreement;

(b) "Adapalm Special Account" means the account referred to in Section 2.01 (c) of this Agreement;

(c) "Adapalm Second Subsidiary Loan Agreement" means the agreement referred to in Section 2.02 of the Imo State Agreement;

(d) "Adapalm SDU" means the smallholders development unit managed by Adapalm and referred to in Part A(2) of the Project; and

(e) "Services and Inputs Supply Management Agreement" means the agreement referred to in Section 2.01 (d) of this Agreement and paragraph 2 of the Schedule to the Imo State Agreement.

ARTICLE II

Execution of the Project

Section 2.01. (a) Adapalm declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and to this end, shall carry out Part A(2) and (3) of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and agricultural practices, and shall provide, or cause to be provided promptly as needed, the funds, facilities, services and other resources required for Part A(2) and (3) of the Project.

(b) Without any limitation or restriction upon Adapalm's obligations under paragraph (a) of this Section, Adapalm shall: (i) provide in its annual budget amounts sufficient to cover Adapalm's counterpart contributions to the costs of the Project; (ii) open and maintain an account at a commercial bank (the Adapalm SDU Project Account) to be used exclusively for Adapalm SDU expenditures under Part A(2) and (3) of the Project. The Borrower, the Bank and Adapalm presently estimate Adapalm's contributions to Project costs to amount in 1989 prices to \$8,500,000 equivalent over the Project period.

(c) Adapalm shall, for the purposes of the Project, open and maintain in dollars a special account (the Adapalm Special Account) in a commercial bank on terms and conditions satisfactory to the Bank. Deposits into, and payments out of, the Adapalm Special Account shall be made in accordance with the provisions of Schedule 2 to this Agreement.

(d) Adapalm shall enter into an agreement satisfactory to the Bank with Imo State (the Services and Inputs Supply Management Agreement) for the management by Adapalm SDU of the smallholder services and inputs supply program under Part A(2) of the Project.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for Part A(2) and (3) of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. Adapalm shall carry out the obligation set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of this Agreement.

Section 2.04. Adapalm shall duly perform all its obligations under the Adapalm Second Subsidiary Loan Agreement and the Services and Inputs Supply Management Agreement. Except as the Borrower and the Bank shall otherwise agree, Adapalm shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Adapalm Second Subsidiary Loan Agreement or the Services and Inputs Supply Management Agreement or any provision thereof.

Section 2.05. (a) Adapalm shall, at the request of the Borrower or the Bank, exchange views with the Borrower and the Bank with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Adapalm Second Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

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

Section 2.06. Adapalm shall as from January 1, 1990: (i) purchase oil palm Fresh Fruit Bunches (FFB) at prevailing market prices at all of its oil palm mills; and (ii) recover SDU costs through appropriate deductions from the prices paid by Adapalm to Adapalm SDU farmers for their oil palm fruit produce.

Section 2.07. Adapalm shall no later than one month before the start of each financial year furnish to its Board of Directors for the Board's approval and to the Bank for information Adapalm's annual budget (including details of the services and inputs to be supplied by Adapalm SDU to monocrop oil palm smallholders under Part A(2) of the Project).

ARTICLE III

Financial covenants

Section 3.01. (a) Adapalm shall maintain or cause to be maintained separate records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of Adapalm responsible for carrying out the Project.

(b) Adapalm shall:

- (i) have the accounts referred to in paragraph (a) of this Section (including the Adapalm Special Account) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

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

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

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. This Agreement and all obligations of the Bank and of Adapalm thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify Adapalm thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

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

Cable address:

INTBAFRAD

Telex:

440098 (ITT)

Washington, D.C.

248423 (RCA) or
64145 (WUI)

For Adapalm:

The General Manager
Adapalm (Nigeria) Limited
P.M.B. 1044
Owerri, Imo State
Nigeria

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of Adapalm, or by Adapalm on behalf of the Borrower under the Loan Agreement, may be taken or executed by the General Manager of Adapalm or such other person or persons as Adapalm shall designate in writing, and Adapalm shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Edward V.K. Jaycox
Regional Vice President
Africa

ADAPALM (NIGERIA) LIMITED

By /s/ Hamzat Ahmadu
Authorized Representative
SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: International Competitive Bidding

1. Goods and works estimated to cost \$500,000 or more equivalent including the following items shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Loans" published by the Bank in May 1985 (the Guidelines):

(a) all items included under Category (1) in Schedule 1 to the Loan Agreement relating to construction of palm oil mills;

(b) all items included under Category (2) in Schedule 1 to the Loan Agreement with the exception of motor-cycles, water pumps, research equipment, office furniture and equipment and spare parts; and

(c) all palm oil mill equipment included under Category (4)

in Schedule 1 to the Loan Agreement with the exception of replacement parts.

2. Bidders for works included in Part A(3) of the Project shall be prequalified as described in paragraph 2.10 of the Guidelines.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in Nigeria may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, the Borrower may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

1. Goods and works estimated to cost an amount equivalent to \$60,000 or more but less than \$500,000 equivalent including all building construction works under Category (1) in Schedule 1 to the Loan Agreement may be procured under contracts awarded on the basis of competitive bidding advertised locally, in accordance with procedures satisfactory to the Bank.

2. Goods and works estimated to cost less than \$60,000 equivalent per contract may be procured under contracts awarded on the basis of comparison of price quotations solicited from a list of at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

3. Nucleus estate and smallholder oil palm planting and nursery operations may be carried out by force account (i.e. by resident casual or smallholder labor) or under contracts awarded on the basis of comparison of quotations solicited from experienced local contractors in accordance with procedures acceptable to the Bank.

4. To the extent practicable, contracts for building construction shall be grouped in bid packages of \$200,000 or more each.

Part E: Review by the Bank of Procurement Decisions

1. Review of prequalification:

With respect to the prequalification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of Appendix 1 to the Guidelines shall apply.

2. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract estimated to cost the equivalent of \$500,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Adapalm Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to paragraph 2 (d) of said Appendix shall be furnished to the Bank prior to the making of the first payment out of the Adapalm Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Adapalm Special Account, said procedures shall be modified to ensure that the two conformed copies

of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 2 to this Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Bank has authorized withdrawals from the Loan Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 3.01 (c)(ii) of this Agreement.

3. The figure of 10% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

In order to assist Adapalm in carrying out the Project, Adapalm shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Borrower and the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 2

Adapalm Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1)(a), (2)(a), (3)(a), (4)(a), (5)(a) and (6)(a) set forth in the table in paragraph 1 of Schedule 1 to the Loan Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for Part A(2) and (3) of the Project and to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$500,000 to be withdrawn from the Loan Account and deposited into the Adapalm Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Adapalm Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Bank has received evidence satisfactory to it that the Adapalm Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Adapalm Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit in the Adapalm Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Adapalm Special Account, the Borrower shall furnish to the Bank requests for deposits into the Adapalm Special Account at such intervals as the Bank shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to paragraph

4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Adapalm 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 made out of the Adapalm Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Bank from the Loan Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

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

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

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

(b) once the total unwithdrawn amount of the Loan allocated to the eligible Categories less the amount of any outstanding special commitment entered into by the Bank 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 Loan Account of the remaining unwithdrawn amount of the Loan allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Adapalm Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

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

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

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

(d) Refunds to the Bank made pursuant to paragraphs 5 (a),

(b) and (c) of this Schedule shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Condition.

