

Public Disclosure Authorized

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**LOAN NUMBER 7372-EGT**

# **Project Agreement**

**(Second Pollution Abatement Project)**

**between**

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

**and**

**NATIONAL BANK OF EGYPT**

**Dated May 8, 2006**

Public Disclosure Authorized



**LOAN NUMBER 7372-EGT**

**PROJECT AGREEMENT**

AGREEMENT dated May 8, 2006, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and NATIONAL BANK OF EGYPT (NBE).

WHEREAS (A) by the Loan Agreement of even date herewith between the Arab Republic of Egypt (the Borrower) and the Bank, the Bank has agreed to make a loan to the Borrower in the amount of twenty million United States dollars (US\$20,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that NBE agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower, and NBE, the proceeds of the loan provided for under the Loan Agreement will be made available to NBE on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS NBE, 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, 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) "EGGEIA" means the Egyptian General Guidelines for Environmental Impact Assessment which forms an integral part of the Operational Manual (as this term is defined hereinafter), adopted by EEAA on January 9, 2006, and approved by the Bank, setting out, inter alia, the objectives and environmental principles that shall govern the implementation of Sub-projects, together with the requisite documentation and disclosure requirements;

(b) "Environmental Legislation" means Law No. 4 of 1994 of the Borrower, together with the Borrower's Decree No. 338 of 1995 which sets out certain regulations concerning the implementation of Law No. 4 of 1994;

(c) “Operational Manual” means NBE’s and EEAA’s joint operational manual which has been approved by the Bank dated February 7, 2006, setting out the procurement, financial management, procedures under the EGGEIA, monitoring, evaluation and other guidelines and procedures to govern the carrying out of Sub-projects, as the same shall be updated from time to time with the Bank’s approval;

(d) “Participating Bank” means any banking institution, satisfactory to the Bank, with which NBE has entered into a Subsidiary Participating Agreement; and

(e) “Statement of Policy” means the statement of lending policy of NBE adopted by the Board of Directors of NBE on December 27, 2003, as amended to the date of this Agreement.

## **ARTICLE II**

### **Execution of Part B of the Project**

Section 2.01. (a) NBE 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 B of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial and environmental practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Part B of the Project.

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

Section 2.02. (a) Except as the Bank shall otherwise agree, procurement of the goods required for Sub-projects and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement, as said provisions may be further elaborated in the Operational Manual.

(b) NBE shall ensure that the Operational Manual shall be updated in a manner acceptable to the Bank, and shall promptly furnish such update to the Bank for approval.

Section 2.03. (a) NBE shall carry out the obligations 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 the Project Agreement.

(b) For the purposes of Section 9.07 of the General Conditions and without limitation thereto, NBE shall:

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to EEAA for submission to the Bank as part of the plan referred to under Section 3.03 of the Loan Agreement, not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose among the Borrower, the Bank and NBE, a plan for the continued achievement of the objectives of Part B of the Project, and
- (ii) afford the Borrower and the Bank a reasonable opportunity to exchange views with NBE on said plan.

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

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

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

### **ARTICLE III**

#### **Management and Operation of NBE**

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

### **ARTICLE IV**

#### **Financial Covenants**

Section 4.01. (a) NBE shall establish and thereafter maintain a financial management system, including records and accounts, and prepare financial statements, in accordance with consistently applied accounting standards acceptable to the Bank,

adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to Part B of the Project.

- (b) NBE shall:
  - (i) have its financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period proposed by the Borrower and agreed to by the Bank) audited by independent auditors in accordance with consistently applied auditing standards, both such auditors and standards to be acceptable to the Bank;
  - (ii) furnish to the Bank as soon as available, but in any case not later than six (6) months after the end of each such year (or such other period proposed by the Borrower and agreed to by the Bank), (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year (or such other period proposed by the Borrower and agreed to by the Bank), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and
  - (iii) furnish to the Bank such other information concerning such records and accounts and the audit of such financial statements, and concerning said auditors, as the Bank may from time to time reasonably request.

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

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

(b) The first FMR shall be furnished to the Bank not later than forty five (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 FMR shall be furnished to the Bank not later than forty five (45) days after each subsequent calendar quarter, and shall cover the period not covered by the previous FMR until the end of such calendar quarter.

## ARTICLE V

### **Effective Date; Termination; Cancellation and Suspension**

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

Section 5.02. This Agreement and all obligations of the Bank and of NBE thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify NBE thereof.

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

## ARTICLE VI

### **Miscellaneous Provisions**

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telex or facsimile 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. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, NW  
Washington, DC 20433  
United States of America

Cable address:

Telex:

Facsimile:

477-6391	INTBAFRAD	248423 (MCI) or	(202)
	Washington, D.C.	64145 (MCI)	



For NBE:

National Bank of Egypt  
1187 Corniche El Nil, Cairo  
Arab Republic of Egypt

Telex:

Facsimile:

20069 NBE UN

(202)

5747614

(202) 5762672

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of NBE, or by NBE on behalf of the Borrower under the Loan Agreement, may be taken or executed by the Chairman of the Board of NBE or such other person or persons as such Chairman shall designate in writing, and NBE shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

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

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

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Emmanuel Mbi

Acting Regional Vice President  
Middle East and North Africa

NATIONAL BANK OF EGYPT

By /s/ Hussein Abdel Aziz Hussein

Authorized Representative

## **SCHEDULE 1**

### **Procurement**

#### Section I. General

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

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

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

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

#### B. Other Procurement Procedures

1. Limited International Bidding. Goods which the Bank agrees can only be purchased from a limited number of suppliers may be procured under contracts awarded on the basis of Limited International Bidding.

2. National Competitive Bidding. Goods estimated to cost less than \$5,000,000 equivalent per contract may be procured under contracts awarded on the basis of National Competitive Bidding, the additional provisions set forth in the Operational Manual and as set forth in the Annex to this Schedule 1 required to comply with the provisions of the Procurement Guidelines.

3. Shopping. Goods estimated to cost less than \$500,000 equivalent per contract may be procured under contracts awarded on the basis of Shopping.

4. Commercial Practices. Goods estimated to cost less than \$5,000,000 equivalent per contract may be procured in accordance with commercial practices acceptable to the Bank and the additional provisions set forth in the Operational Manual.

Section III.      Review by the Bank of Procurement Decisions

The Operational Manual shall set forth those contracts which shall be subject to the Bank's Prior Review. All other contracts shall be subject to Post Review by the Bank.

**ANNEX  
to  
SCHEDULE 1**

**NATIONAL COMPETITIVE BIDDING**

Contracts for goods procured under the National Competitive Bidding procedure shall comply with the following:

1. Any prospective bidder from a country eligible under the Guidelines who proposes to provide goods produced in, or services supplied from, any such country shall be eligible to bid for such contracts.
2. Tenders shall be advertised with no less than thirty (30) days for bid preparation.
3. Government-owned enterprises shall be eligible provided they are legally and financially autonomous, operate under commercial law, and are not selected or hired by the supervising or reporting authority, and shall be subject to the same bid and performance security requirements as other bidders.
4. Bidders shall be allowed to deliver their bid by hand or by mail.
5. Bids shall be opened in public; that is, bidders or their representatives shall be allowed to be present at the place where bids are to be opened and both envelopes, if two are submitted, shall be opened at the same time. The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly thereafter; and shall be announced, together with the place for bid opening, in the invitation to bid.
6. Bids shall be evaluated based on price and on other criteria disclosed in the bid documents and quantified in monetary terms, and no provision for preferential treatment for national companies shall be applied.
7. The contract shall be awarded to the bidder having submitted the lowest evaluated responsive bid, and no negotiation shall take place.
8. Arabic translation of the Bank's standard bidding documents may be used.

## **SCHEDULE 2**

### **Implementation Program**

1. NBE shall, unless the Bank shall otherwise agree:
  - (a) carry out its activities under the Project and conduct its operations and affairs in accordance with sound financial standards and practices with qualified management and staff in adequate numbers and in accordance with appropriate investment and lending policies and procedures, and provide promptly as needed, the funds, facilities, services and other resources required for the purpose; and
  - (b) exclusively utilize the proceeds of the Subsidiary Loan allocated from time to time to Category (1) of the table set forth in paragraph 1 of Schedule 1 to the Loan Agreement, to provide Sub-loans to Beneficiaries, either:
    - (i) through the Participating Banks under Subsidiary Participating Agreements to be entered into between NBE and each such Participating Bank on terms and conditions which shall have been approved by the Bank and which shall include those set forth in Annex A to this Schedule, or
    - (ii) directly by NBE on the terms and conditions set forth in Annex B to this Schedule.
2. NBE shall take all measures to ensure that the aggregate amount of any or all Sub-loans to any one Beneficiary shall not exceed the equivalent of \$12,000,000, when added to any other amount financed or proposed to be financed by NBE or the Participating Banks out of the proceeds of the Loan to the same Beneficiary; provided, however, that such aggregate amount may be increased to the equivalent of \$15,000,000 in cases where the Steering Committee, referred to in paragraph 1 (a)(i) of Schedule 4 to the Loan Agreement, determines, and the Bank agrees, that such an increase is required to finance urgent pollution abatement investments to reduce high levels of toxic substances or heavy metals emissions.
3. For purposes of each Sub-project that shall be cofinanced, NBE shall ensure that the cost of such Sub-project shall be financed on a pari pasu basis by the proceeds of the Subsidiary Loan allocated from time to time to Category (1) of the table set forth in paragraph 1 of Schedule 1 to the Loan Agreement.

4. NBE shall exercise its rights under the Subsidiary Participating Agreements in such manner as to protect its interests and the interests of the Borrower and the Bank and to achieve the purposes of Part B of the Project, and, except as the Bank shall otherwise agree, NBE shall not assign, amend, abrogate or waive any such Agreement.

5. NBE shall coordinate and monitor the carrying out by the Participating Banks of their obligations pursuant to their respective Subsidiary Participating Agreement, and the carrying out by Beneficiaries of their obligations pursuant to their respective agreements with NBE and the Participating Banks, in accordance with policies and procedures satisfactory to the Bank.

6. NBE shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Bank, the carrying out of Part B of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about December 31, 2009, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in carrying out Part B 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 Part B of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, by March 31, 2010, or such later date as the Bank shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of Part B of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.

**ANNEX A**  
**to**  
**SCHEDULE 2**

1. Each Participating Finance shall: (a) be charged interest, on the principal amount thereof withdrawn and outstanding from time to time, at a rate determined by NBE in accordance with the applicable investment and lending policies and practices of NBE; (b) be made for a period determined pursuant to said policies and practices not exceeding eight (8) years, inclusive of a grace period of up to two (2) years; (c) be charged a reasonable margin above the rates applicable to this Loan as may be adjusted from time to time by agreement between the NBE and the Bank; and (d) be made so as to cause NBE to bear the foreign exchange risk.
2. The Participating Finance shall be repaid in accordance with an amortization schedule pursuant to which each portion thereof utilized in the making of a Sub-loan shall have a maturity calculated to conform to the amortization schedule applicable to such Sub-loan.
3. The right of a Participating Bank to the use of the proceeds of its respective Participating Finance shall be: (a) suspended upon failure of such Participating Bank to perform any of its obligations under its respective Subsidiary Participating Agreement; and (b) terminated if such right shall have been suspended pursuant to subparagraph (a) hereof for a continuous period of sixty (60) days.
4. Each respective Subsidiary Participating Agreement shall contain provisions pursuant to which each respective Participating Bank shall undertake to:
  - (a) carry out its activities under Part B of the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and staff in adequate numbers and in accordance with appropriate investment and lending policies and procedures, and provide, promptly as needed, the funds, facilities, services and other resources required for the purpose;
  - (b) (i) make Sub-loans to Beneficiaries on the terms and conditions set forth in paragraph 4 of Annex B to Schedule 2 to this Agreement; (ii) exercise its rights in relation to each such Sub-loan in such manner as to protect its interests and the interests of the Borrower, the Bank and NBE, comply



with its obligations under its respective Subsidiary Participating Agreement and achieve the purpose of Part B of the Project; (iii) not assign, amend, abrogate or waive any of its agreements providing for Sub-loans, or any provision thereof, without prior approval of NBE; and (iv) appraise Sub-projects and supervise, monitor and report on the carrying out by Beneficiaries of Sub-projects, in accordance with procedures satisfactory to the Bank and NBE;

(c) (i) exchange views with, and furnish all such information to NBE, as may be reasonably requested by the Bank or NBE, with regard to the progress of its activities under Part B of the Project, the performance of its obligations under its respective Subsidiary Participating Agreement, and other matters relating to the purposes of Part B of the Project; and (ii) promptly inform NBE of any condition which interferes or threatens to interfere with the progress of its activities under its respective Subsidiary Participating Agreement; and

(d) (i) maintain records and accounts adequate to reflect, in accordance with sound accounting practices, its operations and financial condition; (ii) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to NBE; (iii) furnish to NBE, as soon as available, but in any case not later than six (6) months after the end of each such year, certified copies of said financial statements and accounts for such year as so audited, and the report of such audit by said auditors in such scope and detail as the Bank or NBE shall have reasonably requested; and (iv) furnish to NBE such other information concerning said records, accounts and financial statements, as well as the audit thereof, as the Bank or NBE shall from time to time reasonably request.

**ANNEX B**  
**to**  
**SCHEDULE 2**

1. Each Sub-loan shall: (a) be charged interest, on the principal amount thereof withdrawn and outstanding from time to time, at a rate determined by NBE or the Participating Bank making such Sub-loan in accordance with the applicable investment and lending policies and practices of NBE or the Participating Bank; (b) be made for a period determined pursuant to said policies and practices not exceeding eight (8) years, inclusive of a grace period of up to two (2) years; and (c) be made so as to cause NBE or the Participating Bank, as the case may be, to bear the foreign exchange risk, provided that the principal amount to be made available by the NBE or the Participating Bank on a grant basis for such Sub-project shall be equivalent to 20% of the principal amount or amounts of Sub-loan or Sub-loans financed or proposed to be financed under the Project upon confirmation by EEAA of the achievement of the Sub-project objectives.

2. No expenditures for a Sub-project shall be eligible for financing out of the proceeds of a Sub-loan unless:

(a) such Sub-project shall have been determined by NBE or the Participating Bank, on the basis of an assessment carried out in accordance with guidelines satisfactory to the Bank: (i) to be cost effective, technically feasible, in conformity with the Environmental Legislation, the Operational Manual, including EGGEIA and the Borrower's laws relating to health and safety and confirmed as such by the Project Management Unit referred to in paragraph 1(a)(ii) of Schedule 4 to the Loan Agreement; (ii) to have been reviewed and recommended for financing out of the proceeds of the Loan by, as the case may be, said Project Management Unit or by the Steering Committee referred to in paragraph 1(a)(i) of Schedule 4 to the Loan Agreement; and (iii) in respect of which the Beneficiary shall have entered into the Sub-project technical implementation agreement with EEAA as provided in paragraph 1(a)(ii) of Schedule 4 to the Loan Agreement; and

(b) the Sub-loan for such Sub-Project shall have been made or approved by NBE or the Participating Bank on the basis of information comprising: (i) a description of the Beneficiary and the appraisal of the Sub-project, prepared pursuant to guidelines agreed with the Bank, including a description of the expenditures proposed to be financed out of the proceeds of the

Loan; (ii) the proposed terms and conditions of the Sub-loan, including the schedule of amortization of the Sub-loan.

3. Sub-loans shall be made to Beneficiaries, each of which shall have established to the satisfaction of NBE or the Participating Bank, on the basis of guidelines acceptable to the Bank, that:

(a) it is creditworthy and has the resources required for the efficient carrying out of its operations, including the carrying out of the Sub-project, or has obtained a guarantee, acceptable to NBE or the Participating Bank, from the holding company in control of the Beneficiary's shares, guaranteeing such Beneficiary's performance and payment obligations under its respective Sub-loan; and

(b) it is able and has undertaken to contribute at least 10% of the estimated cost of the Sub-project.

4. Sub-loans shall each be made on terms whereby NBE or the Participating Bank shall obtain, by written contract or other appropriate means, rights adequate to protect its interest and those of the Borrower and the Bank, including, as appropriate, the right to:

(a) require the Beneficiary: (i) to carry out the Sub-project (A) in accordance with such Beneficiary's Sub-project technical implementation agreement referred to in paragraph 2(a)(iii) of this Annex, and (B) with due diligence and efficiency and in conformity with appropriate technical, environmental, economical and financial practices; (ii) to maintain adequate records; and (iii) to provide, promptly as needed, the funds facilities and other resources required for the purpose;

(b) require that: (i) the goods to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 1 to this Agreement; and (ii) such goods shall be used exclusively in the carrying out of the Sub-project;

(c) inspect by itself or jointly with representatives of the Bank, if the Bank shall so request, the goods, sites and plans included in the Sub-project, the operation thereof, and any relevant records and documents;

(d) require that the Beneficiary shall take out and maintain such insurance, against such risks and in such amounts, as shall be consistent with sound business practice, including such insurance to cover hazards incident to the

acquisition, transportation and delivery of goods financed out of the proceeds of the Loan to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Beneficiary to replace or repair such goods;

(e) require the Beneficiary to: (i) have its financial statements for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to NBE or the Participating Bank; and (ii) furnish to NBE or the Participating Bank, as soon as available, but in any case not later than six (6) months after the end of each such year, certified copies of its financial statements for such year as so audited, and the report of such audit by said auditors, of such scope and in such detail as NBE or the Participating Bank shall have reasonably requested;

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

(g) suspend or terminate the right of the Beneficiary to the use of the proceeds of the Sub-loan upon failure by such Beneficiary to perform its obligations under its contract with NBE or the Participating Bank.