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Deloitte Touche Tohmatsu

with Crimson Capital

Phase III Assistance to the Czech Ministry of Privatization

Final Report

Delivery Order No. 28
Contract No. EUR-0014-I-00-1056-00
Eastern Europe Enterprise Restructuring and Privatization Project

USAID

U.S. Agency for International Development
ENI/EUR

March 1996

Deloitte Touche Tohmatsu International

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March 1, 1996

Mr. James Grossman
USAID ENI/PER/EP
320 21st Street, NW
Washington, DC 20523

Re: Contract No. EUR-0014-I-00-1056-00, Delivery Order No. 28, Phase III Assistance to the Czech Ministry of Privatization -- Final Report

Dear Mr. Grossman:

In accordance with the Article IV of the above-referenced contract, I am submitting the final report for Phase III Assistance to the Czech Ministry of Privatization.

If I can provide you with further information, please do not hesitate to contact me at (202) 879-5650.

Sincerely,

Adrienne Brombaugh
Consultant

TABLE OF CONTENTS

I. Summary
   A. Foreign Investor Privatization Transactions

II. Privatization & Restructuring: October 1991 - January 1996
   A. Restitution
   B. Small Scale Privatization
   C. Large Scale Privatization
      1. Number of Enterprises
      2. Value of Enterprises
      3. Privatization Methods
      4. Privatization Proposals
      5. Review Process Outline
      6. Coupon Privatization
      7. Investment (Coupon) Funds
      8. Hallmarks of Czech Privatization
      9. Problems Faced by Czech Government for Implementing Foreign Investor, Direct Sale and Tender Transactions
      10. Role of the USAID Advisory Team
      11. Highlights of Results/Accomplishments of USAID Advisory Team
      12. Macroeconomic Impact Highlights
      13. Summary of Lessons Learned

III. Lessons Learned

APPENDICES
   Appendix 1. Confidentiality Agreement (Short Form)
   Appendix 2. Confidentiality Agreement (Long Form)
   Appendix 3. Consulting Agreement
   Appendix 4. Corporate Governance Guidelines
   Appendix 5. Employment Agreement
   Appendix 6. Enterprise/Asset Purchase Agreement
   Appendix 7. Guaranty Agreement
   Appendix 8. Joint Venture Agreement
   Appendix 9. Participation Agreement
   Appendix 10. Purchase/Sale of Goods Agreement
   Appendix 11. Rules of Selective Tender
   Appendix 12. Share Purchase Agreement
   Appendix 13. Shareholders Agreement
   Appendix 14. Statement of Understanding and Agreement
   Appendix 15. Term Loan Agreement

I. SUMMARY

This report deals with the activities of the USAID Advisory Team for the Czech Ministry of Privatization (CMOP), the Ministry of Industry and Trade (MIT) and the National Property Fund (NPF) for the period of October 1991 to January 1996. All prior monthly, quarterly, phase and delivery order reports for delivery orders 5, 9, 24, 25 and 28 are included herein by reference.

The Czech Republic has led the CEE and the NIS in privatization and now stands ready to complete the job of economic reform. Crimson Capital and Deloitte & Touche have been important partners in this, having provided technical assistance to the Czech Ministry of Privatization (CMOP) for four years, the Ministry of Industry & Trade (MIT) for almost two years and the National Property Fund (NPF) for two years as the USAID Advisory Team.

Phase I Technical Assistance carried out by the Advisory Team from October 1 to December 31, 1991 focused on structuring the privatization process involving foreign investors. The Advisory Team assisted the CMOP in establishing a complex infrastructure from scratch in order to process the privatization transactions systematically and efficiently. As this phase reached completion, the first projects were submitted to the government for approval. The efforts of this phase laid the groundwork for successful processing of Wave 1 projects that followed.

Phase II began January 1, 1992. This phase involved the implementation and refinement of the privatization process, and actual review and negotiation of several hundred privatization projects. The Advisory Team providing this technical assistance consisted of investment bankers, financial planners, attorneys and accountants focusing on transaction analysis and negotiation with sophisticated foreign investors. In order to obtain the best outcome for the Czech Republic, the Advisory Team assisted its Czech counterparts in analyzing and negotiating all terms of the transaction including deal structure, price, capital investment, employment, training, marketing, technical know-how, production and sourcing, and environmental protection.

As the privatization process progressed, the scope and focus of the Advisory Team's functions evolved. Assistance rapidly moved from transaction analysis

to actively taking part with the CMOP personnel in the negotiation process with foreign investors and then into assistance to the NPF in the finalizing of contracts with foreign investors. The Team was involved in almost all aspects of large scale privatization and restructuring, being called on for advice on both domestic and foreign privatizations, privatization policy, and legal, tax, accounting and environmental reform.

The second wave of foreign investor privatizations, under Phase III, involved many of the bigger and more complex companies in the Czech Republic. These transactions attracted many competitive bidders and required the analysis of a large number of proposals for each company before negotiations with a finalist could even begin. The Advisory Team assisted the CMOP to assure the commercial viability of each company after it is privatized, while at the same time obtaining the best value for the Czech Republic (and maintaining employment). To accomplish this, the Advisory Team performed a sophisticated review of the business plans, financial statements, valuations, environmental audits, contracts, and all other relevant information. The Advisory Team assisted the CMOP in the negotiation with foreign investors for them to pay a fair price to the NPF, make all necessary capital investments into the company, reinvest profits, retain and train management and employees, improve the environment, provide new technology and access to new export markets, and generally take a long term, strategic approach to successfully developing the company. The Advisory Team has assisted the government in analyzing, negotiating and closing 130 transactions with foreign investors representing over $4 billion in total transaction value. The Team assisted with over 170 domestic transactions.

As the privatization projects moved through the system, the NPF assumed an increasingly important monitoring role in maintaining the conversion into a market economy. The Advisory Team became engaged in the compliance monitoring of foreign investor commitments at the NPF and also assisted the NPF with the recovery of assets and collection of past due receivables, primarily in the case of sales to Czech buyers. The USAID Advisory Team developed both of these programs, helped the NPF create departments to carry them out, and trained the staff to carry out the activities independently. Both of these activities have been fully transferred to the personnel of the NPF, who are now performing them fully independently.

The Advisory Team was also requested to assist the CMOP, MIT and NPF in the preparation of the tenders for the 16 gas and electricity distribution companies, an activity that took priority during the course of the last twelve months. During this time, the Advisory Team has prepared complete, international standard information memoranda on all 16 companies in Czech and English, developed the draft tender methodology and procedures, and prepared the draft tender documentation including the purchase agreements, shareholders' agreements, and guarantees of performance, as well as making policy recommendations on the privatization of these utilities. Policy recommendations have included areas of pricing, regulation, ownership, corporate governance, competition, and environmental concerns. The USAID Advisory Team effectively integrated a EC PHARE funded technical due diligence program into the process, resulting in a highly leveraged, very successful, well coordinated program for the three ministries. The government and the 16 utilities are utilizing the information memoranda and technical due diligence reports to obtain capital on attractive terms for expansion of both the natural gas and electricity distribution systems throughout the Czech Republic.

The activities at the CMOP & NPF have been successfully completed and finalized, and transferred to the appropriate Czech counterparts in the ministries and companies. The capacity building and technology transfer was quite effective as these ministries now carry out these activities on their own, utilizing the approaches and standard methodologies developed by the Team. Minister Skalicky personally thanked the Team, USAID and US Ambassador Walker for the very successful assistance provided.

The Advisory Team has also been involved in the restructuring of very large Czech companies at the MIT. Restructuring plans have been analyzed and written and the advisors are working closely with the MIT, other agencies and stakeholders, and the management of the companies to gain acceptance of the plans. This work has already seen great success. Based on Advisory Team analysis, review and recommendation, for example, the Czech government changed the law to allow banks to get the tax credit when they write down bad debt, a crucial element of restructuring. The MIT designated this precedent setting policy change as the "USAID Advisory Team Initiative". A key of this program is to get the various stakeholders to focus on "doing business", including restructuring operations and finances, rationalizing the workforce,

divesting of non-core, non-strategic units, and exploiting appropriate new business opportunities effectively.

The material that follows summarizes the privatization process in the Czech Republic and describes the role(s) of the USAID Advisory Team, its accomplishments, some of the key lessons learned and the impact the Team has had on the economic reform. The Appendices consist of standardized forms, contracts, procedures and guidelines that the Team has developed based on its extensive experience. The Team has made these forms as universally applicable as possible so that they can be used as the starting point or foundation in almost any situation or country with modification for the specific situation and local laws and practices.

USAID Advisory Team

I. A. Foreign Investor Privatization Transactions
Czech Republic

USAID Advisory Team Foreign Investor Privatization Transactions
Czech Republic, 1992 - 1995

Czech Company	Czech Region	Czech Business	Foreign Investor	Country	% Acquired	Transaction Value -mil $
Agrotex	West Bohemia	agricultural machines	Leopold Aumayer	Austria	100.0	0.27
Akra	South Bohemia	needles for knitting and sewing machines	Groz Beckert	Germany	97.0	9.93
Akucel	North Bohemia	batteries	Varta	Germany	100.0	8.7
Akuma	Central Bohemia	batteries	Caminor Holding	Switzlerland	100.0	10.26
APO	Prague	auto distributor	De Binckhorst Handelmatt	Netherlands	100.0	6.65
Aquatis	South Moravia	hydro projects and toxic waste	TKW	Austria	55.3	2.03
Autopal	South Bohemia	auto lighting and cooling systems	Ford	USA	100.0	72.18
AZ Belá	South Bohemia	auto wiring systems and metal parts	GM (Packard Electric)	USA	100.0	13.85
Azbestos	North Moravia	insulating materials & products	DNI	Netherlands	81.6	6.08
Balírny Jihlava	South Moravia	coffee	Tchibo	Germany	79.6	19.24
Barum Holding	Prague	tires	Continental	Germany	51.0	78.92
Benar Sponit	Central Bohemia	sewing thread	Amann	Germany	98.3	4.15
Benešovské Mlékárny	South Bohemia	dairy products	BSN	France	76.1	11.66
Brandýské Strojirny	South Bohemia	road construction & repair	R. Kablitz	Germany	100.0	0.87
Cement Hranice	Central Bohemia	cement production	Italcementi	Italy	63.3	87.75
Cementárna Čížkovice	North Bohemia	cement production	La Farge Coppee	France	40.0	48.42
Cementárna Mokrá	South Bohemia	cement production	Cimenteries CBR	Belgium	72.0	117.33
Cemos Ostrava	North Moravia	cement production	Italcementi	Italy	68.4	18.69
CEVA Prachovice	East Bohemia	Cement + Lime Production	Holderbank	Belgium	34.1	13.58
Cihelna Hostimice	Central Bohemia	bricks	Suba Wien & Weinerberger	Austria	100.0	11.05

Cihelna Dolní Jirčany	South Bohemia	roof & wall tiles & bricks	Imetal	France	67.0	14.76
Cihelny Novosedly	South Moravia	bricks	Wienerberger	Austria	55.0	4.75
Cihelny Slapanice	East Bohemia	roof & wall tiles & bricks	TGI (Tondach Gleinstatten Intl)	Austria	67.0	9.2
CPC Zabreh	North Bohemia	mayonaise products	CPC International	USA	85.7	3.55
CSAD Hradec Kralove	North Bohemia	Automotive Repairs	Z-Dentex	Canada	21.6	0.25
Cukrovar Dobrovice	South Bohemia	sugar	Sucrerie de L'aisne	France	79.3	28.66
Cutisin	Central Bohemia	sausage casings	Teepak	USA	56.5	29.77
ČKD Polovodice	Central Bohemia	auto electronics	TRW	USA	100.0	0.76
ČKD Polovodice	Central Bohemia	semiconduct. software	Cegelec	France	99.7	16.12
Čokoladovny	Prague	chocolate & cookies	Nestle/BSN EBRD	Switzerland + France	69.0	213.39
CPP Dannco	North Moravia	PVC piping	Wavin	Netherlands	50.0	4.0
CSUP Ortas	Central Bohemia	uranium mining equipment	Vanenzetti	Italy	50.0	5.15
Dacicke Strojirny	South Bohemia	auto valves & steering components	TRW	USA	96.0	13.74
Darex	Prague	department store	Zane May	USA	96.0	5.65
Desta Decin	North Bohemia	tool manufacturer	FICS	Switzerland	100.0	0.6
Dopravni Stavby Morava	North Moravia	road construction	Bau Holding	Austria	51.3	5.66
Elite	North Bohemia	knitwear	Essemme	Italy	20.0	0.15
EJF Brno	South Moravia	electrical equipment for power production & distribution	ABB	Sweden + Switzerland	98.0	19.98
Electropraga Jablonec	North Bohemia	electrical appliances	ABB/Busch-Jaeger	Germany	100.0	16.98
Electropristroj Pisek	South Bohemia	electrical devices	Telemechanique	France	93.8	10.18
Elitex	East Bohemia	spinning machines for textile ind.	Rieter	Switzerland	98.7	22.77
Energodilny Velke Mezirici	South Moravia	power production equipment	Sanborn	USA	86.9	2.65

10

Ferox Decin	North Bohemia	containers for gases & chemicals	Air Products & Chemicals	USA	80.0	14.36
Fortit	Central Bohemia	light trucks	Granulat	Germany	100.0	2.16
Galena	North Moravia	pharmaceut. Cosmetics & plant extracts	IVAX	USA	61.0	65.65
Hotel Esplanade	West Bohemia	Hotel	United Hotel Investments	Great Britian	100.0	2.31
Hotelovy Porcelan K.V.	West Bohemia	china	Keramik Holding	Germany	69.5	12.33
Hutni Projekt	Central Bohemia	Steel Mill Design	Voest-Alpine	Austria	70.1	3.77
Hydroprojekt	Prague	hydro project construction	Dorsch Consult	Germany	67.0	4.26
Cheming Pardubice	East Bohemia	chemicals	Tractabel	Belgium	100.0	15.15
Chemoprojekt	South Moravia	engineering services	ABB Weisbaden	Germany	100.0	2.67
Chirana Brno	South Moravia	sterilyzing, x-ray and cryogenic equipment	Shaerer + MMM (Muenchner Medizin Mechanik)	Switzerland + Germany	70.0	3.17
Choteborske Strojirny Autogen	East Bohemia	gas cutting and welding equipment	GCE (Gas Control Equipment)	Sweden	100.0	3.41
IPS Ostrava	North Moravia	construction	Alpine Bau	Austria	56.0	2.14
Jalta Hotel	Prague	hotel	Fukuoka - Mikitourist	Japan	15.0	2.83
Jihoceska Keramika	South Bohemia	Ceramics	Keramik Holding	Switzerland	67.4	14.04
Jihoceske Vak	South Bohemia	water purification	Anglian Water	Great Britian	20.0	2.85
Kablo Kladno	Central Bohemia	power transmission cables	Felton & Guilleaume	Germany	67.0	41.15
Kaolin Hlubany	Central Bohemia	mining & processing of kaolin for procelain	Villeroy & Boch	Germany	70.75	4.34
Karosa	East Bohemia	bus manufactur.	Renault	France	51.0	38.31
Keramicke Zavody Teplice	North Bohemia	ceramics	Ideal Standard	USA	92.5	22.62
Koramic Repov	Central Bohemia	bricks	Keramic Holding	Belgium	67.2	1.57
Kovosrot Decin	North Bohemia	scrap metal processing	Scholz	Germany	57.5	9.7

11

Kovosrot Hradec Kralove	North Bohemia	scrap metal processing	Pantech	Austria	100.0	3.46
Kovosrot Lom u Tabora	Central Bohemia	scrap metal processing	Silscrap (ERHG)	Austria	100.0	1.61
Kovosrot Ostrava	North Moravia	scrap metal processing	EH Eisen + Edelstahl	Austria + Germany	100.0	20.0
Kovosrot Svitavy	Central Bohemia	scrap metal processing	Scholz	Germany	100.0	4.77
Kovovyroba Litomerice	North Bohemia	Metal Furniture	Umic Design	Belgium	59.2	1.25
Lecotex Kozedelny podnik	Central Bohemia	leather & rubber goods	RHW	Germany	67.0	9.4
Likerka	West Bohemia	alcoholic beverages	Stock Trieste	Italy	51.1	11.64
Lira	South Bohemia	wood picture frames and moldings	Magnolia	Great Britian	64.9	3.17
Loana Roznov	South Bohemia	infant clothing & hosiery	Ergee	Germany	57.5	16.37
LSH-Porobeton Brno	South Moravia	construction	Hebel Hoeg	Germany + Austria	100.0	47.77
LSH-Porobeton Hrusovany	South Bohemia	construction	Ytong	Austria	67.8	13.65
Maj	Prague	department store	K-Mart	USA	96.9	16.55
MEZ Holice	North Moravia	electric motors	Moteurs LeRoy Somer	France	100.0	5.0
MEZ Mohelnice, Drasov, Frenstat	South Moravia	electric motors	Siemens	Germany	100.0	103.65
Moravske Kovarny	South Moravia	auto steel parts	Penn	Austria	40.0	2.8
Moravskoslezska Zridla	North Moravia	mineral & medicinal water	Helios	USA	100.0	6.18
Nove Silnice	West Bohemia	road construction	Berger-Bau	Germany	75.3	8.41
Obalex Znojmo	South Moravia	wrapings	Frembal	France	51.0	6.5
OPMP	North Bohemia	car seats	Johnson Controls	USA	100.0	9.76
OSPAP	Prague (and all CZ)	paper merchanting	Leykam Murztaler	Austria	66.8	22.42
Pal Kbely Adrspach	Central Bohemia	auto components	VDO	Germany	100.0	7.88
Pal Kbely Horni Pocernice	Central Bohemia	auto components	Magna	Canada	100.0	7.23

12

Pal Kbely Praha 2	Prague	auto components	Mohr	Germany	100.0	3.35
Pleas H.K.	East Bohemia	knitwear	Schiesser	Switzerland	96.5	11.81
Potraviny Brno	South Moravia	grocery stores	Ahold	Netherlands	100.0	4.04
Potraviny Centrum	Prague	grocery stores	Getti	Spain	100.0	3.0
Pragocement Radotin	Central Bohemia	cement production	Heidelberger	Germany	40.0	22.46
Pragolift	Prague	elevators	Kone	Finland	67.0	4.02
Pramen Ostrava	North Moravia	grocery stores	Ahold	Netherlands	100.0	7.62
Prazirny a balirny	Prague	coffee	Sara Lee	USA	100.0	12.58
Prazske Cukrarny a Sodovkarny	Prague	soft drinks	Coca Cola Amatil	USA	100.0	33.85
Prazkse Sinice a vodohosp stavby	Central Bohemia	Civil Engineering	Teerag-Asdag	Germany	60.0	4.81
Prefa	Prague	concrete panels	Heberger	Germany	50.2	4.23
Prazsky stavebni servis	Prague	mortar & plaster	Knauf	Austria	100.0	13.15
Prior Stores	Prague (and all CZ)	department stores	K-Mart	USA	100.0	41.54
Provodinske Pisky	Central Bohemia	sand for glass industry	Quarzewerke	Germany	63.0	7.96
Prumysl Kamene Pribram	Central Bohemia	cut stone - quarry	Steinindustrie	Austria	67.3	2.92
Prumyslove Stavby Brno	South Moravia	industrial construction	Fritz von Haymerle	Austria	76.9	3.85
PTZ	Central Bohemia	edible oils & cosmetics	Unilever	Netherlands	100.0	27.23
PTZ Nelahozeves Alpa	Central Bohemia	cosmetics & oils	IG Pharma	Switzerland	100.0	2.88
Rabs Liberec	North Bohemia	auto components	Rockwell International	USA	54.7	11.62
Rakovmicke Keramicke zavody	Central Bohemia	Ceramics	Buchtal	Germany	100.0	46.15
RICO Veveska Bytiska	South Moravia	bandages, other related medical prod	Hartman AG	Germany	100.0	39.77
Sanitas	Prague	pharmaceuticals distribution	Searle	USA	61.7	6.0
Severoceske Vak	North Bohemia	water & sewage	Welsh Water	Great Britian	20.0	7.65

13

Severokamen Liberec	North Bohemia	rock quarry	George Wimpey	Great Britian	51.9	9.87
Sfinx	North Bohemia	steel drums	Bau Holding	Austria	74.1	8.77
Silnice Beroun	Central Bohemia	building construction	Bau Holding	Austria	51.0	2.92
Silon	South Bohemia	plastic fibers	Consil	Germany	76.9	51.92
Slevarny	Central Bohemia	aluminum casting	Gisserei Heunish	Germany	75.0	2.31
SPT Telecom (served as one of internal advisors)	Prague (and all CZ)	telecom-munications	PTT Netherlands & Swiss Telecom	Netherlands & Switzerland	27.0	1,450.0
SPV K.V.	West Bohemia	construction materials	Lias-Franken	Germany	100.0	15.73
Stavby Silnic a Zeleznic	Prague	road, bridge, railway construction	Jean Lefbvre	France	59.6	31.77
Staviva Brno	South Moravia (and all CZ)	building materials & fixtures	Raab Karcher	Germany	75.0	21.12
Silnice Strabag Bohemia	South Bohemia	road construction	Strabag	Austria	67.0	10.84
Strojplast Tachov	North Bohemia	plastics	Schoeller	Germany	51.0	24.69
Sumavske Vapenice	South Bohemia	lime production	Hasit	Germany	95.0	6.85
Tabak	Central Bohemia	tobacco products	Phillip Morris	USA	77.3	458.81
Taborske Mrazirny	South Bohemia	frozen foods	Hazelwood International	Great Britian	100.0	5.23
Technoplyn	Prague	technical gases	Linde	Germany	48.3	79.62
Teramo Vapenna	North Moravia	mining & processing of limestone	Omya	Switzerland	51.0	9.63
TON Mimon	Central Bohemia	furniture production	Falcon	USA	67.0	4.65
Tona Pecky	Central Bohemia	hand tools	Stanley Works	USA	85.0	12.88
TOS Ctykoly	North Bohemia	hydraulics	Junker	Germany	100.0	0.21
TOS Melnick	Central Bohemia	engineering machinery	Junker	Germany	100.0	1.0
TOS Stredoluky	Central Bohemia	engineering machinery	Junker	Germany	68.5	0.27
UVMV	Prague	research & testing institure	TUV Bayern Holding	Germany	100.0	2.31
VaK K.V.	West Bohemia	water & sewage	Lyonnais des Eaux	France	45.2	2.85
Valcovny trub	North Bohemia	steel tubing	Sandvik	Sweden	51.0	7.69

14

Vitana Bysice	North Moravia	processed foods	Rieber	Norway	98.0	16.12
VUBVL Kourim	Central Bohemia	biotech research institute	Lonza	Switzerland	100.0	5.27
VUSU Semcice	Central Bohemia	R&D agricultural products, beets	Hilleshoeg	Sweden	100.0	1.92
Vytahy Praha	Prague	elevators	Schindler	Switzerland	79.5	7.62
Zapadoceska Zridla	West Bohemia	mineral water	Imbe/Rec Holding	Italy	15.0	1.62
Zavody Hydrauliscky ch Zarizeni	South Moravia	hydraulic motors	Poclain	France	100.0	1.0
ZPA Trutnov - Protection Devices	North Bohemia	electronic & electric products	ABB	Sweden + Switzerland	100.0	1.5
ZPA Trutnov - Relay Products	North Bohemia	electronic & electric products	Siemens	Germany	100.0	16.23
ZZ Stumpf Plzen	West Bohemia	pharmaceutic al products distribution	Stumpf AG	Germany	43.0	4.92
Zelezarny Prosejov Sitarna	South Moravia	wire & wire netting for construction	Stahlwerk Annahutte Max Aicher	Germany	100.0	4.31
Zelezarny Vamberk	South Bohemia	electrodes & welding materials	Esab	Sweden	70.0	29.81
Zeveta Bosnovice	Central Bohemia	Automotive Components	Carl Schlenk	Germany	67.0	1.25
Total Transaction Value (Only includes actual cash paid to the government, cash invested directly into the Czech company, and irrevocable, contractual investment commitments)						**$4.204 bil**

II. Privatization & Restructuring

October 1991 - January 1996

Creating democracy, prosperity and stability through economic reform

Privatization

A major priority of Czech privatization was speed. Quick privatization (though controlled - not shock therapy) minimizes both the suffering of the people during the transition and the return of communist influence.

Czech privatization has three principal components:

- **Restitution**
- **Small Scale Privatization**
- **Large Scale Privatization**

Restitution

- **Return of property nationalized by the Communists since 1948 to rightful owners/heirs. More than 100,000 apartment, office and industrial buildings, and over half of the total area of forests and other lands were returned.**
  - * **Difficulty in establishing title (many records destroyed)**
  - * **Often property no longer in same form or readily divisible**
  - * **Restitution law did not include property owned by a company at the time of nationalization or property appropriated before 1948 by the Germans**
  - * **New owners often without sufficient capital to restore severely neglected buildings**
  - * **Restitution Fund established to assist in process**

♦ **Some privatizations delayed or complicated due to resolution of restitution claims and challenges (most completed now)**

Small Scale Privatization

- Between 1991 and 1993, 22,212 small companies (small stores, restaurants, workshops, etc.) were privatized by auctions to Czech citizens by 85 local privatization commissions

- The opening bids for these properties totaled 21 billion Kc but the final bids exceeded 30 billion Kc

- Another 3,000 properties were used to settle restitution claims or are subject to a right of first refusal on long term leases

Large Scale Privatization

- **4,500 State Owned Enterprises (SOEs)**
  - ◊ 1st Wave - 2,500 SOEs
  - ◊ 2nd Wave - 2,000 SOEs
- **> 900 billion Kc in asset value (32 billion USD)** (does not include transfers to municipalities)
- **Privatization Methods (typically proposed by bidder)**
  - ◊ Voucher (coupon)
  - ◊ Direct Sale
  - ◊ Auction
  - ◊ Tender
  - ◊ Management or Employee Buyout
  - ◊ Free of Charge Transfer to Municipalities (>350 billion Kc value to over 3,000 municipalities)
  - ◊ Liquidation

Large Scale Privatization (cont.)

- **Privatization Proposals**

  - ◊ **Mandatory standard format**
  - ◊ **Firm deadline**
  - ◊ **"Basic" Project: Proposal prepared by management. Required by law**
  - ◊ **"Competing" Project: Proposals prepared by any Czech citizen, Czech company, foreign citizen, or foreign company. Anyone eligible to submit competing privatization project.**
  - ◊ **> 27,900 basic and competing proposals submitted for 4,500 SOEs**
  - ◊ **Bidder could chose any method or combination of methods**
  - ◊ **Bidder could bid on whole company or part of company**

Large Scale Privatization (cont.)

- **Review Process Outline**
  - ◊ Proposals submitted in format by deadline to "Founder" Ministries (FM) (for example, Ministry of Industry)
  - ◊ FM reviews all proposals and makes recommendation to Ministry of Privatization (MOP), and forwards all proposals to MOP
  - ◊ MOP reviews proposals and FM recommendation (early in the process of privatization, it was decided that in all cases with potential foreign investment that the USAID Advisory Team would be involved at this stage)
  - ◊ MOP makes recommendation to Economic Circle of Ministers (ECM)
  - ◊ ECM makes recommendation to Government (Cabinet)
  - ◊ Government issues Governmental Decree
  - ◊ Project goes to National Property Fund (NPF) for implementation
  - ◊ At any step, project can be rejected and returned one step back for reworking or dispute resolution
  - ◊ Tenders can be run at FM, MOP or NPF based on governmental decision

Large Scale Privatization (cont.)

- **Coupon Privatization**
  - ◊ Goal: put ownership into citizens' (private) hands quickly
  - ◊ Citizens did not have cash to purchase shares at market value
  - ◊ Citizens over 18 eligible to purchase a coupon book with 1,000 points for an administrative fee of 1,000 Kc
  - ◊ Over 80% of eligible population participated
  - ◊ Each share was allocated an initial point value for the first auction round of each wave and coupon holders could bid their points for shares (4 - 500 points per share). Share price adjusted in subsequent rounds based on demand.
  - ◊ The vast majority of shares were sold after five auction rounds
  - ◊ Approximately 70% of coupon holders placed their coupons with investment funds
  - ◊ 1st Wave: 210 billion Kc worth of shares offered for 943 companies
  - ◊ 2nd Wave: 155 billion Kc worth of shares offered for 861 companies
  - ◊ Total of about 1,800 companies had 5 - 97% of shares for coupons

Large Scale Privatization (cont.)

- **Hallmarks of Czech Large Scale Privatization**
  - ◊ **Fast (mandatory format, tight deadlines, management required to submit "basic" project, fairly straightforward review process)**
  - ◊ **Flexible (choice of methods, combination of methods, all or part of company, bid alone or with partners, etc.)**
  - ◊ **Market Driven (choice of method(s), structure, etc. typically proposed by bidder – not government)**
  - ◊ **Competitive (on average, 6 competing proposals for each company)**
  - ◊ **Inherent Restructuring - Market Driven (on average, for each company going into privatization, 2 came out – bidders determine parts of company to bid on)**
  - ◊ **Fair to Czech Citizens (can submit privatization proposals; can bid on part of companies; since coupon companies span range of good to bad, most sectors, and coupon portion is typically less than 80% of outstanding shares, citizens have great control over where to invest)**
  - ◊ **Only about 1,800 of 9,000 companies (4,500 → 9,000) or 20%, have coupon components, and most of these are not 100% coupons, which reduces the concerns over corporate governance issues.**
  - ◊ ***Share of Private Sector in % of GDP increased from 8% in 1992 (0% before 1989) to approximately 73% in 1995!***

Large Scale Privatization (cont.)

- **Investment (Coupon) Funds**
  - ◊ **Several hundred funds were established**
  - ◊ **Funds were required to invest its coupons in at least 10 companies with a limit of 20% in any one company**
  - ◊ **The majority of coupons were controlled by the 10 largest funds**
  - ◊ **In the 1st wave, Harvard Fund jazzed up public interest in the coupon program through aggressive public relations and promises of 10X returns (on average, however, coupon books were worth {book value basis} >35X the price citizens paid for them).**
  - ◊ **Many small funds were merged into the larger ones**
  - ◊ **Funds have now mostly converted into traditional investment funds**
  - ◊ **Currently, 15 small and 2 major investment funds have converted to industrial holding company structures (10 more in the works) to get around the 20% ownership limits, among other investment fund limitations. They will not be subject to the Securities Act, Act of Investment and Funds, or new pending stricter legistlation.**

52

Large Scale Privatization (cont.)

- **Problems Faced by the Czech Government for Implementing Foreign Investor, Direct Sale and Tender Transactions**

  - ◊ **Czech side "out-gunned" by large foreign investors (taken advantage of in first major transactions, giving away too much and not getting firm commitments in return – creating long term problems)**
  - ◊ **Inadequate and incomplete policies and guidelines**
  - ◊ **Inadequate experience and expertise for analysis, structuring and negotiation**
  - ◊ **Lack of sufficient coordination between the miriad of ministries and agencies involved in the process**
  - ◊ **Enabling legislation inadequate in several areas (most fixed over time)**

Large Scale Privatization (cont.)

Role of USAID Advisory Team in Privatization

- **Initial Role**
  - ◊ **Develop "Transactions Team" approach using investment bankers, accountants and lawyers to do transactions (as opposed to "studies"). Develop guidelines for reviewing foreign investor transactions. Review and analyze foreign investor privatization proposals and make recommendations to the MOP.**
- **1st Expanded Role**
  - ◊ **Review, analyze, structure and negotiate foreign investor and domestic transactions (where these is at least the potential of foreign investment) in conjunction with Czech counterparts. Develop standardized procedures, policies, templates, contracts, agreements, etc. Strive to achieve best possible terms & conditions, and obtain commitments to modernize business and train employees. Expanded role written into official MOP policy – all privatizations involving potential foreign investment must be reviewed in conjunction with USAID Advisory Team.**

Large Scale Privatization (cont.)

Role of USAID Advisory Team in Privatization (cont.)

- **2nd Expanded Role**
  - ◊ **Follow each transaction through to completion at the NPF. Facilitate coordination between ministries and agencies (including between MOP and NPF). Protect the Czech side at each step while being a champion of the transaction and training Czech counterparts.**
- **3rd Expanded Role**
  - ◊ **Develop "Compliance Monitoring" and "Asset Recovery" departments and capabilities within the NPF. Transfer knowledge, implementation and oversight to Czech counterparts.**

Large Scale Privatization (cont.)

Role of USAID Advisory Team in Privatization (cont.)

- **4th Expanded Role**
  - ◊ **Provide ad hoc advice on privatization, foreign investment, corporate finance and restructuring (including legal and tax aspects) to several ministries and agencies on complex transactions and policies.**
- **5th Expanded Role**
  - ◊ **Assist the Ministry of Industry & Trade in restructuring key companies and in establishing model approaches for restructuring.**

Large Scale Privatization (cont.)

Major goal of the USAID Advisory Team was to assist the Czechs in getting the best possible terms and conditions while at the same time creating viable and competitive companies for the long term post-privatization and building capacity within the Czechs to carry out the work independently. Key considerations of the USAID Advisory Team included:

- **Standardized, strong, enforceable contracts**
- **Fair purchase price for shares or assets**
- **Adequate investment commitment**
- **Employment and training**
- **Technology transfer**
- **Marketing**
- **Management & control systems**
- **Export enhancement**
- **Improved quality, efficiency and competitiveness**
- **Environmental remediation**
- **Commitments to long term viability of enterprise**

Large Scale Privatization (cont.)

Highlights of Results/Accomplishments of USAID Advisory Team

- Developed and implemented complete standardized guidelines, policies, procedures, and methodologies for review, analysis, valuation, structuring, negotiating, documenting and closing for all foreign investor transactions and multi-criteria tenders. Most of these were incorporated into official Czech government policy.

- Created standard documents/templates for confidentiality, letter of intent, share purchase, asset purchase, and participation agreements, as well as for information memoranda, valuation, tender procedures, due diligence, etc.

- The MOP and NPF utilize the USAID Advisory Team methodology on most transactions they now handle independently based on thorough technology transfer and training by the Team.

- Reviewed over ***1,200*** privatization and acquisition plans in conjunction with our Czech counterparts.

- Reviewed, analyzed, valued, structured, negotiated, documented and closed ***130*** foreign investor transactions with a transaction value of over ***$4 billion*** (cash to the government for purchase of shares or assets plus cash invested directly into the companies), which does ***not*** include the value of the debt assumed by the foreign investors or the value of commitments for employee retention, reinvestment of profits, etc.

Large Scale Privatization (cont.)

Highlights of Accomplishments of USAID Advisory Team (cont.)

- Closed *20* major transactions with ***US corporations*** with a transaction value of ***over $850 million.*** Have been the catalyst for a majority of US investment and trade interest in the Czech Republic by being the source of reliable information and by increasing the visibility, transparency and efficiency of the privatization and foreign investment process.

- Reviewed, analyzed and made recommendations for over *170* additional transactions which we concluded were appropriate for domestic transactions (for example, where there was a credible Czech buyer and the foreign investor's offer was inadequate).

- Became the information resource of choice on privatization, foreign investment and restructuring for foreign embassies, foreign companies, etc., and even was the referral source of choice in most cases by the Czech Embassy in Washington and several ministries of the Czech Government.

- The Team was instrumental in getting the Czech government to ***change the law to allow banks to write down bad loans and get the tax deduction***. The old law was a major impediment to wide scale restructuring of Czech industry, which is the single largest remaining obstacle to the completion of the Czech economic reform.

Large Scale Privatization (cont.)

Highlights of Accomplishments of USAID Advisory Team (cont.)

- Let Kunovice, the aircraft manufacturer, is ***the first Czech company*** striving to reach a settlement with its creditors in the Commercial Court in order to avoid bankruptcy. A settlement has to be decided in 90 days, compared to bankruptcy proceedings which could take 3 - 5 years. The USAID Advisory Team ***developed Let's complete restructuring action plan*** including the settlement proposal, and Minister Vladimir Dlouhy, Ministry of Industry, publicly stated that ***this restructuring will serve as a model*** for how to resolve future restructurings for over-indebted companies in the Czech Republic.

- The Team was instrumental in getting the Czech government to accelerate efforts of the ministries on such crucial issues as ***proper disclosure, conflict of interest, confidentiality and corporate governance.***

- Developed models for ***international standard information memoranda and tender documents*** and educated our Czech counterparts on their use. These models were applied to such important transactions as SPT Telecom (single largest transaction in CEE), which the Team advised on internally.

- The Team has been involved in privatization and restructuring policy review and recommendations for such key industries as energy, steel/metalurgy, aeronautics, chemicals, petrochemicals, auto/truck/bus, engineering, telecommunications and heavy manufacturing.

Large Scale Privatization (cont.)

Highlights of Accomplishments of USAID Advisory Team (cont.)

- Working closely with numerous ministries and departments of the Czech Government, with the managements of the companies, and with all other Czech and foreign advisors, put together ***international standard information memoranda, technical assessments, and a compilation of the legal, regulatory and pricing frameworks*** for the 16 gas and electricity distributions companies. The government and the companies are utilizing these documents intensively for future business and strategic planning, restructuring, expansion, debt financing, and ultimate final privatization.

- Created both an ***asset recovery department and an investor/purchaser compliance department for the NPF***. The Team trained the staff and the departments are now functioning totally on their own without advisors.

Restructuring

- USAID Advisory Team is involved in restructuring key industrial companies in the Czech Republic
- Key mission is to establish models and capacity for the government and enterprise managers to carry out numerous restructurings on their own.
- Companies currently in the portfolio include:
  - ◊ Nova Hut Steel Mill. (including IFC financing/ICF Kaiser Mini Mill)
  - ◊ Aero Holding & Subsidiaries (including Let/D3 JV)
  - ◊ CKD Praha
  - ◊ Loana
  - ◊ Chemicke Zavody Sokolov
- Companies are chosen where there is export potential and likelihood of viability after restructuring/privatization

Macroeconomic Impact Highlights

The USAID Advisory Team has had broad and extensive impact on and throughout the Czech economy. The Team has been involved with:

- 50 of the 100 largest companies
- 15 of the 20 largest companies
- >7% of all companies in Large Scale Privatization
- 10% of the GDP on an annual basis
- >7% of the employees (not including effects on suppliers, etc.)
- >15% of the industrial assets
- >70% of all foreign direct investment from 1990 - 1995
- >99% compliance of all transactions and contracts
- >99% viability and competitiveness of companies post-transaction
- Significant improvements on 100% of transactions
- Basis for most privatizations, tenders and large restructurings
- Worked with MOP, NPF, Industry & Trade, Finance, Economy, Economic Competition, Environment, Agriculture, Health, Justice, etc.
- Sectors include: aeronautics, agribusiness, auto/truck/bus manufacturing, building materials, ceramics & crystal, chemicals, construction, electronics & instrumentation, energy, engineering, food processing, healthcare, manufacturing, petrochemicals, pharmaceuticals, retail, steel & other metalurgy, telecommunications, textiles, tourism, transportation, water & sewage.

Some of the Lessons Learned

- Need a willing client
- Must get buy in and authority at the highest possible levels and in as many agencies and levels as possible. Official recognition desirable.
- Implementation and follow-up key
- Skills transfer and capacity building essential
- Policy, social, economic, tax and legal issues must be taken into account.
- Must evaluate all projects and transactions on basis of future viability.
- Direct sale transactions should be considered wherever possible in light of sound business plan and financing.

Some of the Lessons Learned (cont.)

- **Issues of corporate governance, transparency, disclosure and accountability are critical.**
- **Sound guidelines, procedures and standardized processing and documents dramatically increase the fairness and level of success.**
- **Coordination between relevant agencies and ministries key.**
- **Compliance monitoring and enforcement essential.**
- **Flexibility and local cultural and political sensitivity crucial to maximum effectiveness.**
- **Sale of 100% of companies not essential to attract foreign investment and is often not desirable. It is often (usually) advantageous to include management, employees and other local citizens in ownership wherever possible.**

III. LESSONS LEARNED

This is a summary of the USAID Advisory Team's experience from October 1, 1991 through January 31, 1996 as foreign advisors to the Czech Ministry of Privatization (MOP), Ministry of Industry & Trade (MIT) and National Property Fund (NPF). Here we highlight the "lessons learned" from the experiences which benefited the Team, the Czech Government and should also benefit others in similar or related situations or circumstances when encountered elsewhere. Many of these "lessons learned" were reflected in changes already made by the Government, MOP and NPF over the period from 1991 through 1995; many of these derived from advice from the Advisory Team.

It is clear that the earlier the USAID foreign advisors become involved in the process, the more the process will be efficient, effective, transparent and fair. A number of "lessons learned" have already been described in previous sections of this report, so won't be repeated here. Also, "lessons learned" are reflected in the standardized documents and procedures enclosed in the appendices. The standardization of documents, procedures, policies and guidelines is itself an important "lesson learned". It dramatically speeds up the process, makes the process fairer and more transparent, establishes more uniform expectations for all relevant parties, enhances training and capacity building, and makes it far easier to make improvements in the process when needed.

Introduction

Since 1991, the Government has regularly, sometimes annually, amended parts of the applicable laws and continues to do so. The progress made, under the circumstances, is remarkable. Thousands of new laws or amendments to laws have been passed, most being significant improvements. There are still significant changes to be made, particularly in the corporate governance and securities markets areas, but as of this writing, many of these are already in the works. Strong corporate governance guidelines are important for the establishment and maintenance of effective internal controls, management and oversight, and accountability and disclosure by companies to their various constituencies or stakeholders, including shareholders, debtholders, employees, local and national governmental entities, and others. Regulation must assure the transparency, efficiency, effectiveness, competitiveness and the fundamental fairness of the capital debt and equity markets. Of course, public disclosure by the companies, capital market-makers and significant shareholders is

vital. Within the free-enterprise and free market systems, certain safeguards need to be instituted that are currently lacking in most post-communist countries. At the time of this writing, significant efforts are being made to improve the transparency and minority shareholders' rights in the Czech capital markets.

Background

From the time of the "Velvet" revolution in the late fall of 1989 until the enactment of the Act on the Conditions of Transfer of State Owned Property to Other Persons, Act No. 92/1991 Coll. (as amended) ("Large-Scale Privatization Act") and The Act on the Competence of the Czech Republic's Authorities with Regard to Transfers of State-Owned Property to Other Persons and the Czech Republic's National Property Fund, Act No. 171/1991 Coll. (as amended) (the "NPF Act"), no formal structure existed for foreign or domestic investment in medium and larger state-owned enterprises. A small number of large "pre-privatization" transactions took place during the 1989-1991 period without the benefit of any such formal structures, such as the famous "Volkswagen/Skoda" transaction that required subsequent re-negotiation (the USAID Advisory Team started after this transaction was completed. The Team ultimately advised the government on its constructive options for renegotiating the transaction in everyone's best interest). In 1990, the Act on the Transfer of the State Ownership of Some Property to Other Juridical or Natural Person, Act No.427/1990 Coll. (as amended)("Small-Scale Privatization Act") was enacted which included mostly small "mom & pop" local businesses such as restaurants, food stores, etc. The Government of the Czech Republic has from time to time adopted and revised resolutions to carry out the Large-Scale Privatization Act, the NPF Act and the Small-Scale Privatization Act. More description of the privatization process and steps (including restitution, small scale privatization and large scale privatization) is included in the previous section of this report.

Under the Large-Scale Privatization Act and The NPF Act the ownership of state owned enterprises being privatized (consisting of the entire business including its assets, properties, liabilities, contracts etc.) has been transferred to the National Property Fund (the "NPF") and either the enterprise in its entirety or parts have been directly sold by the NPF by direct sale, tender or auction, or the enterprise or parts are converted by the NPF into joint-stock companies (equivalent of corporations in US) and shares in the companies in varying amounts (including in combinations) have been sold by direct sale, tender or auction, sold on the capital markets, transferred to citizens under the voucher/coupon program, transferred directly to settle restitution

claims, and/or transferred free of charge to municipalities with typically 1% to the Endowment Investment Fund and 3% to the Restitution Investment Fund.

The privatization process in part involved the review by the MOP of the various privatization proposals for each enterprise (see the previous section of this report for an overview of the approval process and previous reports for a more detailed description). If one or more of the proposals involved a direct sale to or tender which could include a foreign investor, all of the competing proposals for the privatization of that enterprise were referred to the USAID Advisory Team for evaluation and negotiation of the terms of the transaction and investment (as discussed previously) in conjunction with the team's Czech counterparts. This involvement usually preceded the transfer of the enterprise from the founding ministry (for example, Ministry of Agriculture or Ministry of Industry) to the NPF, since the basic terms of the direct sale had to be approved by government before the transfer. However, in some cases, for example when the company had to be transformed into a joint stock company because of the deadline of the voucher program (and part of the shares were reserved for vouchers), a block of shares were reserved for a potential investor and the transaction was negotiated after the transformation. The government's objectives included strengthening Czech industries and the economy. Thus foreign investment was normally sought to provide needed capital investment, know-how, training and access to markets not otherwise readily available. The USAID advisors in their evaluation and negotiations sought, in addition to achieving the highest fair purchase price, to obtain direct capital investments for modernizing the company's plant, equipment and production processes, and firm commitments as to (i) the level, compensation, social benefits and training of Czech employees, (ii) non-competition by investors as to specific lines of business within the Czech Republic of their invested companies, (iii) providing technical assistance and intellectual property as a contribution or on a cost reimbursement basis, (iv) level of maintenance of facilities, (v) "arms length" related or affiliated transactions ("favored nations clauses"), (vi) minimum levels of production and marketing of products in domestic and foreign markets, (vii) management and control systems, (viii) environmental remediation, and (ix) marketing rights in the Czech Republic (and through the Czech Republic to other NIS/CEE markets) of the foreign investor's products.

41

"Lessons Learned"

The "lessons learned" are based on our cumulative experience during the course of our providing advisory services. They basically fall into two categories, the first are those formally outside (but preferable would be inside) of our directly assigned areas of providing services (but in which the advisors had considerable influence nonetheless), and the second are those formally within our assigned areas of providing services.

A. Beyond the USAID foreign advisors' formally assigned roles:

1. Enactment of Governing Legislation. Others should benefit from reviewing the Czech experiences in enacting and amending the Large-Scale Privatization Act, the Small-Scale Privatization Act, the Commercial Code, the Act on Securities and related acts, which are continuing to be amended. It is important to have sound legislation in place as early in the process as possible to avoid unhealthy practices from developing, adverse precedences being established, delays occuring in the process, and the public losing confidence in the program. Considering the speed and scope of the Czech privatization, it is remarkable how well the laws and policies kept up with the process. The advisors had a fair amount of ad hoc input into such areas as privatization policy (beyond foreign investor transactions), environmental policy and indemnification, bankruptcy, tax, tender procedures, etc.

2. Preparation of State-Owned Enterprises. By regulation or decree, founding ministries or other regulatory bodies should begin the privatization process for each state-owned enterprise and require that before and during the privatization process that such enterprises should be prepared for privatization and specifically be precluded from entering into any material or out of the ordinary course of business contracts or commitments. This is a sensitive time for foreign companies to posture themselves to obtain favorable contracts and thereby reduce the future value of the enterprises to prospective purchasers. Likewise, managements of the enterprise may seek favorable contracts with excessive compensation and without any requirement that management be rewarded upon achieving specific targets or goals. Further, the founding ministries should institute to the extent lacking sound corporate governance practices (including financial and other accountability), and administrative, financial and operational internal controls to enhance the quality of accountability and the value of the enterprises. Also, to the extent not already undertaken, independent financial statement audits in accordance with internationally generally accepted auditing standards should be undertaken. Further, technical and environmental audits should be undertaken, so that the value of the enterprise may be fairly assessed. These procedures are particularly

42

important for larger companies and those companies that might be privatized with foreign partners. This is an area that the USAID foreign advisors could provide assistance, and did on several key companies for the Czech government, such as the gas and electricity distribution companies, for example.

3. Participation of Advisors in the Governing Legislation, Rules and Regulations. The role of USAID foreign advisors should include providing advice as to proposed legislation, rules and regulations governing the overall process. This utilizes in a highly leveraged manner the advisors' past experiences and knowledge, particularly pertaining to all aspects of capital formation, securities laws, ongoing conduct of businesses, corporate transactions, including conflicts-of-interest issues pertaining to all participants, and other matters related to assuring the fundamental fairness of the process. The objective is to maximize the values received for selling interests in the enterprises, maintaining strategic interests of the country, modernizing the enterprises and assuring they are competitive with foreign markets, and assuring the fairness, transparency and accountability of the process. The USAID foreign advisors should assist in covering matters that might otherwise be overlooked, sharpening the governing statutory language, improving accountability and transparency of the process, and helping to institute measures to expedite the process. The USAID advisors had input on an ad hoc basis in a number of key areas of legislation and policy, but a more formal, systematic involvement would have been even more beneficial. It was very useful for the Advisory Team to communicate with other USAID and other donor agency programs in order to further help facilitate this process. It is our feeling that advisors should become as integrated as possible into the policy and institutional reform sides of their specific projects, at as high a level as possible.

4. Participation of Advisors in Developing the Operating Procedures (significant parts of this became the formal role of the advisors relating to foreign investor transactions). The role of USAID foreign advisors within the MOP and the NPF (or any organization performing its functions) should include providing advice to the as to establishing its internal governing and operating procedures with respect to the processes of tenders, auctions and direct negotiated sales applicable to both domestic and foreign purchasers. This would include criteria or guidelines when auctions should be used, when tenders should be used and when direct negotiated sales should be used, and generally applicable procedures to be followed when each of the methods are used. This would also involve establishing criteria or guidelines as to when national interests suggest that certain types of industries and companies should be limited to nationals or citizens, when foreign ownership may be permissible but limited, when transactions should be limited to foreign investors

43

having special qualities that are needed or sought, or when no special concerns are involved and the offer should be left open to all financial and strategic investors. The USAID foreign advisors had an instrumental role in determining the policies and procedures for reviewing, analyzing, structuring and negotiating foreign investor transactions and tenders open to foreign investors. However, the advisors were only afforded a limited ad hoc opportunity to provide input on policies and procedures for domestic transactions and tenders, and in determining when a transactions should be limited to domestic bidders or opened to everyone. More formalized, across the board, input in these areas, especially in policies relating to evaluating domestic transactions would have prevented a lot of ultimately failed domestic transactions. It would further help afford maximizing the values and commitments obtained and increase the viability of enterprises post-privatization, for both domestic and foreign transactions.

5. Participation of Advisors in Developing Standard Forms (the advisors took on this role in several key areas, and the government made it policy in these areas). Consistent with Item 4. above, the role of USAID foreign advisors within the MOP and the NPF (or any organization performing its functions) should include providing advice for establishing the various forms of agreements used in the selection and contracting process. At first, there were no standard form contracts. Ours were the first, and these became the adopted standard for foreign transactions. The standard form contracts prepared by the MOP and NPF did not cover all the issues and provide the safeguards that the forms we devised did. Further while the MOP and NPF adopted rules for public tenders consistent with the requirements of the Commercial Code, it would have been well to provide for selective private tenders, as was ultimately done, for example, with SPT Telecom and for the gas and electricity distribution companies (with the Advisory Team's advice).

While there is often a concern that standard forms of agreements can become too detailed and contain unnecessary language, the Advisory Team proved that this does not need to be the case, if clear and concise drafting and discipline are applied, together with thorough knowledge of the local laws and policies and concerns of the government. Material terms and conditions, including financial guaranties and secured interests, should not be omitted. Transactions are greatly facilitated both in time and in the quality of the terms and conditions obtained (for both sides), when carefully drafted standard form contracts are utilized (with appropriate flexibility to adapt them to the specifics of the transactions). It greatly reduces the perceived risk in the mind of the potential investor at the critical early

44

stages of the development of the transaction. Decreased perceived risk increases the commitments the investor is willing to make and reduces the time it takes to complete the transaction. Because of the use of inadequate contracts in pre-privatization foreign transactions and in most domestic transactions, many of these transactions have run into serious problems. However, in the foreign transactions assisted by the advisors utilizing the standard contract forms, there has been over 99% compliance by the investor with the terms and conditions of the contract, and this represents over 70% of all foreign direct investment into the CR.

6. Participation of Advisors in Domestic and Foreign Transactions. The role of USAID foreign advisors within the MOP and the NPF (or any organization performing its functions) also should include, even if on a very limited advisory participation basis for major policy and procedure issues, the domestic negotiated transactions, auctions and tenders. As previously mentioned, rules for public tenders were adopted, but private selective tenders were not generally utilized, but the advisors could have helped on these also. Overall this would have improved the process and better used the advisors, and the staff of the MOP and NPF could have learned even more from the experience and knowledge of the advisors. The staff did benefit considerably from participating in the foreign negotiated transactions with the advisors and did apply that knowledge to many of the domestic transactions, but this could have been further enhanced if the MOP and NPF had solicited the advisors advice more in the domestic arena.

7. Relationship between MOP and NPF. There needs to be participation and coordination by the staff of the MOP and NPF in the total transaction. While they can continue to fully represent their respective organizations and their respective interests, they should both be involved in the complete transactions to assure that they are carried out on a consistent and expedited basis in accordance with the best interests of both organizations. At the same time the purchasers or investors do not need to explain and negotiate all matters twice. The advisors greatly facilitated coordination and consistency between the MOP and NPF on an ad hoc basis, and much of this advice became policy, but even further integration would have been helpful.

8. Compliance. As previously mentioned, there needs to be an ongoing compliance program to assure that unpaid contractual amounts are diligently being pursued and that any other commitments or undertakings are likewise being diligently enforced. The enforcement of the commitments and undertakings is easier if an annual reporting requirement and sanctions or penalties are provided in the contract. The USAID Advisory Team convinced the government that this was needed and

45

developed a compliance department within the NPF to carry out this crucial function. The Czech staff of this department are now independently carrying out this function. They are running into problems primarily with the domestic transactions and pre-privatization transactions for reasons mentioned above, namely inadequately drafted contracts.

B. Within the USAID foreign advisers' assigned-roles; these are lessons we found beneficial:

1. Development of Standard (Model) Operating Procedures. Transparency and fundamental fairness are better served by establishing certain basic standard operating procedures which would be applied uniformly. At a very early stage (which can be revised and improved from time to time), advisors, from their collective experiences and knowledge, should prepare basic uniform operating procedures. These include: (i) a check list covering the types of preliminary information to be obtained from the state-owned companies, the foreign investors and the MOP to assure that negotiations will be satisfactory to the advisors, the MOP, the state-owned company, and foreign investors, (ii) types and forms of the memoranda to be prepared evidencing the work performed and recommendations to be made, (iii) adopted uniform methodology and criteria used in evaluating bids (such as discount rates, rates of inflation), (iv) uniform procedures to assure all foreign investors are treated equally, (v) uniform procedures to assure full participation of representatives of the MOP and state-owned companies and that all relevant persons are kept informed, and addressing special matters such as environmental issues. A principal role of the advisors is as a role model they set by their consistent, professional conduct.

2. Development of Standard (Model) Forms of Contracts. We found that the transparency, efficiency and fundamental fairness can be better demonstrated and obtained by establishing standard forms of contracts that are modified only to the extent necessary to apply to specific transactions. This provides comfort to prospective investors, knowing that the same basic terms and conditions that are being imposed upon them have been applied to others. Likewise this substantially reduced the negotiations and time expended on the commitments and forms of the contracts. Nevertheless, investors' attorneys will usually try to obtain more favorable terms for their clients, but starting with standard contracts pre-approved by the government, it is easier to reduce the discussions and assure that all of the terms and conditions have been properly addressed in the contracts. If the contracts are drafted by the investors' attorneys, the language is likely to be

46

different in each contract and it imposes a greater burden on contract administration by the NPF. The forms of contracts should be prepared in English and the local language with neither language prevailing and thus each having the same force and effect. Also, the governing law should be (except for special circumstances) the local law of the country. This is consistent with affording proper respect to the country. When these issues are argued one should be concerned about whether the foreign investor is going to respect the country and its citizens.

3. Continuous Involvement of Representatives of the State-Owned Enterprises, the MOP, and the NPF. We found it important to assure, whenever possible, including preceding, during and after meetings with foreign investors, that representatives of the state-owned enterprises, the MOP and the NPF be present so that they can understand the process, present their views, and be fully informed. Otherwise they may feel left out of the process and not committed to the process. It is important to instill the significance of teamwork in the process. Also this helps expedite the process and the foreign investor will better know and understand all of the participants. This is also a crucial element of capacity building. An advisor should not feel that they know the positions of the various parties, and that they can better effectuate the transaction by keeping the parties apart and act as an independent mediator. This is not consistent with the overall objective and an advisor should not take on a role of a mediator. It is important to have continuous involvement of the NPF, so that when the transaction is approved by government, the NPF is responsible for executing the contracts and carrying out what has been previously negotiated. If a representative of the NPF have not been previously involved, they may feel free to renegotiate with the foreign investor, feeling bound only by the express words of the government approval. This of course is not fair and slows up the process, and there are no assurances that the ultimate transaction will be as favorable to the government as that originally negotiated.

4. Involvement of Nationals. One of our primary roles as foreign advisors is to share our knowledge about corporate transactions, including trans-national transactions. Therefore to the extent it is feasible under the circumstances, local national professionals should be made part of the advisory teams and permitted, in fact encouraged, to actively participate in all aspects of the process. It is vital to respect the dignity of the individuals and keep them fully involved and informed and utilize their strengths of knowing the culture and the language. To gain their respect, the advisors must spend the time and provide full explanations in a proper tone. The local national professionals should come to understand the need for teamwork, including the respective roles and responsibilities of the various types of

47

professions and the need to share information in accord with the respective roles and responsibilities, and the need to reach team consensus, but at the same time permitting all to participate in a disciplined, constructive manner.

5. Maintenance of Confidentiality Matters. We found it is important for foreign advisors to carefully and prudently respect the confidentiality of matters that may be viewed as confidential, even though in fact they may not be confidential. This is important to establish the confidence of the representatives of state-owned enterprises, the MOP and the NPF, and at the same time act as professionals and set a good example. Professionals must be careful not to discuss confidential matter in public places, where discussions may be overheard, or in front of any person not entitled to receive the information. Whether or not a confidentiality agreement is signed, professionals should conduct themselves in a responsible manner as if a confidentiality agreement applied. Trading or networking on confidential information is not an acceptable practice.

6. Conflicts-of-Interest. Professional advisors should be on the look-out for conflicts of interest. This includes present or past associations. They also should be on the look-out for professional advisors to potential investors where the person or persons may have worked for the government in a capacity which could cause a conflict. In such situations the conflict should be called to the attention of the government and the reasons for the potential conflict pointed out, so that the government gains a better understanding of potential conflicts and the possible adverse consequences, including transparency of the process and fundamental fairness. The foreign advisors themselves must be diligent in avoiding any situation that could even result in the perception of a conflict.

7. Control of Documents. The advantages of using standard forms of contracts were mentioned above. It is further beneficial if all changes to the standard forms are handled by, and kept in the control of the MOP, NPF and the USAID foreign legal advisors. In this manner, changes will more effectively be managed, including keeping the representatives of the state-owned enterprise, the MOP and the NPF advised and their comments sought. Also, this will assist in maintaining the consistency of the contracts and reducing the likelihood that some change by the foreign investor's attorney will be overlooked. This also importantly permits the process to be expedited, since the foreign advisors are in a better position to keep the process moving along and reduce the likelihood that the NPF might undertake to renegotiate the contract. The foreign investor should have the responsibility that it is satisfied with the translation from English and call to the attention of the USAID foreign advisors their suggested changes in the local language. We

48

encountered situations where the foreign investors' translations were materially different from our translations, which in fact changed the meaning of the provisions and if not rectified would have caused a potential conflict between the language versions.

8. Compliance. We found it very helpful to establish follow-up procedures to assure compliance of investors' commitments and undertakings in a timely manner after the contract has been signed. We further found it helpful to insert a provision in the standard form of contract requiring an annual certificate by the foreign investor indicating the specific actions undertaken in compliance with the specific commitments. This requirement in itself has brought more timely compliance with the underlying commitments. If timely actions are not being undertaken, then appropriate action including the demand for payment of specified penalties and eventual arbitration or litigation should be undertaken. As stated earlier, precise drafting of the contracts, clear and unambiguous commitments, and clear penalties for non-compliance all contributed to an extremely low rate of non-compliance (less than 1%).

C. Ongoing issue of corporate governance:

1. Corporate Governance Practices. The maintenance of strong corporate governance practices are vital to the success of joint-stock companies, particularly in publicly-held companies. In growing national and international capital markets investors need confidence in the quality and effectiveness of corporate governance practices by companies. Corporate governance practices contemplate the clear establishment of internal structuring, governing responsibilities, internal operational, administrative and financial controls, delegating discrete levels of responsibility and authority, and responsibilities for internal and external reporting to various interested persons. Corporate governance practices focus on these functions used to oversee, direct and manage the conduct of the business and affairs of a company with the objectives of (i) establishing and attaining the company's business plans and objectives, (ii) conducting the company's business and affairs in a profitable but responsible manner, and (iii) timely reporting to shareholders and others. Corporate governance is not only concerned with the institution of procedures, but also the conduct and successful fulfillment of the procedures and practices. Thus it is vital that all of the employees including the executives, managing directors, supervisory directors and shareholders are fully informed about all matters appropriate for them to know within their respective areas of responsibility and enable them to make informed decisions. Also, the

procedures and practices involve assigning responsibilities and accountability through levels of authority:

- The shareholders, as owners of the business, are the ultimate decision making body and the body to whom all the other groups are ultimately accountable.
- The supervisory board is the body to whom the shareholders entrust oversight responsibility. The supervisory board supervises the performance of the company's board of directors and the realization of the company's business activities.
- The company's board of directors is the body to whom the shareholders entrust the conduct of the management responsibility. Members of the board of directors are either elected by the supervisory board or by shareholders voting at the general meeting, depending on the company's articles of association.
- The company's general director (general manager) and other members of senior management are entrusted to conduct the operations of the company under the management of the company's board of directors.

Also, companies need to develop and maintain corporate policies and internal operating, administrative and financial controls to assure that all employees, managing directors and supervisory directors are informed of what is expected of them and the manner in which they are expected to conduct themselves in fulfilling their responsibilities in a diligent, careful and loyal manner in accordance with all applicable laws, the companies' articles of association and all governing company rules and regulations.

2. Suggested Legislative Changes to Improve Certain Aspects Of Corporate Governance. It is prudent to review applicable company and securities laws applicable to the conduct of companies, their public reporting and their access to the capital markets. The following suggestion would assist in improving the transparency, effectiveness, competitiveness and fundamental fairness of the process. Timely and full disclosure of all material information is fundamental to a reputable system.

- The Securities Act should be amended to require that the Securities Center be required to record the transfer of securities within three working days of receiving the transfer orders, if the orders have been properly executed and are otherwise in order. The purpose of this is to facilitate the recording of the ownership of securities, and more promptly permit the further transfer of the debt and equity securities. The Securities Center needs to have tighter

50

controls and be liable for losses resulting from lack of proper controls or negligence. This avoids problems with the payment of dividends and other distributions to the proper owner, with the determination of the shareholder entitled to vote at general meetings of shareholders, with sending notice and other issues of shareholder ownership. Currently it is taking too long to effectuate transfers, thereby defeating one of the purposes of establishing the Securities Center. The Securities Center should also be liable for its misconduct and negligence. This is important so that the public will not lose confidence in public ownership of shares.

- Currently too many sales and transfers of securities of publicly-held companies are taking place off the stock exchanges and the transactions and prices are not being reported, thereby adversely impacting the liquidity of the markets and the small public shareholders being precluded from being able to purchase or sell their shares in an honest market.
- It is also suggested that the Securities Act be amended to require supervisory directors, members of the Board of Directors and senior executives of publicly-held companies be required to file annual ownership reports reporting the aggregate amount of their direct and indirect holdings in securities of the company, and they also be required to file within five working days after any transaction changing their holdings. This should reduce the likelihood of illegal insider trading by the specified classes of individuals.
- The Securities Act imposes reporting requirements on companies having public tradable securities. It is recommended that these be revised to require (i) with respect to annual financial reporting, this be accomplished within 90 days after the end of the year, (ii) with respect to quarterly financial reporting, this be accomplished within forty-five days after the end of the quarter, and (iii) with respect to significant events occurring that materially impact the financial condition of the company, that they be reported (and there is no valid corporate reason for maintaining its confidentiality) within 10 days after the event. This would establish greater confidence in the capital markets and reduce the opportunity for insider trading.
- The Commercial Code should be amended to clearly permit that a two-thirds majority of the votes of all shareholders attending a meeting may increase a company's capital stock and specifically provide that the increase of capital stock is not subject to subscription by the company's present

51

shareholders. This would permit companies to use its shares to make acquisitions or to enter into other transactions without having to form a merger to effect the transaction. There presently is confusion as to whether this is permissible.

52

Appendix 1

This form of short form of Confidentiality Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

SHORT FORM OF CONFIDENTIALITY AGREEMENT

FORM OF CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Confidentiality Agreement") is made as of **[INSERT DATE]** _____, 199__, between **[insert name and form of entity and where entity is formed]** company (the "Company"), whose address is **[insert business address]**, and **[insert name of individual or name of entity, if an entity insert form and where formed]** (the "Consultant"), whose business address is **[insert business address]**.

The Company is engaging the Consultant to provide certain technical assistance to the Company (the "Engagement"). In connection with the Engagement, the Consultant has received and will receive information which is non-public, confidential or proprietary information irrespective of the form of the communication, including (but not limited to) proprietary software, secret processes, inventions, discoveries, improvements, formulae, plans, materials, devices or ideas or other know-how, whether patentable or not, with respect to any confidential or secret development, research or other technical work or with respect to any other confidential or secret aspects of the Company's business and affairs ("Confidential Information"). Consultant acknowledges that the Confidential Information may have value and that in any event the unauthorized disclosure or use in any way could be detrimental to the interest of the Company. Confidential Information does not include any information which is available to the general public at the time of disclosure, use and exploitation (other than by manner of unauthorized disclosure, use or exploitation).

Consultant further acknowledges and agrees (without prior written consent):

1. that the Engagement is to be performed and maintained on a confidential basis and that all Confidential Information and any part of it received during the course of this engagement will be kept strictly confidential except as may be required by law;
2. not to copy, reproduce, disclose, disseminate, use or otherwise exploit the Confidential Information for any purpose, to any unauthorized person, or to otherwise use in any way other than in connection with work specifically performed for the Company;
3. that disclosure and dissemination of the Confidential Information will be limited to its employees, agents and contractors of the Consultant ("Representatives") who have a need to know for the purposes of the Engagement and who are bound in writing not to disclose or use the Confidential Information other than in work specifically performed for the Engagement; and
4. to be responsible for enforcing the confidentiality of the Confidential Information and Consultant agrees to take such action, legal or otherwise, to the extent necessary to prevent any disclosure of the Confidential Information by it or any of its Representatives.

In case of termination of the work being performed for the Engagement the Company, the Consultant and its Representatives will (i) promptly return to the Company all copies of any Confidential Information and any other written material containing or reflecting any Confidential Information, then in its and its Representatives' possession or control including all notes, copies, reproductions, summaries, analyses or extracts thereof, whether written or on electronic media, (ii) not use or exploit for any purpose whatsoever the Confidential Information, and (iii) all Confidential Information or information derived from Confidential Information not returned to the Company will be destroyed and expunged from any computer, word processor or other device containing or derived from Confidential Information. The returning, destruction and expunction of all Confidential Information in their possession or control will be certified in writing to the Company by the Consultant.

The terms of this Confidentiality Agreement shall be binding for a period of two (2) years following the termination of Consultant's Engagement with the Company.

In Witness Whereof, this Confidentiality Agreement has been signed as of _____ ,19__.

[INSERT CONSULTANT' NAME]	**[INSERT COMPANY'S NAME]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Appendix 2

This form of long form of Confidentiality Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

LONG FORM OF CONFIDENTIALITY AGREEMENT

57

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made as of **[insert date]**, 199__, between **[insert name and form of entity and where entity is formed]** company ("Company-A"), and **[insert name and form of entity and where entity is formed]** company ("Company-B")(Company-A and Company-B are the "Parties" to this Agreement).

RECITAL

Company-A has requested access to certain information about Company-B for the purpose of performing an investigation for the purpose of **[insert purpose of providing information]** ("Stated Purpose"). In consideration for and as a condition to furnishing information to Company-A and any director, employee, agent, or other representative, including any accountant, attorney or financial or other advisor (collectively "Representatives") of it, Company-A acknowledge the confidential and proprietary nature of the information furnished or to be furnished to Company-A, and agree to be bound as provided in this Agreement.

1. Agreement. Company-A, has requested that it, and its Representatives, have the right to access to certain information about Company B, including the opportunity to inspect its operations, financial and operating data and information, material contracts and other records, and to meet with and ask questions of its management. In consideration of this right, Company-A acknowledges the confidential and proprietary nature of certain of the information "Confidential Information" (as defined below) to be furnished to Company-A, and its Representatives, and agrees to hold and keep the Confidential Information confidential as provided in this Agreement. Company-A further agree by signing this Agreement not to disclose to anyone other than its Representatives (as defined and to the extent provided herein) the Confidential Information.

2. Definition of Confidential Information. As used herein, the term "Confidential Information" shall mean, irrespective of the form of communication or availability, any and all financial, technical, commercial, operational or other information relating to the business and affairs of Company-B, including (but not limited to) trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how, which has been or may hereafter be provided or shown to Company-A or its Representatives by Company-B or by any of its Representatives and also includes all notes, analyses, compilations, studies, or other material prepared by Company-A or its Representatives containing or based, in whole or in part, on any information provided or shown by Company-B or Company-B's Representatives. Company-A acknowledges the Confidential Information may have value and that in any event the unauthorized disclosure or use or exploitation of such Confidential Information could be detrimental to the interests of Company-B.

3. Exclusion From Definition. The term "Confidential Information" does not include information which (i) has become generally available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation by Company-A or its Representatives or someone else); or (ii) is provided to Company-A or Company-A's Representative by a person (other than Company-B or Company-B's Representative or someone otherwise prohibited from transmitting the information by a contractual or legal obligation or fiduciary or special relationship) who is lawfully in possession of such information and has the lawful right to publicly disclose, use and exploit it.

4. Confidentiality of Confidential Information. It is understood that Company-A may disclose any Confidential Information to those of its Representatives who require such information for the purpose of assisting Company-A in its Stated Purpose (as defined below) (provided that Company-A's Representatives shall be informed by Company-A of the confidential nature of the Confidential Information and shall be provided with a copy of this Agreement and acknowledge to Company-A in writing that they shall be bound by the

58

terms and conditions hereof as if they were a Party hereto). Company-A agrees that the Confidential Information and any part thereof will be kept confidential by Company-A and its Representatives and except with the specific prior written consent of the Company-B or as expressly otherwise permitted by the terms hereof, will not be disclosed, used or exploited for any purpose by Company-A or its Representatives. Company-A further agrees that Company-A and its Representatives will not use or exploit any of the Confidential Information for any reason or purpose other than in the Stated Purpose and that the Confidential Information shall not be used or exploited by Company-A or its Representatives in any way detrimental to the Company-B, and its shareholders. Company-A also agrees to be responsible for enforcing the confidentiality of the Confidential Information and Company-A agrees to take such action, legal or otherwise, to the extent necessary to prevent any disclosure of the Confidential Information by any of its Representatives.

5. No Disclosure of Discussions, etc. Without the prior written consent of Company-B, Company-A and its Representatives will not disclose to any person (i) the fact that Confidential Information is being made available to Company-A or that Company-A has inspected any portion of the Confidential Information, or (ii) the fact that any discussions are taking place, or the status thereof. The term "person" as used in this Agreement shall be broadly interpreted to include a natural and/or legal person, such as, without limitation, any corporation, company, partnership, government institution, or any agency or instrumentality thereof or other entity.

6. Mandatory Disclosure. In the event that Company-A or any of its Representatives is requested or becomes legally compelled to make any disclosure, use or exploitation which is prohibited or otherwise constrained by this Agreement, Company-A agree that Company-A or its Representatives, as the case may be, will provide Company-B with prompt written notice of such request or requests so that it may seek an appropriate protective order or other appropriate remedy and/or waive Company-A's or its Representatives' compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or the Company-B grants a waiver hereunder, Company-A or its Representatives may furnish that portion (and only that portion) of the Confidential Information which, in the written opinion of counsel reasonably acceptable to the Company-B, Company-A is legally compelled to disclose or else stand liable for contempt or suffer other censure or penalty; provided, however, that Company-A may disclose only that portion of such information or matter that is legally required to be disclosed and Company-A shall use its best efforts to obtain reliable assurance that confidential treatment and non-use and non-exploitation will be accorded any Confidential Information so disclosed.

7. Company-B's Employees. Without the prior written authorization or consent of Company-B (i) neither Company-A nor Company-B's Representatives will initiate or cause to be initiated (other than through the Company-B or its authorized Representative) any communication with any of Company-B's Representatives concerning Confidential Information.

8. Termination. If Company-A or Company-B determines that it does not wish to proceed with the Stated Purpose, Company-A or Company-B, as the case may be, shall promptly notify the other in writing of such decision. In the event of such termination by either Company-A or the Company-B, Company-A shall (i) promptly deliver to the Company-B all copies of any Confidential Information and any other written material or other matter containing or reflecting any Confidential Information then in Company-A's or its Representatives' possession or control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, not use or exploit for any purpose whatsoever the Confidential Information, (iii) destroy and expunge from any computer, word processor or other device containing information derived from Confidential Information all information derived from Confidential Information or information derived from Confidential Information not returned to Company-B, and (iv)

59

certify in writing full compliance by Company-A and its Representatives with clauses (i), (ii) and (iii) of this paragraph 8 to Company-B by Company-A's authorized officer (supervising such compliance).

9. No Representations or Warranties. Company-A hereby agrees the sole purpose of furnishing Company-A Confidential Information and other information is that (i) it and its Representatives have the obligation to make their own independent investigations and analyses, (ii) it and its Representatives will not rely on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) the Company-B, other than the representations and agreements of Company-B expressly set forth in an executed written agreement, (iii) it and its Representatives have the opportunity to inspect the financial and operating data and information, books, accounts, contracts and records of Company-B and to meet with and ask questions of the management of Company-B, (iv) it and its Representatives have the opportunity to inspect Company-B's facilities in their current condition and at their current location, and (v) it has the obligation to reach its own independent determinations and decisions with respect to Company-B.

10. Indemnification. Company-A hereby agrees to indemnify and hold harmless Company-B, and Company-B's Representatives from any damages, loss, cost or liability (including, without limitation, any expenses including legal fees and the cost of enforcing this indemnity) arising out of or resulting from (i) any use, exploitation or disclosure by Company-A or its Representatives of Confidential Information or other such information. Company-A also acknowledge that money damages may be insufficient remedy for any breach of this Agreement by Company-A or its Representatives and that any such breach would cause Company-B, and/or Company-B's Representatives irreparable harm. Accordingly, Company-A also agree that in the event of any breach or threatened breach of this Agreement, Company-B, and/or Company-B's Representatives shall be entitled, without the requirement of any security, to relief in addition to damages, including without limitation and further proof, injunctive relief and specific performance. Such remedies shall not be exclusive remedies for any breach of this Agreement but shall be in addition to all other remedies available to the Company-B and Company-B's Representatives.

11. No Waiver. It is understood and Company-A agrees that no failure or delay by Company-B or Company-B's Representatives in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

12. Validity of Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. If any of the provisions of this Agreement shall be deemed to be unenforceable by reason of their extent, duration, scope or otherwise, then the Parties contemplate that the court or other body making such determination shall modify such extent, duration, scope or other provision, and shall enforce them in their modified form for all purposes contemplated by this Agreement. The provisions set forth in this Agreement (except all of the provisions set forth in paragraphs 9 and 10, which shall not be modified or waived) may be modified or waived only by a separate writing signed by the Company-B and Company-A expressly so modifying or waiving such provisions. This Agreement shall survive as long as any claim may be invoked under the terms of this Agreement and, if then there are any pending claims, until such time as they are fully and finally adjudicated.

13. Governing Law; Dispute Resolution; Construction; Survival. This Agreement and the rights of the Parties will be construed and interpreted in accordance with **[insert applicable jurisdiction]** laws without reference to conflict of laws provisions. **[Insert if there is a treaty having applicable terms]** Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the **[insert**

60

applicable countries], as amended. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof. This Agreement and any amendments or other modifications hereof shall be executed in the English and [**insert country**] languages. In the event of a conflict between the different language versions of this Agreement, both versions shall be deemed equally authoritative. The representations, warranties and covenants in this Agreement (including the disclaimer thereof) shall be continuing representations, warranties and covenants and shall survive the termination of this Agreement and any transactions contemplated hereunder.

14. Assignment, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. No permitted or purported assignment of all or any portion of this Agreement will effect a release of the assignor of its obligations under this Agreement without an express written release from such obligations by the other Party. Nothing expressed or referred to in this Agreement will be construed to give any person (i) other than to the extent the provisions set forth in paragraphs 9 and 10, expressly grant rights to Company-B's Representatives, and (ii) other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

15. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their best efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the date of this Agreement.

[Insert name of Company-A]	**[Insert name of Company-B]**
By: _____	By : _____
Name: _____	Name: _____
Title: _____	Title: _____

61

Appendix 3

This form of Consulting Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the consulting arrangement, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF CONSULTING AGREEMENT

63

FORM OF CONSULTING AGREEMENT

TABLE OF CONTENTS

Section 1. Description of Services
Section 2. Performance of Services
Section 3. Payment
Section 4. Expense Reimbursement
Section 5. Project Approval
Section 6. Term/Termination
Section 7. Relation of Parties
Section 8. Disclosure
Section 9. Employees
Section 10. Injuries
Section 11. Indemnification
Section 12. Assignment
Section 13. Intellectual Property
Section 14. Confidentiality
Section 15. Unauthorized Disclosure of Information
Section 16. Confidentiality After Termination
Section 17 Services to Third Parties
Section 18 Non-compete Agreement
Section 19 General

64

FORM OF CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is made effective as of [**insert date**] day of _____, 199__, between [**insert name of retaining company**], a [**insert name of jurisdiction under which formed and form of company**] (the "Company"), and [**insert name of service firm**], a [**insert name of jurisdiction under which formed and form of service firm**] (the "Consultant"). The Parties to this Agreement mean the Company and the Consultant, and a Party means either the Company or Consultant, as the case may be.

RECITAL

Consultant has competence and experience in providing Services (as defined in Section 1) and is willing and able to provide Services to the Company. The Company desires to obtain the benefit of those Services.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

Section 1. Description of Services. Beginning on [**insert date**], Consultant will provide the following services, (collectively, the "Services"): [**describe the services to be provided**].

Section 2. Performance of Services. The manner in which the Services are to be performed and the specific hours to be worked by Consultant will be determined by Consultant. The Company will rely on Consultant to work as many hours as may be reasonably necessary to fulfill Consultant 's obligations under this Agreement.

Section 3. Payment. The Company will pay the Consultant monthly within ten days after receiving the invoice for the fee for the Services performed for the preceding calendar month. The fee will be based on [**insert the amount per period and manner of determining fee (hourly, daily etc.)**]. Upon termination of this Agreement, payments under this paragraph will cease; provided, however, that the Consultant will be entitled to payments for periods or partial periods that occurred prior to the date of termination and for which Consultant has not yet been paid.

Section 4. Expense Reimbursement. The Consultant will be entitled to reimbursement from Company for "out-of-pocket" expenses incurred by the Consultant and approved by the Company prior to the incurring the expenses.

Section 5. Project Approval. The Consultant and Company recognize that the Consultant 's Services will include working on various projects for the Company. Consultant will obtain the approval of Company prior to the commencement of any project. The initial project will cover [**describe project**].

Section 6. Term/Termination. This Agreement will become effective as of the signing of this Agreement and continue in full force and effect until the earliest of the following events:

(a) Completion by the Consultant of the Services required by this Agreement;

(b) The Parties mutually agree in writing to another date;

(c) if a Party by its course of conduct repeated fails to comply with this Agreement and breaches its obligations hereunder, then the other Party may terminate this Agreement., provided that the Party instituting termination will not have materially breached its obligations hereunder.

65

Termination of this Agreement for any cause will not release any of the Parties from any liability which at the time of termination has already accrued to either Party or which thereafter may accrue in respect of any act or omission prior to such termination.

Section 7. Relationship of Parties. The Parties that the Consultant is an independent contractor with respect to Company, and not an employee of Company. The Company will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Consultant or its employees.

Section 8. Disclosure. The Consultant is required to disclose any outside activities or interests, including ownership or participation in the development of intellectual property of any sort, that conflict or may conflict with the best interests of Company. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to **[insert description of areas of concern]** and to any activity that Consultant may be involved with on behalf of the Company.

Section 9. Employees. The Consultant 's employees, if any, who perform services for Company under this Agreement will also be bound by the provisions of this Agreement. At the request of Company, Consultant will provide adequate evidence that such persons are Consultant 's employees and that they are also bound by the provisions of this Agreement.

Section 10. Injuries. The Consultant acknowledges the Consultant 's obligation to obtain appropriate insurance coverage for the benefit of the Consultant (and the Consultant 's employees, if any). The Consultant waives any rights to recovery from Company for any injuries that the Consultant (and/or the Consultant 's employees) may sustain while performing services under this Agreement and that are a result of any negligence or acts of the Consultant or the Consultant 's employees.

Section 11. Indemnification. Each Party ("Indemnifying Party") agrees to indemnify and hold the other Party ("Indemnified Party") harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against Indemnified Party that result from the acts or omissions or negligence of the Indemnifying Party, Indemnifying Party's employees, if any, and Indemnifying Party's agents.

Section 12. Assignment. A Party 's rights and obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect.

Section 13. Intellectual Property. The following provisions will apply with respect to copyrightable works, ideas, discoveries, inventions, patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Company's business and affairs. (collectively, "Intellectual Property"):

a. Consultant (or any of the Consultant 's employees, if any) does not personally hold any interest in any Intellectual Property;

b. Any new, or improvements to, Intellectual Property discovered or developed by Consultant (or the Consultant 's employees, if any) during the term of this Agreement will be the property of the Company.

66

The Consultant will sign all documents necessary to perfect the rights of the Company in such Intellectual Property, including the filing and/or prosecution of any applications. Upon request, the Consultant will sign all documents necessary to assign the rights to such Intellectual Property to the Company.

Section 14. Confidentiality. Except to the extent provided in this paragraph, Consultant will not disclose to any person other than an authorized employee ("Authorized Employee"), use or exploit for any purpose whatsoever, and it will cause its Authorized Employees not to disclose, use or exploit for any purpose whatsoever, any written, oral, or other information obtained from the Company ("Information") except (i) with the prior written consent of the Company, (ii) as may be required by law or order of a court of competent jurisdiction, (iii) is available to the general public at the time of disclosure, use or exploitation, or (iv) to the extent expressly permitted by this Agreement. In case the Consultant is required to disclose Information as provided in clause (ii) above, it will attempt to obtain a protective order preserving the confidentiality thereof by the recipient thereof.

The Consultant will cause its Authorized Employees not to disclose to any person or use or exploit for any purpose whatsoever the Information except as expressly permitted in this paragraph. Upon termination of this Agreement, the Consultant will (i) promptly return to the Company all copies of any Information (including all records, notes, data, memoranda, models, and equipment of any nature that are in Consultant's possession or under Consultant's control and that are Company's property or relate to Company's business and affairs) and any other written material containing or reflecting any Information then in its possession or under its control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, (iii) not use or exploit for any purpose whatsoever the Information, and (iv) all Information or information derived from Information not returned to the Company will be destroyed and expunged from any computer, word processor or other device containing or derived from Information. The destruction and expunction will be certified in writing to the Company by the Consultant.

Section 15. Unauthorized Disclosure of Information. The Consultant represents that performance of all the terms of this Agreement and as a consultant of the Company will not breach any agreement or duty to keep in confidence proprietary information acquired by the Consultant in confidence or in trust prior or during the period of this Agreement, and is not at restricted from entering into this Agreement or being retained by the Company. The Consultant further agrees if it reasonably appears that Consultant has disclosed (or has threatened to disclose) Information in violation of this Agreement and that such a breach or threatened breach of this Agreement could cause irreparable damage to the Company, the Company will be entitled to an injunction and any other equitable relief to restrain Consultant from disclosing such Information and that, in the event of such breach, the Company shall have, the right to any and all remedies of law, including any equitable relief.

Section 16. Confidentiality after Termination. The confidentiality provisions of Section 14 of this Agreement will remain in full force and effect after the termination of this Agreement.

Section 17. Services to Third Parties. The Parties recognize that the Consultant may provide consulting services to third parties. However, the Consultant is bound by the confidentiality provisions of this Agreement, and Consultant may not use or exploit the Information, directly or indirectly, for the benefit of third parties.

Section 18. Non-compete Agreement. Recognizing that the various items of Information are special and unique assets of Company, Consultant agrees and covenants that for a period of

67

2 years following the termination of this Agreement, whether such termination is voluntary or involuntary, Consultant will not directly or indirectly engage in any business competitive with Company. The Consultant agrees that this non-compete provision will not adversely affect the livelihood of Consultant.

Section 19. General.

(a) Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with [**insert**] laws without reference to conflict of laws provisions. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by one (1) arbitrator nominated pursuant to the Rules. The [**insert appropriate person**] will act as the "appointing authority" under the Rules. The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(b) Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

(c) Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to Consultant:

_____

_____

_____

_____

Attention: _____

(b) if to the Company:

_____

_____

_____

Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this paragraph. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being

68

deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

(d) Entire Agreement. This Agreement (including the Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof.

(e) Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

(f) Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective legal successors.

(g) No Third-Party Rights. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

(h) Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

(i) Further Assurances. Each Party will, at the request of the other Party, execute, acknowledge, deliver and file, without further consideration, all such documents and take such other action as may be reasonably requested to carry out the provisions of this Agreement.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of [**specify specific date**](the "Agreement Date").

[NAME OF COMPANY]	**[NAME OF CONSULTANT]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Appendix 4

This form of Corporate Governance Guidelines is intended for informational purposes only. This reflects an approach to the important issue of corporate governance but should be carefully considered before using, considering the specific provisions of a company's articles of association and applicable governing law. This has not been reviewed or approved by United States Agency for International Development (USAID) but was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF CORPORATE GOVERNANCE GUIDELINES

71

JOINT-STOCK COMPANY

CORPORATE GOVERNANCE GUIDELINES

Part I. OVERVIEW

The maintenance of strong corporate governance principles and practices are vital to the success of publicly-owned joint-stock companies. In national and international capital markets, investors need confidence to the transparency, efficiency, effectiveness, liquidity and the fundamental fairness of the local stock markets and the participating publicly-held companies.

This is significantly dependent on the quality and effectiveness of corporate governance principles and practices of those publicly-held companies. Corporate governance practices focus on the processes used to direct and manage the businesses and affairs of publicly-held companies in an objective and responsible manner to assure that companies are: (i) establishing and diligently pursuing business plans and objectives, (ii) conducting their businesses and affairs, and (iii) publicly reporting the financial and administrative results to shareholders and other stakeholders in a timely manner.

To assure compliance, this involves the assignments of responsibilities, accountabilities and controls within each company This paper offers guidelines for supervisory directors, managing directors, senior operational management and shareholders to aid in fulfilling their respective responsibilities and accountability duties. Certain statutory duties are established in the applicable laws governing the formation and conduct of companies laws, and, also, certain other conduct and prohibited actions together with associated penalties are addressed in other applicable laws(collectively referred to as the "Applicable Companies Laws").

Part II. INTRODUCTION

Each company is expected to (i) conduct its operations in a responsible manner with a view to enhancing corporate profit and shareholder gain, (ii) act within the boundaries set by Applicable Companies Laws, and (iii) take into consideration interested persons other than shareholders ("other stakeholders"), including employees, suppliers, customers, lenders and other creditors, communities affected by the company's operations, and governmental authorities.

The governance of a joint-stock company is conducted through four levels of authority:

- The shareholders, as owners of the business, are the ultimate decision making body and the body to whom all the other groups are ultimately accountable. The shareholders entrust responsibilities to several different bodies, each of whom has a specific responsibilities and duties. The shareholders reserve the ultimate authority and responsibility over the company and express this through the power of voting their shares at shareholder meetings. **(Part III)**
- Supervisory board is the body to whom the shareholders entrust oversight responsibility. The supervisory board supervises the performance of the company's board of directors and the realization of the company's business activities. In carrying out its supervisory responsibilities, the board considers the interests of all constituencies, but ultimately it is answerable to the owners of the business, the shareholders. **(Part IV)**
- The company's board of directors is the body to whom the shareholder entrust the conduct of the management responsibility. Unless stipulated otherwise by the articles of association, any member of the board of directors is authorized to act on behalf of the company and commit it to binding obligations. Members of the board of directors are

72

either elected by the supervisory board or by shareholders voting at the general meeting, depending on the company's articles of association. **(Part V)**

- The company's the general director (general manager) and other members of the senior operational management are entrusted to carry out the day to day conduct of the Company's operations. **(Part VI)**

It is vital that each of the four levels fully and timely carry out their respective authorities and responsibilities. The duties of the supervisory directors, managing directors and senior operational management may each be divided into two functions, (i) ongoing review and oversight, and (ii) decision-making with respect to specific actions requiring a decision. Of course, senior operational management addresses the greatest number of specific actions that need consideration. **Part VII** addresses the decision-making process.

Each, the Supervisory Board and the Managing Board of Directors, may wish to establish committees of their respective members to assist them in their duties and responsibilities, particularly those related to ongoing review and oversight. This is covered in **Part VIII**.

Part IX addresses certain potential acts or practices by managing directors, supervisory directors, senior operational management and shareholders that should be prohibited by sound corporate governance principles.

Part X addresses certain possible insertions into a company's articles of association to enhance certain corporate governance concepts.

Part III. RESPONSIBILITIES OF SHAREHOLDERS

3.1 General The shareholders maintain control over basic corporate decisions as provided in the company's articles of association and Applicable Companies Laws, principally related to fundamental changes to the company's business, amending the articles of association, changing the number of shares of capital stock issued, electing and recalling supervisory directors other than those elected by employees, electing and recalling members of the board of directors (unless the articles grant the authority to the supervisory directors), and approving the financial statements and deciding on any payment of dividends. Shareholders should be satisfied that decisions by the supervisory directors and managing directors are made consistent with the long-term best interests of the company, including those of the shareholders.

3.2 Selection of Directors The selection process of directors should consider the experience, independence of judgment, and diversity of backgrounds of directors, and the process for shareholders, including investment companies or funds or controlling shareholders, to propose nominees. To be effective, a director should be willing to devote sufficient time to become familiar with the company's business activities and to be fully informed about matters requiring his attention. If unable or unwilling to devote the necessary time and effort, then the person should decline from serving as a director. A concern in the selection of directors is the lack of diversity of backgrounds and experience and the lack of a persons ability to exercise independent judgment, to provide sound business judgment and decision-making on behalf of a company. This should be considered in the selection process. Each director should exercise independent judgment for the overall benefit of the company and all of its shareholders, even if elected at the request of a controlling shareholder, a union, a creditor, or an investment company.

3.3 Shareholder Transactions A company should have a policy, which is enforced, or provision in its articles of association, that any transactions between the company and any shareholder, company of the shareholder or any affiliate of the shareholder, are on terms and

73

conditions which are not more favorable to the shareholder, company of the shareholder, or any affiliate of the shareholder, than the terms and conditions which would prevail in a transaction involving parties which do not have any ownership interest in one another. Shareholders also should be alert to bans on competitive conduct, rules pertaining to insider trading, and the misuse of confidential information.

Part IV. RESPONSIBILITIES OF SUPERVISORY DIRECTORS

4.1 Principal Responsibilities The principal responsibilities of the supervisory board are:

(1) Supervising the performance of the board of directors and its conduct of the company's business activities, including whether the company is improving its competitive position, and whether the business activities of the company are in compliance with the company's policies, its articles of association, the instructions of the general meeting, and applicable laws;

(2) Reviewing the company's financial condition, its operating results including distributable profits, its annual financial statements, any proposed debt or equity financing, any material changes in the company's business, as well as any propose distribution of profits, and reporting to the general meeting on the results of their auditing, inspection and other activities; and

(3) Convening general meetings when required in the best interests of the company and representing the company in court and other proceedings against members of the board of directors.

In addition, either or both the company's articles of association and general meetings of shareholders may assign additional duties to supervisory directors.

4.2 Planning and Budgets In performing their duties and responsibilities, supervisory directors should give serious consideration to the company's long-term economic best interests. In doing this, they should review and approve a company's overall fundamental long-term operating and financial strategies and objectives (a company's "long-term plan"). Further, in pursuing its long-term plan, a company should adopt and then annually update for a shorter period of years a more specific plan (a company's "short-term plan"). Within the annually updated short-term plan, the company should adopt for the ensuing year an annual capital expenditure budget (a company's "capital expenditure budget") and an annual operating budget (a company's "operating budget"). The supervisory board should be instructed by a general meeting to approve the long-term and short-term plans, the capital expenditure budget and the annual operating budget. A company should not exceed its capital expenditure budget and its operating budget without express approval of the supervisory board.

4.3 Keeping Informed In addition, the supervisory directors should be fully informed about and satisfied:

(1) that the company's overall operational and financial performances are in accord with the company's principal operational and financial objectives, strategies, and plans of the company;

(2) with the competence and performance of members of its board of directors and the company's senior management, and with the overall quality and performance of its employees;

(3) that the quality and size of the company's fixed and other assets enable the company to be competitive in markets and are in accord with the company's objectives and plans,

74

and the company's properties and assets are safeguarded by adequate controls and sufficient insurance coverage;

(4) that the company is in compliance with the company's policies and applicable laws and regulations;

(5) that the company has adequate systems of operating, administrative and financial controls to assure that the company is operating in accordance with its plans and policies and that the company's operational, administrative and financial reports are accurate and complete; and

(6) that the financial and operational disclosure statements to shareholders and governmental regulatory bodies are correct and complete in all material respects and are prepared in a timely manner as required by law and good company practice.

Supervisory directors should keep fully informed about the company and act in accord with these guidelines. The supervisory director should carefully adhere to the company's code of conduct including it policies on insider trading, confidential information, and self-dealing transactions.

Part V. RESPONSIBILITIES OF MANAGING DIRECTORS

5.1 Principal Responsibilities The principal responsibility of the company's managing board of directors ("managing directors") is to manage the conduct of the company's business and affairs in the company's best interests including those of its shareholders. The managing directors should determine and designate in writing the specific managing directors who are authorized to make binding obligations for a company, and the manner in which such obligations shall be made binding. This information is required to be registered in the Companies Register.

While the board of directors' authority may be restricted by the company's articles of association, the restriction will not have any effect on third persons. In such instances, it is important to have adequate controls such as requiring the signature of two managing directors. Further, the companies' controls should adequately monitor the conduct and compliance of managing directors in accord with guidelines and instructions that have been either approved at general meetings of shareholders or approved by supervisory directors.

The responsibilities of a managing director include:

(1) ensuring that company's business operations including its research and development activities are conducted in accord with the company's approved policies, its plans, and its capital expenditure and operating budgets;

(2) selecting and evaluating the performance of the company's senior management, when appropriate removing them, maintaining senior management promotion and succession plans, and evaluating the overall competence of the company's employees;

(3) ensuring (i) that the company's properties and other fixed assets are acquired, maintained and disposed in accord with the company's policies, plans, and budgets, and (ii) that the company's properties and other fixed assets are protected by safeguarding procedures and insurance;

(4) ensuring that the company complies with all of its policies, including applicable laws and regulations, and that the company does not engage in illegal business practices, including price fixing;

75

(5) ensuring that the company operates under systems of operating, administrative and financial controls which are directed at providing accurate operating and financial reporting information;

(6) ensuring that the company's accounting records are properly maintained, that the annual financial statements with a proposed distribution of profits are submitted to the general meeting, and that they are complete and accurate in all material respects;

(7) ensuring that the company's financial and operational disclosures to supervisory directors, to the shareholders and to others comply with law and regulations and are accurate and complete in all material respects; and

(8) developing and maintaining company policies that strive to maximize the quality, contributions, and personal development of employees and of the well being of the company.

(9) ensuring that the supervisory directors and the shareholders are provided with financial, operating and other information in a timely manner.

5.2. Keeping Informed A managing director, in performing his or her responsibilities, should have a thorough understanding of the company's business and affairs in all material respects, and he or she should be assured that the company's internal administrative, operational and financial controls provide an effective reporting system enabling the company to make timely reports and the managing directors to be fully informed to make prudent business decisions affecting the conduct of the company's business and affairs. Further, a managing director should be informed with respect to those matters discussed in Paragraph 3.3 above.

5.3 Delegations of Authority The managing directors should develop and specifically grant to each member of senior management written delegations of authority outlining the specific responsibilities, duties and authorities of the person. These delegations of authority should permit the members of senior management to sub-delegate written limited authorities covering the specific responsibilities of those working for the members of senior management.

5.4 Operating Procedures and Practices The managing directors should develop and maintain written company operating procedures and practices that are directed at effectively and efficiently providing for-

- the high quality and safety of the company's products and services;
- employment practices in accordance with applicable laws (including those related to health and safety) and contracts; and
- for the strength of the company's competitive position and its financial condition.

5.5 Codes of Conduct (Company's Corporate Policies) Further the managing directors should develop and maintain a code of conduct, approved by the supervisory directors, applicable to employees (including senior management), managing directors and supervisory directors, and covering company policy matters such as -

(i) principles of business ethics relating to the conduct of the company's business and affairs;

(ii) compliance with environmental and other applicable laws and regulations, including commercial bribery and other illegal payments;

(iii) company's purchase, safeguarding and disposition of its property and assets, and the improper use of company property;

(iv) the duty of loyalty of employees and the prohibition of conflicts of interests;

76

(v) prohibited gifts to and from employees of other companies doing business with the company;

(vi) prohibited times of purchasing and selling of company shares of stock and of securities of other companies doing business with the company;

(vii) other prohibited misuse of confidential company information; and

(viii) timely public disclosure of financial and material company information to shareholders and other investors.

The supervisory and managing directors should be assured that the operating practices and procedures and code of conduct have been circulated to employees, and that the company maintains procedures for monitoring and enforcing compliance.

Part VI. RESPONSIBILITIES OF SENIOR MANAGEMENT

6.1 Source of Responsibility The general director (general manager) and other members of senior management derive their authority, duties and responsibilities mainly from the managing directors, and from the articles of association to the extent that the articles cover the conduct of senior management. If members of senior management are both managing directors and members of senior management, then in their roles as managing directors the rules applicable to managing directors also apply to them.

6.2 Written Delegations As previously mentioned, the managing directors should develop and specifically grant written delegations of authority to either members of senior management, or the general director (with authority to delegate written authorities to other senior management), outlining with some preciseness the specific responsibilities, duties and authorities of the person. This permits each member of management to know his or her responsibilities and duties, for which he or she shall be held responsible. Further it permits others to be aware of the person's authority. These delegations of authority should also state the specific financial authority that the person may commit the company to expend for capital expenditures (if any) and operating costs.

6.3 Employment Relations Employment relations within a company should be governed by applicable labor and other laws, contracts with the employees, the company's employment practices and procedures, the company's code of conduct, and other work and employment rules.

Part VII. DECISION - MAKING

7.1 Decision-Making Each supervisory director, managing director, and member of senior management should exercise independent business judgment in fulfilling his or her responsibilities on behalf of the company and its best interests including all the shareholders, without any special recognition or benefit to any one or group of shareholders even if he or she is elected at the request of the particular shareholder, an investment company or fund, a union, a creditor, the employees, or other constituency.

In fulfilling their responsibilities, supervisory and managing directors and members of senior management in making business decisions should:

(1) be informed (obtain full information about the action or matter requiring a decision);

(2) act in good faith (act solely in the interests of the company and not act in self-interests such as a conflicting interest or self-dealing transaction, or act on information known not to be truthful or incorrect);

(3) act with care (give the act or matter your thorough attention and not act on incomplete, unreliable or inaccurate information);

(4) act with prudence (apply your common sense, knowledge, experience, and best business judgment to the action or matter); and

(5) act in the best interests of the company, including all of the shareholders (not when the action only benefits one or a few shareholders or someone else).

7.2 Disagreement When supervisory or managing directors propose to take action, or refrain from taking action, which a director disagrees with, then the director should consider requesting his views be recorded in the record of the meeting and voting in accord with his beliefs. Where a director has not concluded that a proposed action is in the best interests of the company, but is not opposed to the action, then the director should refrain from voting on the action and have the record note his or her abstention. A member of senior management should tactfully but clearly let a member senior to that person know if the member firmly disagrees with a proposed action to be taken by the senior member. If the matter involves a decision clearly and materially contrary to the best interests of the company, or violates the company's code of conduct, then the member should advise the senior manager.

Part VIII. COMMITTEES OF THE BOARDS

8.1 Concept Some of the work performed by supervisory boards and boards of directors may more effectively and efficiently be delegated to smaller committees of the respective boards. Small boards (for example seven or less members) may function almost entirely at the full board level; whereas larger boards may find it more convenient and effective to delegate part of its duties to committees. The composition of members and size of a committee should be appropriate to its purpose. The duties of any committee should be clearly defined either in the articles of association or guidelines and instructions approved at general meetings of shareholders. The board establishing a committee should have the committee periodically report to it on its activities, and specifically address those matters that require its attention by the articles of association or Applicable Companies Laws. An advantage of the committee system is to reduce some of the responsibilities of board members by specifically assigning such responsibilities to members of committees.

8.2 Possible Supervisory Board Committees Practice may vary in allocating responsibilities mentioned below among various committees:

(a) Accounting and Audit Committee. The supervisory board could establish an accounting and audit committee to recommend outside auditors, meet periodically with the outside auditors to discuss their audit and their annual audit report, review the company's financial statements, and consider other company financial matters. The committee would periodically report its activities to the supervisory board.

(b) Nominating Committee. The supervisory board could also establish a nominating committee to establish criteria for the selection of members to the supervisory board and to the board of directors, interview and review the qualifications of candidates, and then recommend its approved candidates. Also, the committee could undertake overseeing the company's management development of senior managers and their performance evaluations in their current positions and qualifications for more senior positions. The committee would periodically report its activities to the supervisory board.

78

(c) Executive Committee. The supervisory board could also establish an executive committee to review the performance of the company's board of directors in managing the conduct of the company's business, compliance with the company's administrative, operational and financial internal control activities, and compliance with the company's code of conduct and policies.

8.3 Possible Board of Director Committees Practice may vary in allocating responsibilities mentioned below among various committees, depending on the approval by the supervisory board and the shareholders:

(a) Financial and Audit Committee The board of directors could establish an accounting and audit committee to perform its financial, accounting and auditing responsibilities, including meeting periodically with internal and outside auditors to discuss their audit and their annual audit report. The committee would periodically report its activities to the board of directors.

(b) Employee Performance and Benefit Committee The board of directors could establish an employee performance and benefit committee to perform its responsibilities with respect the company's employees, including senior management, concerning the company's compensation and other responsibilities to employees and the employees performance and other responsibilities to the company. This includes review of the effectiveness of the company's employee performance evaluation program, the adequacy of the company's employee compensation program and other benefit programs as related to personal and company performance, and the company's practices related to employee safety and health. The committee would periodically report its activities to the board of directors.

(c) Operations Committee The managing board of directors could establish an operations committee to perform certain of its responsibilities related to its management of the conduct of the Company's operations and oversight of the executive operational management. The committee would periodically report its activities to the managing board of directors.

Part IX. CERTAIN PROHIBITED CONDUCT

9.1 Conflicting Interests Managing directors, supervisory directors and senior management may not use their positions with the company for personal financial or other benefit (outside the benefits directly provided by the company), whether or not to the detriment of the company (a "possible conflicting interest"). In any proposed business transaction, where a director may have a possible conflicting interest, then the director should immediately disclose to the other members the conflicting interest and all material facts and refrain from further participation in the transaction on behalf of the company. The disinterested directors should carefully review all relevant facts and apply additional care in ascertaining the entire fairness of the transaction to the company and whether it is clearly in the best interests of the company under the circumstances to proceed with the transaction. Further, where such transactions may have already taken place the company should ascertain whether it is entitled to any claim or indemnity from the interested director.

9.2 Company Business Opportunities Managing directors, supervisory directors and senior management may not pursue for personal gain, a business opportunity that possibly may be of interest to the company. If a director or member of senior management becomes aware of such business opportunities, then he or she has the responsibility to make the company aware of them.

79

9.3 Self-Dealing Managing directors, supervisory directors and senior management are precluded from representing another or third party in a business transaction where the company may be involved or have any interest. A director is precluded from serving two principals in the same transaction, based on the possibility that both will not be assured of just and fair representation. Further Applicable Companies Laws and other applicable laws may prohibit other activities of managing directors, supervisory directors and/or senior management, such as being a member of another company or other entity engaged in similar business activities, except where the company is an owner or shareholder in the other entity.

9.4 Confidential Information Managing directors, supervisory directors, senior management, and other employees should keep secret all confidential information including trade secrets and other forms of secret property of the company until such time as the company has determined disclosure will not be of any detriment to the company. Unless authorized, they should avoid making any statements or taking any action which might lead to disclosure of confidential information. This precludes directly or indirectly using the confidential information for personal or other benefit, such as trading in the company's securities or securities of other companies based on the information, which if publicly disclosed, might influence the market price of the security. He or she should not respond to any question, which might reasonably be expected to involve confidential information, other than by a person authorized to discuss such information.

9.5 Insider Trading Managing directors, supervisory directors, senior management and other employees of the company acquiring confidential information about the economic and financial position or condition of the company or other confidential facts capable of affecting the financial market of the company or other companies is not allowed to trade in securities of the company or securities of such other companies or to make use of such information or facts for his or her personal benefit or the benefit of other persons, until such information or facts become publicly known.

Part X. POSSIBLE ARTICLES OF ASSOCIATION PROVISIONS

10.1 Protection of Shareholders. Companies may wish to give consideration to adopting in their respective articles of association certain protective provisions designed to enhance the companies' transparency, assure that all shareholders' are treated equally and fairly, and assure that decisions are made in the best interests of the companies including all of their shareholders.

10.2 Take-Over/Control. To permit shareholders to have a vote in determining under the particular circumstances the fairness of permitting a person to obtain control of a company and to assure that all shareholders will be offered the opportunity to approve the fairness of such a fundamental change and permit all shareholder to be able to participate in any premium being paid for acquiring control or taking over the company a provision along the following lines could be inserted into the articles of association:

> "To protect fairly and equally the interests of all shareholders by assuring that no single shareholder or affiliated group (affiliated by common share ownership, contractual agreement or otherwise) of shareholders acquires more than **[insert number]** percent of the shares of the company or control of the company without the approval of at least eighty percent of the other shareholders of the company at a general meeting (shareholders other than the shareholder or shareholders proposing to acquire more than **[insert number]** percent of the shares, and shareholder or shareholders proposing

80

to sell shares to such acquiring shareholders will be precluded from voting for the approval)."

10.3 Fair Dealing. To assure that transactions between the Company and any shareholder, or company of the shareholder or any affiliate of the shareholder, are on terms and conditions which are fair to the company in all respects and are at least as fair as the terms and conditions which would prevail in a transaction involving unrelated parties, consideration could be given to a provision in the articles of association along the following lines:

"Any shareholder of the company or company of the shareholder or any affiliate of the shareholder: (1) engage in transactions with the company will have the burden to notify the company of the relationship and assure that any and all transactions with the company are on commercial terms and conditions (including compensation and payment) which are at least as favorable to the company would prevail in a commercial transaction involving parties which do not have any ownership interest in one another, (2) may not use any non-public company information to secure any pecuniary benefit; or (3) pursue acquiring a business activity (corporate opportunity) that the company is pursuing or has been made available to the company to pursue."

81

Appendix 5

This form of Employment Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the employment, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF EMPLOYMENT AGREEMENT

83

FORM OF EMPLOYMENT AGREEMENT

TABLE OF CONTENTS

Section 1. Employment
Section 2. Best Efforts of Employee
Section 3. Compensation of Employee
Section 4. Profit-sharing Payments
Section 5. Reimbursement for Expenses
Section 6. Intellectual Property
Section 7. Confidentiality
Section 8. Unauthorized Disclosure of Information
Section 9. Confidentiality After Termination
Section 10. Non-compete Agreement
Section 11. Employer Contracts
Section 12. Employee Benefits
Section 13. Termination for Disability
Section 14. Compliance with Employer's Rules
Section 15. Return of Property
Section 16. Term/Termination
Section 17. General

84

FORM OF EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made effective as of [**insert date**] day of _____, 199__, between [**insert name of employing company**], a [**insert name of jurisdiction under which formed and form of company**] (the "Employer"), and [**insert name of employee**] (the "Employee"), [**insert address of employee and identification number**]. The Parties to this Agreement mean the Employer and the Employee, and a Party means either the Employer or Employee, as the case may be.

RECITAL

Employee desires to be employed by the Employer and Employer is willing to employ Employee, on the terms and conditions set forth in this Agreement.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

Section 1. Employment. During employment, the Employee shall serve the Employer in the capacities [**if the understanding is that the Employee is to serve in a precise capacity, then that capacity should be stated**] and will perform duties, in accordance with written assignments provided the Employee by the Employer from time to time.

Section 2. Conduct of Employee. Employee agrees to perform faithfully, carefully and prudently, and to the best of Employee's competence, ability and in the Employer's best interests, all of the duties that may be required by the express and implicit terms of the assignments provided the Employee, to the reasonable satisfaction of Employer.

Section 3. Compensation of Employee. As beginning compensation for the services provided by Employee under this Agreement, Employer will pay Employee [**insert amount**] per [**insert period**]. This amount may be increased without the written consent of the Employee. This amount shall be paid monthly on the first day of the following month. Upon termination of this Agreement, payments under this Section will cease; provided, however, that the Employee will be entitled to payments for periods or partial periods that occurred prior to the date of termination and for which the Employee has not yet been paid. Accrued vacation will be paid in accordance with state law and the Employer's customary procedures.

Section 4. Profit-Sharing Payments. In addition to the payments under the preceding paragraph, Employer may make annual profit-sharing payments to the Employee based on the Employee's performance during the Employer's fiscal year and the Employer's annual net income. The Employee's percentage of the total amount available to distribution to employees will depend upon the Employee's performance. The total amount available to distribution to employees will be based on a formula adopted by the Employer giving recognition to the contribution by the employees to the Employer's net income exceeding a specified return on shareholders' invested capital. [**This should be deleted if not appropriate or modified to appropriately reflect the Employer's intent**]. This will be paid within one hundred twenty days in the following year.

Section 5. Reimbursement For Expenses. The Employer will reimburse Employee for "out-of-pocket" expenses incurred on behalf of the Employer in accordance with applicable Employer policies in effect from time to time.

Section 6. Intellectual Property. The following provisions will apply with respect to copyrightable works, ideas, discoveries, inventions, patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary

85

formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Company's business and affairs. (collectively, "Intellectual Property"). All Intellectual Information will be the sole property of the Employer and its assigns, and the Employee assigns to the Employer all rights the Employee may have now, or will acquire during the course of employment in Intellectual Property. During, or after termination of employment, and upon request, the Employee will sign all documents necessary to perfect the rights of the Employer in such Intellectual Property, including the filing and/or prosecution of any applications.

Section 7. Confidentiality. At all times, both during employment and after its termination, the Employee will keep in confidence and trust all proprietary information, and Employee will not use, exploit or disclose any proprietary and other information ("Information") or anything directly relating to it, except (i) with the prior written consent of the Company, (ii) as may be required by law or order of a court of competent jurisdiction, or (iii) is available to the general public at the time of disclosure, use or exploitation. In case the Employee is required to disclose Information as provided in clause (ii) above, the Employer will be afforded the opportunity to obtain a protective order preserving the confidentiality thereof.

During the course of employment to the extent not required in the course of the Employee's duties and upon termination of employment, the Employee will promptly return (i) to the Employer all copies of any Information (including all records, notes, data, memoranda and models), and all equipment of any nature, that are in Employee's possession or under Employee's control and that are Employer's property or relate to Employer's business and affairs, and any other written material containing or reflecting any Information then in Employees possession or under Employee's control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such matter, (iii) not use or exploit for any purpose whatsoever other than for the benefit of the Employer, the Information or information derived from Information, and (iv) all Information or information derived from Information not returned to the Employer will be destroyed and expunged from any computer, word processor or other device containing or derived from Information. The destruction and expunction will be certified in writing to the Employer by the Employee.

Section 8. Unauthorized Disclosure of Information. The Employee represents that performance of all the terms of this Agreement and as an employee of the Company will not breach any agreement or duty to keep in confidence proprietary information acquired by the Employee in confidence or in trust prior to employment by the Company, and is not at restricted from entering into this Agreement or being employed by the Company. The Employee further agrees if it reasonably appears that Employee has disclosed (or has threatened to disclose) Information in violation of this Agreement and that such a breach or threatened breach of this Agreement could cause irreparable damage to the Company, the Company will be entitled to an injunction and any other equitable relief to restrain Employee from disclosing such Information and that, in the event of such breach, the Company shall have, the right to any and all remedies of law, including any equitable relief.

Section 9. Confidentiality after Termination. The confidentiality provisions of this Agreement shall remain in full force and effect for a **[insert number]** years period after the termination of Employee's employment or so long as .

Section 10. Non-compete Agreement. The Employer and the Employee agree and covenant that for a period of **[insert number]** years following the termination of this Agreement, whether such termination is voluntary or involuntary, Employee will not directly or indirectly engage in any business competitive with Employer. This covenant shall apply to **[insert**

86

description of limitation], directly or indirectly, engaging in any competitive business includes, but is not limited to, (i) engaging in a business as owner, partner, or agent, (ii) becoming an employee of any third party that is engaged in such business, (iii) becoming interested directly or indirectly in any such business, or (iv) soliciting any customer of Employer for the benefit of a third party that is engaged in such business. Employee agrees that this non-compete provision will not adversely affect the Employee's livelihood. The Company and the Employee agree that the services rendered by the Employee hereunder are unique and irreplaceable.

Section 11. Employer's Contracts. Employee shall not have the right to make any contracts or commitments for or on behalf of Employer without first obtaining express written authority from the Employer.

Section 12. Other Benefits. Employee shall be entitled to insurance and other benefits (including vacation, sick leave and holidays) as such benefits are provided in accordance with the Employer's policies in effect from time to time. Employee shall be able to participate in Employer's pension plan in accordance with the plan's terms and the requirements of law.

Section 13. Termination for Disability. Employer shall have the option to terminate this Agreement, if Employee becomes permanently disabled and is no longer able to perform the essential functions of the Employee's position with reasonable accommodation. Employer shall exercise this option by giving 30 days days' written notice to Employee.

Section 14. Compliance With Employer's Polices. Employee agrees to comply with all of the Employer's policies and applicable laws.

Section 15. Return of Property. Upon termination of this Agreement, the Employee shall deliver all property (including keys, equipment, etc.) that is in the Employee's possession or under the Employee's control which is the Employer's property or related to Employer's business.

Section 16. Term/Termination. This Agreement will become effective as of the signing of this Agreement and Employee's employment under this Agreement shall be for an unspecified term and continue in full force and effect until the earliest of the following events:

(a) Upon 30 days written notice by either of the Parties; or

(b) Upon violation of this Agreement, including applicable laws or any of the Employers' policies applicable to employees.

If Employer shall terminate this Agreement under clause (a) above, Employee shall be entitled to compensation for 30 days, unless the Employee is in violation of this Agreement. If Employee is in violation of this Agreement, Employer may terminate employment without notice and with compensation to Employee only to the date of such termination and other benefits that have accrued to the date of such termination. Termination of this Agreement for any cause will not release any of the Parties from any liability which at the time of termination has already accrued to either Party or which thereafter may accrue in respect of any act or omission prior to such termination.

Section 17. General.

(a) Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with **[insert]** laws without reference to conflict of laws provisions. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any

87

dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by one (1) arbitrator nominated pursuant to the Rules. The [**insert appropriate person**] will act as the "appointing authority" under the Rules. The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(b) Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

(c) Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to Employee:

_____

_____

_____

_____

Attention: _____

(b) if to the Company:

_____

_____

_____

Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this paragraph. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

(d) Entire Agreement. This Agreement (including the Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof.

(e) Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

88

(f) Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective legal successors.

(g) No Third-Party Rights. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

(h) Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

(i) Further Assurances. Each Party will, at the request of the other Party, execute, acknowledge, deliver and file, without further consideration, all such documents and take such other action as may be reasonably requested to carry out the provisions of this Agreement.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of [**Specify specific date**](the "Agreement Date").

[NAME OF COMPANY]	**[NAME OF EMPLOYEE]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Appendix 6

This form of Enterprise/Asset Purchase Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF ENTERPRISE/ASSET PURCHASE AGREEMENT

91

FORM OF ENTERPRISE/ASSET PURCHASE AGREEMENT

TABLE OF CONTENTS

RECITAL 4

ARTICLE I. DEFINITIONS 4

ARTICLE II. PURCHASE AND SALE; CLOSING 5

Section 2.1 Purchase and Sale of the Purchased Assets
Section 2.2 Assumption of Assumed Liabilities
Section 2.3 Purchase Price
Section 2.4 Closing
Section 2.5 Closing Obligations

ARTICLE III. REPRESENTATIONS OF SELLER 7

Section 3.1 Organization; Good Standing, Etc.
Section 3.2 Authorization; Due Execution
Section 3.3 No Violation
Section 3.4 Litigation
Section 3.5 Approvals/Consents
Section 3.6 Financial Statements
Section 3.7 Title to Properties; Encumbrances
Section 3.8 Legal Compliance
Section 3.9 Limitation on Representations

ARTICLE IV. REPRESENTATIONS OF BUYER 8

Section 4.1 Organization, Good Standing, Etc.
Section 4.2 Authorization; Due Execution
Section 4.3 No Violation
Section 4.4 Approvals, Consents, Etc.
Section 4.5 Litigation
Section 4.6 Financing

ARTICLE V. COVENANTS PRECEDENT TO CLOSING 8

Section 5.1 Access to Information
Section 5.2 Negative Agreements
Section 5.3 Governmental Consents
Section 5.4 Other Conveyance Agreements
Section 5.5 Best Efforts

ARTICLE VI. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER TO CLOSE 9

Section 6.1 Accuracy of Representations
Section 6.2 Performance of Agreements
Section 6.3 Legal Proceedings
Section 6.4 Governmental Consents
Section 6.5 No Change in Business

ARTICLE VII. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER TO CLOSE 10

Section 7.1 Accuracy of Representations
Section 7.2 Performance of Agreements
Section 7.3 Legal Proceedings
Section 7.4 Governmental Consents

92

ARTICLE VIII. BUYER'S POST-CLOSING COVENANTS 10

Section 8.1 Business Plan
Section 8.2 Buyer Investment Program
Section 8.3 Reinvestment Policy
Section 8.4 Employment and Related Matters
Section 8.5 Non-Competition
Section 8.6 Technical Assistance and Intellectual Property
Section 8.7 Facilities
Section 8.8 Continued Operation of Business
Section 8.9 Related Transactions
Section 8.10 No Transfer of Shares
Section 8.11 Minimum Production and Sale of Products
Section 8.12 Marketing Rights
Section 8.13 Procurement Policies

ARTICLE IX. TERMINATION 12

Section 9.1 Right of Termination
Section 9.2 Effect of Termination

ARTICLE X. INDEMNIFICATION; REMEDIES 12

Section 10.1 Survival of Representations and Covenants
Section 10.2 Indemnification
Section 10.3 Limitations on Indemnification
Section 10.4 Retention and Inspection of Books and Records
Section 10.5 Compliance
Section 10.6 Exclusive Remedy

ARTICLE XI. GENERAL 13

Section 11.1 Expenses
Section 11.2 Governing Law and Dispute Resolution
Section 11.3 Sovereign Immunity
Section 11.4 Waiver
Section 11.5 Notices
Section 11.6 Entire Agreement
Section 11.7 Amendments and Modifications
Section 11.8 Binding Effect
Section 11.9 Assignment, Successors, and No Third Party Rights
Section 11.10 Separability
Section 11.11 Counterparts
Section 11.12 Languages
Section 11.13 Headings; Construction
Section 11.14 Confidentiality
Section 11.15 Further Assurances
Section 11.16 Public Announcements

FORM OF GUARANTY 17

93

FORM OF ENTERPRISE/ASSET PURCHASE AGREEMENT

This Enterprise/Asset Purchase Agreement ("Agreement") is made as of [**insert date**], 199__, by [**insert name and form of entity and where entity is formed**] company ("Buyer"),and [**insert name and form of entity and where entity is formed**] company ("Seller").

RECITAL

Seller desires to sell, and Buyer desires to purchase, all of the Purchased Assets, and in connection therewith, Buyer shall assume, and Seller shall be relieved of, all liability for all of the Assumed Liabilities relating to the Purchased Assets, for the consideration and on the terms set forth in this Agreement.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1 Definitions. For the purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.1:

"Affiliate" will mean with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons will be deemed to be Affiliates.

"Agreement" will mean this Enterprise/Asset Purchase Agreement as amended pursuant to the terms hereof.

"Agreement Date" will have the meaning set forth in this Agreement.

"Ancillary Documents" shall mean all documents and instruments to be executed in connection with or pursuant to this Agreement.

"Assumed Liabilities" shall mean all liabilities and obligations related to the Business or the Purchased Assets, of every kind and description (direct or indirect, matured or unmatured, known or unknown, absolute, accrued, contingent or otherwise), whether or not required to be reflected on a balance sheet, including without limitation all obligations arising under contracts, laws and regulations.

"Balance Sheet" will have the meaning set forth in Section 3.7.

"Best Efforts" will mean the efforts that a prudent Person would reasonably use to ensure that the contemplated results are achieved as expeditiously as reasonable under the circumstances.

"Business" will mean [**insert definition of the business to be sold**], as currently conducted and as historically conducted by the Enterprise.

"Business Plan" will have the meaning set forth in Section 9.1.

"Buyer" will have the meaning set forth in the first paragraph of this Agreement.

"Buyer's Group" will mean the Buyer, all its Affiliates, and all Representatives of the Affiliates and Buyer.

"Buyer's Investment Program" will have the meaning set forth in Section 9.2.

"Closing" will have the meaning set forth in Section 2.3.

94

"Closing Date" will mean the date and time as of which the Closing actually takes place.

"Confidential Information" will have the meaning set forth in Section 11.14.

"Contract Shares" will have the meaning set forth in the Recital.

"Disclosure Statement" will have the meaning set forth in Schedule [**insert**].

"Enterprise" shall mean [**insert relevant name**].

"Environmental Agreement" will mean any written agreement or agreements with respect to environmental obligations (as defined in the Environmental Agreement).

"Facilities" will mean those current facilities of the Enterprise which are used in the conduct of the Business and which are listed in Schedule[**insert**] attached hereto.

"Guaranty" will mean the guaranty provided by the Buyer in the form attached as an Exhibit to this Agreement.

"Intellectual Property" will mean all patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Business.

"Interim Balance Sheet" will have the meaning set forth in Section 3.7.

"Investor" will have the meaning set forth in the Guaranty

"Investment Program Amount" will have the meaning set forth in Section 8.2.

"Loss" and "Losses" will have the meanings set forth in Section 11.2(a).

"Permitted Encumbrances" will mean those liens, claims and encumbrances identified in Section 3.8.

"Parties" will mean Buyer and Seller, and "Party" will mean Buyer or Seller.

"Person" will mean a natural and/or legal person, such as a company, partnership, government institution or an agency or instrumentality thereof, or other legal entity.

"Purchase Price" will have the meaning set forth in Section 2.2.

"Purchased Assets" shall mean all assets, properties and rights relating exclusively to the Business of every kind and description, wherever situated and located, including, without limitation: cash; accounts receivable; inventory (including, without limitation, raw materials, work-in-process, finished goods, service or spare parts, and supplies); real property (including, without limitation, land and buildings) and other property (including, without limitation, furniture, equipment, machinery, tools, dies, jigs, patterns, molds and vehicles); leasehold interests; contract rights; permits, licenses and approvals; books and records; and claims and rights against third parties. [**Modify accordingly to reflect extent of assets to be purchased in specific transaction**].

"Representative" shall mean any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Rules" will have the meaning set forth in Section 12.2.

"Seller" will have the meaning set forth in the first paragraph of this Agreement.

"Seller's Group" will mean the Buyer, all its Affiliates, and all Representatives of the Affiliates and Seller.

"Shares" will mean the non-redeemable voting securities of the Buyer.

"[**Insert symbol of currency**]" mean the official currency of [**insert applicable country**].

"[**Insert symbol for applicable country**]" mean "[**insert name of applicable country**].

"[**Insert symbol for applicable country**] laws" and "laws of the [**insert symbol for applicable country**]" mean all laws and regulations of [**insert name of applicable**].

95

ARTICLE II. PURCHASE AND SALE; CLOSING

Section 2.1. Purchase and Sale of the Purchased Assets. Subject to the terms and conditions of this Agreement, at the Closing, Seller will sell and convey the Purchased Assets to Buyer, and Buyer will purchase the Purchased Assets from Seller.

Section 2.2 Assumption of Assumed Liabilities. Subject to the terms and conditions of this Agreement, at the Closing, Seller will convey all Assumed Liabilities to Buyer, and Buyer will assume and agree to discharge when due, all Assumed Liabilities from Seller.

Section 2.3. Purchase Price. The purchase price (the "Purchase Price") for the purchase of Purchased Assets and the assumption of Assumed Liabilities will be **[insert purchase price]** (in words **[insert purchase price]**).

Section 2.3. Closing. The purchase and sale (the "Closing") provided in this Agreement will take place at the Seller's offices at **[insert location]**, at **[insert time]** :00 a.m. (local time) on the later of (i) **[insert date]**, 199___ , or (ii) at such other time and place as the Parties may agree. Subject to the provisions of Article IX, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.3 will not result in the termination of this Agreement and will not relieve any Party of any obligation under this Agreement.

Section 2.4. Closing Obligations.

At the Closing:

(a) The Buyer will deliver to the Seller:

(i) the Purchase Price by bank cashier's or certified check or by wire or similar bank transfer of Seller to the account number **[insert account number at bank]** at **[insert bank's name and locaition of bank account]**;

(ii) releases and other instruments of assumption as are required to evidence that the Buyer assumes and becomes irrevocably liable for the Assumed Liabilities without further act of the Seller; and

(iii) a statement executed by Buyer representing and warranting to Seller that each of Buyer's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

(b) The Seller will deliver to the Buyer:

(i) bills of sale, assignments, deeds and other instruments of transfer as are required to assign, transfer and convey the Purchased Assets, free and clear of all liens, encumbrances, claims and equities of every kind, other than any obligations imposed on Purchaser pursuant to this Agreement, and Permitted Encumbrances;

(ii) assignments and other instruments of transfer as are required to assign, transfer and convey the Assumed Liabilities; and

(iii) a statement executed by Seller representing and warranting to Buyer that each of Seller's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to the Disclosure Statement and any supplements to the Disclosure Statement that were delivered by Seller to Buyer prior to the Closing Date.)

ARTICLE III. REPRESENTATIONS OF SELLER

Section 3.1. Organization, Good Standing, Etc. The Seller (a) is a joint stock company duly organized, duly registered, validly existing and in good standing under the **[insert country or jurisdiction]** laws , and (b) has all requisite corporate power and authority to cause the Enterprise to conduct its Business as it is now being conducted, to own or use its Facilities, and to perform all its contractual obligations.

96

Section 3.2. Authorization; Due Execution. The Seller has been duly established and duly registered, and has all requisite power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Seller, and constitutes the binding, legal and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

Section 3.3. No Violation. Neither the execution or delivery by the Seller of this Agreement or the Ancillary Documents, nor the consummation or performance of the transactions contemplated hereby, (a) violates any material agreement, commitment, judgment or order to which the Enterprise or the Seller is a Party or by which the Enterprise's property is bound, (b) contravenes any law or regulation having applicability to the Enterprise or the Seller, or (c) results in or requires the creation or imposition of any encumbrance of any nature upon, or with respect to, any properties or assets now owned or hereafter acquired by the Enterprise (other than as may arise pursuant to this Agreement).

Section 3.4. Litigation. To the knowledge of the Seller, there is no claim, action, proceeding, arbitration, investigation or hearing, pending or threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal, against the Seller or the Enterprise, involving the Purchased Assets or the transactions contemplated by this Agreement.

Section 3.5. Approvals/Consents. Other than those consents and approvals which have already been obtained, no consent or approval of the any governmental or administrative body is required to authorize the Seller to enter into this Agreement or perform its obligations hereunder, other than that of the [**insert any approval entity that has not granted approval**], and of the [**insert any other approval entity that has not granted approval**].

Section 3.6. Financial Statements. Buyer has been provided: (a) [**insert if statements are unaudited**] consolidated balance sheet of the Enterprise as at [**insert date**], 199____, (including notes thereto, the "Balance Sheet"), and balance sheets of the Enterprise in each of the preceding [**insert number**] years, and the related [**insert if unaudited**] consolidated statements of income, changes in shareholders' equity, and cash flow for each of the fiscal years then ended, [**insert if audited, "together with the report thereon of _____, independent certified public accountants"**,] and (b) an unaudited interim consolidated balance sheet of the Enterprise as at [**insert date**] (the "Interim Balance Sheet") and the related unaudited consolidated statements of income, changes in shareholders' equity, and cash flow for the [**insert number**] months then ended, including the notes thereto, and the corresponding unaudited financial statements for the corresponding period in the preceding year. Such financial statements and notes fairly present in all material respects the financial condition and the results of operations, changes in shareholders' equity, and cash flow of the Acquired Companies as at the respective dates of and for the periods referred to in such financial statements, all in accordance with applicable generally accepted accounting principles, subject, in the case of interim financial statements, to normal recurring year-end adjustments and the absence of notes (that, if presented, would not differ materially from those included in the Balance Sheet); the financial statements referred to in this Section 3.7 reflect the consistent application of such accounting principles throughout the periods involved [, **insert if applicable ", except as disclosed in the notes to such financial statements."**]. The consolidated financial statements do not omit the financial statement of any Person required by applicable generally accepted accounting principles to be included in the consolidated financial statements of the Enterprise.

Section 3.7. Title to Properties; Encumbrances. In all material respects, the Enterprise has good and marketable title to the real property that is reflected in the Balance Sheet, Interim Balance Sheet or Disclosure Statement as owned by it, except for (i) rights of public utilities to maintain wires, lines, cables and other facilities and equipment, easements or right-of-way which would not in the aggregate materially interfere with or impair the use or diminish the value of the property affected thereby or the operation of the Business, (ii) mortgages or security interests reflected in the Balance Sheet or Interim Balance Sheet or as set forth on the Disclosure Statement. No default (or event that, with notice or lapse of time or both, would

97

constitute a default) exists with respect to any material mortgages or security interests affecting the Enterprise's properties and assets.

Section 3.8 Legal Compliance. Except as disclosed in the Disclosure Statement, the Seller has not received any notice or communication that it (i) not in compliance with applicable laws and regulations affecting the conduct or operation of its Business or the ownership or use of its assets, or (ii) has breached any of its material contracts.

Section 3.9. Limitation on Representations. The representations set forth in this Article III hereof constitute the only representations made by the Seller in connection with the transactions contemplated hereby. Buyer hereby acknowledges that in entering into this Agreement (i) it and its Representatives have the obligation to make their own independent investigations and analyses, (ii) it and its Representatives will not rely on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) the Seller Group, other than the representations and agreements of the Seller expressly set forth in this Agreement, (iii) it and its Representatives have the opportunity to inspect the financial and operating data and information, books, accounts, contracts and records of the Enterprise and to meet with and ask questions of the management of the Enterprise, (iv) it and its Representatives have the opportunity to inspect the Facilities in their current condition and at their current location, and (v) it has the obligation to reach its own independent investment decision with respect to the Enterprise.

IV. REPRESENTATIONS OF BUYER

Section 4.1. Organization, Good Standing, Etc. Buyer is a [**specify the form of legal entity of the Buyer**] duly organized, validly existing and in good standing under the laws of [**insert jurisdiction**].

Section 4.2. Authorization; Due Execution. Buyer has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Buyer, and constitutes the binding, legal and valid obligation of Buyer enforceable against Buyer in accordance with its terms.

Section 4.3. No Violation. Neither the execution or delivery by Buyer of this Agreement, nor the consummation of the transactions contemplated hereby, will (a) violate any material agreement, commitment, judgment or order to which Buyer is a Party or by which Buyer's property in any material respect would be bound, (b) contravene any law or regulation having applicability to Buyer or the Enterprise or (c) result in or require the creation or imposition of any encumbrance of any nature upon, or with respect to, any properties or assets now owned or hereafter acquired by the Enterprise or the Buyer (other than as may arise pursuant to this Agreement).

Section 4.4. Approvals, Consents, Etc. No consent, authorization or approval of, or waiver or exemption by, or filing or registration with, any governmental agency or any other Person is required to be obtained or made in connection with the execution, delivery or performance by Buyer of this Agreement other than that of the [**insert**], or the [**insert**].

Section 4.5. Litigation. There is no claim, action, proceeding, arbitration, investigation or hearing, pending or, to the knowledge of Buyer, threatened, by or before any court or governmental or administrative agency or authority or private arbitration tribunal, against Buyer involving the transactions contemplated by this Agreement.

Section 4.6. Financing. Buyer has sufficient funds available to it to enable it to perform its obligations under this Agreement, including the payment of the Purchase Price.

V. COVENANTS PRECEDENT TO CLOSING

For the period between the Agreement Date and the earlier of the Closing Date or the termination of this Agreement, the Parties agree as follows:

Section 5.1. Access to Information. Between the Agreement Date and the Closing Date, the Seller will and will use its Best Efforts to cause the Enterprise to allow Buyer and its counsel,

98

accountants, consultants and other representatives reasonable access during normal business hours to access the Enterprise's properties, personnel, financial and operating data and information, books, accounts, contracts and records of the Enterprise, and furnish additional financial, operating, and other data and information as Buyer may reasonably request.

Section 5.2. Negative Agreements. Except as otherwise provided or contemplated herein, or as Buyer may otherwise consent in writing, before the Closing Date the Seller will take all action available to it to cause the Enterprise to conduct its business in the ordinary course of business, and not to:

(a) declare, pay or set aside for payment any dividend, distribution or other amounts or benefits in respect of any of its shares;

(b) purchase any of its shares except for employee shares;

(c) issue any shares or become a party to any subscriptions, warrants, rights, options or rights related to the shares of the Enterprise;

(d) merge or consolidate with, or acquire all or a majority of the shares or assets of, any other entity; or

(e) change the character of its business in any material respect or operate the Enterprise other than in the ordinary course of business.

Section 5.3. Governmental Consents. Within three (3) working days after the signing of this Agreement, the Buyer, the Seller will and will use its Best Efforts to cause the Enterprise to make the necessary submissions and provide the necessary data and information to obtain all required Governmental consents required to conclude this Agreement.

Section 5.4. Other Conveyancing Agreements. Purchaser shall make such other conveyancing agreements as required to carry out this Agreement and set forth in Schedule [**insert**].

Section 5.5. Best Efforts. The Buyer and Seller will use their respective Best Efforts to see that the Closing is concluded.

VI. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to close the transactions contemplated by this Agreement are, except as set forth in a supplement to the Disclosure Statement attached as Schedule ___, subject to the satisfaction on or before the Closing Date of the following conditions:

Section 6.1. Accuracy of Representations. The representations made by the Seller in this Agreement will be accurate and true in all material respects, both as of the Agreement Date and as of the Closing Date, with the same effect as if made on and as of the Closing Date, except as affected by the transactions contemplated hereby.

Section 6.2. Performance of Agreements. The Seller will have performed in all material respects all agreements to be performed by it on or before the Closing Date pursuant to this Agreement.

Section 6.3. Legal Proceedings.

(a) No claim, action, proceeding, governmental investigation or hearing will be pending against or affecting Buyer, the Seller or the Enterprise, that restrains or prevents or seeks to restrain or prevent the transactions contemplated hereby.

(b) No law, rule, regulation or order will have been enacted or promulgated and no preliminary or permanent injunction or other order will have been issued by any court or regulatory body, that restrains, enjoins or otherwise prohibits the transactions contemplated hereby.

Section 6.4. Governmental Consents. Provided that the Buyer will have used its Best Efforts to obtain all necessary Governmental consents, all necessary Governmental consents required to conclude this Agreement will have been obtained.

99

Section 6.5. No Change in Business. Between the Agreement Date and the Closing Date no material adverse change will have occurred in the nature of the Business and the Business will have been conducted in its ordinary course.

VII. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE SELLER TO CLOSE

The obligations of the Seller to close the transactions contemplated by this Agreement are subject to the satisfaction on or before the Closing Date of the following conditions:

Section 7.1. Accuracy of Representations. The representations made by Buyer in this Agreement will be accurate and true in all material respects, both as of the Agreement Date and as of the Closing Date, with the same effect as if made on and as of the Closing Date, except as affected by the transactions contemplated hereby.

Section 7.2. Performance of Agreements. Buyer will have performed in all material respects all agreements to be performed by it on or before the Closing Date pursuant to this Agreement.

Section 7.3. Legal Proceedings.

(a) No claim, action, proceeding, governmental investigation or hearing will be pending against or affecting Buyer, the Seller or the Enterprise, that restrains or prevents or seeks to restrain or prevent the transactions contemplated hereby.

(b) No law, rule, regulation or order will have been enacted or promulgated and no preliminary or permanent injunction or other order issued by any court or regulatory body, that restrains, enjoins or otherwise prohibits the transactions contemplated hereby or asserts a penalty in respect thereof.

Section 7.4. Governmental Consents. Provided that the Seller will have used its Best Efforts to obtain the necessary Governmental consents, all necessary Governmental consents required to conclude this Agreement will have been obtained.

VIII. BUYER'S POST-CLOSING COVENANT

Section 8.1. Business Plan. The Buyer will undertake and implement the Business Plan, a copy of which is attached as Schedule [**insert**] to this Agreement (the "Business Plan").

Section 8.2. Buyer's Investment Program. The Buyer confirms and agrees in support of the Business Plan, that it will make aggregate capital investments in the Business in accordance with Schedule [**insert**] of at least the equivalent of [**insert foreign currency amount**] (the "Investment Program Amount"). Such investments will be used for purposes of modernizing, refurbishing and strengthening the Business, including for the purposes set forth in Business Plan. Buyer agrees to satisfy its investment obligations set forth in Schedule [**insert**] in accordance with the time table set forth in Schedule [**insert**] (the "Buyer's Investment Program"). If capital investments are provided in Schedule [**insert**] to be in any form other than cash, their value will be determined in accordance with applicable laws.

Section 8.3. Reinvestment Policy. Since for a period of five (5) years after the Closing Date, the Enterprise's net profits will be used to modernize, refurbish and improve the Purchased Assets and to otherwise strengthen the Business as provided in the Business Plan.

Section 8.4. Employment and Related Matters.

(a) Continued Employment. For a period of five (5) years after the Closing Date, the Buyer will not to terminate employment arrangements (or take any action (such as a reduction of hours) which has a similar effect) for employees of the Business other than for cause or pursuant to employee initiated terminations or as provided in the Business Plan.

(b) Management and Employee Training. To the extent provided in the Business Plan, the Buyer will provide without charge (except for direct, reasonable out-of-pocket costs such as travel and lodging expenses) training programs to the management and employees of the Enterprise with the emphasis on the following areas: (i) general, financial and personnel management: (ii) strategic direction and decision-making systems; (iii) technology,

100

manufacturing, production and research and development; (iv) marketing and selling; (v) procurement, planning, inventory and accounting systems, (vi) quality control, and (vii) language skills.

(c) Work Force. The Buyer will engage primarily employees (both management and non-management) who are **[insert country or symbol]** citizens.

(d) Social Benefits. Except to the extent otherwise provided in Schedule **[insert]**, the Buyer will ensure that the value of all indirect compensation and social benefits to employees (which indirect compensation and social benefits are described on Schedule **[insert]**) will be maintained at a level at least equivalent to that at the Closing Date.

(e) Other. Where at all possible, the Buyer will introduce and implement personnel, remuneration, training, organization and social security policies which modernize the Business and represent progress over existing policies.

Section 8.5. Non-Competition. So long as Buyer or its Affiliates own the Business, the Buyer will not, and will cause each of its Affiliates not to, other than through the Business, directly or indirectly, engage in the conduct of any business which is competitive with the Business within **[insert area or country]**, and which is competitive with Business outside **[insert area or country]**, provided, that the Buyer and its Affiliates will not engage in competition to the extent that its products are directly competitive with or substitutable for the Business's products in those regions where the Business currently markets its products.

Section 8.6. Technical Assistance and Intellectual Property. In addition to, and not in limitation of, Buyer's obligations under Section 8.4(b), the Buyer will, and will cause its Affiliates to, make available to the Business without charge (except for direct, reasonable out-of-pocket costs such as travel and lodging expenses) technical assistance, technology, know-how, skills and other expertise necessary for the conduct of the Business as provided in this Agreement. The Buyer will, and will cause its Affiliates to, license or sub license (all without charge) to the Business Intellectual Property (owned by Buyer or its Affiliates or with respect to which Buyer or its Affiliates have rights to license or sub license such Intellectual Property) necessary for the conduct of the Business as provided in this Agreement. The Buyer or its Affiliates, as the case may be, will in the license or sub license to the Business undertake to maintain and improve the licensed Intellectual Property.

Section 8.7. Facilities. Except as otherwise provided in the Business Plan, the Buyer will properly maintain of the Facilities and continue to use and operate the Facilities.

Section 8.8. Continued Operation of Business. For a period of ten (10) years after the Closing Date, the Buyer will not (a) liquidate or dissolve the Business, (b) sell all or substantially all of the assets of the Business, or (c) restructure or change the operations of the Business in any way which would result in a substantial reduction of the operations of the Business..

Section 8.9. Related Transactions. Except as otherwise provided herein, the Buyer will cause all transactions between the Business and the Buyer (or any of their respective Affiliates) to be on terms and conditions (including compensation and payment) which are not more favorable to the Buyer (or any such Affiliate) than the terms and conditions which would prevail in a transaction involving parties which do not have any ownership interest in one another.

Section 8.10. Minimum Production and Sale of Products. For a period of **[insert number]** years after the Closing Date, the Buyer will cause the Business to produce and sale not less than [state minimum quantities of specified products, including specified minimum amounts in foreign markets specified by year during the period] on competitive terms and conditions which are at least as favorable as those prevailing in other transactions involving parties which do not have any ownership interest in one another.

Section 8.11. Marketing Rights. The Buyer will, and will cause its Affiliates to, make available to the Business without charge from the Closing Date the exclusive selling and marketing rights to all of the products of the Buyer and its Affiliates in the _____, and these exclusive selling and marketing rights will continue in full force and effect during the time the Buyer or its Affiliates own Business. The Buyer will, and will cause its Affiliates to,

101

make available to the Business all licenses and other rights necessary to carry out these selling and marketing rights.

Section 8.12. Procurement Polices. The Buyer will cause the Business procurement policy provide equal treatment based on cost and quality and other relevant factors provided in the policy to domestic and foreign suppliers of goods and services. The Buyer will also make available to the Business the Buyer's access to suppliers' discounts and similar commercial benefits.

IX. TERMINATION

Section 9.1. Right of Termination. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) by either Buyer or Seller if a material breach of an obligation of Agreement has been committed by the other Party and such breach has not been waived;

(b) upon the mutual consent of Buyer and the Seller; or

(c) by either Buyer or Seller if the Closing has not occurred (other than through the failure of the Party seeking to terminate this Agreement of comply fully with its obligations under this Agreement) on or before [**insert date**], or such later date as the Parties may agree upon.

Section 9.2. Effect of Termination. Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1 hereof, all further obligations of Buyer and the Seller hereunder will terminate, except that the obligations in Sections 11.1 and 11.14 will survive; provided, however, nothing in this Section will (i) relieve either Party hereto of any liability for any willful breach of this Agreement that occurred prior to the termination of this Agreement or (ii) relieve Buyer of liability for any breach of Sections 11.1 and 11.14 hereof regardless of when such breach occurs.

X. INDEMNIFICATION

Section 10.1. Survival of Representations and Covenants. All representations, warranties, covenants and obligations in this Agreement, and all documents delivered pursuant to the Agreement will survive the Closing Date for a period whichever is later of (i) one (1) year after the Closing Date except as to any claim which a Party notifies the other Party of the claim which claim is based on reasonable grounds specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer, or (ii) if the representations, warranties, covenants and obligations by their stated terms in the Agreement are to be completed after the Closing Date, then one (1) year after notification to the other Party of such completion except as to any claim which a Party notifies the other Party of the claim which claim is based on reasonable grounds specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

Section 10.2. Indemnification.

(a) After the Closing Date, the Seller will, subject to Section 10.3, indemnify Buyer from and against any and all claims, losses, liabilities, obligations, damages, costs and expenses (collectively, "Losses"; individually, a "Loss"), suffered by the Buyer resulting from (i) subject to the time limitation contained in Section 10.1. hereof, any breach of a representation made by the Seller in Article II hereof, and (ii) the failure of the Seller to perform any of the agreements to be performed by the Seller pursuant to this Agreement. In case the Buyer receives notice of any claim which may be subject to indemnification, it will promptly notify the Seller, and the Seller will thereupon have the right to assume defense against such claim and to contest it or agree to any settlement or compromise of it.

(b) After the Closing Date, Buyer will, subject to Section 10.3., indemnify the Seller from and against any and all Losses, resulting from (i) subject to the time limitation contained in Section 13.1. hereof, any breach of a representation made by Buyer in Article III hereof,

107

and (ii) the failure of Buyer to perform any of the other representations, warranties, covenants and obligations to be performed by Buyer pursuant to this Agreement.

Section 10.3. Limitations on Indemnification.

(a) The amount of any Loss indemnifiable pursuant to this Article X will be reduced to reflect (i) the value of any benefit (including, without limitation, any tax benefit) realized, directly or indirectly, by the Buyer as a result of such Loss and (ii) the amount of any insurance proceeds received directly or indirectly by the Buyer in respect of such Loss.

(b) The amount of any Loss indemnifiable by any indemnifying Party pursuant to this Article X will exclude lost profits and consequential damages.

Section 10.4. Retention and Inspection of Books and Records. Buyer will cause the Enterprise (a) to preserve its books and records (whether existing as of or created following the Closing Date) for a period of **[insert number of years]** after the Closing Date and (b) to make its books and records available for inspection by the Seller or its duly authorized representatives, for reasonable purposes in connection with the transactions contemplated hereby and the Parties obligations hereunder, during normal business hours at the Enterprise's principal facility. As used in this Section, the right of inspection includes the right to make extracts or copies.

Section 10.5. Compliance

(a) The Buyer will, for so long as any obligations under Article VIII hereof remain in effect, deliver to the Seller (or Government Designee, as the case may be) prior to April 1 of each following year a duly authorized and executed certificate stating whether or not Buyer has complied in all respects with each of the obligations under Article VIII hereof with respect to the immediately preceding calendar year and stating in reasonable detail the actions taken to comply with Article VIII hereof. In the event that Buyer will have failed to comply with any of the obligations under Article VIII, such certificate will completely describe each such failure and the reasons therefor.

(b) In the event that the Buyer will have failed to comply with any of the obligations under Article VIII, except for Section 8.2, the Buyer and the Seller will then discuss in good faith what actions can be taken by the Buyer to achieve compliance. If the Buyer fails to achieve compliance with the commitments set forth in Article VIII (except for Section 9.2), or as may otherwise agreed as provided in the preceding sentence, then the Buyer will pay to the Seller, in cash, a contractual penalty of 100% of the economic value equivalent, assigned by the Seller, to the failure to achieve compliance.

(c) If the Buyer fails to achieve compliance with Section 8.2, the Buyer Investor will immediately pay to the Seller, in cash a contractual penalty in an amount equal to 100% of such delinquent obligations.

Section 10.4. Exclusive Remedy. After the Closing Date, the indemnification provided in this Article X will be the exclusive remedy for breach of this Agreement, except that either Party will have the right (in addition to its rights under this Article X) to seek specific performance of the non-monetary obligations of the other Party, and the Seller will have the right to enforce the penalty provisions included in Article X. It is expressly understood and agreed that, except by virtue of the indemnification provisions set forth in this Article X the Buyer is not entitled to any adjustment, reduction, set-off, damages or the like in connection with the Purchase Price or otherwise in connection with the transactions contemplated by this Agreement.

XI. GENERAL

Section 11.1. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each of the Parties hereto will pay its own costs and expenses and the fees and expenses of its counsel and accountants and other representatives incurred in connection with the transactions contemplated by this Agreement.

103

Section 11.2. Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with [**insert applicable jurisdiction or country**] laws without reference to conflict of laws provisions. [**Insert following sentence if applicable**] Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**insert appropriate country**] and [**insert appropriate country**], as amended. Buyer and the Seller will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** Buyer and the Seller each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11.3. Sovereign Immunity. [**Insert if applicable**] The Parties hereby agree and acknowledge that they are entering into this Agreement as a "commercial act" and not as acts in capacities as a "sovereign" and hereby waive any and all rights or claims to the defense of sovereign immunity with respect to any claims brought under this Agreement.

Section 11.4. Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

Section 11.5. Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to the Seller:

_____

_____

_____

_____

Attention: _____

(b) if to Buyer:

_____

_____

_____

Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this Section. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

104

Section 11.6. Entire Agreement. This Agreement (including the Disclosure Statement and any Schedules and Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof; **[insert the following to extent applicable under law]** it being expressly understood and agreed that only to the extent required by Section **[insert number]** of the **[insert name of applicable law]** (the "Code") will the provisions of **[insert specific provisions to extent applicable]**, of the Code apply to this Agreement or the transactions contemplated hereby.

Section 11.7. Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

Section 11.8. Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 11.9. Assignment, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. No permitted or purported assignment of all or any portion of this Agreement will effect a release of the assignor of its obligations under this Agreement without an express written release from such obligations by the other Party. Nothing expressed or referred to in this Agreement will be construed to give any Person (except the Enterprise and other shareholders with respect to Article IX) other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. Except as to Article IX, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and assigns.

Section 11.10. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

Section 11.11. Counterparts. This Agreement will be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts together will constitute one and the same legal document.

Section 11.12. Languages. This Agreement and any amendments or other modifications hereof will be executed in the English and **[insert language]** languages. In the event of a conflict between the different language versions of this Agreement, both versions will be deemed to be equally authoritative.

Section 11.13. Headings; Construction. The Section and other headings contained in this Agreement are for convenience only and will not be deemed to limit, characterize or interpret any provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 11.14. Confidentiality.

(a) The Buyer shall not disclose to any Person (other than to a Buyer's representative ("Buyer's Representative") or use or exploit for any purpose whatsoever any information which it obtains or has heretofore obtained in relation to the Business ("Confidential Information"), except:

16

(i) with the prior written consent of the Seller;

(ii) as may be required by law or order of a court of competent jurisdiction; or

(iii) to the extent expressly permitted by this Agreement.

In the event that the Buyer or a Buyer's Representative or is required to disclose Confidential Information as provided in clause (ii) above, such Person shall use its best efforts to obtain a protective order preserving the confidentiality thereof, and to the extent unsuccessful in obtaining a protective order, to ensure that such information is treated by any recipient as constituting confidential information that is not subject to further disclosure.

(b) For purposes of this Section 11.14, Confidential Information shall not include any information which:

(i) has become available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation); or

(ii) is provided to Buyer or Buyer's Representative by a Person (other than the Seller) who is lawfully in possession of such information and has the lawful right to publicly disclose, use or exploit it.

(c) Buyer shall cause each Buyer's Representative not to disclose to any Person or use or exploit for any purpose whatsoever the Confidential Information except as expressly permitted in this Section 11.14. The Buyer shall limit the disclosure and dissemination of the Company's Confidential Information within its own organization to those of its personnel and to other Representatives who have a need to know for the purposes of this Agreement and who have been bound, in writing, not to use (except in the course of their work with respect to this Agreement) and to maintain Confidential Information in confidence both during and after the term of their employment or retention. In case of termination of this Agreement, each Buyer's Representative shall (i) promptly return to the Seller all copies of any Confidential Information and any other written material containing or reflecting any Confidential Information then in its possession or under their control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, (iii) not use or exploit for any purpose whatsoever the Confidential Information, and (iv) all Confidential Information or information derived from Confidential Information not returned to the Seller shall be destroyed and expunged from any computer, word processor or other device containing or derived from Confidential Information. The destruction and expunction shall be certified in writing to the Seller by an authorized officer of the Buyer responsible for reporting that such destruction and expunction has been fully and completely performed.

Section 11.15. Further Assurances. Buyer and the Seller will each, at the request of the other, execute, acknowledge, deliver and file, without further consideration, all such further assignments, conveyances, endorsements, powers of attorney, consents and other documents and take such other action as may be reasonably requested (a) to transfer and vest in Buyer and protect Buyer's right, title and interest in and to the Contract Shares and (b) otherwise to consummate transactions contemplated by this Agreement.

106

Section 11.16. Public Announcements. Any public announcement or similar publicity with respect to this Agreement will be issued, if all, at such time with such disclosure and in such manner as Parties agree. Unless consented to in advance, prior to the Closing the Parties will, and Seller will use its Best Efforts to cause the Enterprise to, keep this Agreement strictly confidential. The Parties will consult with each other concerning the means by which the Enterprise's employees, customers, and suppliers and others having dealings with the Enterprise will be informed of the Agreement, and the Buyer will have the right to be present for any such communication.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the Agreement Date.

[INSERT NAME OF BUYER]	**[INSERT NAME OF SELLER]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

107

[FORM OF GUARANTY OF BUYER'S OBLIGATIONS]
[SHORT FORM]

GUARANTY

To induce [**insert name and form of company and jurisdiction where formed**] company (the "Seller"), to enter into the foregoing Enterprise/Asset Purchase Agreement (the "Enterprise/Asset Purchase Agreement") of even date with [**insert name and form of company and jurisdiction where formed**] company ("Buyer"), [**insert name and form of company and jurisdiction where formed**] company ("Guarantor") hereby guarantees and promises to fulfill the full and prompt payment and performance of the Buyer's obligations under the Enterprise/Asset Purchase Agreement (including, without limitation, the Buyer's payment obligations) if such obligations are not performed when due and promises to pay all the costs of proceedings, including, without limitation, all reasonable attorneys' fees and costs in connection with the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee and is enforceable against the Guarantor and its successors and assigns, without the necessity for any demand, suit or proceedings whatsoever against the Buyer, and without the necessity of any protest or notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty of any other notice or demand to which the Guarantor might otherwise be entitled, all of which the Guarantor hereby expressly waives.

The Guarantor agrees that this Guaranty is a continuing guarantee and that the validity of this Guaranty and the obligations of the Guarantor hereunder will in no way be terminated, affected, diminished or impaired by reason of (1) the assertion or the failure of the Seller to assert against the Buyer any of the rights or remedies reserved to the Seller pursuant to the Enterprise/Asset Purchase Agreement, or (2) any assignment or modification of the Enterprise/Asset Purchase Agreement, or (3) an extension of time that may be granted by the Seller to the Buyer, or (4) any dealings or transactions whatsoever occurring between the Seller and the Buyer, whether or not notice thereof is given to the Guarantor.

This Guaranty will inure to the benefit of the Seller, and its successors and assigns. The provisions of Sections 11.2 and 11.14 of the Enterprise/Asset Purchase Agreement are hereby incorporated into this Guaranty and will apply to the obligations of the Guarantor hereunder, and for such purposes the term "Agreement" as used therein will include this Guaranty and the term "Buyer" will refer to the Guarantor.

Dated: [**insert date**], 199_

[INSERT NAME OF GUARANTOR]

By: _____
Name: _____
Title: _____

108

Appendix 7

This form of Guaranty Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the loan, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF GUARANTY AGREEMENT

110

FORM OF GUARANTY AGREEMENT

TABLE OF CONTENTS

RECITAL 4

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS 4

Section 1.1 Definitions
Section 1.2 Accounting Terms

ARTICLE II GUARANTY 4

ARTICLE III IMPLEMENTATION OF GUARANTY 4

Section 3.1 Performance by Guarantor, Notice
Section 3.2 Obligations Unconditional
Section 3.3 No Exhaustion of Remedies
Section 3.4 Subrogation Rights
Section 3.5 Binding Guaranty
Section 3.6 Enforcement Costs
Section 3.7 Termination of Guaranty

ARTICLE IV REPRESENTATIONS OF GUARANTOR 6

Section 4.1 Organization, Good Standing, Etc.
Section 4.2 Authorization; Due Execution
Section 4.3 No Violation
Section 4.4 Litigation
Section 4.5 Approvals/Consents
Section 4.6 Limitation on Representations and Warranties
Section 4.7 Financial Statements

ARTICLE V REPRESENTATIONS OF THE COMPANY 6

Section 5.1 Organization, Good Standing, Etc.
Section 5.2 Authorization; Due Execution
Section 5.3 No Violation
Section 5.4 Litigation
Section 5.5 Approvals/Consents
Section 5.6 Limitation on Representations

ARTICLE VI GENERAL 7

Section 6.1 Expenses
Section 6.2 Governing Law and Dispute Resolution
Section 6.3 Waiver
Section 6.4 Notices
Section 6.5 Entire Agreement
Section 6.6 Amendments and Modifications
Section 6.7 Binding Effect
Section 6.8 Assignment
Section 6.9 Separability
Section 6.10 Counterparts
Section 6.11 Languages
Section 6.12 Headings
Section 6.13 Further Assurances

FORM OF GUARANTY AGREEMENT

This **GUARANTY AGREEMENT** is entered into as of this [**Insert date**] day of _____ , 199_ between [**insert name of company**], [**insert kind of company**] established and existing under the laws of [**insert name of country**] (the "Company"), and [**insert name of company**], a [**insert kind of company**] established and existing under the laws of [**insert name of country**], (the "Guarantor").

RECITALS

A. The Guarantor is [**describe purpose of guaranty**]

B. To induce the Company to enter into [**describe nature of inducement**].

AGREEMENTS

NOW, THEREFORE, in consideration of the premises, the Parties, intending to be legally bound, agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.1 Definitions. For the purposes of this Guaranty Agreement, the following terms shall have the following definitions:

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons shall be deemed to be Affiliates.

"Agreement Date" has the meaning set forth in the first paragraph of this Guaranty Agreement.

"Best Efforts" means the efforts that a prudent Person would reasonably use to ensure that the contemplated results are achieved as expeditiously as reasonable under the circumstances.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks in [**insert location or locations**] are authorized or required to close under applicable laws.

"Company" has the meaning set forth in the Recital.

"Confidential Information" shall have the meaning set forth in Section 9.14.

"GAAP" means the generally accepted accounting principles (standards) applied by **[insert applicable country or "Internationally Generally Accepted Accounting Principles"].**

"Guaranty Agreement" means this Guaranty Agreement as amended pursuant to the terms hereof.

"Guaranteed Person" means a party to the Relevant Agreement whose obligations, to the extent provided in this Guaranty Agreement, are Guaranteed Obligations.

112

"Guaranteed Obligations" has the meaning set forth in Section 2.

"Guarantor" has have the meaning set forth in the first paragraph of this Guaranty Agreement.

"Parties" means the Company and the Guarantor; and "Party" means one of the Parties to this Agreement.

"Person" means a natural person, such as a Representative, and/or legal person, such as a company, corporation, partnership, government entity, or other entity.

"Relevant Agreement" means the agreement between [**insert parties**], dated as of [**insert date**], containing the Guaranteed Obligations.

"Representative" means any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Shares" means the non-redeemable voting securities of the Company.

"[**Insert symbol of applicable currency**]" mean the official currency of [**insert applicable country**].

"[**Insert symbol for applicable country**]" mean "[**insert name of applicable country**].

"[**Insert letter symbol**]IBOR" means the [**insert**] Inter-Bank Overnight Rate.

"[**Insert symbol for applicable country**] laws" and "laws of the [**insert symbol for applicable country**]" mean all laws and regulations of [**insert name of country where loan is to be made**].

Section 1.2 Accounting Terms. All accounting terms not specifically defined herein are to be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement are to be prepared, and will be deemed to be prepared, in accordance with GAAP.

ARTICLE II

GUARANTY

Section 2. Guaranty. The Guarantor hereby promises, warrants and Guarantees to the Company (a) the complete and punctual performance and payment of all of the Guaranteed Person's obligations, now or hereafter arising under the Relevant Agreement, and (b) the correctness of each of the undertakings, representations and warranties of the Guaranteed Person under the Relevant Agreement (the "Guaranteed Obligations"), and the Guarantor shall cause the Guaranteed Person and its Affiliates to timely perform all of the Guaranteed Obligations, and should the Guaranteed Person or any Affiliate default in the performance of the same the Guarantor shall undertake the performance of the Guaranteed Obligations.

ARTICLE III

IMPLEMENTATION OF GUARANTY

Section 3.1 Performance by Guarantor; Notice.

(a) Performance by Guarantor. If and whenever the Guaranteed Person or any Affiliate for any reason does not fully and punctually perform any of its Guaranteed Obligations, the Guarantor shall immediately and unconditionally (i) procure the complete and punctual performance and satisfaction of the Guaranteed Obligations, or (ii) perform and satisfy the unperformed Guaranteed Obligations in regard to which such performance failure has been made in the manner prescribed by the relevant agreement, so that the same benefit shall be conferred as would have

113

been conferred if such Guaranteed Obligations had been duly performed and satisfied by the Guaranteed Person.

(b) Notice. If and whenever the Guaranteed Person or any Affiliate does not fully and punctually perform any of its Guaranteed Obligations, the Company may but is not required to provide the Guarantor with any written notice of such performance failure.

Section 3.2 Obligations Unconditional. The obligations of the Guarantor under this Guaranty Agreement shall be absolute, irrevocable, continuing and unconditional and shall remain in full force and effect without regard to, and shall not be released or discharged by:

(a) Any amendment or modification of or supplement to either of the Relevant Agreement, or any assignment or transfer thereof;

(b) Any exercise or non-exercise of any right, remedy, power or privilege under or in respect of this Guaranty Agreement or the Relevant Agreement, or any waiver, consent, extension, indulgence or other action or inaction in respect thereof; or

(c) Any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceedings in respect of the Guarantor or the Guaranteed Person;

all whether or not the Guarantor or the Guaranteed Person shall have notice or knowledge of the foregoing.

Section 3.3 No Exhaustion of Remedies. The Company may enforce the obligations of the Guarantor under this Guaranty Agreement without in any way first pursuing or exhausting any other rights or remedies which the Company may have against the Guaranteed Person or any other Person, or against any security the Company may hold. The Guarantor agrees that each performance guaranty of this Guaranty Agreement is a continuing guaranty and that its validity shall in no way be terminated, affected, diminished or impaired by reason of (i) the assertion of the failure of the Company to assert against the Guaranteed Person any of the rights or remedies reserved to the Company pursuant to the Relevant Agreement, or (ii) any assignment or modification of the Relevant Agreement, or (iii) an extension of time that may be granted by the Company to the Guaranteed Person, or (iv) any dealings or transactions whatsoever occurring between the Fund, Company and the Guaranteed Person, whether or not notice thereof is given to the Guarantor.

Section 3.4 Subrogation Rights. The Guarantor shall have no right of subrogation with respect to any rights the Company may have against the Guaranteed Person or any security which the Company may hold unless and until all of the obligations of the Guarantor under this Guaranty Agreement have been performed in full.

Section 3.5 Binding Guaranty. This Guaranty Agreement shall be valid and binding upon the Guarantor regardless of any invalidity, irregularity or unenforceability of either of the Relevant Agreements.

Section 3.6 Enforcement Costs. The Guarantor shall pay all reasonable costs and expenses incurred by or on behalf of the Company, as the case may be, in connection with the enforcement of this Guaranty Agreement together with interest thereon from the day the cost or expense is incurred by the Company until the day such cost or expense is paid at rate of three-month **[insert]**IBOR plus 50 basis points; provided that if an action for enforcement is decided in favor of the Guarantor, the Company shall pay their own costs.

Section 3.7 Termination of Guaranty. Upon full performance and completion by the Guaranteed Person of the Guaranteed Obligations, all further liability and obligations of the Guarantor shall terminate and be forever extinguished. However, such termination and extinguishment shall not be effective until all unasserted claims of the Company, as the case may be, based upon facts and circumstances occurring during the terms or pendency of the Relevant Agreement has been resolved.

ARTICLE IV

REPRESENTATIONS OF GUARANTOR

Guarantor hereby represents to the Company that:

Section 4.1 Organization, Good Standing, Etc. The Guarantor (a) is a joint stock company duly organized, duly registered, validly existing and in good standing under the [**insert**] laws , and (b) has all requisite corporate power and authority to conduct its business and to perform all its contractual obligations.

Section 4.2 Authorization; Due Execution. The Guarantor has been duly established and duly registered, and has all requisite power and authority to execute and deliver this Agreement, and to perform its obligations under this Agreement. This Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor, and constitutes the binding, legal and binding obligation of the Borrower, enforceable against the Guarantor in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally.

Section 4.3 No Violation. Neither the execution or delivery by the Guarantor of this Guaranty Agreement, nor the consummation or performance of the transactions contemplated hereby, (a) violates any material agreement, commitment, judgment or order to which the Guarantor is a Party or by which the Guarantor's property is bound, (b) contravenes any law or regulation having applicability to the Guarantor, or (c) results in or requires the creation or imposition of any encumbrance of any nature upon, or with respect to, any properties or assets now owned.

Section 4.4 Litigation. To the knowledge of the Guarantor, there is no claim, action, proceeding, arbitration, investigation or hearing, pending or threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal, against the Guarantor involving this Guaranty Agreement.

Section 4.5 Approvals/Consents. Other than those consents and approvals which have already been obtained, no consent or approval of the any governmental or administrative body is required to authorize the Guarantor to enter into this Guaranty Agreement or perform its obligations hereunder.

Section 4.6 Limitation on Representations and Warranties. The representations and warranties set forth in this Article IV hereof constitute the only representations made by the Guarantor in connection with this Guaranty Agreement.

Section 4.7 Financial Statements. The Guarantor (i) has made available to the Company copies of the Guarantor's annual report for the fiscal years ended [**insert**], prepared in accordance with GAAP and (ii) shall annually make available to the Company copies of the Guarantor's annual report, prepared in accordance with GAAP, for each fiscal year during the period of this Guaranty Agreement. Each of the annual reports will present fairly the consolidated financial position of the Guarantor. Since [**insert**], there has been no material change in the business and affairs and financial condition of the Guarantor which would have a material adverse effect on the Guarantor's ability to perform its obligations under this Guaranty Agreement or adversely affect the transactions contemplated under this Guaranty Agreement.

115

ARTICLE V

REPRESENTATIONS OF THE COMPANY

The Company hereby represents to the Guarantor that:

Section 5.1 Organization, Good Standing, Etc. The Company is a joint stock company duly organized, duly registered, validly existing and in good standing under the [**insert**] laws , and (b) has all requisite corporate power and authority to conduct its business and affairs and perform all its contractual obligations. .

Section 5.2. Authorization; Due Execution. The Company has all requisite power and authority to execute and deliver this Guaranty Agreement and to perform its obligations under this Agreement. This Guaranty Agreement has been duly authorized, executed and delivered by the Company, and constitutes the binding, legal and valid obligation of the Company enforceable against the Company in accordance with its terms.

Section 5.3. No Violation. Neither the execution or delivery by the Company of this Guaranty Agreement, nor the consummation of this Loan Agreement.

Section 5.4. Approvals, Consents, Etc. No consent, authorization or approval of, or waiver or exemption by, or filing or registration with, any governmental agency or any other Person is required to be obtained or made in connection with the execution, delivery or performance by the Company of this Guaranty Agreement.

Section 5.5. Litigation. There is no claim, action, proceeding, arbitration, investigation or hearing, pending or, to the knowledge of the Company, threatened, by or before any court or governmental or administrative agency or authority or private arbitration tribunal, against the Company involving this Guaranty Agreement.

Section 5.6 Limitation on Representations. The representations set forth in this Article V constitute the only representations made by the Company in connection with this Guaranty Agreement.

ARTICLE VI

GENERAL

Section 6.1 Expenses. Whether or not the transactions contemplated by this Guaranty Agreement are consummated, each of the Parties hereto shall pay its own costs and expenses and the fees and expenses of its counsel and accountants and other Representatives incurred in connection with the transactions contemplated by this Guaranty Agreement.

Section 6.2 Governing Law and Dispute Resolution.

(a) This Guaranty Agreement and the rights of the Parties hereunder shall be construed and interpreted in accordance with the law of [**insert jurisdiction**], without reference to conflict of laws provisions. [**If applicable, insert the following**] Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**insert appropriate country**] and [**insert appropriate country**], as amended.

(b) The Parties shall endeavor to reach an amicable settlement of any disputes that may arise under this Guaranty Agreement. However, if the Parties are unable to resolve any dispute by amicable settlement, such dispute shall be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the**

116

"appointing authority" under the Rules".] The Borrower and the Company each hereby irrevocably waive the right to submit any dispute, or to appeal, to any court. The seat of the arbitration tribunal shall be in **[insert location]**. The language of the arbitration shall be English. This submission and agreement to arbitrate shall be specifically enforceable. Any award rendered by an arbitration tribunal shall be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(c) In the event the Company invokes binding arbitration proceeding against the Guaranteed Person under the Relevant Agreement, then the Borrower may, at the option of the Company or the Guarantor, be joined as an additional party in such proceeding provided that the subject of such proceeding is covered by this Guaranty Agreement.

Section 6.3 Waiver. None of the terms of this Guaranty Agreement shall be deemed to have been waived by any Party hereto or Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by any Party hereto or Representative of a breach of any provision of this Guaranty Agreement shall not operate or be construed as a waiver of any other provision of this Guaranty Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder shall be deemed to be an extension of time for the performance of any other obligation or act.

Section 6.4 Notices. All notices and other communications that are required or permitted to be given under this Guaranty Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or by registered mail, telexed or telefaxed and addressed as follows:

(a) if to the if to the Guarantor:

_____

_____

_____

(b) if to the Company:

_____

_____

_____

and/or to such other addressee and/or address as any of the above shall have specified by notice delivered in accordance with this Section. Each notice or other communication which shall be delivered personally, mailed, telexed or telefaxed in the manner described above shall be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy the answer back) being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Section 6.5 Entire Agreement. This Guaranty Agreement contains the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, among the Parties hereto with respect to the subject matter hereof.

Section 6.6 Amendments and Modifications. This Guaranty Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or affected.

Section 6.7 Binding Effect. All of the terms and provisions of this Guaranty Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 6.8 Assignment, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Guaranty Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Nothing expressed or referred to in this Guaranty Agreement will be construed to give any Person other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Guaranty Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Guaranty Agreement and their successors and assigns.

Section 6.9 Separability. Whenever possible, each provision of this Guaranty Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Guaranty Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Guaranty Agreement which are required to carry out the intent of this Guaranty Agreement in light of such unenforceability or invalidity.

Section 6.10 Counterparts. This Guaranty Agreement shall be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same legal document.

Section 6.11 Languages. This Guaranty Agreement and any amendments or other modifications hereof shall be executed in the English and **[insert]** languages. In the event of a conflict between the different language versions of this Guaranty Agreement, both versions shall be deemed equally authoritative.

Section 6.12 Headings. The Section and other headings contained in this Guaranty Agreement are for convenience only and shall not be deemed to limit, characterize or interpret any provisions of this Guaranty Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 6.13 Further Assurances. A Party shall, at the request of any other Party, execute, acknowledge, deliver and file without further consideration, all further assignments, conveyances, endorsements, powers of attorney, consents and other documents and take such other action as may be reasonably requested to consummate this Guaranty Agreement.

In Witness Whereof, this Guaranty Agreement has been signed by or an behalf of each of the Parties hereto as of the date first above written.

[NAME OF COMPANY]	**[NAME OF GUARANTOR]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

118

Appendix 8

This form of Joint Venture Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the joint venture transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF JOINT VENTURE AGREEMENT

120

FORM OF JOINT VENTURE AGREEMENT

TABLE OF CONTENTS

RECITAL		**4**
ARTICLE I.	**DEFINITIONS**	**4**
Section 1.1	Definitions	
ARTICLE II.	**PURPOSE AND OBJECTIVES OF JOINT VENTURE COMPANY**	**7**
Section 2.1	Purpose of Joint Venture Company	
Section 2.2	Strategic Objectives of the Joint Venture Company	
Section 2.3	Participants' Funding Commitments	
Section 2.4	Participants' Other Commitments	
Section 2.5	Compliance	
ARTICLE III.	**FORMATION OF JOINT VENTURE COMPANY**	**8**
Section 3.1	Formation	
Section 3.2	Interests of Participants	
Section 3.3	Articles of Association	
Section 3.4	Effect of Articles of Association	
Section 3.5	Invalidity of Provisions in the Articles of Association	
Section 3.6	Cooperation Among the Participants	
ARTICLE IV.	**BUSINESS PLAN AND CAPITAL INVESTMENT PLAN**	**10**
Section 4. 1	Preparation, Submission and Contents	
Section 4.2	Timing of Submission	
Section 4.3	Objections	
ARTICLE V.	**ANNUAL CAPITAL AND OPERATING BUDGETS**	**10**
Section 5.1	Preparation, Submission and Contents	
Section 5.2	Timing of Submission	
Section 5.3	Objections	
ARTICLE VI.	**CORPORATE GOVERNANCE**	**11**
Section 6.1	General Meetings	
Section 6.2	Supervisory Board	
Section 6.3	Supervisory Board Responsibilities	
Section 6.4	Managing Board of Directors	
Section 6.5	Managing Board of Directors Responsibilities	
Section 6.6	Rights of Inspection and Information	
Section 6.7	Conflicts of Interest	
Section 6.8	Dividend Policy	
Section 6.9	Decision-Making	
Section 6.10	Codes of Conduct	
ARTICLE VII.	**RESTRICTIONS ON SHARE TRANSFERS**	**14**
Section 7.1	Restrictions on Transfer of Shares	
ARTICLE VIII.	**PARTICIPANTS ADDITIONAL COMMITMENTS**	**15**
Section 8.1	Services Provided	
Section 8.2	Direct-Cost Services	
Section 8.3	Price Calculation of Direct-Cost Services	
Section 8.4	Other Services and Affiliate Transactions	

121

Section 8.5 Standard of Care Owed by the Participants
Section 8.6 Non-competition
Section 8.7 Benefit of Third-Party Relationships
Section 8.8 Other Contracts

ARTICLE IX. BOOKS AND RECORDS; ACCOUNTING 16

Section 9.1 General
Section 9.2 Actions by the Joint Venture Company
Section 9.3 Reports
Section 9.4 Retention of Books and Records
Section 9.5 Compliance Certificate
Section 9.6 Audit

ARTICLE X. DURATION AND TERMINATION 17

Section 10.1 Duration
Section 10.2 Effect of Termination

ARTICLE XI. REPRESENTATIONS OF PARTICIPANT A 17

Section 11.1 Organization, Good Standing, Etc.
Section 11.2 Authorization; Due Execution
Section 11.3 No Violation
Section 11.4 Approvals, Consents, Etc.
Section 11.5 Litigation
Section 11.6 Limitation on Representations

ARTICLE XII. REPRESENTATIONS OF PARTICIPANT B 18

Section 12.1 Organization, Good Standing, Etc.
Section 12.2 Authorization; Due Execution
Section 12.3 No Violation
Section 12.4 Approvals, Consents, Etc.
Section 12.5 Litigation
Section 12.6 Limitation on Representations

ARTICLE XIII. INDEMNIFICATION; EXCLUSIVE REMEDY 19

Section 13.1 Indemnification
Section 13.2 Exclusive Remedy.

122

ARTICLE XIV GENERAL **20**

Section 14.1 Expenses
Section 14.2 Governing Law; Dispute Resolution
Section 14.3 Sovereign Immunity
Section 14.4 Waiver
Section 14.5 Notices
Section 14.6 Entire Agreement
Section 14.7 Amendments; Modifications
Section 14.8 Binding Effect
Section 14.9 Assignment; Successors; No Third Party Rights
Section 14.10 Separability
Section 14.11 Counterparts
Section 14.12 Languages
Section 14.13 Headings; Construction
Section 14.14 Confidentiality
Section 14.15 Further Assurances
Section 14.16 Announcements

EXHIBITS

A Participant A's Services
B Participant B's Services
C Participant A's Direct-Cost Services
D Participant B's Direct-Cost Services
E Participant A's Other Services
F Participant B's Other Services

FORM OF JOINT VENTURE AGREEMENT

This Joint Venture Agreement ("Agreement") is made as of [**insert date**] day of _____, 199__, between [**insert name of company**], a [**insert name of jurisdiction under which formed**] joint-stock company ("Participant A"), and [**insert name of company**], a [**insert name of jurisdiction under which formed**] joint-stock company ("Participant B").

RECITALS

Participant A and Participant B have individually determined it is in their respective Best Interests to enter into this Agreement, conduct themselves in accordance with the terms and conditions of this Agreement, and obtain the benefits and rights afforded by this Agreement.

AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. For the purposes of this Agreement, the following terms will have the following definitions:

"A-Managing Director" will mean any Managing Director who has been nominated by Participant A.

"AC-Member" will mean a member of the Advisory Committee.

"Advisory Committee" will mean an advisory committee, advising the Managing Board and senior executive officers of the Joint Venture Company on the conduct of the Business and affairs of the Joint Venture Company, or any discrete portion of it, consisting from time to time of at least two and not more than four members, as determined by the Participants, one-half of the member designated by each Participant.

"Affiliate" will mean with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons will be deemed to be Affiliates.

"Agreement" will mean this Shareholders Agreement as amended pursuant to the terms hereof.

"Agreement Date" will mean the date set forth in the preamble.

"Annual Capital Budget" will have the meaning set forth in Section 4.1.

"Annual Operating Budget" will have the meaning set forth in Section 4.1.

"Annual Capital and Operating Budgets" will mean the Annual Capital Budget and the Annual Operating Budget for the same year.

"Articles of Association" will mean the Articles of Association of the Joint Venture Company from time to time.

"B-Managing Director" will mean any Managing Director who has been nominated by Participant B.

124

"Best Efforts" will mean the efforts that a prudent Person would reasonably use to ensure that the contemplated results are achieved as expeditiously as reasonable under the circumstances.

"Business" will mean [**insert definition of the business of the Joint Venture Company**], as currently and as historically conducted by the Joint Venture Company and any other business activities of the Joint Venture Company mentioned in the Companies Register.

"Business Day" will mean any day other than a Saturday or Sunday or a day on which commercial banks are required or authorized to close in the principal offices of Participant A, Participant B and the Joint Venture Company.

"Business Plan" will have the meaning set forth in Section 3.1.

"Capital Investment Program" will have the meaning set forth in Section 3.1.

"Centre of Securities" will mean the official register of book-entry securities, established and existing pursuant to [**insert applicable law**].

"Code" will mean the Commercial Code No. [insert applicable law], as amended.

"Confidential Information" will have the meaning set forth in Section 14.14.

"Direct-Cost Services" will mean those Services and Intellectual Property provided to the Joint Venture Company by Participant A and/or Participant B pursuant to Section 9.3.

"Dividend Policy" will have the meaning set forth in Section 5.8.

"GAAP" means the generally accepted accounting principles (standards) applied by **[insert applicable country or "Internationally Generally Accepted Accounting Principles"].**

"General Meeting" will mean a general meeting of the Joint Venture Company's shareholders.

"Government Entity" will mean the Government of the [insert country], any ministry of the [**insert country**], any other organ of the state administration of the [insert country], or any political subdivision of the [**insert country**].

"Intellectual Property" will mean all patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Business.

"Joint Venture Company" will have the meaning set forth in the preamble.

"License" will mean any license granted to the Joint Venture Company by any Governmental Entity authorizing the Joint Venture Company to conduct any segment of its Business.

"License Obligations" will mean any obligations of the Joint Venture Company to conduct its Business in accord with any Governmental Entity and all applicable decrees and regulations.

"Managing Board" will mean the Joint Venture Company's Managing Board of Directors from time to time.

"Managing Director" will mean a member of the Joint Venture Company's Managing Board from time to time.

"Participants" will mean Participants A and B; and "Participant" will mean either of them.

"Parties" will mean the Joint Venture Company, Participant A and Participant B; and "Party" will mean one of the Parties to this Agreement.

"Purpose" will have the meaning set forth in Section 2.1.

125

"Person" will mean a natural person, such as a Representative, and/or legal person, such as a company, corporation, partnership, Government Entity, or other legal entity.

"Regulator" will mean any Governmental Entity or any successor having the role as regulator of any Business services provided by the Company.

"Representative" will mean any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Rules" will have the meaning set forth in Section 14.2.

"Services" will mean those services set forth in Section 9.1.

"Participant A" will have the meaning set forth in the first paragraph of this Agreement.

"Participant B" will have the meaning set forth in the first paragraph of this Agreement.

"Participant" will mean either Participant A or Participant B, and "Participants A and B" will mean Participant A and Participant B collectively.

"Shares" will mean the ordinary non-redeemable voting securities of the Joint Venture Company.

"Strategic Objectives" will mean the strategic objectives set out in Section 2.1 of this Agreement.

"Supervisory Board" will mean the Joint Venture Company's Supervisory Board from time to time.

"Supervisory Member" will mean a member of the Joint Venture Company's Supervisory Board.

"[**Insert symbol of currency**]" mean the official currency of [**insert applicable country**].

"[**Insert symbol for applicable country**]" mean "[**insert name of applicable country**].

"[**Insert symbol for applicable country**] laws" and "laws of the [**insert symbol for applicable country**]" mean all laws and regulations of [**insert name of applicable**].

Section 1.2 Accounting Terms. All accounting terms not specifically defined herein are to be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement are to be prepared, and will be deemed to be prepared, in accordance with GAAP.

ARTICLE II

PURPOSE AND OBJECTIVES OF JOINT VENTURE; COOPERATION BETWEEN PARTIES

Section 2.1 Purpose of the Joint Venture Company. The purpose of the Joint Venture Company is to [**insert specific purpose, including scope, scale and areas of its business operations**] (the "Purpose" and the "Business") and to engage in such other activities that may be incidental to carrying out the Purpose.

Section 2.2 Strategic Objectives of the Joint Venture Company. The Joint Venture Company's strategic objectives (the "Strategic Objectives") are to:

(a) expand and continue to modernize the Joint Venture Company's Business in an efficient, reliable, safe and environmentally and technically sound manner;

(b) develop and maintain strong management, technical, operational and administrative teams and operational, administrative, financial and management controls within the Joint Venture Company;

(c) provide reliable goods and services to the Joint Venture Company's customers at reasonable, competitive prices;

(d) comply with all applicable Governmental policies, laws and regulations, and policies and technology standards of other applicable laws and regulations and other commitments; and

(e) generate internal capital to support external borrowings and to provide a reasonable return on equity that is sufficient to attract new investments through appropriate capital market activities for the continuing expansion, modernization and maintenance of the gas distribution system.

Section 2.3 Participants' Funding Commitments. Each Participant agrees to subscribe in equal amounts for Shares to the extent necessary to enable the Joint Venture Company to operate in accordance with its Strategic Objectives, Business Plan and Capital Investment Program, and which permits the Joint Venture Company to seek external borrowings where prudent.

Section 2.4 Participants' Other Commitments. Each Participant will use its Best Efforts to ensure that the Joint Venture Company's business and operations are conducted in a prudent manner, consistent with the Joint Venture Company's Strategic Objectives, which permits the Joint Venture Company:

(a) to meet its Strategic Objectives;

(b) to operate in accordance with the Business Plan and the Capital Investment Program;

(c) to apply responsible (i) administrative, business, financial, operational, safe and technical standards and practices, and (ii) administrative; financial, management and operational controls;

(d) to (i) finance the continued modernization and orderly expansion of its Business, (ii) support external borrowings from financial institutions, (iii) provide a sufficient return to its Participants to encourage additional Participants' investments, and otherwise meet the financial objectives of the Joint Venture Company's Strategic Objectives.

Section 2.5 Compliance.

(a) Any of the Participants may advise the Joint Venture Company from time to time in a timely manner of prudent and cost-effective means of complying with the contents of Section 2.3 to the extent that any Participant concludes there is a more prudent and cost-effective means of complying with any of the contents of Section 2.3.

(b) The status of the Joint Venture Company's compliance with the contents of Section 2.3 will be reviewed regularly (at least annually) by the Managing Board and by the Supervisory Board. If any of the Participants, the Managing Board or the Supervisory Board determines that the Joint Venture Company is failing to meet any of the contents of Section 2.2 (a "Failure"), then the Managing Board will decide (y) if the Failure has been caused by economic or other circumstances or conditions outside the control of the Joint Venture Company, then it will take (if within its authority) or recommend (if outside its sole authority) any appropriate action that may be appropriate in view of the changed circumstances or conditions, or (z) if the Failure is caused by circumstances or conditions within the control of the Joint Venture Company, then it will take (if within its authority) or recommend (if outside its sole authority) all appropriate action to correct the Failure.

If any of the Participants or the Supervisory Board decides (i) the Failure has been caused by circumstances or conditions within the control of the Joint Venture Company, and the Managing Board and not taken (if within its authority) or recommended (if outside its sole authority) all appropriate action to correct the Failure, or (ii) the Failure has been caused by economic or other circumstances or conditions outside the control of the Joint Venture Company, and the Managing Board has not taken (if within its authority) or recommended (if outside its sole authority) action that may be appropriate in view of the changed circumstances or conditions, then the Managing Board will be notified of such failure to take appropriate action, and if the Managing Board fails to take appropriate action within 30-days, then a General Meeting may be called to consider the matter and decide on any appropriate action.

127

ARTICLE III

FORMATION OF JOINT VENTURE COMPANY

[This section provides for establishing the name and form of the joint venture company which may take the form of a joint-stock company, limited-liability company, partnership, limited partnership or other form of legal entity or may be purely a contractual relationship) for conducting the joint venture's operations. This form of joint venture agreement is established on the basis of a joint-stock company, which possibly offers greater future flexibility than some may which by the nature of the proposed joint venture. Depending on the form of joint venture company, a number of changes will be required to this form.]

Section 3.1 Formation. Participant A and Participant B form by **[specify date]**a joint-stock company, **[insert name of company]**, a **[insert name of applicable jurisdiction]** joint-stock company (the "Joint Stock Company"). The principal office, including operating headquarters of the Joint Venture Company will be **[insert location]**.

Section 3.2 Interests of Participants. Except as otherwise expressly provided in this Agreement, Participant A and Participant B shall each own the same number of Shares. To initially start the Joint Venture Company, the Participants agree individually to contribute in cash and/or other assets of **[insert amount]**. Assets other than cash contributed will be valued at their fair market value as agreed by the Participants and in accordance with any applicable requirements of tax and other laws.

Section 3.3 Articles of Association. Before formation of the Joint Venture Company, the Participants will develop articles of association ("Articles of Association") for it consistent with the provisions of this Agreement.

Section 3.4 Effect of the Articles of Association.

(a) The Participants agree that the Articles of Association (as of the effective date of this Agreement), together with this Agreement and applicable law, shall govern each of the subjects, issues, procedures and powers dealt with in this Agreement.

(b) Each Participant shall exercise its rights under this Agreement and as a shareholder of the Joint Venture Company, including without limitation the voting of any and all of its Shares, to obtain, to the extent permitted by law, the realization of the intended effect of each of the provisions of the Articles of Association and this Agreement.

Section 3.5 Invalidity of Provisions in the Articles of Association. If (i) pursuant to a final decision of a court of competent jurisdiction any one or more of the provisions of the Articles of Association is held or becomes invalid, or (ii) the court order required to give effect to the Articles of Association is not granted, each Participant shall take all reasonable action within its power, including, without limitation, voting any and all Shares held by it in favor of amendments to the Articles of Association, to provide each Participant with the benefit of the rights granted or purported to be granted to it in the Articles of Association and to ascertain the proper compliance with the procedures prescribed or purported to be prescribed in the Articles of Association.

Section 3.5 Cooperation Among the Participants. Each Participant will, to the extent permitted by law:

(a) (A)(i) exercise its voting rights at any General Meeting of the Joint Venture Company, (ii) ensure the Managing Directors nominated by the Participants vote or refrain from voting at any meeting of the Managing Board or any committee of the Managing Board, and (iii) ensure the Supervisory Members nominated by the Participants' vote or refrain at any meeting of the Supervisory Board or any committee of the Supervisory Board; and (B) vote its Shares, and to instruct its Supervisory Members and its Managing Directors to vote or refrain from voting at meeting and take other proper action to fully carry out the applicable provisions of this Agreement. Such nominated persons will prior to taking office

128

acknowledge in writing to vote at meetings and otherwise take proper action to fully carry out the applicable provisions of this Agreement, and failure to do so is sufficient grounds to terminate them from office;

(b) in decision making and acting in the best interests of the Joint Venture Company, including its shareholders, take into account the interests of other constituencies other than shareholders, including employees, debt-holders, communities in which facilities of the Joint Venture Company are located and serve, and customers.

(c) take all reasonable action available to them to cause the Joint Venture Company to develop fair and just employment policies, procedures and practices that fairly and justly recognize and reward contributions made by employees. These policies, procedures and practices should encourage and motivate employees to perform individually and collectively above normal performance expectations, and financially and otherwise reward them for superior performances. The policies, procedures and practices should provide for frequent period team and individual performance reviews, equal opportunity without discrimination, training and development, health and safety, and fair and just compensation and retirement and other employee benefits.

(d) take all reasonable action available to them to cause the Joint Venture Company to engage primarily employees (both management and non-management) who are [**insert**] citizens.

ARTICLE IV

BUSINESS PLAN AND CAPITAL INVESTMENT PROGRAM

Section 4.1 Preparation, Submission and Contents. The Managing Board will cause to be prepared and then revised annually a long-term business plan in accordance with the Strategic Objectives (the "Business Plan") and a capital investment program consistent with the Business Plan (the "Capital Investment Program"), incorporating in the Business Plan, for at least [insert number] years, at least projected annual (i) operating revenues, operating costs and marketing, general and administrative expenses, by major categories, for the Joint Venture Company, (ii) marketing plans, (iii) system development plans, and (iv) employee staffing requirements, compensation plans and training and re-training plans, and incorporating in the Capital Investment Program for the same period on an annual basis at least projected annual (i) capital expenditures, (ii) dispositions of fixed assets, (iii) year-end balance sheets by major categories, and (iv) debt and equity financings.

Section 4.2 Timing of Submission. The proposed Business Plan and Capital Investment Program for each year will be prepared not later than each June 30th of the year preceding the projected years to which they apply, and the Managing Board will develop the Annual Capital and Operating Budgets consistent with the Business Plan and Capital Investment Program. The Supervisory Board and the Participants will be promptly (within 10 business days) provided with copies of the proposed Business Plan and Capital Expenditure Program.

Section 4.3 Objections. If any of the Participants or Supervisory Board has any proposed modifications to any aspect of the Business Plan or the Capital Investment Program, such modifications will be submitted to the Managing Board in writing at least 15 business days prior to the end of the sixty-day review period. Any such modifications will be considered by the Managing Board in good faith.

ARTICLE V

ANNUAL CAPITAL AND OPERATING BUDGETS

Section 5.1 Preparation, Submission and Contents. The Managing Board will cause to be prepared (A) an annual operating budget (the "Annual Operating Budget") for each ensuing year incorporating at least on a monthly basis projected operating revenues, operating costs and marketing, general and administrative expenses, by major categories, for the Joint Venture Company and supporting information with respect to (i) marketing plans, (ii) system

129

improvement plans, (iii) executive and other employee compensation by categories, and (iv) employee staffing requirements, changes in compensation plans and training and re-training plans, and (B) an annual capital budget (the "Annual Capital Budget") for each ensuing year incorporating any proposed (i) capital expenditures including fixed asset acquisitions, (ii) dispositions of fixed assets, (iii) debt and/or equity financings, (iv) dividends or other shareholder distributions, and (v) all other commitments or transactions requiring financial statement disclosure or affecting the Joint Venture Company's ability to obtain support for external borrowings from financial institutions.

Section 5.2 Timing of Submission. The Annual Capital and Operating Budgets for each year will be prepared not later than September 30 of the year preceding the year to which the Plan applies, and the Managing Board will not take action on such Annual Capital and Operating Budgets for at least sixty (60) days. The Shareholders A and B will be promptly (within 10 business days) provided with copies of the proposed Annual Capital and Operating Budgets.

Section 5.3 Objections. If either Participant A or Participant B have any proposed modifications to any aspect of the Annual Capital and Operating Budgets, such modifications will be submitted to the Managing Board at least 15 business days prior to the end of the sixty-day review period. Any such modifications will be considered by the Managing Board in good faith. If the Managing Board does not accept or otherwise satisfy any proposed modifications, which are materially related to its obligations in this Agreement, then appropriate representatives of the Participants will meet and resolve the issue or issues to the satisfaction of the Participants.

ARTICLE VI
GOVERNANCE

Section 6.1 General Meetings. Prior to each General Meeting, each of the Participants (i) will discuss the voting of its Shares at the General Meeting, (ii) will vote its Shares at any General Meeting in accordance with the specific provisions of this Agreement, and (ii) will not without agreement of the other Participant vote its Shares at any General Meeting as to any matter not specifically covered by the provisions of this Agreement.

Section 6.2 Supervisory Board.

(a) Participants A and B will each have the right to nominate for election to the Supervisory Board an equal number of Supervisory Members.

(b) The Participants agree (i) to appoint qualified persons as Supervisory Members who will conduct themselves in accordance with applicable law and the provisions of this and (ii) to vote their shares to elect as Supervisory Members the persons nominated pursuant to Section 6.2(a).

(c) The Participants will agree on the person to be nominated as Chairman of the Supervisory Board, they will annually rotate between the Participants, the Participant A initially suggesting the person to be nominated.

(d) The Supervisory Board will hold meetings at the discretion of the Supervisory Board to meet its responsibilities, but will meet at least quarterly. A quorum will consist of at least two-thirds the Supervisory Members. Without limiting the rights of the Participants under the Articles of Association, the Chairman of the Supervisory Board, if requested by any three of the Supervisory Members, will promptly cause a meeting of the Supervisory Board to be called and will cause the required notice of any such meeting to be given. If the Chairman of the Supervisory Board fails to call such meeting within five (5) days, any three of the Supervisory Members, may call a meeting of the Supervisory Members and give the required notice. Any Member may participate in a meeting by telephone or by any other telecommunications means where Managing Directors may hear one another. Supervisory Board actions which may be approved at a meeting of the Managing Board, may be approved in writing by all of the Managing Directors without a meeting, if the Managing Directors have received sufficient information to make an informed decision.

120

Section 6.3 Supervisory Board Responsibilities. In addition to those duties specified by law and those specified in the Articles of Association, the Supervisory Board will be responsible to keep informed about and satisfied with the activities of the Joint Venture Company and oversee and review the performance of the Managing Board. This includes being satisfied (i) that the Joint Venture Company's overall operational and financial performances are in accord with the Strategic Objectives, the Business Plan and Investment Program, (ii) with the competence and performance of the Managing Directors and the Joint Venture Company's senior management, and with the overall quality and performance of its employees, (iii) that the Joint Venture Company is in compliance with its policies and with applicable laws and regulations, and (iv) that the Joint Venture Company has adequate systems of operating, administrative and financial control controls to assure that the Joint Venture Company is operating in accordance with its plans and policies and that the Joint Venture Company's operational, administrative and financial reports are accurate and complete, and (vi) that the financial and operational disclosure statements to shareholders and governmental regulatory bodies are correct and complete in all material respects and are prepared in a timely manner as required by law and good practice.

Section 5.4 Managing Board of Directors.

(a) (a) Participants A and B will each have the right to nominate for election to the Managing Board an equal number of Managing Directors and will agree upon the person to be appointed the General Manager of the Joint Venture Company.

(b) The Participants agree (i) to appoint qualified persons as Supervisory Members who will conduct themselves in accordance with applicable law and the provisions of this and (ii) to vote their shares to elect as Managing Directors the persons nominated pursuant to Section 6.4(a).

(c) The Participants will agree on the person to be nominated as Chairman of the Managing Directors, they will annually rotate between the Participants, a Participant initially suggesting the person to be nominated, and a Participant may not nominate in the same year the Chairman of the Supervisory Board and the Chairman of the Board of Directors. If, at any time between General Meetings of the Joint Venture Company, a Participant will request (i) the removal of a Managing Director whom such Participant had previously proposed for nomination and/or (ii) the election of a nominee to fill a vacancy created by the departure from the Managing Board of a Managing Director whom such Participant had previously proposed for nomination, then the Participants will vote their Shares to procure such removal and/or the election of such nominee.

(d) A minimum of [**insert number**] Managing Directors will be of citizens of the [**insert**]. The Participants will nominate qualified members, and will consult with each other and coordinate their nominations to the Managing Board.

(e) The Managing Board will hold meetings at the discretion of the Managing Board to meet its responsibilities, but will meet at least quarterly. A quorum will consist of two-thirds of the Managing Directors. Without limiting the rights of the Participants under the Articles of Association, the Chairman of the Managing Board, if requested by any two of the Managing Directors, will promptly cause a meeting of the Managing Board to be called and will cause the required notice of any such meeting to be given. If the Chairman of the Managing Board fails to call such meeting within five (5) days, any two of the Managing Directors, may call a meeting of the Managing Board and give the required notice. Managing Directors may participate in a meeting by telephone or by any other telecommunications means where Managing Directors may hear one another. Also, any Managing Board actions which may be approved at a meeting of the Managing Board, may be approved in writing by all of the Managing Directors without a meeting, if the Managing Directors have received sufficient information to make an informed decision.

Section 6.5 Managing Board of Directors Responsibilities.

(a) In addition to those duties specified by law and those specified in the Articles of Association, the Managing Board will have responsibility for managing the business and affairs of the Joint Venture Company not otherwise reserved to the Supervisory Board or

131

the General Meeting or as otherwise provided by the Articles of Association or the [insert] laws. Accordingly the Managing Board will take into consideration all recommendations to it by the Joint Venture Company's senior management, be responsible to keep informed about the Joint Venture Company's business and affairs, and make decisions relating to the Joint Venture Company's conduct of its business and affairs.

(b) A decision of the Managing Board will normally require the affirmative vote of a majority of the Managing Directors present. However, the following matters also require the affirmative vote of the three Managing Directors nominated by Participants:

(i) the appointment of the Chairman of the Managing Board, who will have no executive or managerial responsibility;

(ii) the election, dismissal and compensation of the Joint Venture Company's chief executive officer, the "Director-General", who will be a citizen of [insert];

(iii) the election, dismissal and compensation of other senior executive officers of the Joint Venture Company;

(iv) the approval of, and any amendments to, the Business Plan and Investment Program;

(v) the approval of any amendments to the Annual Capital and Operating Budgets;

(vi) any amendments to, modifications of, or deviations from, an approved Annual Capital and Operating Budgets

(vii) the creation of any company, partnership or other legal Person by the Joint Venture Company;

(viii) except for any claim arising under the Transaction Documents, the commencement or defense of any material or precedent-setting litigation or arbitration proceeding;

(ix) the adoption or amendment of overall employee remuneration, any employee bonus, pension or other benefit plan (or submission to the General Meeting for action) of any plan or proposal for the Joint Venture Company to issue or sell Shares to employees;

(x) the surrender, abandonment, abrogation or transfer of any important or material license, concession or authority;

(xi) the approval of any change in the Dividend Policy or any recommendations to the General Meeting on the declaration or payment of any annual or interim dividend;

(xii) the establishment of any committee of the Managing Board, the appointment and removal of the members of any committee, and the delegation of authority to any such committee;

(xiii) the recommendation for approval of any change in the number of Managing Directors or Supervisory Members; and the recommendation to the General Meeting of (A) amendments to the Articles of Association, (B) agenda items for the General Meeting or (C) proposals with respect to the merger, consolidation, liquidation or winding-up of the Joint Venture Company.

Section 6.6 Rights of Inspection and Information. The Members of the Supervisory Board and the Managing Directors are entitled to discuss the Joint Venture Company's business and affairs, including finances and accounts with its principal executives at any reasonable time as requested, and all books, records and accounts relating to the business and affairs of the Joint Venture Company will, at such time, be open to the inspection of any such person may make such copies thereof or extracts therefrom as such person may reasonably require. Any information secured as a consequence of such discussions and inspections will be kept strictly confidential in accordance with the provisions of Section 14.14.

Section 6.7 Conflicts of Interest. In the case of any agreement or transaction (and the taking of any action in connection therewith) between the Joint Venture Company and any Participant

132

or any of its Affiliates, the Managing Board will take such action as directed by the Managing Directors not associated with such Participant.

Section 6.8 Dividend Policy. The Participants agree that the dividend policy of the Joint Venture Company will be that until the **[insert]** anniversary of the Agreement Date, the Joint Venture Company's profits will be used to modernize, refurbish and improve the Joint Venture Company assets and to otherwise strengthen the Joint Venture Company as provided in the Annual Capital and Operating Budgets and, accordingly, during that period the Participants agree to take all reasonable action available to them to cause the Joint Venture Company not to pay any dividends or other distributions from the capital account, redeem any Shares, make any loans or advances, or guaranty loans or other obligations for the benefit of the Joint Venture Company's shareholders.

Section 6.9 Decision-Making. Each Participant, Supervisory Member, and Managing Director should exercise prudent business judgment in making decisions and fulfilling responsibilities on behalf of the Joint Venture Company and its best interests including all of the Joint Venture Company's shareholders. In making decisions or otherwise considering a matters regarding the Joint Venture Company, the Person should:

a) be fully informed about the matter;
b) act in good faith and relying on accurate information;
c) act carefully, by giving the matter thorough attention; and
d) act rationally and prudently in the best interests of the Joint Venture Company, not favoring some special interest or some specific shareholder to the detriment of other shareholders.

Section 6.10 Codes of Conduct. The Managing Board should develop and maintain, in accordance with good corporate governance practices, codes of conduct approved by the Supervisory Members applicable to all employees of the Joint Venture Company, Managing Directors and to Supervisory Members, covering Joint Venture Company policy matters, including:

a) a) principles of business ethics relating to the conduct of the business and affairs of the Joint Venture Company, including compliance with all laws and regulations applicable to the Company;
b) Joint Venture Joint Venture Company's purchasing and safeguarding of its assets and other property;
c) delegations of authority outlining the specific responsibilities, duties and authorities of each member of the Joint Venture Company's senior management;
d) Joint Venture Company's operating procedures and practices covering the efficient and effective conduct of its business operations and affairs; for employment practices in accord with applicable laws for the health and safety of its employees; for the quality and safety of the Joint Venture Joint Venture Company's products and services; and for the strength of the Joint Venture Joint Venture Company's competitive position and its financial condition, and reimbursement by the Joint Venture Company for travel and other allowable expenses;
e) prohibition of practices by Companies employees concerning (i) conflicting interests, (ii) receipt and giving of gifts to Persons outside the Joint Venture Company, and any illegal political or other illegal payments, (iii) the purchasing and selling of (y) Joint Venture Company's debt and equity securities and (z) securities of other companies doing business with the Joint Venture Company, based on inside information gained from the business and affairs of the Joint Venture Company, (iv) other misuse of confidential information, and (v) improper use by employees of company assets and property; and
f) Joint Venture Company's timely public disclosure to shareholders and others of financial and material Joint Venture Company information.

Further, the Managing Board should be assured that the Joint Venture Company has written procedures that assure that these codes of conduct have been circulated to all of the employees affected by the procedures and polices, and that the Joint Venture Company maintains procedures for monitoring and enforcing compliance.

133

ARTICLE VII

RESTRICTIONS ON SHARE TRANSFERS

(a) **Section 7.1** Restrictions on Transfer of Shares.

(a) For the period of the Agreement, Participants A and B agree, and agree to cause each of their respective Affiliates, not to transfer or otherwise dispose of, or charge or create or permit to be created any pledge or security interest in respect of the whole or any part of its holding of Shares or any interest in such Shares or enter into any agreement, option or other arrangement in respect of any such transfer, disposal or creation other than a transfer to an Affiliate (with the prior written consent of the other (Participant A or Participant B, as the case may be (the "Consenting Shareholder").

(b) In the event that Participant A or Participant B obtain written consent from the Consenting Shareholder as provided in Section 6.3(a) to sale Shares, then the selling Participant A or Participant B will offer to sale the Shares to the Consenting Shareholder, and the Consenting Shareholder will have the right (to be exercised within sixty days) to acquire the Shares at the Trading Market Value. If there is no Trading Market Value, then the Consenting Shareholder will have the right to acquire the Shares at the price equal to the price being offered by the prospective purchaser of the Shares. However, in no event may the Shares be sold at a price lower than that offered the Consenting Shareholder.

ARTICLE VIII

PARTICIPANTS ADDITIONAL COMMITMENTS

Section 8.1 Services Provided. Each, Participant A and Participant B, to the extent it, directly or through its Affiliates, has the capability and it will materially enhance the value and operation of the Joint Venture Company, may make available services to the Joint Venture Company, as described in writing in Exhibits A and B, respectively, to this Agreement, by it (the "Services"). Such Services may relate but are not limited to strategic planning and decision-making, managerial practices and information systems, customer service and collection procedures, operational efficiency and effectiveness, development planning and execution, achieving competitive credit ratings and facilitating access to international debt-capital markets, safety practices, and internal financial, operating and administrative controls.

Section 8.2 Direct-Cost Services. Each, Participant A and Participant B, will offer on a Direct-Cost basis in an amount, no less than the equivalent of the amount described in writing in Exhibits C and D, respectively, to this Agreement, to provide Services and Intellectual Property listed in Exhibits C and D, respectively, to this Agreement (the "Direct-Cost Services"). The Direct-Cost Services will be offered from the date of this Agreement.

Section 8.3 Price Calculation of Direct-Cost Services.

(a) The Joint Venture Company will reimburse for Direct-Cost Services on a Cost basis only. The provider of Direct-Cost Services will deliver quarterly invoices to the Joint Venture Company with respect to the Direct-Cost Services together with such supporting evidence as the Joint Venture Company may require. The Joint Venture Company will pay the full amount of such invoices within thirty days (30) days after receipt.

(b) For purposes of this Article VIII, "Cost" will not exceed: (i) with respect to human resources, direct labor costs, which will include salary, bonus, payroll taxes, and related pension and other employee-benefit costs, including insurance; travel, lodging, meals, and other direct out-of-pocket expenses; and relocation and other employee displacement costs; (ii) with respect to other services and products, "Cost" will be the lower of the lowest price at which the Strategic Investor provides or procures the same services to or for its departments, divisions or Affiliates, or the incremental cost of the services or products to the provider of Direct-Cost Services; (iii) with respect to equipment related to the Direct-Cost Services, the purchase price of such equipment to the provider of Direct-Cost Services, or, if the equipment

134

is constructed by the provider of Direct-Cost Services or an Affiliate, the sum of: raw material costs; direct labor and manufacturing costs; and indirect manufacturing costs.

"Cost" for purposes of this Article VIII will not include: (i) indirect, overhead or general cost items that are not directly attributable to the Direct-Cost Services; (ii) direct cost items that the provider of Direct-Cost Services or an Affiliate would incur whether or not offered the Direct-Cost Service to the Joint Venture Company (e.g., research development or implementation costs or managerial tools and techniques); or (iii) any profit element.

(c) Any withholding or similar taxes imposed under [insert] laws upon the payments made pursuant to this Article VIII will be considered a "Cost" for purposes of Section 8.3(a) and will be borne and paid by the Joint Venture Company. Notwithstanding the preceding sentence, however, (i) the Parties will cooperate to achieve the minimum tax liability allowed by the [**insert**] laws with respect to payments made for Direct-Cost Services, and (ii) the Joint Venture Company may claim a credit for such taxes paid against invoices submitted to the extent a refund of or other financial benefit for payment of such taxes is made.

Section 8.4 Other Services and Affiliate Transactions. Each, Participant A and Participant B, will offer, on such bases as provided in Exhibits E and F, respectively, to this Agreement to provide to the Joint Venture Company in amounts totaling no less than the equivalent of the amounts set forth in Exhibits [**insert**] and [**insert**], respectively, of Services, Intellectual Property, goods and other items listed in Exhibits [**insert**] and [**insert**], respectively. In all other transactions not listed in an Exhibit to this Agreement, each Participant A and Participant B will cause such transactions with the Joint Venture Company to be on terms and conditions (including compensation and payment) which are not more favorable to the provider or any Affiliate of the provider than the lower of terms and conditions which would prevail in an arms-length transaction, or the lowest or most favorable prices between the provider and/or any of its Affiliates with others within or outside of such affiliated group of companies. All contracts for Services and other Affiliate transactions to be provided by each Participant A and Participant B, or any Affiliate of either, other than listed in Exhibits [**insert**], will require the prior authorization of the Managing Directors nominated by the other Participant.

Section 8.5 Standard of Care Owed by Participants. In providing any Services, Intellectual Property, other services and goods to the Joint Venture Company, each of the Participants will meet the standards of an expert acting with all due care and will use all reasonable efforts to ensure that the services and goods are of a high quality, are provided expeditiously and to the reasonable satisfaction of the Joint Venture Company.

Section 8.6 Non-competition. To the extent not precluded by applicable law, the Participants in their respective best interests have established the Joint Venture Company and granted it the exclusive right to [**insert specific territory or territories and specific lines of businesses to be conducted by Joint Venture Company**], and neither of the Participants will conduct competitive operations with the Joint Venture Company.

Section 8.7 Benefit of Third-Party Relationships. Each of the Participants will use all reasonable efforts to ensure that the Joint Venture Company is able to benefit from access to supplier discounts and similar commercial benefits which are available such Participant, subject to any contractual restrictions imposed on the such Participant.

Section 8.8 Other Contracts. [This section specifies the basic terms of, or refers to copies attached as exhibits of, other material agreements to be executed by either of the Participants].

Section 8.9 Intellectual Property Provided. Each, Participant A and Participant B will provide, directly or through its respective Affiliates, Intellectual Property to the Joint Venture Company in order to assist the Joint Venture Company. Each, Participant A and Participant B will license or sub-license to the Joint Venture Company, directly or through its Affiliates, Intellectual Property (owned by such shareholder or its Affiliates or with respect to which such shareholder or its Affiliates have rights to license or sub-license) appropriate for the conduct of the Joint Venture Company's Business. Each, Participant A and Participant B, or any of its respective Affiliates, as the case may be, will in the license or sub-license to the Joint Venture Company undertake to maintain and improve the licensed Intellectual Property.

ARTICLE IX

BOOKS AND RECORDS; ACCOUNTING

Section 9.1 Books and Records. The Joint Venture Company will keep full and complete books and records of its business and affairs including administration, operations and financial accounting. The maintenance and retention of these will comply with all requirements of law including laws applicable to the Participants. The Joint Venture Company will also maintain internal administrative, operational and financial/accounting controls.

Section 9.2 Financial Reports. Commencing in 19[**insert**], the Joint Stock Company will provide the Managing Directors and Members of the Supervisory Board with monthly financial statements, within thirty days after the end of the period, accurate in all material respects presenting fairly the financial position and operating results for the preceding period, in accordance with GAAP. Quarterly, the Joint Stock Company shall provide the Participant with financial statements, that permit the Participants to meet all of their reporting requirements. Annually, the Joint Stock Company will provided the Participants with annual audited financial statements presented in accordance with GAAP and audited in accordance with generally accepted auditing standards, in sufficient detail and with sufficient information to permit the Participants to meet all of their reporting requirements. The Board of Directors and Supervisory Board will be empowered to approve the selection of independent auditors.

ARTICLE X

DURATION AND TERMINATION

Section 10.1 Duration. This Agreement will become effective as of the Agreement Date and continue in full force and effect until the earliest of the following events:

(a) the Parties hereto agree in writing to terminate this Agreement;

(b) either Participant A or Participant B disposes of all its Shares other than to Affiliates; or

(d) December 31, [**insert**], unless the Participants mutually agree in writing to extend this Agreement to a date beyond December 31, [**insert**];

(e) an effective resolution of the General Meeting of shareholders of the Joint Venture Company is passed, or a decision of a court is made, for the winding up of the Joint Venture Company; or

(f) if a Participant by its course of conduct repeated fails to comply with this Agreement and materially breaches its obligations hereunder, then the other Participant may terminate this Agreement., provided that the Participant instituting termination will not have materially breached its obligations hereunder.

Section 10.2 Effect of Termination. Termination of this Agreement for any cause will not release either of the Parties from any liability which at the time of termination has already accrued to either of the Parties or which thereafter may accrue in respect of any act or omission prior to such termination, including the obligations to return all Confidential Information and not to disclose, use or exploit the Confidential Information in any respect. All Services and Intellectual Property provided the Joint Venture Company prior to the date of termination, whether tangible or intangible, will remain the property of the Joint Venture Company following termination.

ARTICLE XI

REPRESENTATIONS OF PARTICIPANT A

Participant A hereby represents to Participant B that:

Section 11.1 Organization, Good Standing, Etc. Participant A is a [**insert**] company duly organized, validly existing and in good standing under the laws of [**insert**].

Section 11.2 Authorization; Due Execution. Participant A has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Participant A, and constitutes the binding, legal and valid obligation of Participant A enforceable against Participant A in accordance with its terms.

Section 11.3 No Violation. Neither the execution or delivery by Participant A of this Agreement, nor the consummation of the transactions contemplated hereby, hereby (a) violates any material agreement, commitment, judgment or order to which Participant A is a party or by which Participant A's property is bound or (b) contravenes any law or regulation having applicability to Participant A.

Section 11.4 Approvals, Consents, Etc. Other than those consents and approvals that have already been obtained, no consent or approval of any governmental or administrative body (other than that of the [**insert**]) is required to authorize Participant A to enter into this Agreement or perform its obligations hereunder.

Section 11.5 Litigation. There is no material claim, action, proceeding, arbitration, investigation or hearing pending or, to the knowledge of Participant A, threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal against Participant A that would prevent the consummation of the transactions contemplated by this Agreement.

Section 11.6 Limitation on Representations.

(a) Only Representations. The representations set forth in this Agreement constitute the only representations made by Participant A in connection with the transactions contemplated hereby.

(b) No Reliance. Participant B hereby acknowledges and agrees that in entering into this Agreement it has not relied on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) Participant A, or any of its Representatives (or any of its Affiliates), other than the representations and agreements of Participant A expressly set forth in this Agreement.

ARTICLE XII

REPRESENTATIONS OF PARTICIPANT B

The Participant B hereby represents to Participant A that:

Section 12.1. Organization, Good Standing, Etc. Participant B is a [**insert**] company duly organized, validly existing and in good standing under the laws of [**insert**].

Section 12.2. Authorization; Due Execution. Participant B has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Participant B, and constitutes the binding, legal and valid obligation of Participant B enforceable against Participant B in accordance with its terms.

Section 12.3. No Violation. Neither the execution or delivery by Participant B of this Agreement, nor the consummation of the transactions contemplated hereby, hereby (a) violates any material agreement, commitment, judgment or order to which Participant B is a party or by which Participant B's property is bound or (b) contravenes any law or regulation having applicability to the Participant B.

Section 12.4. Approvals, Consents, Etc. Other than those consents and approvals that have already been obtained, no consent or approval of any governmental or administrative body (other than that of the [**insert**] is required to authorize Participant B to enter into this Agreement or perform its obligations hereunder.

Section 12.5. Litigation. There is no material claim, action, proceeding, arbitration, investigation or hearing pending or, to the knowledge of Participant B, threatened, by or before

any court or governmental or administrative agency or authority or arbitration tribunal against Participant B that would prevent the consummation of the transactions contemplated by this Agreement.

Section 12.6. Limitation on Representations.

(a) Only Representations. The representations set forth in this Agreement constitute the only representations made by Participant B in connection with the transactions contemplated hereby.

(b) No Reliance. Participant A hereby acknowledges and agrees that in entering into this Agreement it has not relied on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) Participant B, or any of its Representatives (or any of its Affiliates), other than the representations and agreements of Participant B expressly set forth in this Agreement.

ARTICLE XIII

INDEMNIFICATION; EXCLUSIVE REMEDY

Section 13.1. Indemnification.

(a) The Joint Venture Company shall indemnify, defend, and hold harmless each Participant and each of its present or former Representatives ("JVC Indemnified Person") from and against all loss, cost, liability and expense which may be imposed upon or reasonably incurred by JVC Indemnified Person, including reasonable attorneys' fees and disbursements and reasonable settlement payments, in connection with any claim, action, suit or proceeding or threat thereof, made or instituted in which such JVC Indemnified Person may be involved or be made a party by reason of any action alleged to have been taken or omitted by such JVC Indemnified Person in a capacity directly or indirectly on behalf of the Joint Venture Company, if such JVC Indemnified Person acted in good faith, reasonably to be within the scope of authority set forth in this Agreement, was not grossly negligent in conduct or omission of conduct considering the best interests of the Joint Venture Company. In case of reasonable notice of any claim against a JVC Indemnified Person which may be subject to indemnification, the JVC Indemnified Person will promptly notify the Joint Venture Company, and the Joint Venture Company will thereupon have the right to assume defense against such claim and to contest it or agree to any settlement or compromise of it.

(b) Each Participant shall indemnify, defend, and hold harmless the Joint Venture Company, and the other Participant and each of their present or former Representatives ("Participant Indemnified Person") from and against all loss, cost, liability and expense which may be imposed upon or reasonably incurred by Indemnified Person, including reasonable attorneys' fees and disbursements and reasonable settlement payments, in connection with any claim, action, suit or proceeding or threat thereof, made or instituted in which the Indemnified Person may be involved or be made a party by reason of a breach of such Participant's representations or covenants.

(c) Promptly after receipt by a person entitled to indemnification under Section 13.1 (a) or(b) above ("Indemnified Party") of notice of the commencement of any action against the Indemnified Party, such Indemnified Party will give notice to the person or person or entity or entities obligated to indemnify the Indemnified Party pursuant to the express provisions of this Agreement (the "Indemnifying Party"). The Indemnifying Party shall be entitled to participate in the defense of the action and, to the extent that it may elect in its discretion by written notice to the Indemnified Party, to assume the control and defense and/or settlement of such action; provided, however, that (i) both the Indemnifying Party and Indemnified Party must consent and agree to any settlement of any such action, except that if the Indemnifying Party has reached a bona fide settlement agreement with the plaintiff(s) in any such action and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party, and (ii) if the defendants in any such action include both the Indemnifying Party and the Indemnified Party, then the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and otherwise to participate in the defense of such action on its own behalf, and the fees and disbursements

of such separate counsel shall be included in the amount which the Indemnified Party is entitled to recover under the terms and subject to the conditions of this Agreement.

Section 10.2. Exclusive Remedy. A Participant ("Breaching Participant") will indemnify the other Participant ("Breached Participant") from and against any and all claims, losses, liabilities, obligations, damages, costs and expenses, suffered as a result of any breach of a representation in this Agreement by the Breaching Participant, and (ii) the failure of the Breaching Participant to perform any of the agreements to be performed by the Breaching Participant pursuant to this Agreement.

ARTICLE XIV

GENERAL

Section 14.1. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each of the Parties hereto will pay its own costs and expenses and the fees and expenses of its counsel and accountants and other representatives incurred in connection with the transactions contemplated by this Agreement.

Section 14.2. Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with **[insert]** laws without reference to conflict of laws provisions. **[If applicable, insert the following]** Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the **[insert appropriate country]** and **[insert appropriate country]**, as amended. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in **[insert appropriate location]**. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

[Insert if appropriate] Section 14.3. Sovereign Immunity. The Parties hereby agree and acknowledge that they are entering into this Agreement as a "commercial act" and not as acts in capacities as a "sovereign" and hereby waive any and all rights or claims to the defense of sovereign immunity with respect to any claims brought under this Agreement.

Section 14.4. Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

Section 14.5. Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to Participant A:

_____
_____
_____
_____
Attention: _____

(b) if to Participant B:

_____
_____
_____
Attention: _____

(c) if to the Joint Venture Company:

_____
_____
_____
Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this Section. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Section 14.6. Entire Agreement. This Agreement (including the Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof [**Insert if applicable**] it being expressly understood and agreed that only to the extent required by Section [**insert**] of the [**insert**] (the "Code") will the provisions of [**insert if applicable**] of the Code that apply to this Agreement and the transactions contemplated hereby.

Section 14.7. Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

Section 14.8. Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors.

Section 14.9. Assignment, Successors, and No Third-Party Rights. A Party may not assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. No permitted or purported assignment of all or any portion of this Agreement will effect a release of the assignor of its obligations under this Agreement without an express written release from such obligations by the other Party. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and assigns.

Section 14.10. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

Section 14.11. Counterparts. This Agreement will be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts together will constitute one and the same legal document.

Section 14.12. Languages. This Agreement and any amendments or other modifications hereof will be executed in the English and **[insert]** languages. In the event of a conflict between the different language versions of this Agreement, both versions will be deemed to be equally authoritative.

Section 14.13. Headings; Construction. The Section and other headings contained in this Agreement are for convenience only and will not be deemed to limit, characterize or interpret any provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 14.14 Confidentiality.

(a) Each Participant will not disclose to any Person or use or exploit for any purpose whatsoever any information which it obtains, or has heretofore obtained from the other Participant, in relation to the establishment and operation of the Joint Venture Company ("Confidential Information"), except: (i) with the prior written consent of the other Participant; (ii) as may be required by law, applicable accounting regulation or order of a court of competent jurisdiction; (iii) in connection with the advancement of the Business or (iv) to the extent expressly permitted by this Agreement. In the event that any Participant is required to disclose Confidential Information as provided in clause (ii) above, it will attempt to obtain a protective order preserving the confidentiality thereof by the recipient thereof, and to the extent unsuccessful in obtaining a protective order, to ensure that such information is treated by any recipient as constituting confidential information that is not subject to further disclosure.

(b) For purposes of this Section 14.14, Confidential Information will not include any information which: (i) is available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation); or (ii) is provided to any Person associated with a Participant by a Person (another Person associated with a Participant or with the Joint Venture Company) who is lawfully in possession of such information and has the lawful right to disclose, use or exploit it.

(c) Each Participant will cause all Persons associated with it not to disclose to any Person or use or exploit for any purpose whatsoever the Confidential Information except as expressly permitted in this Section 14.14. Each Participant shall limit the disclosure and dissemination of the Joint Venture Company's Confidential Information within its own organization to those of its personnel who have a need to know for the purposes of this Agreement and who have been bound, in writing, not to use (except in the course of their work with respect to this Agreement) and to maintain Confidential Information in confidence both during and after the term of their employment. In case of termination of this Agreement, or the Participant ceases to be a Participant, or the Participant not longer has a need for such Confidential Information, each Person associated with the Participant will (i) promptly return to the Joint Venture Company all copies of any Confidential Information and any other written material containing or reflecting any Confidential Information then in its possession or under its control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, (iii) not use or exploit for any purpose whatsoever the Confidential Information, and (iv) all Confidential Information or information derived from Confidential

141

Information not returned to the Joint Venture Company will be destroyed and expunged from any computer, word processor or other device containing or derived from Confidential Information. The destruction and expunction will be certified in writing to the Joint Venture Company by an authorized officer of such Participant responsible for reporting that such destruction and expunction has been fully and completely performed. Notwithstanding the foregoing, Participants' nominated Supervisory Members and Managing Directors may retain any Confidential Information which they are entitled to have or use for so long as such Persons continue to act or serve in such capacities.

Section 14.15. Further Assurances. Each Party will, at the request of the other Party, execute, acknowledge, deliver and file, without further consideration, all such further assignments, conveyances, endorsements, powers of attorney, consents and other documents and take such other action as may be reasonably requested to consummate the transactions contemplated by this Agreement.

Section 14.16 Announcements. During the continuation of this Agreement, the Participants will, subject to the requirements of applicable laws, the rules and regulations of any governing Governmental Entity and/or stock exchange consult together as to the terms of, the timetable for and the manner of publication of, any announcements to any governing Governmental Entity and/or stock exchange and to the media or otherwise which any of the Parties may desire or be obliged to make regarding this Agreement and neither of them will issue any such announcement without the prior written consent of the others, such consents not to be unreasonably withheld.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the Agreement Date.

[NAME OF SHAREHOLDER A]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[NAME OF SHAREHOLDER B]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

142

Appendix 9

This form of Participation Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF PARTICIPATION AGREEMENT

144

FORM OF PARTICIPATION AGREEMENT

This Participation Agreement ("Agreement") is made as of **[insert date]**, 199__, between **[insert name and form of entity and where entity is formed]** company ("Company-A"), and **[insert name and form of entity and where entity is formed]** ("Company-B") (Company-A and Company-B are the "Parties" to this Agreement).

RECITAL

Company-A has indicated an interest in participating in the proposed selective offering by Company-B the requested access to certain information about Company-B for the purpose of performing an investigation ("Due Diligence"). In consideration for and as a condition to furnishing information to Company-A and any director, employee, agent, or other representative, including any accountant, attorney or financial or other advisor (collectively "Representatives") of it, Company-A acknowledge the confidential and proprietary nature of the information furnished or to be furnished to Company-A, and agree to be bound as provided in this Agreement.

1. Agreement. Company-A, has requested that it, and its Representatives, have the right to access to certain information about Company B, including the opportunity to inspect its operations, financial and operating data and information, material contracts and other records, and to meet with and ask questions of its management. In consideration of this right, Company-A acknowledges the confidential and proprietary nature of certain of the information "Confidential Information" (as defined below) to be furnished to Company-A, and its Representatives, and agrees to hold and keep the Confidential Information confidential as provided in this Agreement. Company-A further agree by signing this Agreement not to disclose to anyone other than its Representatives (to the extent provided herein) the Confidential Information.

2. Definition of Confidential Information. As used herein, the term "Confidential Information" shall mean, irrespective of the form of availability or communication, any and all financial, technical, commercial, operational or other information relating to the business and affairs of Company-B, including (but not limited to) trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how, which has been or may hereafter be provided or shown to Company-A or its Representatives by Company-B or by any of its Representatives and also includes all notes, analyses, compilations, studies, or other material prepared by Company-A or its Representatives containing or based, in whole or in part, on any information provided or shown by Company-B or Company-B's Representatives. Company-A acknowledges the Confidential Information may have value and that in any event the unauthorized disclosure or use or exploitation of such Confidential Information could be detrimental to the interests of Company-B.

3. Exclusion From Definition. The term "Confidential Information" does not include information which (i) has become generally available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation by Company-A or its Representatives or someone else); or (ii) is provided to Company-A or Company-A's Representative by a person (other than Company-B or Company-B's Representative or someone otherwise prohibited from transmitting the information by a contractual or legal obligation or fiduciary or special relationship) who is lawfully in possession of such information and has the lawful right to publicly disclose, use and exploit it.

4. Confidentiality of Confidential Information. It is understood that Company-A may disclose any Confidential Information to those of its Representatives who require such information for the purpose of assisting Company-A in its Discussions (as defined below) (provided that Company-A's Representatives shall be informed by Company-A of the confidential nature of the Confidential Information and shall be provided with a copy of

145

this Agreement and acknowledge to Company-A in writing that they shall be bound by the terms and conditions hereof as if they were a Party hereto). Company-A agrees that the Confidential Information and any part thereof will be kept confidential by Company-A and its Representatives and except with the specific prior written consent of the Company-B or as expressly otherwise permitted by the terms hereof, will not be disclosed, used or exploited for any purpose by Company-A or its Representatives. Company-A further agrees that Company-A and its Representatives will not use or exploit any of the Confidential Information for any reason or purpose other than in the Stated Purpose and that the Confidential Information shall not be used or exploited by Company-A or its Representatives in any way detrimental to the Company-B, and its shareholders. Company-A also agrees to be responsible for enforcing the confidentiality of the Confidential Information and Company-A agrees to take such action, legal or otherwise, to the extent necessary to prevent any disclosure of the Confidential Information by any of its Representatives.

5. No Disclosure of Discussions; Due Diligence, etc. Without the prior written consent of Company-B, Company-A and Company-A's Representatives will not disclose to any person (i) the fact that Confidential Information is being made available to Company-A, or (ii) the fact that any discussions and Due Diligence are taking place between Company-A and Company-B, or the status thereof. The term "person" as used in this Agreement shall be broadly interpreted to include a natural and/or legal person, such as, without limitation, any corporation, company, partnership, government institution, or any agency or instrumentality thereof or other entity.

6. Mandatory Disclosure. In the event that Company-A or any of its Representatives is requested or becomes legally compelled to make any disclosure, use or exploitation which is prohibited or otherwise constrained by this Agreement, Company-A agree that Company-A or its Representatives, as the case may be, will provide Company-B with prompt written notice of such request or requests so that it may seek an appropriate protective order or other appropriate remedy and/or waive Company-A's or its Representatives' compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or the Company-B grants a waiver hereunder, Company-A or its Representatives may furnish that portion (and only that portion) of the Confidential Information which, in the written opinion of counsel reasonably acceptable to the Company-B, Company-A is legally compelled to disclose or else stand liable for contempt or suffer other censure or penalty; provided, however, that Company-A may disclose only that portion of such information or matter that is legally required to be disclosed and Company-A shall use its best efforts to obtain reliable assurance that confidential treatment and non-use and non-exploitation will be accorded any Confidential Information so disclosed.

7. Company-B's Employees. Without the prior written consent of the Company-B (i) neither Company-A nor Company-A's Representatives will initiate or cause to be initiated (other than through the Company-B or its authorized Representative) any communication with any of Company-B's Representatives concerning the Confidential Information or its Due Diligence, and (ii) Company-A will not, for a period of two (2) years from the date of this Agreement, solicit or cause to be solicited the employment of or, within one (1) year after the date hereof, employ any person which is now employed by Company-B without Company-B's consent.

8. Termination. If Company-A or Company-B determines that it does not wish to proceed with its Due Diligence, Company-A or Company-B, as the case may be, shall promptly notify the other in writing of such decision. In the event of such termination by either Company-A or the Company-B, Company-A shall (i) promptly deliver to the Company-B all copies of any Confidential Information and any other written material or other matter containing or reflecting any Confidential Information then in Company-A's or its Representatives' possession or control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, not use or exploit for any

14

purpose whatsoever the Confidential Information, (iii) destroy and expunge from any computer, word processor or other device containing information derived from Confidential Information all information derived from Confidential Information or information derived from Confidential Information not returned to Company-B, and (iv) certify in writing full compliance by Company-A and its Representatives with clauses (i), (ii) and (iii) of this paragraph 8 to Company-B by Company-A's authorized officer (supervising such compliance).

9. No Representations or Warranties. Company-A hereby agrees the sole purpose of furnishing Company-A Confidential Information and other information is that (i) it and its Representatives have the obligation to make their own independent investigations and analyses, (ii) it and its Representatives will not rely on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) the Company-B, other than the representations and agreements of Company-B expressly set forth in an executed written agreement, (iii) it and its Representatives have the opportunity to inspect the financial and operating data and information, books, accounts, contracts and records of Company-B and to meet with and ask questions of the management of Company-B, (iv) it and its Representatives have the opportunity to inspect Company-B's facilities in their current condition and at their current location, and (v) it has the obligation to reach its own independent determinations and decisions with respect to Company-B.

10. Indemnification. Company-A hereby agrees to indemnify and hold harmless Company-B, and Company-B's Representatives from any damages, loss, cost or liability (including, without limitation, any expenses including legal fees and the cost of enforcing this indemnity) arising out of or resulting from (i) any use, exploitation or disclosure by Company-A or its Representatives of Confidential Information or other such information. Company-A also acknowledge that money damages may be insufficient remedy for any breach of this Agreement by Company-A or its Representatives and that any such breach would cause Company-B, and/or Company-B's Representatives irreparable harm. Accordingly, Company-A also agree that in the event of any breach or threatened breach of this Agreement, Company-B, and/or Company-B's Representatives shall be entitled, without the requirement of any security, to relief in addition to damages, including without limitation and further proof, injunctive relief and specific performance. Such remedies shall not be exclusive remedies for any breach of this Agreement but shall be in addition to all other remedies available to the Company-B and Company-B's Representatives.

11. No Waiver. It is understood and Company-A agrees that no failure or delay by Company-B or Company-B's Representatives in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

12. Validity of Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. If any of the provisions of this Agreement shall be deemed to be unenforceable by reason of their extent, duration, scope or otherwise, then the Parties contemplate that the court or other body making such determination shall modify such extent, duration, scope or other provision, and shall enforce them in their modified form for all purposes contemplated by this Agreement. The provisions set forth in this Agreement (except all of the provisions set forth in paragraphs 9 and 10, which shall not be modified or waived) may be modified or waived only by a separate writing signed by the Company-B and Company-A expressly so modifying or waiving such provisions. This Agreement shall survive as long as any claim may be invoked under the terms of this Agreement and, if then there are any pending claims, until such time as they are fully and finally adjudicated.

147

13. Governing Law; Dispute Resolution; Construction; Survival. This Agreement and the rights of the Parties will be construed and interpreted in accordance with [**insert applicable**] laws without reference to conflict of laws provisions. [**Insert following sentence if applicable**] Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**insert appropriate countires**], as amended. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof. This Agreement and any amendments or other modifications hereof shall be executed in the English and [**insert language**] languages. In the event of a conflict between the different language versions of this Agreement, both versions shall be deemed equally authoritative. The representations, warranties and covenants in this Agreement (including the disclaimer thereof) shall be continuing representations, warranties and covenants and shall survive the termination of this Agreement and any transactions contemplated hereunder.

14. Assignment, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. No permitted or purported assignment of all or any portion of this Agreement will effect a release of the assignor of its obligations under this Agreement without an express written release from such obligations by the other Party. Nothing expressed or referred to in this Agreement will be construed to give any person (i) other than to the extent the provisions set forth in paragraphs 9 and 10, expressly grant rights to Company-B's Representatives, and (ii) other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

15. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their best efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the date of this Agreement.

[Insert name of Company-A]	**[Insert name of Company-B]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

148

Appendix 10

This form of Purchase/Sale of Goods Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the purchase and sale transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF PURCHASE/SALE OF GOODS AGREEMENT

150

FORM OF PURCHASE/SALE OF GOODS AGREEMENT

TABLE OF CONTENTS

Section 1. Description of Goods
Section 2. Purchase and Sale
Section 3. Price
Section 4. Payment
Section 5. Delivery
Section 6. Demurrage
Section 7. Invoices
Section 8. Warranties
Section 9. Inspection
Section 10. Title
Section 11. Covenant against Resale
Section 12. Licenses
Section 13. Termination
Section 14. Remedies
Section 15. General

151

FORM OF PURCHASE/SALE OF GOODS AGREEMENT

This Purchase/Sale of Goods Agreement (the "Agreement") is made as of [**insert date**] day of _____, 199__, between [**insert name of company**], a [**insert name of jurisdiction under which formed and form of company**] (the "Seller"), and [**insert name of company**], a [**insert name of jurisdiction under which formed and form of company**] (the "Buyer"). The Parties to this Agreement mean the Buyer and the Seller, and a Party means either the Buyer or Seller, as the case may be.

Section 1. Description of Goods. The specifications of the goods [**insert description of goods**](the "Goods") are [**insert detailed description of those aspects of Goods important to Buyer and Seller to avoid any misunderstandings about quality of Goods**].

Section 2. Purchase and Sale. Seller shall sell and Buyer shall purchase [**insert quantity of Goods and indicate whether it is a one-time amount or the quantity of each delivery over a specified period of time**].

Section 3. Price.

a) **[If fixed price, insert price of each specified unit price of Goods].** The Goods' price is[**insert price amount**] for each [**insert quantity amount**] of Goods delivered to the Buyer. The [**insert which Party**] will be responsible for all costs incurred for insuring and transporting the Goods from the Seller to the Buyer.

b) **[If a formula price method of determination of price, then insert description of formula, indicating the internal or external costs on which the price is based on, the weighting of those costs and how often those costs are revised.]** The Goods' price will be determined by adding the following:

   (i) [**insert percentage of 100%**] for the commodity price of [**insert name of commodity and quantity amount**] as reported in [**insert name of reporting service**], and

   (ii) [**insert the remaining percentage of 100% - percentage in (i) above**] for [**insert number**] times the direct costs of manufacturing the Goods from such commodity.

   [The foregoing example may be modified to only refer to Sellers' costs and modified to allow for certain of Buyers' costs.]

   The [**insert which Party**] will be responsible for all costs incurred for insuring and transporting the Goods from the Seller to the Buyer.

c) **[Price reduction, based on competition.]** The Goods' price is [**insert price amount**] for each [**insert quantity amount**] of Goods delivered to the Buyer. The [**insert which Party**] will be responsible for all costs incurred for insuring and transporting the Goods from the Seller to the Buyer. If at any time during the term of this Agreement Buyer is able to secure a specific amount of Goods of equal quality from another manufacturer at a lower price than that herein provided and if, after notice in writing, Seller is unwilling to meet such lower price, Buyer will have the privilege of purchasing such specific amount and applying it against this Agreement and at the election of either the Seller or Buyer terminate this Agreement.

d) **[Price increase, based on increased costs.]** The Goods' price is [**insert price amount**] for each [**insert quantity amount**] of Goods delivered to the Buyer. The [**insert which Party**] will be responsible for all costs incurred for insuring and transporting the Goods from the Seller to the Buyer. The prices stated herein may be increased to the extent that Seller's direct cost of the

152

Goods sold increase. If Buyer is unwilling to accept any such increase, Buyer shall have the right to purchase the Goods from others and terminate this Agreement.

Section 4. Payment. Within [**insert**] days after execution of this Agreement, Buyer will provide the Seller with establishment of an irrevocable, confirmed letter of guaranty or letter of credit, in either case from a reputable bank, payable in [**specify which country's currency**], with offices in [**insert**]. The amount of the letter of guaranty or letter of credit or any other mutually agreed upon method of payment will be replenished [**insert**] days prior to each delivery of Goods for the period of this Agreement.

Section 5. Delivery. Seller will give notice to Buyer by electronic means when the Goods are available for delivery. The [**insert Party paying for transportation**] will furnish timely and complete shipping instructions to [**insert Party no paying for transportation**], stating the date of shipment, the carrier, and the routing. [**Insert Party paying for transportation**] shall be entitled to select any routing officially authorized or recognized, provide that such means of transportation is available. Shipping instructions must be received within [**specify period**]. The party failing to give timely and complete instructions or follow proper instructions will be liable for all ensuing costs and damages. The risk of loss for the Goods shall pass to Buyer upon delivery. The Goods will be delivered in [**insert method of packaging or delivery**].

Section 6. Demurrage. The Party responsible for causing any demurrage or storage costs will be responsible for all such costs resulting from the demurrage delay and storage costs.

Section 7. Invoices. Seller will provide provisional invoices at the time of delivery and final invoices within [**specify**] of time of delivery. The weights as estimated at the time and place of delivery will be used in determining the amounts of the provisional invoices. The Buyer will forward to Seller certified weight certificates issued at the time and place of delivery, for shipment to Buyer's destination, and the weights as established at such time and place will be final in determining the total amounts of the final invoices.

Section 8. Warranty. Seller represents, warrants and guaranties that the Goods, at time of delivery, (i) will conform to the specifications set forth in this Agreement and free from any defects, (ii) will be in the quantities required by this Agreement, and (iii) will be delivered in the manner provided by this Agreement.

Section 9. Inspection. Upon delivery to the Buyer, the Buyer may inspect the Goods. Failure to inspect does not waive the Buyer's rights pursuant to Section 7 of this Agreement.

Section 10. Title. The Seller will pass good and valid title to each delivery of Goods at the point of delivery, provided Buyer has established an acceptable means of payment for the Goods, as provided in Section 4.

Section 11. Covenant against Resale. Buyer covenants that the Goods are being acquired (i) to be used in for manufacturing and production and not to be resold in their present state by the Buyer, or (ii) to be resold only within the following specified territory [**define specified territory**].

Section 12. Licenses. Seller represents that it will, at its cost, obtain and furnish all licenses, duties and other documents required to export the Goods from [**specify jurisdiction or jurisdictions**], and Buyer represents that it will, at its cost, obtain and furnish all licenses, duties and other documents required to import the Goods into [**specify jurisdiction or jurisdictions**].

Section 13. Termination. This Agreement will become effective as of the signing of this Agreement and continue in full force and effect until the earliest of the following events:

(a) [**Specify date**];

153

(b) The Parties mutually agree in writing to another date;

(c) if a Party by its course of conduct repeated fails to comply with this Agreement and materially breaches its obligations hereunder, then the other Party may terminate this Agreement., provided that the Party instituting termination will not have materially breached its obligations hereunder.

Termination of this Agreement for any cause will not release any of the Parties from any liability which at the time of termination has already accrued to either Party or which thereafter may accrue in respect of any act or omission prior to such termination.

Section 14. Remedies. A Party ("Breaching Party") will indemnify the other Party ("Breached Party") from and against any and all claims, losses, liabilities, obligations, damages, costs and expenses, suffered as a result of any breach of a representation in this Agreement by the Breaching Party, and (ii) the failure of the Breaching Party to perform any of the agreements to be performed by the Breaching Party pursuant to this Agreement.

Section 15. General.

(a) Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with [**insert jurisdiction or symbol to govern**] laws without reference to conflict of laws provisions. [**If depending on special facts and circumstances applicable, insert the following**] Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**insert appropriate country**] and [**insert appropriate country**], as amended. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [insert appropriate location]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(b) Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

154

(c) Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to Buyer:

_____

_____

_____

_____

Attention: _____

(b) if to Seller:

_____

_____

_____

Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this paragraph. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

(d) Entire Agreement. This Agreement (including the Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof; it being expressly understood and agreed that the applicable provisions of the United Nations Convention on Contracts for the International Sale of Goods will apply to this Agreement.

(e) Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

(f) Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective legal successors.

(g) Assignment, Successors, and No Third-Party Rights. A Party may not assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

(h) Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on

155

changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

(i) Counterparts. This Agreement will be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts together will constitute one and the same legal document.

(j) Languages. This Agreement and any amendments or other modifications hereof will be executed in the **[insert]** and **[insert]** languages. In the event of a conflict between the different language versions of this Agreement, both versions will be deemed to be equally authoritative.

(k) Headings; Construction. The Section and other headings contained in this Agreement are for convenience only and will not be deemed to limit, characterize or interpret any provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

(l) Confidentiality. Each Party will not disclose to any Person or use or exploit for any purpose whatsoever any information which it obtains or has heretofore obtained in relation to this Agreement, without the prior written consent of the other Party, which approval will not be unreasonably withheld, except any information which:

(i) is available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation); or

(ii) is provided to any Person associated with a Party who is lawfully in possession of such information and has the lawful right to disclose, use or exploit it.

Each Party will cause all Persons associated with it not to disclose to any Person or use or exploit for any purpose whatsoever the information except to carry out this Agreement.

(m) Further Assurances. Each Party will, at the request of the other Party, execute, acknowledge, deliver and file, without further consideration, all such documents and take such other action as may be reasonably requested to carry out the provisions of this Agreement.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of **[Specify specific date]**(the "Agreement Date").

[NAME OF BUYER]	**[NAME OF SELLER]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

156

Appendix 11

This form of Rules of the Selective Tender is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF RULES OF THE SELECTIVE TENDER

158

RULES OF THE SELECTIVE TENDER

TABLE OF CONTENTS

2May1996

INTRODUCTION - RULES OF THE SELECTIVE TENDER

ARTICLE I DEFINITIONS

Section 1.1 Definitions

ARTICLE II GENERAL

Section 2.1 Objective
Section 2.2 Limitations on Strategic Ownership

ARTICLE III INTERESTED BIDDERS

Section 3.1 Invitations to Participate
Section 3.2 Submissions by Interested Bidders
Section 3.3 Determinations by Steering Committee

ARTICLE IV PARTICIPATION BY QUALIFIED BIDDERS

Section 4.1 Information Provided to Qualified Bidders
Section 4.2 Restraints on Certain Conduct
Section 4.3 Submissions by Qualified Bidders

ARTICLE V FIRST-ROUND REVIEW AND SELECTION

Section 5.1 Review of Submissions by Qualified Bidders
Section 5.2 Selected Bidders

ARTICLE VI SECOND-ROUND DUE DILIGENCE AND SUBMISSIONS

Section 6.1 Participation by Second-Round Selected Bidders
Section 6.2 Due Diligence by Second-Round Selected Bidders
Section 6.3 Submissions by Second-Round Selected Bidders

ARTICLE VII SECOND-ROUND REVIEW AND SELECTION

Section 7.1 Review of Submissions by Second-Round Selected Bidders
Section 7.2 Selected Bidders

ARTICLE VIII SELECTIONS OF INVESTORS

Section 8.1 Negotiations
Section 8.2 Submissions
Section 8.3 Determinations

159

RULES OF THE SELECTIVE TENDER

The Steering Committee is responsible for conducting the sale of the Contract Shares in Company-B to the Investor on behalf of Company-A. The process of fairly and objectively selecting the Investor will be conducted as provided in the Selective Tender. The objective of the Selective Tender is to consider the qualifications of the prospective Investor and to ascertain which prospective Investor will offer (i) the most preferable considerations in accord with the long-term objectives and best interests of Company-B, and (ii) the highest considerations to be paid Company-A in exchange for the Contract Shares being offered in Company-B. At the conclusion of the Selective Tender, the Steering Committee will present proposals to Company-A, and Company-A will approve the selection of the Investor.

The Steering Committee and the Company-A reserve the right in their sole and absolute discretion to (1) reject any and all Bidders, and (2) select from among the Bidders such Investor as it deem to be in the best interests of Company-B and Company-A.

The Selective Tender, including each step, does not constitute a public offer to conclude a contract or a public tender within the meaning of [insert applicable law], as amended).

The Steering Committee reserves the right to revise, amend, or terminate any or all of these Rules from time to time at any time and to revoke in part or its entirety the Selective Tender for Contract Shares of Company-B. The Selective Tender may be canceled at any time prior to the execution of the Transaction Documents, at no cost and with no liability inuring to Company-A, Company-B, or any of their Representatives. During the Selective Tender until execution of the Transaction Documents, Bidders have no rights with respect to the purchase of Contract Shares as a result of their participation in the Selective Tender.

Further, the Steering Committee reserves the right to exercise whatever discretion it in its own sole judgment deems appropriate in carrying out these Rules.

The Bidders and their Representatives are subject to the terms and conditions of the Participation Agreement.

No Bidder (nor any of its Affiliates) participating in the Selective Tender shall, directly or indirectly, purchase, or shall, directly or indirectly, enter into any agreement for the purchase of, shares of Company-B other than under these Rules.

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For the purposes of these Rules of the Selective Tender, the following terms have the following definitions:

"Affiliate" shall mean with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons shall be deemed to be Affiliates.

"Bidder" means a single legal entity, formed and validly existing under the laws of Czech Republic or the laws within another country.

"Company-A means [**insert name and form of entity and jurisdiction in which formed**].

"Company-B means [**insert name and form of entity and jurisdiction in which formed**].

"Contract Shares" mean the [**insert precise number**] shares of the Company-B to be sold by Company-A in accordance with the Transaction Documents.

"Data Room" mean separate Room established for Company-B containing documentation and information, including: (a) articles of association, (b) selected contracts, (c) financial information, (d) operational information, (e) technical due diligence reports, and (f) environmental assessments.

"Final Selected Bidders" mean the Second-Round Selected Bidders described in Section 7.2.

"Final Selective Tender Proposals" mean the submissions by Final Selected Bidders set forth in Section 8.2.

"First-Round Participation Fee" means the fee of [**insert amount**] payable as one of the conditions precedent to receiving the Transactions Documents and which becomes nonrefundable upon an Interested Bidder being determined to be a Qualified Bidder.

"First-Round Selective Tender Proposals" mean the submissions by Qualified Bidders set forth in Section 4.3.

"Information Memorandum" means the Confidential Information Memorandum containing introductory information including introductory information about Company-B.

"Interested Bidders" mean Bidders who have provided indications of interest in writing to participate in the Selective Tender in response to the Notice of Selective Tender.

"Investors" mean the Bidders, if any, selected to purchase Contract Shares.

"Notice of Selective Tender" mean the Notice of Selective Tender for the selection of the Investor published in various newspapers and other publications and/or mailed to those prospective Bidders and/or any of their Representatives who may have already indicated an interest.

"Participation Agreement" means the Participation Agreement between each Bidder and Company-A, execution of which by the Bidder is one of the conditions precedent to its receiving copies of the Information Memorandum and the Transaction Documents.

161

"Person" means a natural and/or legal person, including without limitation, a corporation, company, partnership, government institution or any agency or instrumentality thereof, or other legal entity.

"Qualified Bidders" mean Bidders (i) which the Steering Committee has determined meet the prerequisites established by it to be considered as potential Investor and (ii) who have executed the Participation Agreements and paid the Participation Fees.

"Representative" means any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Request for Information about Interested Bidders" means the form of request for specified information to be provided by Interested Bidders in [**insert language**] and English about themselves to enable the Steering Committee to consider their qualifications to be eligible to be Investors.

"Rules of the Selective Tender" or "Rules" means the description in its entirety of the rules applicable to the processes of selective tender for Company-B set forth in this document.

"Second-Round Participation Fee" means the nonrefundable fee [**insert amount**] payable as one of the conditions precedent to participation in a Data Room.

"Second-Round Selected Bidders" mean the Qualified Bidders described in Section 5.2.

"Second-Round Selective Tender Proposals" mean the submissions by Second-Round Selected Bidders set forth in Section 6.3.

"Selective Tender" mean the processes of selecting the Investor for Company-B announced in the Notice of Selective Tender.

"Steering Committee" means the Steering Committee conducting the Selective Tender comprised of [**insert members by function or name**].

"Transaction Documents" mean the [**insert names of transaction documents**].

"USD" means the lawful currency of the United States of America.

ARTICLE II GENERAL

Section 2.1 Objective The objective of the Selective Tender is for Company-A to sell the Contract Shares in Company-B on terms and conditions which are in the best interests of Company-A and Company-B and [**insert anyone else, if applicable**]. Qualified Bidders should have the financial resources and documented proven operational experience in the gas distribution industry and willingness to contribute to the overall successful management, operation and development of Company-B. This contribution should include among others assistance in improving strategic planning, marketing, customer service, operational efficiency, safety practices, and management information systems. The Qualified Bidders should also be able to assist Company-B in achieving competitive credit ratings and facilitating access to the international debt-capital markets.

Section 2.2 Limitations on Strategic Ownership

(a) No Qualified Bidders will be permitted in the bidding process, nor will an Investor be permitted with respect to share holding in Company-B, to form any investment alliance, or distribution, supply, joint venture or other cooperative arrangement which will be deemed by the Steering Committee to be against the strategic interests of Company-B.

162

(b) The Investor will be allowed to increase its ownership in the Company-B up to [**insert percentage**] through open-market or other purchases. The Investor will also be entitled to participate in any pro-rata capital subscription offerings with other shareholders even if such participation results in the Investor increasing their own ownership above [**insert percentage**]. Under no circumstances however, will the Investor be permitted to vote, either directly or indirectly, more than [**insert percentage**] of Company-B.

(c) To ensure that Company-B obtains the benefit of the resources sought from the Investor, the Investor will be entitled to designate [**insert number**] of the [**insert number**] directors on the board of directors of Company-B. To qualify as a majority vote of the board of directors in specified instances will require the inclusion within the majority votes of at least one of the directors designated by the Investor. Should the Investor sell or transfer any part or all of their shares in Company-B, these rights shall terminate and not be transferred to the new owners of such shares. The Investor will be entitled to nominate members of the supervisory boards commensurate with its shareholdings in Company-B.

ARTICLE III INTERESTED BIDDERS

Section 3.1 Invitations to Participate Interested Bidders will be provided invitations to participate. The invitations to participate will contain (i) Rules of the Selective Tender,(ii) copies of Participation Agreements to be signed and submitted by the Interested Bidders, and (iii) Requests for Information about Interested Bidders to be submitted by Interested Bidders to enable the Steering Committee to ascertain whether or not the Interested Bidders will be considered Qualified Bidders. Such information should include:

(A) current articles of association or incorporation of the Bidder;

(B) ownership structure of the Bidder;

(C) annual audited financial statements of the Bidder for most recent 3 years and more recent interim financial reports;

(D) information about Bidder's technical qualifications, including size and quality;

(E) method of financing cash purchase of Contract Shares;

(F) direct or indirect ownership of any shares in any of Company-B; and

(G) any other information relating to the Bidder's proven operational experience in Company-B's industry.

The invitations to participate will also provide (i) a designated person, address and telephone number to contact if they have any questions (and a reminder that they shall not contact any Representatives of Company-B), (ii) the date and time that submissions are due, and (iii) to whom they are to be sent.

Section 3.2 Submissions by Interested Bidders Interested Bidders will submit fifteen copies each in [**insert language**] and English not later than the due date and time specified in the invitations to participate consisting of the information requested in the invitations to participate. The [**insert language**] and English language versions shall be bound separately. Interested Bidders will also submit (ii) two signed copies of the Participation Agreement, and (ii) payment of the First-Round Participation Fee to the account designated by Company-B. The First-Round Participation Fee of [**insert amount**] is payable for the Information Memorandum.

163

Section 3.3 Determinations by Steering Committee The Steering Committee will review the submissions by Interested Bidders and in its sole discretion determine those Interested Bidders that are eligible to become Qualified Bidders. The Steering Committee will provide separate notice to each Interested Bidder (who made a submission) of the outcome of its determinations and will return any First-Round Participation Fee if the Interested Bidder has not been determined to be a Qualified Bidder.

ARTICLE IV PARTICIPATIONS BY QUALIFIED BIDDERS

Section 4.1 Information Provided to Qualified Bidders Qualified Bidders will be provided an Information Memorandum and Transaction Documents. The Qualified Bidders will be informed in the covering letter of (i) a designated person, address and telephone number to contact if they have any questions (and a reminder that they shall not contact any Representatives of the Company), (ii) the date and time that the First-Round Selective Tender Proposals are due, and (iii) to whom they are to be sent. Requests for information by the Qualified Bidders should be made in writing to such designated person in both **[insert language]** and English languages. Such requests shall be made no later than fourteen (14) days before the submission due date. Oral explanations or instructions will not be binding.

Section 4.2 Restraints on Certain Conduct. No communication with regard to matters relating to the Selective Tender shall be initiated directly or indirectly by or on behalf of any Bidder or any of its Representatives except as explicitly permitted in Section 4.1 or in Section 6.2 during the Selective Tender with: (i) any member of the Steering Committee; (ii) Company-A or (iii) Company-B or its Representatives. Requests for any information shall be made in accord with Section 4.1. Bidders and their affiliates shall comply with all applicable laws of the **[insert applicable jurisdiction]**, these Rules, and the Participation Agreement.

Section 4.3 Submissions by Qualified Bidders Qualified Bidders will submit **[insert number]** copies each of a consecutively page-numbered First-Round Selective Tender Proposal in **[insert language]** and in English not later than the due date and time specified in the cover letter referred to in Section 4.1. The **[insert language]** and English language versions of the First-Round Selective Tender Proposals shall be bound separately. Additional instructions concerning the submission of First-Round Selective Tender Proposals will be provided at a later date. The First-Round Selective Tender Proposals shall consist of the following:

(a) A preliminary price for the Contract Shares for Company-B.

(b) A proposed preliminary business and financial plan for Company-B.

(c) Commitments of services and assistance to be provided by the Qualified Bidder for Company-B, including stating the estimated value of the services and assistance and the extent that the Qualified Bidder expects to be reimbursed for any costs.

(d) A memorandum setting forth the proposed changes to both the **[insert language]** and English language versions of the Transaction Documents, accompanied by the rationale for each proposed change and explaining how each proposed change is consistent with the Transaction Documents and the First-Round Selective Tender Proposals.

(e) Other assistance or measures that the Qualified Bidder will undertake on behalf of Company-B, including stating the estimated value of the assistance or measures and the extent that the Qualified Bidder expects to be reimbursed for any costs.

ARTICLE V FIRST-ROUND REVIEW AND SELECTION

Section 5.1 Review of Submissions by Qualified Bidders The Steering Committee will review the submissions by Qualified Bidders to assess compliance with these Rules, and will compare and evaluate the competing First-Round Selective Tender Proposals in the manner that in its sole discretion the Steering Committee determines to be in accord with the objectives of the Selective Tender, these Rules and in the best interests of Company-B, Company-A and [**insert anyone else, if applicable**].

Section 5.2 Selected Bidders The Steering Committee will determine in its sole discretion, those, if any, Qualified Bidders that may continue to participate in the Selective Tender as Second-Round Selected Bidders. The Steering Committee will provide notice to each Qualified Bidder (who made a submission) of the outcome of its determinations and a request for the return of all Confidential Information relating to Company-B if the Qualified Bidder was not selected to continue in the Selective Tender. The Second-Round Selected Bidders will be informed in the covering letter of (i) a designated person, address and telephone number to contact if they have any questions (and a reminder that they shall not contact any Representatives of the Company-B), (ii) the date and time that the Second-Round Selective Tender Proposals are due, (iii) to whom they are to be sent, and (iv) any additional instructions concerning the submission of Second-Round Selective Tender Proposals.

ARTICLE VI SECOND-ROUND DUE DILIGENCE AND SUBMISSIONS BY SELECTED BIDDERS

Section 6.1 Participation by Second-Round Selected Bidders. The Selected Bidders shall submit payment of the Second-Round Participation Fee within five (5) business days of notice of selection by the Steering Committee to the designated account of Company-A. If the Second-Round Selected Bidder does not pay the Second-Round Participation Fee, it will be precluded from further participation in the Selective Tender.

Section 6.2 Due Diligence by Second-Round Selected Bidders. The Second-Round Selected Bidders, in performing their independent investigations and assessments, will be afforded the opportunity to visit the Data Room, visit the sites and inspect the properties, and meet and ask questions of senior management of Company-B.

Section 6.3 Submissions by Second-Round Selected Bidders. Second-Round Selected Bidders will submit [**insert number**] copies each of a consecutively page-numbered Second-Round Selective Tender Proposal in [**insert language**] and in English not later than the due date and time specified in Section 5.2. The [**insert language**] and English language versions of the Second-Round Selective Tender Proposals shall be bound separately and shall be submitted in accordance with Section 5.2.

ARTICLE VII SECOND-ROUND REVIEW AND SELECTION

Section 7.1 Review of Submissions by Second-Round Selected Bidders. The Steering Committee will review the submissions by Second-Round Selected Bidders to assess compliance with these Rules, and will compare and evaluate competing Second-Round Selective Tender Proposals in the manner that, in its sole discretion, the Steering Committee determines to be in accord with the objectives of the Selective Tender and in the best interests of Company-B, Company-A and [**insert anyone else, if applicable**].

165

Section 7.2 Selected Bidders The Steering Committee will determine in its sole discretion, those, if any or all, Second-Round Selected Bidders that may continue to participate in the Selective Tender as Final Selected Bidders. The Steering Committee will provide notice to each Second-Round Selected Bidder (who made a submission) of the outcome of its determinations and a request for the return of all Confidential Information relating to Company-B if the Second-Round Selected Bidder has not been chosen as a Final Selected Bidder. The Final Selected Bidders will be informed in the covering letter of (i) a designated person, address and telephone number to contact if they have any questions (and a reminder that they shall not contact any Representatives of Company-B), (ii) the date and time that the Final Selective Tender Proposals are due, (iii) to whom they are to be sent, and (iv) any additional instructions concerning the submission of Final Selective Tender Proposals.

ARTICLE VIII SELECTION OF INVESTORS

Section 8.1 Negotiations. Representatives of the Steering Committee and the NPF will engage in discussions with each of the Final Selected Bidders to assure that the final submissions by the Final Selected Bidders are fully responsive bids.

Section 8.2 Submissions. After negotiations, the Final Selected Bidders will then submit [**insert number**] copies each of a consecutively page-numbered Final Selective Tender Proposal in [**insert language**] and in English not later than the due date and time specified by the Steering Committee. The [**insert language**] and English language versions of the Final Selective Tender Proposals shall be bound separately. Additional instructions concerning the submission of Final Selective Tender Proposals will be provided prior to the specified submission date.

Section 8.3 Determinations. The Steering Committee will review the submissions by Final Selected Bidders to assess compliance with these Rules, and will compare and evaluate the competing Final Selective Tender Proposals in the manner that in its sole and absolute discretion the Steering Committee determines to be in accord with the objectives of the Selective tender and in the best interests of Company-B, Company-A and [**insert anyone else, if applicable**]. The Steering Committee will present its determinations to and obtain the decision of the Company-A. The Steering Committee will provide notice to each Final Selected Bidder (who made a Final Selective Tender Proposal) of the outcome of the Government's decision and a request for the return of all Confidential Information furnished by each of the Final Selected Bidders determined not to be an Investor, as provided in the Participation Agreement.

166

Appendix 12

This form of Share Purchase Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF SHARE PURCHASE AGREEMENT

168

FORM OF SHARE PURCHASE AGREEMENT

TABLE OF CONTENTS

RECITAL 4

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS 4

ARTICLE II. PURCHASE AND SALE; CLOSING 5

Section 2.1 Sale of Shares
Section 2.2 Purchase Price
Section 2.3 Closing
Section 2.4 Closing Obligations

ARTICLE III. REPRESENTATIONS OF SELLER 6

Section 3.1 Organization, Good Standing, Etc.
Section 3.2 Authorization; Due Execution
Section 3.3 No Violation
Section 3.4 Capitalization
Section 3.5 Litigation
Section 3.6 Approvals/Consents
Section 3.7 Financial Statements
Section 3.8 Title to Properties; Encumbrances
Section 3.9 Legal Compliance
Section 3.10 Limitation on Representations

ARTICLE IV. REPRESENTATIONS OF BUYER 8

Section 4.1 Organization, Good Standing, Etc.
Section 4.2 Authorization; Due Execution
Section 4.3 No Violation
Section 4.4 Approvals, Consents, Etc.
Section 4.5 Litigation
Section 4.6 Financing
Section 4.7 Investment; Transfer of Shares

ARTICLE V. COVENANTS PRECEDENT TO CLOSING 8

Section 5.1 Access to Information
Section 5.2 Negative Agreements
Section 5.3 Governmental Consents
Section 5.4 General Meetings of the Company
Section 5.5 Best Efforts

ARTICLE VI. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER TO CLOSE 9

Section 6.1 Accuracy of Representations
Section 6.2 Performance of Agreements
Section 6.3 Legal Proceedings
Section 6.4 Governmental Consents
Section 6.5 No Change in Business

ARTICLE VII. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER TO CLOSE 10

Section 7.1 Accuracy of Representations
Section 7.2 Performance of Agreements
Section 7.3 Legal Proceedings
Section 7.4 Governmental Consents

169

ARTICLE VIII. BUYER'S POST-CLOSING COVENANTS - GOVERNANCE **10**

Section 8.1 Business Plan
Section 8.2 Buyer Investment Program
Section 8.3 Dividend Policy
Section 8.4 Employment and Related Matters
Section 8.5 Non-Competition
Section 8.6 Technical Assistance and Intellectual Property
Section 8.7 Facilities
Section 8.8 Continued Operation of Business
Section 8.9 Related Transactions
Section 8.10 Minimum Production and Sale of Products
Section 8.11 Marketing Rights
Section 8.12 Procurement Policies
Section 8.13 Corporate Governance

ARTICLE IX. TERMINATION **13**

Section 9.1 Right of Termination
Section 9.2 Effect of Termination

ARTICLE X. INDEMNIFICATION; REMEDIES **13**

Section 10.1 Survival of Representations and Covenants
Section 10.2 Indemnification
Section 10.3 Limitations on Indemnification
Section 10.4 Retention and Inspection of Books and Records
Section 10.5 Compliance
Section 10.6 Exclusive Remedy

ARTICLE XI. GENERAL **14**

Section 11.1 Expenses
Section 11.2 Governing Law and Dispute Resolution
Section 11.3 Sovereign Immunity
Section 11.4 Waiver
Section 11.5 Notices
Section 11.6 Entire Agreement
Section 11.7 Amendments and Modifications
Section 11.8 Binding Effect
Section 11.9 Assignment, Successors, and No Third Party Rights
Section 11.10 Separability
Section 11.11 Counterparts
Section 11.12 Languages
Section 11.13 Headings; Construction
Section 11.14 Confidentiality
Section 11.15 Further Assurances
Section 11.16 Public Announcements

FORM OF GUARANTY **18**

170

FORM OF SHARE PURCHASE AGREEMENT

This Share Purchase Agreement ("Agreement") is made as of [**insert date**], 199__, by [**insert name of company**], a [**insert form and jurisdiction of company**] ("Buyer"), [**insert name of company**]company, a [**insert form and jurisdiction of company**] company ("Seller").

RECITAL

Seller desires to sell, and Buyer desires to purchase, [**insert number**] of the issued and outstanding shares (the "Contract Shares"), representing [**insert percentage**]% of the registered share capital of [**insert name of company**], a [**insert form and jurisdiction of company**] company (the "Company"), for the consideration and on the terms set forth in this Agreement. The Contract Shares will as of the Closing Date (i) each have a nominal value of [**insert amount**], (ii) be in the form of bearer / certificated shares, (iii) be publicly / non-publicly tradable, and (iv) be issued in registered / book entry form.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

ARTICLE I.

DEFINITIONS AND ACCOUNTING TERMS

Section 1.1 Definitions. For the purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.1:

"Affiliate" will mean with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons will be deemed to be Affiliates.

"Agreement" will mean this Share Purchase Agreement as amended pursuant to the terms hereof.

"Agreement Date" will have the meaning set forth in this Agreement.

"Balance Sheet" will have the meaning set forth in Section 3.7.

"Best Efforts" will mean the efforts that a prudent Person would reasonably use to ensure that the contemplated results are achieved as expeditiously as reasonable under the circumstances.

"Business" will mean [**insert definition of the business of the Company**], as currently conducted and as historically conducted by the Company and any other business activities of the Company mentioned in the Companies Register.

"Business Plan" will have the meaning set forth in Section 8.1.

"Buyer" will have the meaning set forth in the first paragraph of this Agreement.

"Buyer's Group" will mean the Buyer, all its Affiliates, and all Representatives of the Affiliates and Buyer.

"Buyer's Investment Program" will have the meaning set forth in Section 9.2.

"Centre of Securities" will mean the official register of book-entry securities, established and existing pursuant to [**insert**] of the [**insert**].

"Closing" will have the meaning set forth in Section 2.3.

171

"Closing" will have the meaning set forth in Section 2.3.

"Closing Date" will mean the date and time as of which the Closing actually takes place.

"Company" will have the meaning set forth in the Recital.

"Confidential Information" will have the meaning set forth in Section 11.14.

"Contract Shares" will have the meaning set forth in the Recital.

"Disclosure Statement" will have the meaning set forth in Schedule [**insert**].

"Environmental Agreement" will mean any written agreement or agreements of the Company with respect to environmental obligations (as defined in the Environmental Agreement).

"Facilities" will mean those current facilities of the Company listed in Schedule [**insert**] attached hereto.

"GAAP" will mean the generally accepted accounting principles (standards) applied by [**insert applicable country or "Internationally Generally Accepted Accounting Principles"**].

"Guaranty" will mean the guaranty provided by the Buyer in the form attached as an Exhibit to this Agreement.

"Intellectual Property" will mean all patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Business.

"Interim Balance Sheet" will have the meaning set forth in Section 3.7.

"Investor" will have the meaning set forth in the Guaranty.

"Investment Program Amount" will have the meaning set forth in Section 8.2.

"Loss" and "Losses" will have the meanings set forth in Section 11.2(a).

"Order for the Registration of Transfer of the Contract Shares" will mean an order which includes all the prerequisites required by the [insert name of law] for the registration of transfer of shares.

"Parties" will mean Buyer and Seller, and "Party" will mean Buyer or Seller.

"Person" will mean a natural and/or legal person, such as a company, partnership, government institution or an agency or instrumentality thereof, or other legal entity.

"Purchase Price" will have the meaning set forth in Section 2.2.

"Representative" shall mean any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Rules" will have the meaning set forth in Section 12.2.

"Seller" will have the meaning set forth in the first paragraph of this Agreement.

"Seller's Group" will mean the Buyer, all its Affiliates, and all Representatives of the Affiliates and Seller.

"Shares" will mean the non-redeemable voting securities of the Company.

"[**Insert symbol for currency**]" will mean the [**insert symbol for country**] official currency.

"[**insert symbol for country**]" will mean the[**insert name of country**].

"[**insert symbol for country**] laws" and "laws of the [**insert symbol for country**]" will mean all laws and regulations of the [**insert symbol for country**].

172

Section 1.2 Accounting Terms. All accounting terms not specifically defined herein are to be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement are to be prepared, and will be deemed to be prepared, in accordance with GAAP.

ARTICLE II.

PURCHASE AND SALE; CLOSING

Section 2.1. Shares. Subject to the terms and conditions of this Agreement, at the Closing, Seller will sell and transfer the Contract Shares to Buyer, and Buyer will purchase the Shares from Seller.

Section 2.2. Purchase Price. The purchase price (the "Purchase Price") for the Contract Shares will be [**insert amount in currency**] ([**insert amount in words**]).

Section 2.3. Closing. The purchase and sale (the "Closing") provided in this Agreement will take place at the Seller's offices at [**insert location**], at [**insert time**]:00 a.m. (local time) on the later of (i) [**insert date**], 199___ , or (ii) at such other time and place as the Parties may agree. Subject to the provisions of Article IX, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.3 will not result in the termination of this Agreement and will not relieve any Party of any obligation under this Agreement.

Section 2.4. Closing Obligations.

At the Closing:

(a) The Buyer will deliver to the Seller:

(i) the Purchase Price by bank cashier's or certified check or by wire or similar bank transfer of Seller to the account number [**insert account number**], [**insert name of bank**] at [**insert location**]; and

(ii) a statement executed by Buyer representing and warranting to Seller that each of Buyer's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

(b) The Seller will deliver to the Buyer:

(i) either (depending on whether the Contract Shares are certificated or book-entry uncertificated shares), certificates representing the Contract Shares, duly endorsed (or accompanied by duly executed Share powers), with signatures guaranteed by a commercial bank for transfer to Buyer, or an Order of the Seller for the Registration of the Transfer of the Contract Shares from the account of the Seller (Account No. [**insert number**]) to the account of the Buyer, pursuant to the applicable provisions of law, free any liens, encumbrances, claims and equities of every kind, other than any obligations imposed on Buyer pursuant to this Agreement or applicable laws; and

(ii) a statement executed by Seller representing and warranting to Buyer that each of Seller's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to the Disclosure Statement and any supplements to the Disclosure Statement that were delivered by Seller to Buyer prior to the Closing Date.

ARTICLE III.

REPRESENTATIONS OF SELLER

Section 3.1. Organization, Good Standing, Etc. The Company (a) is a joint stock company duly organized, duly registered, validly existing and in good standing under the [**insert jurisdiction name**] laws , and (b) has all requisite corporate power and authority to conduct its Business as it is now being conducted, to own or use its Facilities, and to perform all its contractual obligations. Attached hereto as Schedule A is a true and correct copy of the Articles of Association of the Company, as of the Agreement Date.

173

Section 3.2. Authorization; Due Execution. The Seller has been duly established and duly registered, and has all requisite power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Seller, and constitutes the binding, legal and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

Section 3.3. No Violation. Neither the execution or delivery by the Seller of this Agreement or the ancillary documents, nor the consummation or performance of the transactions contemplated hereby, (a) violates any material agreement, commitment, judgment or order to which the Company or the Seller is a Party or by which the Company's property is bound, (b) contravenes any law or regulation having applicability to the Company or the Seller, or (c) results in or requires the creation or imposition of any encumbrance of any nature upon, or with respect to, any properties or assets now owned or hereafter acquired by the Company (other than as may arise pursuant to this Agreement).

Section 3.4. Capitalization. The Company has [**insert number**] authorized and [**insert number**] issued common shares of a single class with a nominal or par value each of [**insert amount**]. All of the Contract Shares are owned by the Seller. There are no other authorized equity securities or securities convertible into equity securities of the Company. The Contract Shares have been duly and validly issued. There are no outstanding Share subscriptions, interim certificates, options, or warrants granted by the Company relating to the issued or unissued Shares of the Company. There are no options or other rights relating to the Contract Shares.

Section 3.5. Litigation. To the knowledge of the Seller, there is no claim, action, proceeding, arbitration, investigation or hearing, pending or threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal, against the Seller or the Company, involving the Contract Shares or the transactions contemplated by this Agreement.

Section 3.6. Approvals/Consents. Other than those consents and approvals which have already been obtained, no consent or approval of the any governmental or administrative body is required to authorize the Seller to enter into this Agreement or perform its obligations hereunder, other than that of the [**insert any approval entity that has not granted approval**], and of the [**insert any other approval entity that has not granted approval**].

Section 3.7. Financial Statements. Buyer has been provided: (a) [**insert if statements are unaudited**] consolidated balance sheet of the Company as at [**insert date**], 199____, (including notes thereto, the "Balance Sheet"), and balance sheets of the Company in each of the preceding [**insert number**] years, and the related [**insert unaudited if unaudited**] consolidated statements of income, changes in shareholders' equity, and cash flow for each of the fiscal years then ended, [**insert if audited, "together with the report thereon of _____, independent certified public accountants,"**] and (b) an unaudited interim consolidated balance sheet of the Company as at [**insert date**] (the "Interim Balance Sheet") and the related unaudited consolidated statements of income, changes in shareholders' equity, and cash flow for the [**insert number**] months then ended, including the notes thereto, and the corresponding unaudited financial statements for the corresponding period in the preceding year. Such financial statements and notes fairly present in all material respects the financial condition and the results of operations, changes in shareholders' equity, and cash flow of the Acquired Companies as at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP, subject, in the case of interim financial statements, to normal recurring year-end adjustments and the absence of notes (that, if presented, would not differ materially from those included in the Balance Sheet); the financial statements referred to in this Section 3.7 reflect the consistent application of such accounting principles throughout the periods involved [**insert if applicable ", except as disclosed in the notes to such financial statements"**]. The consolidated financial statements do not omit the financial statement of any Person required by applicable generally accepted accounting principles to be included in the consolidated financial statements of the Company.

174

Section 3.8. Title to Properties; Encumbrances. In all material respects, the Company has good and marketable title to the real property that is reflected in the Balance Sheet, Interim Balance Sheet or Disclosure Statement as owned by it, except for (i) rights of public utilities to maintain wires, lines, cables and other facilities and equipment, easements or right-of-way which would not in the aggregate materially interfere with or impair the use or diminish the value of the property affected thereby or the operation of the Business, (ii) mortgages or security interests reflected in the Balance Sheet or Interim Balance Sheet or as set forth on the Disclosure Statement. No default (or event that, with notice or lapse of time or both, would constitute a default) exists with respect to any material mortgages or security interests affecting the Company's properties and assets.

Section 3.9 Legal Compliance. Except as disclosed in the Disclosure Statement, the Company has not received any notice or communication that it (i) not in compliance with applicable laws and regulations affecting the conduct or operation of its Business or the ownership or use of its assets, or (ii) has breached any of its material contracts.

Section 3.10. Limitation on Representations.

(a) Only Representations. The representations set forth in this Article III constitute the only representations made by the Seller connection with the transactions contemplated hereby.

(b) No Reliance. The Buyer hereby acknowledges and agrees that (i) in entering into this Agreement it has not relied on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) the Seller or the Company, or any of their Representatives (or any of its Affiliates), other than the representations and agreements of the Company expressly set forth in this Agreement, (ii) it has had the opportunity to inspect the books and records of the Company and to meet with and ask questions of the management of the Company, and (iii) it has inspected the assets and liabilities of the Company and except as expressly provided herein accepts those assets and liabilities in their current condition and at their current location.

(c) Independent Determinations. Except as expressly represented by the Seller in this Agreement, the Buyer further hereby acknowledges and agrees that (i) it and its Representatives have made their own independent investigations and analyses, (ii) to the extent it has deemed appropriate, it and its Representatives have independently verified all information, (iii) it has reached its own independent investment decision with respect to the Company, and (iv) Representatives of the Sellers and the Company will have no liability arising out of, or resulting from, the use of any information provided to the Buyer.

ARTICLE IV.

REPRESENTATIONS OF BUYER

Section 4.1. Organization, Good Standing, Etc. Buyer is a **[specify the form of legal entity of the Buyer]** duly organized, validly existing and in good standing under the laws of **[insert jurisdiction]**.

Section 4.2. Authorization; Due Execution. Buyer has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Buyer, and constitutes the binding, legal and valid obligation of Buyer enforceable against Buyer in accordance with its terms.

Section 4.3. No Violation. Neither the execution or delivery by Buyer of this Agreement, nor the consummation of the transactions contemplated hereby, will (a) violate any material agreement, commitment, judgment or order to which Buyer is a Party or by which Buyer's property in any material respect would be bound, (b) contravene any law or regulation having applicability to Buyer or the Company or (c) result in or require the creation or imposition of any encumbrance of any nature upon, or with respect to, any properties or assets now owned or hereafter acquired by the Company or the Buyer (other than as may arise pursuant to this Agreement).

175

Section 4.4. Approvals, Consents, Etc. No consent, authorization or approval of, or waiver or exemption by, or filing or registration with, any governmental agency or any other Person is required to be obtained or made in connection with the execution, delivery or performance by Buyer of this Agreement other than that of the [**insert**] or the [**insert**].

Section 4.5. Litigation. There is no claim, action, proceeding, arbitration, investigation or hearing, pending or, to the knowledge of Buyer, threatened, by or before any court or governmental or administrative agency or authority or private arbitration tribunal, against Buyer involving the transactions contemplated by this Agreement.

Section 4.6. Financing. Buyer has sufficient funds available to it to enable it to perform its obligations under this Agreement, including the payment of the Purchase Price.

Section 4.7. Investment; Transfer of Shares. The Buyer is acquiring the Contract Shares for its own account, and for a period of five (5) years after the Closing Date, the Buyer agrees, not to transfer any Contract Shares or any other Shares acquired during the period of five years without the prior written consent of the Seller.

ARTICLE V.

COVENANTS PRECEDENT TO CLOSING

For the period between the Agreement Date and the earlier of the Closing Date or the termination of this Agreement, the Parties agree as follows:

Section 5.1. Access to Information. Between the Agreement Date and the Closing Date, the Seller will and will use its Best Efforts to cause the Company to allow Buyer and its counsel, accountants, consultants and other representatives reasonable access during normal business hours to access the Company's properties, personnel, financial and operating data and information, books, accounts, contracts and records of the Company, and furnish additional financial, operating, and other data and information as Buyer may reasonably request.

Section 5.2. Negative Agreements. Except as otherwise provided or contemplated herein, or as Buyer may otherwise consent in writing, before the Closing Date the Seller will take all action available to it to cause the Company to conduct its business in the ordinary course of business, and not to:

(a) declare, pay or set aside for payment any dividend, distribution or other amounts or benefits in respect of any of its shares;

(b) purchase any of its shares except for employee shares;

(c) issue any shares or become a party to any subscriptions, warrants, rights, options or rights related to the shares of the Company;

(d) merge or consolidate with, or acquire all or a majority of the shares or assets of, any other entity; or

(e) change the character of its business in any material respect or operate the Company other than in the ordinary course of business.

Section 5.3. Governmental Consents. Within three (3) working days after the signing of this Agreement, the Buyer, the Seller will and will use its Best Efforts to cause the Company to make the necessary submissions and provide the necessary data and information to obtain all required Governmental consents required to conclude this Agreement.

Section 5.4. General Meetings of the Company. Preceding the Closing Date and subject to the Closing of this Agreement, the Seller will vote its Shares at one or more of the Company's General Meetings to (a) amend Article [**insert**] of the Company's Articles of Association to provide that the Company's registered capital consists of [**insert number**] certificated/bearer shares in the form of book entry, and publicly tradable shares; and [**insert number**] employee registered shares in the form of non-publicly tradable shares; and (b) (i) recall or accept the resignations of one or more of the then existing members of the Company's Board of Directors and recall or accept the resignations of one or more of the then existing members of the Company's Supervisory Board, (ii) elect new members of the Company's Board of Directors

176

and elect new members of the Supervisory Board of the Company to replace the resigned or recalled members, and (iii) approve other actions contemplated by this Agreement.

Section 5.5. Best Efforts. The Buyer and Seller will use their respective Best Efforts to see that the Closing is concluded.

ARTICLE VI.

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to close the transactions contemplated by this Agreement are, except as set forth in a supplement to the Disclosure Statement attached as Schedule **[insert]**, subject to the satisfaction on or before the Closing Date of the following conditions:

Section 6.1. Accuracy of Representations. The representations made by the Seller in this Agreement will be accurate and true in all material respects, both as of the Agreement Date and as of the Closing Date, with the same effect as if made on and as of the Closing Date, except as affected by the transactions contemplated hereby.

Section 6.2. Performance of Agreements. The Seller will have performed in all material respects all agreements to be performed by it on or before the Closing Date pursuant to this Agreement.

Section 6.3. Legal Proceedings.

(a) No claim, action, proceeding, governmental investigation or hearing will be pending against or affecting Buyer, the Seller or the Company, that restrains or prevents or seeks to restrain or prevent the transactions contemplated hereby.

(b) No law, rule, regulation or order will have been enacted or promulgated and no preliminary or permanent injunction or other order will have been issued by any court or regulatory body, that restrains, enjoins or otherwise prohibits the transactions contemplated hereby.

Section 6.4. Governmental Consents. Provided that the Buyer will have used its Best Efforts to obtain all necessary Governmental consents, all necessary Governmental consents required to conclude this Agreement will have been obtained.

Section 6.5. No Change in Business. Between the Agreement Date and the Closing Date no material adverse change will have occurred in the nature of the Business and the Business will have been conducted in its ordinary course.

ARTICLE VII.

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE SELLER TO CLOSE

The obligations of the Seller to close the transactions contemplated by this Agreement are subject to the satisfaction on or before the Closing Date of the following conditions:

Section 7.1. Accuracy of Representations. The representations made by Buyer in this Agreement will be accurate and true in all material respects, both as of the Agreement Date and as of the Closing Date, with the same effect as if made on and as of the Closing Date, except as affected by the transactions contemplated hereby.

Section 7.2. Performance of Agreements. Buyer will have performed in all material respects all agreements to be performed by it on or before the Closing Date pursuant to this Agreement.

Section 7.3. Legal Proceedings.

(a) No claim, action, proceeding, governmental investigation or hearing will be pending against or affecting Buyer, the Seller or the Company, that restrains or prevents or seeks to restrain or prevent the transactions contemplated hereby.

171

(b) No law, rule, regulation or order will have been enacted or promulgated and no preliminary or permanent injunction or other order issued by any court or regulatory body, that restrains, enjoins or otherwise prohibits the transactions contemplated hereby or asserts a penalty in respect thereof.

Section 7.4. Governmental Consents. Provided that the Seller will have used its Best Efforts to obtain the necessary Governmental consents, all necessary Governmental consents required to conclude this Agreement will have been obtained.

ARTICLE VIII.

BUYER'S POST-CLOSING COVENANTS - GOVERNANCE

Section 8.1. Business Plan. The Buyer will use its Best Efforts to cause the Company to undertake and implement the Company's Business Plan, a copy of which is attached as Schedule [**insert**] to this Agreement (the "Business Plan").

Section 8.2. Buyer's Investment Program.

(a) The Buyer confirms and agrees in support of the Business Plan, that it will make aggregate capital investments in the Company (provided the necessary number of other shareholders approve it) in accordance with Schedule [**insert**] of at least the equivalent of [**insert foreign currency amount**] (the "Investment Program Amount"). Such investments will be used for purposes of modernizing, refurbishing and strengthening the Company, including for the purposes set forth in Business Plan. Buyer agrees to satisfy its investment obligations set forth in Schedule [**insert**] in accordance with the time table set forth in Schedule [**insert**] (the "Buyer's Investment Program").

(b) In consideration of the Buyer's Investment Program, the Buyer will be entitled to receive from the Company such aggregate number of shares (the "New Shares"), equal to the quotient of (i) the Investment Program Amount and (ii) the Per Share Purchase Price (as defined below), all in accordance with the remainder of this paragraph (b). Following capital investments in the Company in accordance with this Section 8.2 and Schedule [**insert**], the Parties agree to vote their Shares at a General Meeting to authorize the Company to issue and deliver to the Buyer additional number of New Shares equal to the quotient of (A) the amount of such capital investment in [**insert**] and (B) the Per Share Purchase Price. The "Per Share Purchase Price" will mean an amount equal to the quotient of (I) the [**insert**] equivalent of the Purchase Price at the Closing Date (using the then-applicable official State Bank conversion rate), and (II) the aggregate number of Contract Shares. In no event, however, will the price for any such shares be less than their nominal value or higher value if the Company issues Shares at a price that includes a per share premium above the nominal value. If capital investments are provided in Schedule [**insert**] to be in any form other than cash, their value will be determined in accordance with applicable laws.

Section 8.3. Dividend Policy. Since for a period of five (5) years after the Closing Date the Company's profits are to be used to modernize, refurbish and improve the Company assets and to otherwise strengthen the Company as provided in the Business Plan, the Buyer will use its Best Efforts to cause the Company not to pay any dividends or other distributions from the capital account, redeem any Shares, make any loans or advances, or guaranty loans or other obligations for the benefit of the Company's shareholders or Buyer's Affiliates.

Section 8.4. Employment and Related Matters.

(a) Continued Employment. For a period of five (5) years after the Closing Date, the Buyer will use its Best Efforts to cause the Company not to terminate employment arrangements (or take any action (such as a reduction of hours) which has a similar effect) for employees of the Company other than for cause or pursuant to employee initiated terminations or as provided in the Business Plan.

178

(b) Management and Employee Training. To the extent provided in the Business Plan, the Buyer will provide without charge (except for direct, reasonable out-of-pocket costs such as travel and lodging expenses) training programs to the management and employees of the Company with the emphasis on the following areas: (i) general, financial and personnel management: (ii) strategic direction and decision-making systems; (iii) technology, manufacturing, production and research and development; (iv) marketing and selling; (v) procurement, planning, inventory and accounting systems, (vi) quality control, and (vii) language skills.

(c) Work Force. The Buyer will use its Best Efforts to cause the Company to engage primarily employees (both management and non-management) who are [**insert country or symbol**] citizens.

(d) Social Benefits. Except to the extent otherwise provided in Schedule [**insert**], the Buyer will use its Best Efforts to cause the Company to ensure that the value of all indirect compensation and social benefits to employees (which indirect compensation and social benefits are described on Schedule [**insert**]) will be maintained at a level at least equivalent to that at the Closing Date.

(e) Other. Where at all possible, the Buyer will use its Best Efforts to cause the Company to introduce and implement personnel, remuneration, training, organization and social security policies which modernize the Company and represent progress over existing policies.

Section 8.5. Non-Competition. So long as Buyer or its Affiliates own any of the shares of the Company and for a period of five (5) years thereafter, the Buyer will not, and will cause each of its Affiliates not to, other than through the Company, directly or indirectly, engage in the conduct of any business which is competitive with the Business within [**insert area or country**], and which is competitive with Business conducted by the Company outside [**insert area or country**], provided, that the Buyer and its Affiliates will not engage in competition to the extent that its products are directly competitive with or substitutable for the Company's products in those regions where the Company currently markets its products.

Section 8.6. Technical Assistance and Intellectual Property. In addition to, and not in limitation of, Buyer's obligations under Section 8.4(b), the Buyer will, and will cause its Affiliates to, make available to the Company without charge (except for direct, reasonable out-of-pocket costs such as travel and lodging expenses) technical assistance, technology, know-how, skills and other expertise necessary for the conduct of the Business as provided in this Agreement. The Buyer will, and will cause its Affiliates to, license or sub license (all without charge) to the Company Intellectual Property (owned by Buyer or its Affiliates or with respect to which Buyer or its Affiliates have rights to license or sub license such Intellectual Property) necessary for the conduct of the Business as provided in this Agreement. The Buyer or its Affiliates, as the case may be, will in the license or sub license to the Company undertake to maintain and improve the licensed Intellectual Property.

Section 8.7. Facilities. Except as provided in the Business Plan, for a period of five (5) years after the Closing Date, the Buyer will use its Best Efforts to cause the Company to support the proper maintenance of the Company's Facilities and continue to use and operate the Facilities.

Section 8.8. Continued Operation of Business. For a period of ten (10) years after the Closing Date, the Buyer will use its Best Efforts to cause the Company not (a) to liquidate or be dissolved, (b) to sell all or substantially all of the assets of the Company, (c) to change in a fundamental manner the Company business from the Business, or (d) to restructure the operations of the Company in any way which would result in the splitting-up or division of the Business.

Section 8.9. Related Transactions. Except as otherwise provided herein, the Buyer will cause all transactions between the Company and the Buyer (or any of their respective Affiliates) to be on terms and conditions (including compensation and payment) which are not more favorable to the Buyer (or any such Affiliate) than the terms and conditions which would prevail in a transaction involving parties which do not have any ownership interest in one another.

179

Section 8.10. Minimum Production and Sale of Products. For a period of [**insert number**] years after the Closing Date, the Buyer will use its Best Efforts to cause the Company to produce and sale not less than [**state minimum quantities of specified products, including specified minimum amounts in foreign markets specified by year during the period**] on competitive terms and conditions which are at least as favorable as those prevailing in other transactions involving parties which do not have any ownership interest in one another.

Section 8.11. Marketing Rights. The Buyer will, and will cause its Affiliates to, make available to the Company without charge from the Closing Date the exclusive selling and marketing rights to all of the products of the Buyer and its Affiliates in the [**insert date**], and these exclusive selling and marketing rights will continue in full force and effect during the time the Buyer or its Affiliates own any of the Shares of the Company and for a period of five (5) years thereafter. The Buyer will, and will cause its Affiliates to, make available to the Company all licenses and other rights necessary to carry out these selling and marketing rights.

Section 8.12. Procurement Polices. The Buyer will use its Best Efforts to cause the Company's procurement policy to provide equal treatment based on cost and quality and other relevant factors provided in the policy to domestic and foreign suppliers of goods and services. The Buyer will also use its Best Efforts to make available to the Company the Buyer's access to suppliers' discounts and similar commercial benefits.

Section 8.13. Corporate Governance.

(a) The Buyer will use its Best Efforts to assure that all actions taken by it with respect to the Company, or by the Company, will be made considering the best interests of the Company, including all of the shareholders without favoring any group of shareholders over other shareholders.

(b) The Buyer will support nominating procedures that permit shareholders owning less than a majority of Shares to nominate one or more supervisory directors in proportion to the percentage of shares held by those shareholders, in accordance with the applicable provisions of the Company's Articles of Association and applicable law.

(c) The Buyer will, and the Buyer will use its Best Efforts to cause the Company, to nominate qualified persons to hold Company offices, including as supervisory directors and managing directors.

(d) The Buyer will use its Best Efforts to cause the Company to maintain sound corporate governance policies and practices and internal operating and financial controls.

ARTICLE IX.

TERMINATION

Section 9.1. Right of Termination. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) by either Buyer or Seller if a material breach of an obligation of Agreement has been committed by the other Party and such breach has not been waived;

(b) upon the mutual consent of Buyer and the Seller; or

(c) by either Buyer or Seller if the Closing has not occurred (other than through the failure of the Party seeking to terminate this Agreement of comply fully with its obligations under this Agreement) on or before [**insert date**], or such later date as the Parties may agree upon.

Section 9.2. Effect of Termination. Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1 hereof, all further obligations of Buyer and the Seller hereunder will terminate, except that the obligations in Sections 11.1 and 11.14 will survive; provided, however, nothing in this Section will (i) relieve either Party hereto of any liability for any willful breach of this Agreement that occurred prior to the termination of this Agreement or

180

(ii) relieve Buyer of liability for any breach of Sections 11.1 and 11.14 hereof regardless of when such breach occurs.

ARTICLE X.

INDEMNIFICATION

Section 10.1. Survival of Representations and Covenants. All representations, warranties, covenants and obligations in this Agreement, and all documents delivered pursuant to the Agreement will survive the Closing Date for a period whichever is later of (i) one (1) year after the Closing Date except as to any claim which a Party notifies the other Party of the claim which claim is based on reasonable grounds specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer, or (ii) if the representations, warranties, covenants and obligations by their stated terms in the Agreement are to be completed after the Closing Date, then one (1) year after notification to the other Party of such completion except as to any claim which a Party notifies the other Party of the claim which claim is based on reasonable grounds specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

Section 10.2. Indemnification.

(a) After the Closing Date, the Seller will, subject to Section 10.3, indemnify Buyer or the Company as the case may be from and against any and all claims, losses, liabilities, obligations, damages, costs and expenses (collectively, "Losses"; individually, a "Loss"), suffered by the Buyer resulting from (i) subject to the time limitation contained in Section 10.1. hereof, any breach of a representation made by the Seller in Article II hereof, and (ii) the failure of the Seller to perform any of the agreements to be performed by the Seller pursuant to this Agreement. In case the Buyer receives notice of any claim which may be subject to indemnification, it will promptly notify the Seller, and the Seller will thereupon have the right to assume defense against such claim and to contest it or agree to any settlement or compromise of it.

(b) After the Closing Date, Buyer will, subject to Section 10.3., indemnify the Seller from and against any and all Losses, resulting from (i) subject to the time limitation contained in Section 13.1. hereof, any breach of a representation made by Buyer in Article III hereof, and (ii) the failure of Buyer to perform any of the other representations, warranties, covenants and obligations to be performed by Buyer pursuant to this Agreement.

Section 10.3. Limitations on Indemnification.

(a) The amount of any Loss indemnifiable pursuant to this Article X will be reduced to reflect (i) the value of any benefit (including, without limitation, any tax benefit) realized, directly or indirectly, by the Company as a result of such Loss and (ii) the amount of any insurance proceeds received by the Company in respect of such Loss.

(b) The amount of any Loss indemnifiable by any indemnifying Party pursuant to this Article X will exclude lost profits and consequential damages.

Section 10.4. Retention and Inspection of Books and Records. Buyer will cause the Company (a) to preserve its books and records (whether existing as of or created following the Closing Date) for a period of **[insert number of years]** after the Closing Date and (b) to make its books and records available for inspection by the Seller or its duly authorized representatives, for reasonable purposes in connection with the transactions contemplated hereby and the Parties obligations hereunder, during normal business hours at the Company's principal facility. As used in this Section, the right of inspection includes the right to make extracts or copies.

Section 10.5. Compliance

(a) The Buyer will, for so long as any obligations under Article VIII hereof remain in effect, deliver to the Seller (or Government Designee, as the case may be) prior to April 1 of each following year a duly authorized and executed certificate stating whether or not Buyer has complied in all respects with each of the obligations under Article VIII hereof with respect

181

to the immediately preceding calendar year and stating in reasonable detail the actions taken to comply with Article VIII hereof. In the event that Buyer will have failed to comply with any of the obligations under Article VIII, such certificate will completely describe each such failure and the reasons therefor.

(b) In the event that the Buyer will have failed to comply with any of the obligations under Article VIII, except for Section 8.2, the Buyer and the Seller will then discuss in good faith what actions can be taken by the Buyer to achieve compliance. If the Buyer fails to achieve compliance with the commitments set forth in Article VIII (except for Section 9.2), or as may otherwise agreed as provided in the preceding sentence, then the Buyer will pay to the Seller, in cash, a contractual penalty of 100% of the economic value equivalent, assigned by the Seller, to the failure to achieve compliance.

(c) If the Buyer fails to achieve compliance with Section 8.2, the Buyer Investor will immediately pay to the Seller, in cash a contractual penalty in an amount equal to 100% of such delinquent obligations.

Section 10.4. Exclusive Remedy. After the Closing Date, the indemnification provided in this Article X will be the exclusive remedy for breach of this Agreement, except that either Party will have the right (in addition to its rights under this Article X) to seek specific performance of the non-monetary obligations of the other Party, and the Seller will have the right to enforce the penalty provisions included in Article X. It is expressly understood and agreed that, except by virtue of the indemnification provisions set forth in this Article X the Buyer is not entitled to any adjustment, reduction, set-off, damages or the like in connection with the Purchase Price or otherwise in connection with the transactions contemplated by this Agreement.

ARTICLE XI.

GENERAL

Section 11.1. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each of the Parties hereto will pay its own costs and expenses and the fees and expenses of its counsel and accountants and other representatives incurred in connection with the transactions contemplated by this Agreement.

Section 11.2. Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with [**insert applicable jurisdiction or country**] laws without reference to conflict of laws provisions. [**Insert following sentence if applicable**] Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**insert appropriate country**] and [**insert appropriate country**], as amended. Buyer and the Seller will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. [**The parties may wish to either designate a method such as,** "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" **or designate a person as the appointing authority, such as,** "The President of the Vienna Bundeskammer der gewerblichen Wirtschaft will act as the "appointing authority" under the Rules".] Buyer and the Seller each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11.3. Sovereign Immunity. [**Insert if applicable**] The Parties hereby agree and acknowledge that they are entering into this Agreement as a "commercial act" and not as acts in capacities as a "sovereign" and hereby waive any and all rights or claims to the defense of sovereign immunity with respect to any claims brought under this Agreement.

182

Section 11.4. Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

Section 11.5. Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to the Seller:

_____
_____
_____
_____
Attention: _____

(b) if to Buyer:

_____
_____
_____
Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this Section. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Section 11.6. Entire Agreement. This Agreement (including the Disclosure Statement and any Schedules and Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof; [**insert the following to extent applicable under law**] it being expressly understood and agreed that only to the extent required by Section [**insert**] of the [**insert name of applicable law**] (the "Code") will the provisions of [**insert specific provisions to extent applicable**], of the Code apply to this Agreement or the transactions contemplated hereby.

Section 11.7. Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

Section 11.8. Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 11.9. Assignment, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. No permitted or purported assignment of all or any portion of this Agreement will effect a release of the assignor of its obligations under this Agreement without an express written release from such obligations by the other Party. Nothing expressed or referred to in this Agreement will be construed to give any Person (except as otherwise expressly provided in Article III) other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this

183

Agreement. Except as otherwise expressly provided in Article III, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and assigns.

Section 11.10. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

Section 11.11. Counterparts. This Agreement will be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts together will constitute one and the same legal document.

Section 11.12. Languages. This Agreement and any amendments or other modifications hereof will be executed in the English and [**insert language**] languages. In the event of a conflict between the different language versions of this Agreement, both versions will be deemed to be equally authoritative.

Section 11.13. Headings; Construction. The Section and other headings contained in this Agreement are for convenience only and will not be deemed to limit, characterize or interpret any provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 11.14. Confidentiality.

(a) The Buyer shall not disclose to any Person (other than to a Buyer's representative ("Buyer's Representative") or use or exploit for any purpose whatsoever any information which it obtains or has heretofore obtained in relation to the Company ("Confidential Information"), except:

(i) with the prior written consent of the Seller;

(ii) as may be required by law or order of a court of competent jurisdiction; or

(iii) to the extent expressly permitted by this Agreement.

In the event that the Buyer or a Buyer's Representative or is required to disclose Confidential Information as provided in clause (ii) above, such Person shall use its best efforts to obtain a protective order preserving the confidentiality thereof, and to the extent unsuccessful in obtaining a protective order, to ensure that such information is treated by any recipient as constituting confidential information that is not subject to further disclosure.

(b) For purposes of this Section 11.14, Confidential Information shall not include any information which:

(i) has become available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation); or

(ii) is provided to Buyer or Buyer's Representative by a Person (other than the Seller or the Company) who is lawfully in possession of such information and has the lawful right to publicly disclose, use or exploit it.

(c) Buyer shall cause each Buyer's Representative not to disclose to any Person or use or exploit for any purpose whatsoever the Confidential Information except as expressly permitted in this Section 11.14. The Buyer shall limit the disclosure and dissemination of the Company's Confidential Information within its own organization to those of its personnel and to other Representatives who have a need to know for the purposes of this Agreement and who have been bound, in writing, not to use (except in the course of their work with respect to this Agreement) and to maintain Confidential Information in confidence both during and after the term of their employment or retention. In case of termination of this Agreement, each Buyer's Representative shall (i) promptly return to the Seller all copies of any

184

Confidential Information and any other written material containing or reflecting any Confidential Information then in its possession or under their control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, (iii) not use or exploit for any purpose whatsoever the Confidential Information, and (iv) all Confidential Information or information derived from Confidential Information not returned to the Seller shall be destroyed and expunged from any computer, word processor or other device containing or derived from Confidential Information. The destruction and expunction shall be certified in writing to the Seller by an authorized officer of the Buyer responsible for reporting that such destruction and expunction has been fully and completely performed.

Section 11.15. Further Assurances. Buyer and the Seller will each, at the request of the other, execute, acknowledge, deliver and file, without further consideration, all such further assignments, conveyances, endorsements, powers of attorney, consents and other documents and take such other action as may be reasonably requested (a) to transfer and vest in Buyer and protect Buyer's right, title and interest in and to the Contract Shares and (b) otherwise to consummate transactions contemplated by this Agreement.

Section 11.16. Public Announcements. Any public announcement or similar publicity with respect to this Agreement will be issued, if all, at such time with such disclosure and in such manner as Parties agree. Unless consented to in advance, prior to the Closing the Parties will, and Seller will use its Best Efforts to cause the Company to, keep this Agreement strictly confidential. The Parties will consult with each other concerning the means by which the Company's employees, customers, and suppliers and others having dealings with the Company will be informed of the Agreement, and the Buyer will have the right to be present for any such communication.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the Agreement Date.

[INSERT NAME OF BUYER]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[INSERT NAME OF SELLER]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

185

[INSERT GUARANTY OF BUYER'S OBLIGATIONS]
[SHORT FORM]

GUARANTY

To induce **[insert name of company]**, **[insert form of company and jurisdiction where formed]** company (the "Seller"), to enter into the foregoing Share Purchase Agreement (the "Share Purchase Agreement") of even date with **[insert name and form of company and jurisdiction where formed]** ("Buyer"), **[insert name and form of entity and jurisdiction where formed]** ("Guarantor") hereby guarantees and promises to fulfill the full and prompt payment and performance of the Buyer's obligations under the Share Purchase Agreement (including, without limitation, the Buyer's payment obligations) if such obligations are not performed when due and promises to pay all the costs of proceedings, including, without limitation, all reasonable attorneys' fees and costs in connection with the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee and is enforceable against the Guarantor and its successors and assigns, without the necessity for any demand, suit or proceedings whatsoever against the Buyer, and without the necessity of any protest or notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty of any other notice or demand to which the Guarantor might otherwise be entitled, all of which the Guarantor hereby expressly waives.

The Guarantor agrees that this Guaranty is a continuing guarantee and that the validity of this Guaranty and the obligations of the Guarantor hereunder will in no way be terminated, affected, diminished or impaired by reason of (1) the assertion or the failure of the Seller to assert against the Buyer any of the rights or remedies reserved to the Seller pursuant to the Share Purchase Agreement, or (2) any assignment or modification of the Share Purchase Agreement, or (3) an extension of time that may be granted by the Seller to the Buyer, or (4) any dealings or transactions whatsoever occurring between the Seller and the Buyer, whether or not notice thereof is given to the Guarantor.

This Guaranty will inure to the benefit of the Seller, and its successors and assigns. The provisions of Sections 11.2 and 11.14 of the Share Purchase Agreement are hereby incorporated into this Guaranty and will apply to the obligations of the Guarantor hereunder, and for such purposes the term "Agreement" as used therein will include this Guaranty and the term "Buyer" will refer to the Guarantor.

Dated: **[insert date]**, 199_

[INSERT NAME OF GUARANTOR]

By: _____
Name: _____
Title: _____

186

Appendix 13

This form of Shareholders Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF SHAREHOLDERS AGREEMENT

188

FORM OF SHAREHOLDERS AGREEMENT

TABLE OF CONTENTS

RECITAL		**4**
ARTICLE I.	**DEFINITIONS AND ACCOUNTING TERMS**	**4**
Section 1.1	Definitions	
Section 1.2	Accounting Terms	
ARTICLE II.	**STRATEGIC OBJECTIVES AND COOPERATION AMONG SHAREHOLDERS**	**8**
Section 2.1	Strategic Objectives	
Section 2.2	Shareholders' Commitments and Conduct	
Section 2.3	Compliance	
Section 2.4	Cooperation Among the Participating Shareholders	
Section 2.5	Effect of the Articles of Association	
Section 2.6	Invalidity of Provisions in the Articles of Association	
ARTICLE III.	**BUSINESS PLAN AND INVESTMENT PROGRAM**	**10**
Section 3. 1	Preparation, Submission and Contents	
Section 3.2	Timing of Submission	
Section 4.3	Objections	
Section 4.4	Exceptions	
ARTICLE IV.	**ANNUAL CAPITAL AND OPERATING BUDGETS**	**10**
Section 4.1	Preparation, Submission and Contents	
Section 4.2	Timing of Submission	
Section 4.3	Objections	
Section 4.4	Exceptions	
ARTICLE V.	**GOVERNANCE**	**11**
Section 5.1	General Meetings	
Section 5.2	Supervisory Board	
Section 5.3	Supervisory Board Responsibilities	
Section 5.4	Managing Board of Directors	
Section 5.5	Managing Board of Directors Responsibilities	
Section 5.6	Rights of Inspection and Information	
Section 5.7	Conflicts of Interest	
Section 5.8	Dividend Policy	
Section 5.9	Other Matters	
Section 5.10	Decision-Making	
Section 5.11	Codes of Conduct	
ARTICLE VI.	**RESTRICTIONS ON ADDITIONAL SHARES AND SHARE TRANSFERS**	**15**
Section 6.1	Restrictions on Additional Shares	
Section 6.2	Definition	
Section 6.3	Restrictions on Transfer of Shares	
ARTICLE VII.	**SHAREHOLDERS A AND B'S ADDITIONAL COMMITMENTS**	**15**
Section 7.1	Services Provided	

189

Section 7.2	Contributed Services	
Section 7.3	Direct-Cost Services	
Section 7.4	Price Calculation of Direct-Cost Services	
Section 7.5	Other Services and Affiliate Transactions	
Section 7.6	Standard of Care Owed by the Strategic Investor	
Section 7.7	Service Company	
Section 7.8	Benefit of Third-Party Relationships	
Section 7.9	Licenses and Consents	
Section 7.10	Intellectual Property Provided	
ARTICLE VIII.	**REVIEW OF SERVICES**	**17**
Section 8.1	General	
Section 8.2	Actions by the Company	
ARTICLE IX.	**ACCOUNTING FOR COMMITMENTS**	**17**
Section 9.1	General	
Section 9.2	Actions by the Company	
Section 9.3	Reports	
Section 9.4	Retention of Books and Records	
Section 9.5	Compliance Certificate	
Section 9.6	Audit	
ARTICLE X.	**DURATION AND TERMINATION**	**18**
Section 10.1	Duration	
Section 10.2	Right of Termination	
Section 10.3	Effect of Termination	
ARTICLE XI.	**REPRESENTATIONS OF SHAREHOLDER A**	**19**
Section 11.1	Organization, Good Standing, Etc.	
Section 11.2	Authorization; Due Execution	
Section 11.3	No Violation	
Section 11.4	Approvals, Consents, Etc.	
Section 11.5	Litigation	
Section 11.6	Limitation on Representations	
ARTICLE XII.	**REPRESENTATIONS OF SHAREHOLDER B**	**20**
Section 12.1	Organization, Good Standing, Etc.	
Section 12.2	Authorization; Due Execution	
Section 12.3	No Violation	
Section 12.4	Approvals, Consents, Etc.	
Section 12.5	Litigation	
Section 12.6	Limitation on Representations	
ARTICLE XIII.	**REPRESENTATIONS OF THE COMPANY**	**20**
Section 13.1	Organization, Good Standing, Etc.	
Section 13.2	Authorization; Due Execution	
Section 13.3	No Violation	
Section 13.4	Approvals, Consents, Etc.	
Section 13.5	Litigation	
Section 13.6	Limitation on Representations	
ARTICLE XIV	**GENERAL**	**21**
Section 14.1	Expenses	

190

Section 14.2 Governing Law; Dispute Resolution
Section 14.3 Sovereign Immunity
Section 14.4 Waiver
Section 14.5 Notices
Section 14.6 Entire Agreement
Section 14.7 Amendments; Modifications
Section 14.8 Binding Effect
Section 14.9 Assignment; Successors; No Third Party Rights
Section 14.10 Separability
Section 14.11 Counterparts
Section 14.12 Languages
Section 14.13 Headings; Construction
Section 14.14 Confidentiality
Section 14.15 Further Assurances
Section 14.16 Announcements

EXHIBITS

A Amended Articles of Association of the Company
B Shareholder A's Services
C Shareholder B's Services
D Shareholder A's Contributed Services
E Shareholder B's Contributed Services
F Shareholder A's Direct-Cost Services
G Shareholder B's Direct-Cost Services
H Shareholder A's Other Services
I Shareholder B's Other Services

191

FORM OF SHAREHOLDERS AGREEMENT

This Shareholders Agreement ("Agreement") is made as of **[insert date]**, 199__, among **[insert name of company]**, a **[insert name of jurisdiction under which formed and form of entity]** ("Shareholder A"), **[insert name of company]**, a **[insert name of jurisdiction under which formed and form of entity]** ("Shareholder B"), and **[insert name of company]**, a **[insert name of jurisdiction under which formed and form of entity]** (the "Company") and to the extent expressly provided herein by any other Person or group of Persons owning Shares of the Company and who agree in writing to be bound by the terms and conditions of Articles I through VI, inclusive, of this Agreement (the "Other Participating Shareholders").

RECITALS

Shareholder A, Shareholder B, and the Company have individually determined it is in their respective Best Interests to enter into this Agreement, to conduct themselves in accordance with the terms and conditions of this Agreement, and to obtain the benefits and rights afforded by this Agreement. Any Participating Shareholder, upon disposing of its Shares, will not be afforded the rights and benefits granted to that Participating Shareholder by the terms and conditions of this Agreement.

AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.1 Definitions. For the purposes of this Agreement, the following terms will have the following definitions:

"A-Managing Director" will mean any Managing Director who has been nominated by Shareholder A.

"A and B-Managing Directors" will mean any Managing Directors who have been nominated by Shareholders A and B.

"AC-Member" will mean a member of the Advisory Committee.

"Advisory Committee" will mean an advisory committee, advising the Managing Board and senior executive officers of the Company on the conduct of the Business and affairs of the Company, or any discrete portion of it, consisting from time to time of at least three and not more than five members, as determined by the Participating Shareholders, at least one member designated by each of the Shareholder A, Shareholder B, senior executive officers of the Company, and any single or group (pursuant to a contract) of Other Participating Shareholders owning at least 20% of the Shares.

"Affiliate" will mean with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons will be deemed to be Affiliates.

"Agreement" will mean this Shareholders Agreement as amended pursuant to the terms hereof.

"Agreement Date" will mean the date set forth in the preamble.

192

"Amended Articles" will mean the amended and restated Articles of Association of the Company attached as Exhibit A to this Agreement.

"Annual Capital Budget" will have the meaning set forth in Section 4.1.

"Annual Operating Budget" will have the meaning set forth in Section 4.1.

"Annual Capital and Operating Budgets" will mean the Annual Capital Budget and the Annual Operating Budget for the same year.

"Articles of Association" will mean the Articles of Association of the Company from time to time.

"B-Managing Director" will mean any Managing Director who has been nominated by Shareholder B.

"Best Efforts" will mean the efforts that a prudent Person would reasonably use to ensure that the contemplated results are achieved as expeditiously as reasonable under the circumstances.

"Business" will mean [**insert definition of the business of the Company**], as currently and as historically conducted by the Company and any other business activities of the Company mentioned in the Companies Register.

"Business Day" will mean any day other than a Saturday or Sunday or a day on which commercial banks are required or authorized to close in the principal offices of Shareholder A, Shareholder B and the Company.

"Business Plan" will have the meaning set forth in Section 3.1.

"Capital Investment Program" will have the meaning set forth in Section 3.1.

"Centre of Securities" will mean the official register of book-entry securities, established and existing pursuant to [**insert applicable law**].

"Closing Date" will be the date as of which the Closing (as defined in the [**insert applicable agreement**]) actually takes place.

"Code" will mean the [**insert applicable name of law and citation**], as amended.

"Company" will have the meaning set forth in the preamble.

"Confidential Information" will have the meaning set forth in Section 14.14.

"Contributed Services" will mean those Services and Intellectual Property provided to the Company by Shareholder A and/or Shareholder B pursuant to Section 9.2.

"Direct-Cost Services" will mean those Services and Intellectual Property provided to the Company by the Shareholder A and/or Shareholder B pursuant to Section 9.3.

"Dividend Policy" will have the meaning set forth in Section 5.8.

"Failure" will have the meaning set forth in Section 2.3.

"GAAP" means the generally accepted accounting principles (standards) applied by [**insert applicable country or "Internationally Generally Accepted Accounting Principles"**].

"General Meeting" will mean a general meeting of the Company's shareholders.

"Government Entity" will mean the Government of the [**insert country or its term**], any ministry of the [**insert country or its term**], any other organ of the state administration of the [**insert country or its term**], or any political subdivision of the [**insert country or its term**].

"Intellectual Property" will mean all patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Business.

193

"License" will mean any license granted to the Company by any Governmental Entity authorizing the Company to conduct any segment of its Business.

"License Obligations" will mean any obligations of the Company to conduct its Business in accord with any Governmental Entity and all applicable decrees and regulations.

"Loss" and "Losses" will mean any and all claims, losses, liabilities, obligations, damages, costs and expenses.

"Managing Board" will mean the Company's Managing Board of Directors from time to time.

"Managing Director" will mean a member of the Company's Managing Board from time to time.

"N-Managing Directors" will mean those Directors from time to time who have not been nominated by either Shareholder A or Shareholder B.

"Order for the Registration of Transfer of Shares" will mean an order which includes all the prerequisites required by the [**insert name of law and citation**] for the registration of the transfer of Shares.

"Other Participating Shareholders" will mean any Person or group of Persons (pursuant to a contract) other than Shareholders A and B owning Shares of the Company and who agree in writing to be bound by the terms and conditions of Articles I through VI, inclusive, of this Agreement.

"Participating Shareholders" will mean Shareholders A and B and Other Participating Shareholders; and "Participating Shareholder" will mean any of them.

"Parties" will mean the Company, Shareholder A and Shareholder B; and "Party" will mean one of the Parties to this Agreement.

"Person" will mean a natural person, such as a Representative, and/or legal person, such as a company, corporation, partnership, Government Entity, or other legal entity.

"Regulator" will mean any Governmental Entity or any successor having the role as regulator of any Business services provided by the Company.

"Representative" will mean any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Rules" will have the meaning set forth in Section 14.2.

"Securities Act" will mean [**insert applicable law and its citation**], as amended.

"Services" will mean those services set forth in Section 9.1.

"Shareholder A" will have the meaning set forth in the first paragraph of this Agreement.

"Shareholder A Shares" will mean all of the Shares directly or indirectly held by Shareholder A.

"Shareholder B" will have the meaning set forth in the first paragraph of this Agreement.

"Shareholder B Shares" will mean all of the Shares directly or indirectly held by Shareholder B.

"Shareholders A and B" will mean Shareholder A and Shareholder B collectively.

"Shareholders A and B Shares" will mean all of the Shares directly or indirectly held collectively by Shareholders A and B.

"Shares" will mean the ordinary non-redeemable voting securities of the Company.

"Strategic Objectives" will mean the strategic objectives set out in Section 2.1 of this Agreement.

194

"Supervisory Board" will mean the Company's Supervisory Board from time to time.

"Supervisory Member" will mean a member of the Company's Supervisory Board.

"Trading Market Value" will mean the average of the closing prices on the principal exchange for the trading of Shares on the last business day of each of the three months immediately preceding the date of the sale of the Shares.

"Transaction Documents" will mean this Agreement, the **[insert name of agreement]**, dated **[insert date]**, between Shareholder A and the Company, the **[insert name of agreement]**, dated **[insert date]**, between Shareholder B and the Company, and the **[insert name of agreement]** Agreement, dated **[insert date]** among Shareholder A, Shareholder B, and Company.

"**[Insert symbol of currency]**" mean the official currency of **[insert applicable country]**.

"**[Insert symbol for applicable country]**" mean "**[insert name of applicable country]**.

"**[Insert symbol for applicable country]** laws" and "laws of the **[insert symbol for applicable country]**" mean all laws and regulations of **[insert name of applicable]**.

Section 1.2 Accounting Terms. All accounting terms not specifically defined herein are to be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement are to be prepared, and will be deemed to be prepared, in accordance with GAAP.

ARTICLE II

STRATEGIC OBJECTIVES AND COOPERATION AMONG SHAREHOLDERS

Section 2.1 Strategic Objectives of the Company. Each Participating Shareholder agrees that the Company's strategic objectives (the "Strategic Objectives") are to:

(a) expand and continue to modernize the Company's Business in an efficient, reliable, safe and environmentally and technically sound manner;

(b) develop and maintain strong management, technical, operational and administrative teams and operational, administrative, financial and management controls within the Company;

(c) provide reliable goods and services to the Company's customers at reasonable, competitive prices;

(d) comply with any License Obligations, and all applicable Governmental policies, laws and regulations, and other applicable policies and technology standards and other commitments; and

(e) generate internal capital to support external borrowings and to provide a reasonable return on equity that is sufficient to attract new shareholders through appropriate capital market activities for the continuing expansion, modernization and maintenance of its properties and other fixed assets.

Section 2.2 Participating Shareholders' Commitments. Each Participating Shareholder will use its Best Efforts to ensure that the Company's business and operations are conducted in a prudent manner, consistent with the Company's Strategic Objectives, which permits the Company:

(a) to meet its Strategic Objectives;

(b) to fulfill any License Obligations;

(c) to operate in accordance with the Business Plan and the Capital Investment Program;

(d) to apply responsible (i) administrative, business, financial, operational, safe and technical standards and practices, and (ii) administrative; financial, management and operational controls;

195

(e) to (i) finance the continued modernization and orderly expansion of its Business, (ii) support external borrowings from financial institutions, (iii) provide a sufficient return to its shareholders to encourage additional shareholder investments, and otherwise meet the financial objectives of the Company's Strategic Objectives.

Section 2.3 Compliance.

(a) Any of the Participating Shareholders may advise the Company from time to time in a timely manner of prudent and cost-effective means of complying with the contents of Section 2.2 to the extent that any Participating Shareholder concludes there is a more prudent and cost-effective means of complying with any of the contents of Section 2.2.

(b) The status of the Company's compliance with the contents of Section 2.2 will be reviewed regularly (at least annually) by the Managing Board and by the Supervisory Board. If any of the Participating Shareholders, the Managing Board or the Supervisory Board determines that the Company is failing to meet any of the contents of Section 2.2 (a "Failure"), then the Managing Board will decide (y) if the Failure has been caused by economic or other circumstances or conditions outside the control of the Company, then it will take (if within its authority) or recommend (if outside its sole authority) any appropriate action that may be appropriate in view of the changed circumstances or conditions, or (z) if the Failure is caused by circumstances or conditions within the control of the Company, then it will take (if within its authority) or recommend (if outside its sole authority) all appropriate action to correct the Failure.

(c) If any of the Participating Shareholders or the Supervisory Board decides (i) the Failure has been caused by circumstances or conditions within the control of the Company, and the Managing Board and not taken (if within its authority) or recommended (if outside its sole authority) all appropriate action to correct the Failure, or (ii) the Failure has been caused by economic or other circumstances or conditions outside the control of the Company, and the Managing Board has not taken (if within its authority) or recommended (if outside its sole authority) action that may be appropriate in view of the changed circumstances or conditions, then the Managing Board will be notified of such failure to take appropriate action, and if the Managing Board fails to take appropriate action within 30-days, then a General Meeting may be called to consider the matter and decide on any appropriate action.

Section 2.4 Cooperation Among the Participating Shareholders. Each Participating Shareholder will, to the extent permitted by law: (A)(i) exercise its voting rights at any General Meeting of the Company, (ii) ensure the Directors nominated by the Participating Shareholders vote or refrain from voting at any meeting of the Managing Board or any committee of the Managing Board, and (iii) ensure the Supervisory Members nominated by the Participating Shareholders vote or refrain at any meeting of the Supervisory Board or any committee of the Supervisory Board; and (B) vote its Shares, and to instruct its Supervisory Members and its Directors to vote or refrain from voting at meeting and take other proper action to fully carry out the applicable provisions of this Agreement. Such nominated persons will prior to taking office acknowledge in writing to vote at meetings and otherwise take proper action to fully carry out the applicable provisions of this Agreement, and failure to do so is sufficient grounds to terminate them from office.

Section 2.5 Effect of the Articles of Association.

(a) The Participating Shareholders agree that the Articles of Association (as of the effective date of this Agreement), together with this Agreement and applicable law, shall govern each of the subjects, issues, procedures and powers dealt with in this Agreement.

(b) Each Participating Shareholder shall exercise its rights under this Agreement and as a shareholder of the Company, including without limitation the voting of any and all of its Shares, to obtain, to the extent permitted by law, the realization of the intended effect of each of the provisions of the Articles of Association and this Agreement.

Section 2.6 Invalidity of Provisions in the Articles of Association. If (i) pursuant to a final decision of a court of competent jurisdiction any one or more of the provisions of the Articles of Association is held or becomes invalid, or (ii) the court order required to give effect to the

196

Articles of Association is not granted, each Participating Shareholder shall take all reasonable action within its power, including, without limitation, voting any and all Shares held by it in favor of amendments to the Articles of Association, to provide each Participating Shareholder with the benefit of the rights granted or purported to be granted to it in the Articles of Association and to ascertain the proper compliance with the procedures prescribed or purported to be prescribed in the Articles of Association.

ARTICLE III

BUSINESS PLAN AND CAPITAL INVESTMENT PROGRAM

Section 3.1 Preparation, Submission and Contents. The Managing Board will cause to be prepared and then revised annually a long-term business plan in accordance with the Strategic Objectives (the "Business Plan") and an capital investment program consistent with the Business Plan (the "Capital Investment Program"), incorporating in the Business Plan, for at least [insert number] years, at least projected annual (i) operating revenues, operating costs and marketing, general and administrative expenses, by major categories, for the Company, (ii) marketing plans, (iii) system development plans, and (iv) employee staffing requirements, compensation plans and training and re-training plans, and incorporating in the Capital Investment Program for the same period on an annual basis at least projected annual (i) capital expenditures, (ii) dispositions of fixed assets, (iii) year-end balance sheets by major categories, and (iv) debt and equity financings.

Section 3.2 Timing of Submission. The proposed Business Plan and Capital Investment Program for each year will be prepared not later than each June 30th of the year preceding the projected years to which they apply, and the Managing Board will develop the Annual Capital and Operating Budgets consistent with the Business Plan and Capital Investment Program. The Supervisory Board and the Participating Shareholders will be promptly (within 10 business days) provided with copies of the proposed Business Plan and Capital Expenditure Program.

Section 3.3 Objections. If any of the Participating Shareholders or Supervisory Board has any proposed modifications to any aspect of the Business Plan or the Capital Investment Program, such modifications will be submitted to the Managing Board and the other Participating Shareholders in writing at least 15 business days prior to the end of the sixty-day review period. Any such modifications will be considered by the Managing Board in good faith.

ARTICLE IV

ANNUAL CAPITAL AND OPERATING BUDGETS

Section 4.1 Preparation, Submission and Contents. The Managing Board will cause to be prepared (A) an annual operating budget (the "Annual Operating Budget") for each ensuing year incorporating at least on a monthly basis projected operating revenues, operating costs and marketing, general and administrative expenses, by major categories, for the Company and supporting information with respect to (i) marketing plans, (ii) system improvement plans, (iii) executive and other employee compensation by categories, and (iv) employee staffing requirements, changes in compensation plans and training and re-training plans, and (B) an annual capital budget (the "Annual Capital Budget") for each ensuing year incorporating any proposed (i) capital expenditures including fixed asset acquisitions, (ii) dispositions of fixed assets, (iii) debt and/or equity financings, (iv) dividends or other shareholder distributions, and (v) all other commitments or transactions requiring financial statement disclosure or affecting the Company's ability to obtain support for external borrowings from financial institutions.

Section 4.2 Timing of Submission. The Annual Capital and Operating Budgets for each year will be prepared not later than September 30 of the year preceding the year to which the Plan applies, and the Managing Board will not take action on such Annual Capital and Operating Budgets for at least sixty (60) days. The Shareholders A and B will be promptly (within 10 business days) provided with copies of the proposed Annual Capital and Operating Budgets.

191

Section 4.3 Objections. If either Shareholder A or Shareholder B have any proposed modifications to any aspect of the Annual Capital and Operating Budgets, such modifications will be submitted to the Managing Board and the other Participating Shareholders in writing at least 15 business days prior to the end of the sixty-day review period. Any such modifications will be considered by the Managing Board in good faith. If the Managing Board does not accept or otherwise satisfy any proposed modifications, which are materially related to its obligations in this Agreement, then appropriate representatives of the Participating Shareholders will meet and resolve the issue or issues to the satisfaction of the Participating Shareholders.

ARTICLE V
GOVERNANCE

Section 5.1 General Meetings. Prior to each General Meeting, each Participating Shareholder (i) will discuss with the other Participating Shareholders how it intends to vote its Shares at the General Meeting, (ii) will vote its Shares at any General Meeting in accordance with the specific provisions of this Agreement, and (ii) will not without the consent of 2/3rds of the other Participating Shareholders vote its Shares at any General Meeting as to any matter not specifically covered by the provisions of this Agreement.

Section 5.2 Supervisory Board.

(a) Shareholders A and B will each have the right to nominate for election to the Supervisory Board a Supervisory Member and the Other Participating Shareholders will have the right to nominate for election the number of Supervisory Members whose relation to the maximum number of Supervisory Members (excluding the Supervisory Members appointed by the employees and Shareholders A and B) is as proportional as possible to the percentage of the Company's Shares owned by the Other Participating Shareholders.

(b) The Participating Shareholders agree (i) to appoint qualified persons as Supervisory Members who will conduct themselves in accordance with applicable law and the provisions of this and (ii) to vote their shares to elect as Supervisory Members the persons nominated pursuant to Section 5.2(a).

(c) The Participating Shareholders agree to take such action as may be required to ensure that the Chairman of the Supervisory Board will be a person nominated by either Shareholder A or Shareholder B, after consultation with other Participating Shareholders.

(d) The Supervisory Board will hold meetings at the discretion of the Supervisory Board to meet its responsibilities, but will meet at least quarterly. A quorum will consist of a majority of the Supervisory Members and of the presence of all of the Supervisory Members nominated by Shareholders A and B and at least one of the Supervisory Members nominated by the Other Participating Shareholders. Without limiting the rights of the Participating Shareholders under the Articles of Association, the Chairman of the Supervisory Board, if requested by any three of the Supervisory Members, will promptly cause a meeting of the Supervisory Board to be called and will cause the required notice of any such meeting to be given. If the Chairman of the Supervisory Board fails to call such meeting within five (5) days, any three of the Supervisory Members, may call a meeting of the Supervisory Members and give the required notice.

Section 5.3 Supervisory Board Responsibilities. In addition to those duties specified by law and those specified in the Articles of Association, the Supervisory Board will be responsible to keep informed about and satisfied with the activities of the Company and oversee and review the performance of the Managing Board. This includes being satisfied (i) that the Company's overall operational and financial performances are in accord with the Strategic Objectives, the Business Plan and Investment Program, (ii) with the competence and performance of the Managing Directors and the Company's senior management, and with the overall quality and performance of its employees, (iii) that the Company is in compliance with its policies and with applicable laws and regulations, and (iv) that the Company has adequate systems of operating, administrative and financial control controls to assure that the Company is operating in

198

accordance with its plans and policies and that the Company's operational, administrative and financial reports are accurate and complete, and (vi) that the financial and operational disclosure statements to shareholders and governmental regulatory bodies are correct and complete in all material respects and are prepared in a timely manner as required by law and good practice.

Section 5.4 Managing Board of Directors.

(a) Shareholders A and B will each have the right to nominate for election to the Managing Board a Managing Director and the Other Participating Shareholders will have the right, after consultation among all of the Other Participating Shareholders, to nominate for election a Managing Director.

(b) The Participating Shareholders will vote their Shares to elect as Managing Directors the persons nominated pursuant to Section 5.2(a) and for the General Manager of the Company.

(c) If, at any time between General Meetings of the Company, a Participating Shareholder will request (i) the removal of a Managing Director whom such Participating Shareholder had previously proposed for nomination and/or (ii) the election of a nominee to fill a vacancy created by the departure from the Managing Board of a Managing Director whom such Participating Shareholder had previously proposed for nomination, then the Participating Shareholders will vote their Shares to procure such removal and/or the election of such nominee.

(d) A majority of the Managing Board will be comprised of citizens of the **[insert]**. The Participating Shareholders will nominate qualified members, and will consult with each other and coordinate their nominations to the Managing Board in order to achieve a majority of citizens of the **[insert]** on the Managing Board.

(e) The Managing Board will hold meetings at the discretion of the Managing Board to meet its responsibilities, but will meet at least quarterly. A quorum will consist of a majority of the Directors and of the presence of all of the Managing Directors nominated by the Participating Shareholders. Without limiting the rights of the Participating Shareholders under the Articles of Association, the Chairman of the Managing Board, if requested by any two of the Managing Directors, will promptly cause a meeting of the Managing Board to be called and will cause the required notice of any such meeting to be given. If the Chairman of the Managing Board fails to call such meeting within five (5) days, any two of the Managing Directors, may call a meeting of the Managing Board and give the required notice. Managing Directors may participate in a meeting by telephone or by any other telecommunications means where Managing Directors may hear one another. Also, any Managing Board actions which may be approved at a meeting of the Managing Board, may be approved in writing by all of the Managing Directors without a meeting, if the Managing Directors have received sufficient information to make an informed decision.

Section 5.5 Managing Board of Directors Responsibilities.

(a) In addition to those duties specified by law and those specified in the Articles of Association, the Managing Board will have responsibility for managing the business and affairs of the Company not otherwise reserved to the Supervisory Board or the General Meeting or as otherwise provided by the Articles of Association or the applicable laws. Accordingly the Managing Board will take into consideration all recommendations to it by the Company's senior management, be responsible to keep informed about the Company's business and affairs, and make decisions relating to the Company's conduct of its business and affairs.

(b) A decision of the Managing Board will normally require the affirmative vote of a majority of the Directors present. However, the following matters also require the affirmative vote of the three Managing Directors nominated by Participating Shareholders:

(i) the appointment of the Chairman of the Managing Board, who will have no executive or managerial responsibility;

168

(ii) the election, dismissal and compensation of the Company's chief executive officer, the "Director-General", who will be a citizen of [**insert**];

(iii) the election, dismissal and compensation of other senior executive officers of the Company;

(iv) the approval of, and any amendments to, the Business Plan and Investment Program;

(v) the approval of any amendments to the Annual Capital and Operating Budgets;

(vi) any amendments to, modifications of, or deviations from, an approved Annual Capital and Operating Budgets

(vii) the creation of any company, partnership or other legal Person by the Company;

(viii) except for any claim arising under the Transaction Documents, the commencement or defense of any material or precedent-setting litigation or arbitration proceeding;

(ix) the adoption or amendment of overall employee remuneration, any employee bonus, pension or other benefit plan (or submission to the General Meeting for action) of any plan or proposal for the Company to issue or sell Shares to employees;

(x) the surrender, abandonment, abrogation or transfer of any important or material license, concession or authority;

(xi) the approval of any change in the Dividend Policy or any recommendations to the General Meeting on the declaration or payment of any annual or interim dividend;

(xii) the establishment of any committee of the Managing Board, the appointment and removal of the members of any committee, and the delegation of authority to any such committee;

(xiii) the recommendation for approval of any change in the number of Managing Directors or Supervisory Members; and the recommendation to the General Meeting of (A) amendments to the Articles of Association, (B) agenda items for the General Meeting or (C) proposals with respect to the merger, consolidation, liquidation or winding-up of the Company.

Section 5.6 Rights of Inspection and Information. The Company will provide the directors and Shareholders with unaudited quarterly financial statements prepared in accordance with GAAP, and annual audited financial statements prepared in accordance with GAAP with the independent auditors' report. Further, the Company will provide the Directors with monthly financial and operational status reports. The Company will permit the Directors to discuss the business and affairs, including finances and accounts of the Company with its principal executives all at such time as may be reasonably requested, and all books, records and accounts relating to the business and affairs of the Company will, at such time, be open to the inspection of any such person may make such copies thereof or extracts therefrom as such person may reasonably require. Any information secured as a consequence of such discussions and inspections will be kept strictly confidential in accordance with the provisions of Section 14.14.

Section 5.7 Conflicts of Interest. In the case of any agreement or transaction (and the taking of any action in connection therewith) between the Company and any Participating Shareholder or any of its Affiliates, the Managing Board will take such action as directed by the Managing Directors not associated with such Participating Shareholder.

Section 5.8 Dividend Policy. The Participating Shareholders agree that the dividend policy of the Company will be that until the fifth anniversary of the Agreement Date, the Company's profits will be used to modernize, refurbish and improve the Company assets and to otherwise strengthen the Company as provided in the Annual Capital and Operating Budgets and, accordingly, during that period the Participating Shareholders agree to take all reasonable action available to them to cause the Company not to pay any dividends or other distributions from the capital account, redeem any Shares, make any loans or advances, or guaranty loans or other obligations for the benefit of the Company's shareholders.

200

Section 5.9 Other Matters.

(a) The Participating Shareholders agree to, and the Supervisory Board and Managing Board will, in decision making and acting in the best interests of the Company, including its shareholders, take into account the interests of other constituencies other than shareholders, including employees, debt-holders, communities in which facilities of the Company are located and serve, and customers.

(b) The Participating Shareholders agree to take all reasonable action available to them to cause the Company to develop fair and just employment policies, procedures and practices that fairly and justly recognize and reward contributions made by employees. These policies, procedures and practices should encourage and motivate employees to perform individually and collectively above normal performance expectations, and financially and otherwise reward them for superior performances. The policies, procedures and practices should provide for frequent period team and individual performance reviews, equal opportunity without discrimination, training and development, health and safety, and fair and just compensation and retirement and other employee benefits.

(c) The Participating Shareholders agree to take all reasonable action available to them to cause the Company to engage primarily employees (both management and non-management) who are [**insert**] citizens.

Section 5.10 Decision-Making. Each Participating Shareholder, Supervisory Member, and Managing Director should exercise prudent business judgment in making decisions and fulfilling responsibilities on behalf of the Company and its best interests including all of the Company's shareholders. In making decisions or otherwise considering a matters regarding the Company, the Person should:

a) be fully informed about the matter;
b) act in good faith and relying on accurate information;
c) act carefully, by giving the matter thorough attention; and
d) act rationally and prudently in the best interests of the Company, not favoring some special interest or some specific shareholder to the detriment of other shareholders.

Section 5.11 Codes of Conduct. The Managing Board should develop and maintain, in accordance with good corporate governance practices, codes of conduct approved by the Supervisory Members applicable to all employees of the Company, Managing Directors and to Supervisory Members, covering Company policy matters, including:

a) principles of business ethics relating to the conduct of the business and affairs of the Company, including compliance with all laws and regulations applicable to the Company;
b) Company's purchasing and safeguarding of its assets and other property;
c) delegations of authority outlining the specific responsibilities, duties and authorities of each member of the Company's senior management;
d) Company's operating procedures and practices covering the efficient and effective conduct of its business operations and affairs; for employment practices in accord with applicable laws for the health and safety of its employees; for the quality and safety of the Company's products and services; and for the strength of the Company's competitive position and its financial condition, and reimbursement by the Company for travel and other allowable expenses;
e) prohibition of practices by Companies employees concerning (i) conflicting interests, (ii) receipt and giving of gifts to Persons outside the Company, and any illegal political or other illegal payments, (iii) the purchasing and selling of (y) Company's debt and equity securities and (z) securities of other companies doing business with the Company, based on inside information gained from the business and affairs of the Company, (iv) other misuse of confidential information, and (v) improper use by employees of company assets and property; and
f) Company's timely public disclosure to shareholders and others of financial and material Company information.

Further, the Managing Board should be assured that the Company has written procedures that assure that these codes of conduct have been circulated to all of the employees affected by the

201

procedures and polices, and that the Company maintains procedures for monitoring and enforcing compliance.

ARTICLE VI

RESTRICTIONS ON ADDITIONAL SHARES AND SHARE TRANSFERS

Section 6.1 Restrictions on Additional Shares. Neither Shareholders A nor Shareholder B and their respective Affiliates will acquire Shares or any interest in Shares through open-market or other purchases which, in the aggregate including Shares already owned, exceed [insert percentage] of the share capital of the Company without the prior written consent of the other (Shareholder A or Shareholder B, as the case may be). Provided, however, the Shareholders A and B will entitled to participate in any pro-rata capital subscription offerings with other shareholders even if such participation results in an increase of ownership above [insert percentage]. Under no circumstances however, will either Shareholder A or Shareholder B be permitted to vote, either directly or indirectly, more than [insert percentage] of the Shares.

Section 6.2 Definition Applicable to Section 8.1. For the proposes of Section 8.1, Shareholder A and Shareholder B and their respective Affiliates will be deemed to have an interest in any Share or Shares if any of them:

(i) directly or indirectly owns or is able directly or indirectly to exercise control over the rights attaching to such Share or Shares,

(ii) directly or indirectly has any financial interest in any such Share or Shares, or

(iii) has entered into or agreed to enter into any agreement, arrangement, or option with any person with respect to any of the foregoing.

Section 6.3 Restrictions on Transfer of Shares.

(a) For the period of the Agreement, Shareholders A and B agree, and agree to cause each of their respective Affiliates, not to transfer or otherwise dispose of, or charge or create or permit to be created any pledge or security interest in respect of the whole or any part of its holding of Shares or any interest in such Shares or enter into any agreement, option or other arrangement in respect of any such transfer, disposal or creation other than a transfer to an Affiliate (with the prior written consent of the other (Shareholder A or Shareholder B, as the case may be (the "Consenting Shareholder").

(b) In the event that Shareholder A or Shareholder B obtain written consent from the Consenting Shareholder as provided in Section 6.3(a) to sale Shares, then the selling Shareholder A or Shareholder B will offer to sale the Shares to the Consenting Shareholder, and the Consenting Shareholder will have the right (to be exercised within sixty days) to acquire the Shares at the Trading Market Value. If there is no Trading Market Value, then the Consenting Shareholder will have the right to acquire the Shares at the price equal to the price being offered by the prospective purchaser of the Shares. However, in no event may the Shares be sold at a price lower than that offered the Consenting Shareholder.

ARTICLE VII

SHAREHOLDERS A AND B'S ADDITIONAL COMMITMENTS

Section 7.1 Services Provided. Each, Shareholder A and Shareholder B, to the extent it, directly or through its Affiliates, has the capability and it will materially enhance the value and operation of the Company, may make available services to the Company, as described in writing in Exhibits B and C, respectively, to this Agreement, by it (the "Services"). Such Services may relate but are not limited to strategic planning and decision-making, managerial practices and information systems, customer service and collection procedures, operational efficiency and effectiveness, development planning and execution, achieving competitive credit ratings and facilitating access to international debt-capital markets, safety practices, and internal financial, operating and administrative controls.

202

Section 7.2 Contributed Services. Each, Shareholder A and Shareholder B, will, at its sole cost and expense, provide to the Company in an amount, no less than the equivalent of the amount described in writing in Exhibits D and E, respectively, to this Agreement, of Services and Intellectual Property listed in D and E, respectively, (the "Contributed Services"), including when the Contributed Services will be provided.

Section 7.3 Direct-Cost Services. Each, Shareholder A and Shareholder B, will offer on a Direct-Cost basis in an amount, no less than the equivalent of the amount described in writing in Exhibits F and G, respectively, to this Agreement, to provide Services and Intellectual Property listed in Exhibits F and G, respectively, to this Agreement (the "Direct-Cost Services"). The Direct-Cost Services will be offered within a five-year period from the date of this Agreement.

Section 7.4 Price Calculation of Direct-Cost Services.

(a) The Company will reimburse for Direct-Cost Services on a Cost basis only. The provider of Direct-Cost Services will deliver quarterly invoices to the Company with respect to the Direct-Cost Services together with such supporting evidence as the Company may require. The Company will pay the full amount of such invoices within thirty days (30) days after receipt.

(b) For purposes of this Article VII, "Cost" will not exceed: (i) with respect to human resources, direct labor costs, which will include salary, bonus, payroll taxes, and related pension and other employee-benefit costs, including insurance; travel, lodging, meals, and other direct out-of-pocket expenses; and relocation and other employee displacement costs; (ii) with respect to other services and products, "Cost" will be the lower of the lowest price at which the Strategic Investor provides or procures the same services to or for its departments, divisions or Affiliates, or the incremental cost of the services or products to the provider of Direct-Cost Services; (iii) with respect to equipment related to the Direct-Cost Services, the purchase price of such equipment to the provider of Direct-Cost Services, or, if the equipment is constructed by the provider of Direct-Cost Services or an Affiliate, the sum of: raw material costs; direct labor and manufacturing costs; and indirect manufacturing costs.

"Cost" for purposes of this Article VII will not include: (i) indirect, overhead or general cost items that are not directly attributable to the Direct-Cost Services; (ii) direct cost items that the provider of Direct-Cost Services or an Affiliate would incur whether or not offered the Direct-Cost Service to the Company (e.g., research development or implementation costs or managerial tools and techniques); or (iii) any profit element.

(c) Any withholding or similar taxes imposed under [**insert**] laws upon the payments made pursuant to this Article VII will be considered a "Cost" for purposes of Section 7.4(a) and will be borne and paid by the Company. Notwithstanding the preceding sentence, however, (i) the Parties will cooperate to achieve the minimum tax liability allowed by the [**insert**] laws with respect to payments made for Direct-Cost Services, and (ii) the Company may claim a credit for such taxes paid against invoices submitted to the extent a refund of or other financial benefit for payment of such taxes is made.

Section 7.5 Other Services and Affiliate Transactions. Each, Shareholder A and Shareholder B, will offer, on such bases as provided in Exhibits H and I, respectively, to this Agreement to provide to the Company, within a five-year period from the date of this Agreement in amounts totaling no less than the equivalent of the amounts set forth in Exhibits [**insert**] and [**insert**], respectively, of Services, Intellectual Property, goods and other items listed in Exhibits [**insert**] and [**insert**], respectively. In all other transactions not listed in an Exhibit to this Agreement, each Shareholder A and Shareholder B will cause such transactions with the Company to be on terms and conditions (including compensation and payment) which are not more favorable to the provider or any Affiliate of the provider than the lower of terms and conditions which would prevail in an arms-length transaction, or the lowest or most favorable prices between the provider and/or any of its Affiliates with others within or outside of such affiliated group of companies. All contracts for Services and other Affiliate transactions to be provided by each Shareholder A and Shareholder B, or any Affiliate of either, other than listed in Exhibits

203

[**insert**], will require the prior authorization of two-thirds (2/3rds) of the N-Directors of the Managing Board.

Section 7.6 Standard of Care Owed by Participating Shareholders. In providing any Services, Intellectual Property, other services and goods to the Company, each of the Participating Shareholders will meet the standards of an expert acting with all due care and will use all reasonable efforts to ensure that the services and goods are of a high quality, are provided expeditiously and to the reasonable satisfaction of the Company.

Section 7.7 Service Company. Each of the Participating Shareholders may establish a service company to provide Services. Neither the creation nor the operation of any such service company will (i) relieve such Participating Shareholder from any portion of its obligations under this Agreement or (ii) result in any additional costs being payable by the Company.

Section 7.8 Benefit of Third-Party Relationships. Each of the Participating Shareholders will use all reasonable efforts to ensure that the Company is able to benefit from access to supplier discounts and similar commercial benefits which are available such Participating Shareholder, subject to any contractual restrictions imposed on the such Participating Shareholder.

Section 7.9 Licenses and Consents. Each, Shareholder A and Shareholder B, will obtain all necessary licenses, permits, consents and approvals in connection with the provision of any Services or Intellectual Property.

Section 7.10 Intellectual Property Provided. Each, Shareholder A and Shareholder B will provide, directly or through its respective Affiliates, Intellectual Property to the Company in order to assist the Company. Each, Shareholder A and Shareholder B will license or sub-license to the Company, directly or through its Affiliates, Intellectual Property (owned by such shareholder or its Affiliates or with respect to which such shareholder or its Affiliates have rights to license or sub-license) appropriate for the conduct of the Company's Business. Each, Shareholder A and Shareholder B, or any of its respective Affiliates, as the case may be, will in the license or sub-license to the Company undertake to maintain and improve the licensed Intellectual Property.

ARTICLE VIII
REVIEW OF SERVICES

Section 8.1 General. The Company may make a written request to modify or supplement the Contributed Services, the Direct-Cost Services, or other Services provided under this Agreement at any time during the continuation of this Agreement. The Person receiving the request will consider any such request in good faith and will use reasonable efforts to comply with such request. If compliance with the request results in an increase in cost, the Company will be informed of the increased cost (providing such supporting documentation as the Company may request) and, providing the Company determines that the requested modification or supplement is necessary or desirable, the Company will pay such increased cost.

Section 8.2 Actions by the Company. All actions required to be taken or decisions required to be made by the Company with respect to services provided by the Strategic Investor or its Affiliates will only be taken or made with the approval of a majority of the N-Directors.

ARTICLE IX
ACCOUNTING FOR SERVICES

Section 9.1 Accounts and Records. Each, Shareholder A and Shareholder B, respectively, will keep or cause to be kept complete accounts and records with respect to all aspects of the Services provided by it or any Affiliate. On reasonable notice, the Company, its agents or advisors, will have full access to such accounts and records during normal business hours.

Section 9.2 Reports. Commencing in 19[**insert**], each, Shareholder A and Shareholder B, respectively, will provide to the Company a quarterly report as to the status of, and associated charges for, the Services provided to the Company.

204

Section 9.3 Retention and Inspection of Books and Records. Each, Shareholder A and Shareholder B, respectively and each of their Affiliates providing Services will (a) preserve their books and records and (b) make their books and records available for inspection by the Company or its duly authorized representatives, for reasonable purposes in connection with the Services provided hereby, during normal business hours. As used in this Section, the right of inspection includes the right to make extracts or copies.

Section 9.4 Compliance Certificate. Each, Shareholder A and Shareholder B, respectively, and each of their Affiliates providing Services will, for so long as any obligations to provide Services under Article VII remain in effect, deliver to the Company prior to April 1 of each year a duly authorized and executed certificate stating whether or not it and each of its Affiliates providing Services, Intellectual Property, or goods or engaging in other transactions, has complied in all respects with each of the obligations under Article VII with respect to the immediately preceding calendar year and stating in reasonable detail the actions taken to comply with Article VII. In the event that either or both Shareholder A and Shareholder B or any of their Affiliates will have failed to so comply with any of the obligations under Article VII, such certificate will completely describe each such failure and the reasons therefor; and each failing shareholder and the Company will then discuss in good faith what actions can be taken by it, or the Affiliate, as the case may be, to achieve compliance. If a failing shareholder or Affiliate, as the case may be, fails to agree on actions to achieve compliance, then the failing shareholder or Affiliate, as the case may be, will pay to the Company, in cash, a contractual penalty of 100% of the economic-value equivalent, reasonably assigned by the Company, to the failure to achieve compliance.

Section 9.5 Audit. At the request of the Company, each, Shareholder A and Shareholder B, will cooperate with an annual audit by an internationally recognized auditing firm selected by the Company for the purpose of reviewing the provision of Services and associated charges. The cost of the audit will be borne by the Company, unless the audit reveals that the Company was overcharged by at least USD 15,000. In the event that the audit reveals such overcharging, the cost of the audit will be borne by the overcharging shareholder and the overcharging shareholder will pay to the Company in the aggregate an amount equal to 120% of the amount of the overcharging.

ARTICLE X
DURATION AND TERMINATION

Section 10.1 Duration. This Agreement will become effective as of the Agreement Date and continue in full force and effect until the earliest of the following events:

(a) the Parties hereto agree in writing to terminate this Agreement;

(b) either Shareholder A or Shareholder B disposes of all its Shares other than to Affiliates; or

(d) December 31, [**insert**], unless the Fund, the Strategic Investor and the Company agree in writing to extend this Agreement to a date beyond December 31, [**insert**];

(e) an effective resolution of the General Meeting of shareholders of the Company is passed, or a decision of a court is made, for the winding up of the Company; or

(f) if a Party to this Agreement by its course of conduct repeated fails to comply with this Agreement and materially breaches its obligations hereunder, then either or both of the other Parties may terminate this Agreement., provided that the Party instituting termination will not have materially breached its obligations hereunder.

Section 10.2 Effect of Termination. Termination of this Agreement for any cause will not release any of the Parties from any liability which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination, including the obligations of the Strategic Investor set forth in Section 14.13 (to return all Confidential Information and not to disclose, use or exploit the Confidential Information in any respect). All Services and Intellectual Property provided the Company prior

205

to the date of termination, whether tangible or intangible, will remain the property of the Company following termination.

ARTICLE XI
REPRESENTATIONS OF SHAREHOLDER A

Shareholder A hereby represents to Shareholder B and the Company that:

Section 11.1 Organization, Good Standing, Etc. Shareholder A is a **[insert]** company duly organized, validly existing and in good standing under the laws of **[insert]**.

Section 11.2 Authorization; Due Execution. Shareholder A has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Shareholder A, and constitutes the binding, legal and valid obligation of Shareholder A enforceable against Shareholder A in accordance with its terms.

Section 11.3 No Violation. Neither the execution or delivery by Shareholder A of this Agreement, nor the consummation of the transactions contemplated hereby, hereby (a) violates any material agreement, commitment, judgment or order to which the Shareholder A is a party or by which Shareholder A's property is bound or (b) contravenes any law or regulation having applicability to the Shareholder A.

Section 11.4 Approvals, Consents, Etc. Other than those consents and approvals that have already been obtained, no consent or approval of any governmental or administrative body (other than that of the **[insert]**) is required to authorize the Shareholder A to enter into this Agreement or perform its obligations hereunder.

Section 11.5 Litigation. There is no material claim, action, proceeding, arbitration, investigation or hearing pending or, to the knowledge of the Shareholder A, threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal against the Shareholder A that would prevent the consummation of the transactions contemplated by this Agreement.

Section 11.6 Limitation on Representations.

(a) Only Representations. The representations set forth in this Agreement constitute the only representations made by Shareholder A in connection with the transactions contemplated hereby.

(b) No Reliance. The Shareholder B and the Company each hereby acknowledges and agrees that (i) in entering into this Agreement it has not relied on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) Shareholder A, or any of its Representatives (or any of its Affiliates), other than the representations and agreements of Shareholder A expressly set forth in this Agreement, (ii) it has had the opportunity to inspect the books and records of the Company and to meet with and ask questions of the management of the Company, and (iii) it has inspected the assets and liabilities of the Company and except as expressly provided herein accepts those assets and liabilities in their current condition and at their current location.

(c) Independent Determinations. Except as expressly represented by Shareholder A in this Article XI, Shareholder B and the Company each further hereby acknowledges and agrees that (i) it and its Representatives have made their own independent investigations and analyses, (ii) to the extent it has deemed appropriate, it and its Representatives have independently verified all information, (iii) it has reached its own independent decision with respect to participating in this Agreement, and (iv) Representatives of Shareholders A will have no liability arising out of, or resulting from, the use of any information provided to Shareholder B or the Company and their Representatives.

206

ARTICLE XII

REPRESENTATIONS OF SHAREHOLDER B

The Shareholder B hereby represents to Shareholder A and the Company that:

Section 12.1 Organization, Good Standing, Etc. Shareholder B is a **[insert]** company duly organized, validly existing and in good standing under the laws of **[insert]**.

Section 12.2 Authorization; Due Execution. Shareholder B has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Shareholder B, and constitutes the binding, legal and valid obligation of Shareholder B enforceable against Shareholder B in accordance with its terms.

Section 12.3 No Violation. Neither the execution or delivery by Shareholder B of this Agreement, nor the consummation of the transactions contemplated hereby, hereby (a) violates any material agreement, commitment, judgment or order to which the Shareholder B is a party or by which Shareholder B's property is bound or (b) contravenes any law or regulation having applicability to the Shareholder B.

Section 12.4 Approvals, Consents, Etc. Other than those consents and approvals that have already been obtained, no consent or approval of any governmental or administrative body (other than that of the [insert] is required to authorize the Shareholder B to enter into this Agreement or perform its obligations hereunder.

Section 12.5 Litigation. There is no material claim, action, proceeding, arbitration, investigation or hearing pending or, to the knowledge of the Shareholder B, threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal against the Shareholder B that would prevent the consummation of the transactions contemplated by this Agreement.

Section 12.6 Limitation on Representations.

(a) Only Representations. The representations set forth in this Agreement constitute the only representations made by Shareholder B in connection with the transactions contemplated hereby.

(b) No Reliance. The Shareholder A and the Company each hereby acknowledges and agrees that (i) in entering into this Agreement it has not relied on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) Shareholder B, or any of its Representatives (or any of its Affiliates), other than the representations and agreements of Shareholder B expressly set forth in this Agreement, (ii) it has had the opportunity to inspect the books and records of the Company and to meet with and ask questions of the management of the Company, and (iii) it has inspected the assets and liabilities of the Company and except as expressly provided herein accepts those assets and liabilities in their current condition and at their current location.

(c) Independent Determinations. Except as expressly represented by Shareholder B in this Article XII, Shareholder A and the Company each further hereby acknowledges and agrees that (i) it and its Representatives have made their own independent investigations and analyses, (ii) to the extent it has deemed appropriate, it and its Representatives have independently verified all information, (iii) it has reached its own independent decision with respect to participating in this Agreement, and (iv) Representatives of Shareholders B will have no liability arising out of, or resulting from, the use of any information provided to Shareholder A or the Company and their Representatives.

ARTICLE XIII

REPRESENTATIONS OF THE COMPANY

The Company hereby represents to the Shareholder A and Shareholder B that:

Section 13.1 Organization, Good Standing, Etc. The Company is a joint-stock company established pursuant to the Code and duly registered and validly existing and in good standing under the [insert] laws.

Section 13.2 Authorization; Due Execution. Company has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by Company, and constitutes the binding, legal and valid obligation of Company enforceable against Company in accordance with its terms.

Section 13.3 No Violation. Neither the execution or delivery by Company of this Agreement, nor the consummation of the transactions contemplated hereby, (a) violates any material agreement, commitment, judgment or order to which the Company is a party or by which Company's property is bound or (b) contravenes any law or regulation having applicability to the Company.

Section 13.4 Approvals, Consents, Etc. Other than those consents and approvals that have already been obtained, no consent or approval of any governmental or administrative body (other than that of the [**insert**]) is required to authorize the Company to enter into this Agreement or perform its obligations hereunder.

Section 13.5 Litigation. There is no material claim, action, proceeding, arbitration, investigation or hearing pending or, to the knowledge of the Company, threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal against the Company that would prevent the consummation of the transactions contemplated by this Agreement.

Section 13.6 Limitation on Representations.
(a) Only Representations. The representations set forth in this Article XIII constitute the only representations made by the Company in connection with the transactions contemplated hereby.

(b) No Reliance. The Shareholder A and Shareholder B each hereby acknowledges and agrees that (i) in entering into this Agreement it has not relied on any representation, warranty or agreement, express or implied, or information, made or given by or on behalf of (or attributable to) the Company, or any of its Representatives (or any of its Affiliates), other than the representations and agreements of the Company expressly set forth in this Agreement, (ii) it has had the opportunity to inspect the books and records of the Company and to meet with and ask questions of the management of the Company, and (iii) it has inspected the assets and liabilities of the Company and except as expressly provided herein accepts those assets and liabilities in their current condition and at their current location.

(c) Independent Determinations. Except as expressly represented by the Company in this Article XII, Shareholder A and Shareholder B each further hereby acknowledges and agrees that (i) it and its Representatives have made their own independent investigations and analyses, (ii) to the extent it has deemed appropriate, it and its Representatives have independently verified all information, (iii) it has reached its own independent investment decision with respect to the Company, and (iv) Representatives of the Company will have no liability arising out of, or resulting from, the use of any information provided to Shareholder A or Shareholder B.

ARTICLE XIV
GENERAL

Section 14.1 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each of the Parties hereto will pay its own costs and expenses and the fees and expenses of its counsel and accountants and other representatives incurred in connection with the transactions contemplated by this Agreement.

Section 14.2 Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with [**insert applicable**] laws without reference to conflict of laws provisions. [**Insert if applicable**]Further, this

248

Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**insert appropriate countries**], as amended. The Parties will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** The Parties each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

[Insert this section, if applicable] Section 14.3. Sovereign Immunity. The Parties hereby agree and acknowledge that they are entering into this Agreement as a "commercial act" and not as acts in capacities as a "sovereign" and hereby waive any and all rights or claims to the defense of sovereign immunity with respect to any claims brought under this Agreement.

Section 14.4. Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

Section 14.5. Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to Shareholder A:

_____

_____

_____

_____

Attention: _____

(b) if to Shareholder B:

_____

_____

_____

Attention: _____

(c) if to the Company:

_____

_____

_____

Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this Section. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt,

the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Section 14.6. Entire Agreement. This Agreement (including the Exhibits hereto) constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof;[**insert followinng if appropriate and to extent appropriate**] it being expressly understood and agreed that only to the extent required by Section [**insert if applicable**] of the [**insert if applicable**] (the "Code") will the provisions of [**insert if applicable**] of the Code apply to this Agreement or the transactions contemplated hereby.

Section 14.7. Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

Section 14.8. Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 14.9. Assignment, Successors, and No Third-Party Rights. A Party may not assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. No permitted or purported assignment of all or any portion of this Agreement will effect a release of the assignor of its obligations under this Agreement without an express written release from such obligations by the other Party. Nothing expressed or referred to in this Agreement will be construed to give any Person (except as otherwise expressly provided in Articles XI, XII and XIII) other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. Except as to Articles XI, XII and XIII, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and assigns.

Section 14.10. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

Section 14.11. Counterparts. This Agreement will be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts together will constitute one and the same legal document.

Section 14.12. Languages. This Agreement and any amendments or other modifications hereof will be executed in the English and [**insert**] languages. In the event of a conflict between the different language versions of this Agreement, both versions will be deemed to be equally authoritative.

Section 14.13. Headings; Construction. The Section and other headings contained in this Agreement are for convenience only and will not be deemed to limit, characterize or interpret any provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

210

Section 14.14 Confidentiality.

(a) Each Participating Shareholder will not disclose to any Person or use or exploit for any purpose whatsoever any information which it obtains or has heretofore obtained in relation to the Company ("Confidential Information"), except:

(i) with the prior written consent of the Company;

(ii) as may be required by law, applicable accounting regulation or order of a court of competent jurisdiction;

(iii) in connection with the advancement of the Business or (iv) to the extent expressly permitted by this Agreement.

In the event that any Participating Shareholder is required to disclose Confidential Information as provided in clause (ii) above, it will attempt to obtain a protective order preserving the confidentiality thereof by the recipient thereof, and to the extent unsuccessful in obtaining a protective order, to ensure that such information is treated by any recipient as constituting confidential information that is not subject to further disclosure.

(b) For purposes of this Section 14.14, Confidential Information will not include any information which:

(i) is available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation); or

(ii) is provided to any Person associated with a Participating Shareholder by a Person (another Person associated with a Participating Shareholder or with the Company) who is lawfully in possession of such information and has the lawful right to disclose, use or exploit it.

(c) Each Participating Shareholder will cause all Persons associated with it not to disclose to any Person or use or exploit for any purpose whatsoever the Confidential Information except as expressly permitted in this Section 14.14. Each Participating Shareholder shall limit the disclosure and dissemination of the Company's Confidential Information within its own organization to those of its personnel who have a need to know for the purposes of this Agreement and who have been bound, in writing, not to use (except in the course of their work with respect to this Agreement) and to maintain Confidential Information in confidence both during and after the term of their employment. In case of termination of this Agreement, or the Participating Shareholder ceases to be a Participating Shareholder, or the Participating Shareholder not longer has a need for such Confidential Information, each Person associated with the Participating Shareholder will (i) promptly return to the Company all copies of any Confidential Information and any other written material containing or reflecting any Confidential Information then in its possession or under its control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, (iii) not use or exploit for any purpose whatsoever the Confidential Information, and (iv) all Confidential Information or information derived from Confidential Information not returned to the Company will be destroyed and expunged from any computer, word processor or other device containing or derived from Confidential Information. The destruction and expunction will be certified in writing to the Company by an authorized officer of such Participating Shareholder responsible for reporting that such destruction and expunction has been fully and completely performed. Notwithstanding the foregoing, Participating Shareholders' nominated Supervisory Members and Managing Directors may retain any Confidential Information which they are entitled to have or use for so long as such Persons continue to act or serve in such capacities.

Section 14.15. Further Assurances. A Party will each, at the request of another Party, execute, acknowledge, deliver and file, without further consideration, all such further assignments, conveyances, endorsements, powers of attorney, consents and other documents and take such other action as may be reasonably requested to consummate the transactions contemplated by this Agreement.

Section 14.16 Announcements. During the continuation of this Agreement the Fund, the Company and the Strategic Investor will, subject to the requirements of applicable laws, the rules and regulations of any governing Governmental Entity and/or stock exchange consult together as to the terms of, the timetable for and the manner of publication of, any announcement to shareholders or employees, customers, suppliers, distributors and

211

subcontractors and to any governing Governmental Entity and/or stock exchange and to the media or otherwise which any of the Parties may desire or be obliged to make regarding this Agreement and none of them will issue any such announcement without the prior written consent of the others, such consents not to be unreasonably withheld.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the Agreement Date.

[INSERT NAME OF COMPANY]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[INSERT NAME OF SHAREHOLDER A]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[INSERT NAME OF SHAREHOLDER B]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

OTHER PARTICIPATING SHAREHOLDERS

AGREED AND ACCEPTED to be bound by the terms and conditions Articles I through VI, inclusive, of this Agreement as of the date first above written.

[INSERT NAME OF COMPANY]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[INSERT NAME OF COMPANY]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

212

Appendix 14

This form of Statement of Understanding and Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the transaction, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF STATEMENT OF UNDERSTANDING AND AGREEMENT

214

FORM OF STATEMENT OF UNDERSTANDING AND AGREEMENT

This Statement of Understanding and Agreement ("Statement of Understanding and Agreement") is made as of [**insert date**] 199__(the "Statement of Understanding and Agreement Date"), by [**insert name and form of entity and where entity is formed**] company ("Company A"), and [**insert name and form of entity and where entity is formed**], company ("Company B"). (Either Company A or Company B may be referred to as the "Other Company" and both Company A and Company B may be referred to as the "Companies" in this Statement of Understanding and Agreement.)

RECITAL

The purpose of this Statement of Understanding and Agreement, concerning negotiations and preliminary arrangements, is to set forth certain nonbinding mutual understandings and certain binding agreements between Company A and Company B.

AGREEMENT

PART ONE --NONBINDING PROVISIONS

The following numbered paragraphs (collectively, the "Nonbinding Provisions") reflect our mutual understanding of the matters described in them, but the Companies acknowledge that the Nonbinding Provisions are not intended to create or constitute legally finding obligations between Company B and Company A, and neither Company A nor Company B shall have any liability to the Other Company with respect to the Nonbinding Provisions until [**insert names of the proposed agreements**] (the "Definitive Agreements") are executed by the Companies. **If the Definitive Agreements are not executed for any reason, neither of the Companies shall have any liability to the Other Company with respect to this Statement of Understanding and Agreement based upon, arising from, or relating to the Nonbinding Provisions.**

1. Contemplated Transaction. [**Describe basic Contemplated Transaction**] (the "Contemplated Transaction").

2. Proposed Initial Consideration. Based on the information known to date, [describe proposed initial consideration] (the "Initial Consideration"), which would be paid at closing of Contemplated Transaction.

3. Purchase Price Adjustment. The proposed Initial Consideration would be adjusted [describe any proposed adjustments].

4. Due Diligence. Each, Company A and Company B, intends to commence and to continue until completion, its due diligence investigation of the prospects, business, assets, contracts, rights, liabilities, obligations, commitments, and contingencies of [**specify enterprise**], including financial, employee, legal, regulatory and environmental matters. Each, Company A and Company B, understands that it will not in the Definitive Agreements be provided with representations, warranties or agreements, express or implied, or information, made or given by or on behalf of [**specify enterprise**] since it is being afforded the opportunity (i) to inspect the books and records of [**specify enterprise**], (ii) to meet with and ask questions of the management of [**specify enterprise**], and (iii) it inspect the prospects, business, assets, contracts, rights, liabilities, obligations, and commitments of [**specify enterprise**].

5. Forms of Definitive Agreements. The Company A will promptly provide Company B with the proposed draft forms of the Definitive Agreements. Company B will promptly provide Company A with any comments on the proposed forms by separate letter limited to the extent necessary to make the forms acceptable for signing by Company B.

6. Conditions to Contemplated Transaction. Company A and Company B do not intend to be bound to the Nonbinding Provisions or any provisions covering the same subject matter until the execution and delivery of the Definitive Agreements. Prior to the execution of the Definitive Agreements, [**describe briefly the conditions**].

215

7. **Other Important Terms of Contemplated Transaction**. **[Describe briefly]**.

PART TWO --BINDING PROVISIONS

Upon execution by Company A and Company B of this Statement of Understanding and Agreement, or counterparts thereof, the following lettered paragraphs of this Statement of Understanding and Agreement (collectively, the "Binding Provisions") will constitute the legally binding and enforceable agreement of Company A and of Company B (in consideration of the costs and efforts being borne by Company A and by Company B in pursuing this transaction and further in consideration of their mutual undertakings as to the matters described herein).

A.. Nonbinding Provisions Not Enforceable. The Nonbinding Provisions do not create or constitute any legally binding obligations between Company A and Company B, and neither Company A nor Company B shall have any liability to the Other Company with respect to the Nonbinding Provisions until the Definitive Agreements, if executed, are executed by Company A and Company B. If the Definitive Agreements are not executed by Company A and Company B for any reason, neither Company A nor Company B shall have any liability to the Other Company, based on, arising from, or relating to the Nonbinding Provisions.

B. Good Faith Commitment. Each, Company A and Company B, agrees, during the Period of Exclusive Dealing, to negotiate in good faith and use its best efforts (the efforts that a prudent person desirous of achieving a result would use in similar circumstances to achieve a mutually satisfactory result as expeditiously as reasonable possible without being required to take any action that would result in a materially adverse change in its contemplated benefits in the Contemplated Transaction) to arrive at mutually acceptable Definitive Agreements.

C. Access; Confidentiality.. Except to the extent provided in a separate confidentiality agreement, this paragraph, neither Company A, nor Company B shall disclose to any person other than an authorized director, officer, employee, agent or advisor ("Authorized Representative"), or use or exploit for any purpose whatsoever, and it shall cause its Authorized Representatives not to disclose, use or exploit for any purpose whatsoever, any written, oral, or other information ("Confidentiality Information") or to have access (i) to inspect the books and records of [**specify enterprise**], (ii) to meet with and ask questions of the management of [**specify enterprise**], and (iii) it inspect the prospects, business, assets, contracts, rights, liabilities, obligations, and commitments of [**specify enterprise**].

D. Exclusive Dealing. From the date of this Statement of Understanding and Agreement until such time as this Statement of Understanding and Agreement is terminated (the "Period of Exclusive Dealing"), neither Company A nor Company B, other than as a participant in the Contemplated Transaction in accordance with this Statement of Understanding and Agreement, shall directly or indirectly through others solicit, initiate, or encourage any inquiries or proposals from, any person relating directly or indirectly to the Contemplated Transaction.

E. Conduct of Business. During the Period of Exclusive Dealing, [**specify enterprise**] shall conduct it business and affairs in the ordinary course and not engage in any extraordinary transactions outside its business plans.

G. Disclosure. Except as and to the extent required by law without the prior written agreement of the Companies, neither Company A nor Company B shall, or shall direct its representative to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, the Contemplated Transaction, any of the terms, conditions or other aspects of the Contemplated Transaction.

H. Costs Except to the extent expressly otherwise provided herein, each, Company A and Company B, shall be responsible for and bear all of its own costs and expenses incurred in connection with the Contemplated Transaction, including expenses of its Authorized Representatives, incurred at any time in connection with pursuing or consummating the Contemplated Transaction.

216

I. Required Approvals. Each, Company A and Company B, will use its best efforts to obtain, will assist the Other Company other in making, [**specify any consents, approval, ratification, waiver or other authorization including governmental required before the Definitive Agreements may be executed**].

J. Termination. This Statement of Understanding and Agreement may be terminated:

(a) at any time by either Company A or Company B, if prior written note of [**state number of days**] of the termination is furnished to the Other Company;

(b) at any time by the mutual consent of the Companies;

(c) at any time by either Company A or Company B, if a material breach of any of the Binding Provisions in PART TWO has been committed by the Other Company and such breach has not been waived; or

(d) on [**specify date**], unless the date is extended by the mutual consent of the Companies.

In Witness Whereof, this Statement of Understanding and Agreement has been signed below to acknowledge and confirm the mutual agreements set forth in the Binding Provisions by or on behalf of each of the signatories hereto as of the Statement of Understanding and Agreement Date.

[INSERT NAME OF COMPANY-A]	**[INSERT NAME OF COMPANY-B]**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

217

Appendix 15

This form of Term Loan Agreement is intended for informational purposes only. This form should not be used in this or any modified form without careful consideration of the specific terms of the loan, the applicable governing law, and the local policies and practices. This form was prepared under funding provided by United States Agency for International Development (USAID).

FORM OF TERM LOAN AGREEMENT

219

FORM OF TERM LOAN AGREEMENT

TABLE OF CONTENTS

RECITAL 4

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS 4

Section 1.1 Definitions
Section 1.2 Accounting Terms

ARTICLE II. AMOUNT AND TERMS OF THE LOAN 6

Section 2.1 Term Loan
Section 2.2 Interest
Section 2.3 Term Note
Section 2.4 Prepayments
Section 2.5 Method Payment
Section 2.6 Use of Proceeds

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF BORROWER 7

Section 3.1 Organization; Good Standing, Etc.
Section 3.2 Authorization; Due Execution
Section 3.3 No Violation
Section 3.4 Litigation
Section 3.5 Approvals/Consents
Section 3.6 Financial Statements
Section 3.7 Title to Properties; Encumbrances
Section 3.8 Legal Compliance
Section 3.9 Limitation on Representations

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF LENDER 8

Section 4.1 Organization, Good Standing, Etc.
Section 4.2 Authorization; Due Execution
Section 4.3 No Violation
Section 4.4 Approvals, Consents, Etc.
Section 4.5 Litigation
Section 4.6 Financing
Section 4.7 Limitation on Representations

ARTICLE V. CONDITIONS PRECEDENT 9

Section 5.1 Conditions Precedent to the Loan

ARTICLE VI. AFFIRMATIVE COVENANTS OF BORROWER 9

Section 6.1 Maintenance of Existence, Records, Properties and Insurance
Section 6.2 Conduct of Business
Section 6.3 Compliance with Laws
Section 6.4 Right of Inspection
Section 6.5 Reporting Requirements

ARTICLE VII. NEGATIVE COVENANTS OF BORROWER 10

Section 7.1 Security Interests
Section 7.2 Debt
Section 7.3 Mergers, Etc.
Section 7.4 Leases
Section 7.5 Sale and Leaseback
Section 7.6 Dividends
Section 7.7 Sale of Properties

220

Section 7.8 Investments
Section 7.9 Related Transactions
Section 7.10 Guaranties

ARTICLE VIII. FINANCIAL COVENANTS OF BORROWER **11**

Section 8.1 Minimum Working Capital
Section 8.2 Minimum Total Tangible Net Assets In Excess of Total Liabilities
Section 8.3 Capital Ratio

ARTICLE IX. EVENTS OF DEFAULT **12**

Section 9.1 Events of Default

ARTICLE X. TERMINATION **13**

Section 9.1 Termination

ARTICLE XI. GENERAL **13**

Section 11.1 Expenses
Section 11.2 Governing Law and Dispute Resolution
Section 11.3 Waiver
Section 11.4 Notices
Section 11.5 Entire Agreement
Section 11.6 Amendments and Modifications
Section 11.7 Binding Effect
Section 11.8 Assignment, Successors, and No Third Party Rights
Section 11.9 Separability
Section 11.10 Counterparts
Section 11.11 Languages
Section 11.12 Headings; Construction
Section 11.13 Confidentiality
Section 11.14 Further Assurances

FORM OF NOTE **17**

221

FORM OF TERM LOAN AGREEMENT

This Term Loan Agreement ("Agreement") is made as of [**insert month and day**], 199[**insert**], by [**insert name of Borrower**], a [**insert name of jurisdiction**] joint-stock company ("Borrower"), [**if applicable, similarly name each of the Participating Subsidiaries and insert name of jurisdiction in which each is formed**]("Participating Subsidiaries"), and [**insert name of Lender**], a [**insert name of jurisdiction**] joint-stock company ("Lender").

RECITAL

Lender desires to loan, and Borrower and the Participating Subsidiaries desire to borrow, for the consideration and on the terms and conditions set forth in this Agreement.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

ARTICLE I.

DEFINITIONS AND ACCOUNTING TERMS

Section 1.1 Definitions. For the purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.1:

"Affiliate" mean with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. In the case where one Person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another Person, such Persons will be deemed to be Affiliates.

"Agreement" means this Term Loan Agreement pursuant to the terms and conditions hereof.

"Agreement Date" has the meaning set forth in this Agreement.

"Best Efforts" means the efforts that a prudent Person would reasonably use to ensure that the contemplated results are achieved as expeditiously as reasonable under the circumstances.

"Borrower" has the meaning set forth in the first paragraph of this Agreement.

"Borrower's Group" means the Borrower and the Participating Subsidiaries.

"Borrower's Consolidated Investment Program" has the meaning set forth in Section 7.8.

"Businesses" means the businesses and affairs as currently conducted and as historically conducted by the Borrower Group.

"Business Plans" means set forth in Section 9.1.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks in [**insert location or locations**] are authorized or required to close under applicable laws

"Capital Lease" means all leases which have been or should be capitalized on the books of the lessee in accordance with applicable generally accepted accounting principles.

"Collateral" means all property which is subject to a Lien.

222

"Commitment" means the Lender's obligation to make Loans to the Borrower pursuant to Section 2.01 in the amount or amounts referred to therein.

"Confidential Information" has the meaning set forth in Section 11.14.

"Debt" means (1) indebtedness or liability for borrowed money; (2) obligations evidenced by bonds, debentures, notes, or other similar instruments; (3) obligations for the deferred purchase price of property or services (including trade obligations); (4) obligations as lessee under Capital Leases; (5) current liabilities in respect of unfunded benefits under all employee plans, whether required by law, contract or other arrangement; (6) obligations under letters of credit; (7) obligations under various credit or loan facilities; (8) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds or payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; and (9) obligations secured by any Liens, whether or not the obligations have been assumed.

"Default" means any of the events specified in Section 9.1, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Event of Default" means any of the events specified in Section 9.1, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"GAAP" means the generally accepted accounting principles (standards) applied by [insert applicable country or "Internationally Generally Accepted Accounting Principles"].

"Intellectual Property" means all patents, trademarks, trade names, service marks, copyrights (and applications related to any of the foregoing), trade secrets, proprietary formulations, process technology, proprietary software, proprietary technical information and other technology and know-how applicable to the conduct of the Businesses.

"Lender" has the meaning set forth in the first paragraph of this Agreement.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, encumbrance (other than a Permitted Encumbrance) of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease, or other arrangement having substantially the same economic effect as any of the foregoing).

"Loan" has the meaning set forth in Section 2.1.

"Note" has the meaning set forth in Section 2.3.

"Participating Subsidiary" means a legal entity controlled, directly or indirectly through one or more intermediaries, or both, by the Borrower, and which has agreed in writing with the Borrower to be bound by the terms and conditions of this Agreement. (For purposes of this definition, the term "controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the legal entity).

"Parties" means Borrower and Lender, and "Party" mean Borrower or Lender.

"Permitted Encumbrances" means those liens, claims and encumbrances identified in Section 3.8.

"Person" mean a natural and/or legal person, such as a company, partnership, government institution or an agency or instrumentality thereof, or other legal entity.

"Principal Office" means the office of a Party identified in Section 11.5.

"Representative" means any director, employee, agent, or other representative, including without limitation, any accountant, attorney or financial or other advisor.

"Rules" has the meaning set forth in Section 11.2.

"Shares" means the non-redeemable voting securities of the Borrower.

223

"**[Insert symbol of currency to be used in loan]**" mean the official currency of **[insert applicable country whose currency is to be used in loan]**.

"**[Insert symbol for country where loan is to be made]**" mean "**[insert name of country where loan is to be made]**.

"**[Insert letter symbol]**IBOR" means the **[insert]** Inter-Bank Overnight Rate.

"**[Insert symbol for country where loan is to be made]** laws" and "laws of the **[insert symbol for country where loan is to be made]**" mean all laws and regulations of **[insert name of country where loan is to be made]**.

Section 1.2 Accounting Terms. All accounting terms not specifically defined herein are to be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement are to be prepared, and will be deemed to be prepared, in accordance with GAAP.

ARTICLE II.

AMOUNT AND TERMS OF THE LOAN

Section 2.1 Term Loan. The Lender agrees on the terms and conditions herein set forth, to make a loan (the "Loan") to the Borrower on the date of this Agreement in the principal amount of **[insert amount in writing, specifying by symbol the currency]([insert amount by number, specifying by symbol the currency]**).

Section 2.2 Interest. The Borrower will pay interest to the Lender on the outstanding and unpaid principal amount of the Loan made under this Agreement until maturity at a rate of **[insert]** percent (**[insert]** %) per annum **[or if a variable rate, "equal to [insert] percent ([insert] %) over [insert]**IBOR **[or another standard rate]. Changes in the interest percent resulting from changes in LIBOR will become effective as of the opening of business on the day on which such change in LIBOR [or another standard rate] will become effective**.]. Interest will be calculated on the basis of a year of 365 **[365 may be changed to some other agreed number]** days for the actual number of days elapsed. Interest will be due and paid on **[insert which]** day of each **[insert month, year or other period of year]** commencing **[insert date]** and ending at maturity. If and to the extent any principal amount and/or interest is not paid when due (and the due date is not extended by the Lender), such payment will bear interest thereafter until paid in full, payable on demand, at a rate which will be **[insert]** percent (**[insert]**%) above the rate which would otherwise be applicable.

Section 2.3 Term Note. The Borrower's obligation to repay the Loan will be evidenced by its promissory note (the "Note") in substantially the form of Exhibit A attached hereto with blanks appropriately filled in and payable to of the Lender. **[If principal is to be paid in single payment, include the following sentence.** The Note will be dated the date of this Agreement and the principal of the Loan will be repaid in full by **[insert date]**. **[If principal is to be paid in installments, include following sentence.** The Note will be dated the date of this Agreement and principal of the Loan will be repaid in **[insert in writing number]([insert number]**) equal, consecutive **[insert month, annual, other period of year]** installments, each in the amount of **[insert in writing the amount and currency symbol] ([insert the numbers for the amount and currency symbol]**) and the first installment will be due on **[insert date]** and subsequent installments on **[insert which]** day of each **[insert month, year or other period of year]** thereafter to and including **[insert date]**; provided, however that the last such installment will be in the amount necessary to repay in full the unpaid principal amount of the Loan.]

Section 2.4 Prepayments. The Borrower may, upon at least **[insert number in writing]([insert number]**) Business days' notice to the Lender, prepay the Note in whole or in part with accrued unpaid interest to the day of such prepayment on the amount prepaid, provided that each partial prepayment will be in a principal amount of not less than **[insert in writing the amount and currency symbol] ([insert the numbers for the amount and currency symbol]**) and will be applied to the principal installments on the Note in the inverse order of their maturities.

224

Section 2.5 Method of Payment. The Borrower will make each payment under this Agreement and under the note not later than [**specify time and A.M. or P.M.**] on the date when due in lawful currency at the Lender's Principal Office in immediately available funds. Whenever any payment to be made under this Agreement or under the Note shall be stated to be due on a day other than a Business Day, such payment will be made on the next succeeding Business Day, and such extension of time will in such case will not be included in the computation of payment of interest.

Section 2.6. Use of Proceeds. The proceeds of the Loan will be used by the Borrower to [**describe what the proceeds of the Loan are to be used for and when**]. The Borrower will not, directly or indirectly, use any part of the proceeds of the Loan for any other purpose without the express written consent of the Lender and will use the proceeds of the Loan in accordance with all applicable laws.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the Lender that:

Section 3.1. Organization, Good Standing, Etc. The Borrower (a) is a joint stock company duly organized, duly registered, validly existing and in good standing under the [**insert**] laws , and (b) has all requisite corporate power and authority to conduct its Business as it is now being conducted, to own or use its Facilities, and to perform all its contractual obligations.

Section 3.2. Authorization; Due Execution. The Borrower has been duly established and duly registered, and has all requisite power and authority to execute and deliver this Agreement, and to perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by the Borrower, and constitutes the binding, legal and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally.

Section 3.3. No Violation. Neither the execution or delivery by the Borrower of this Agreement, nor the consummation or performance of the transactions contemplated hereby, (a) violates any material agreement, commitment, judgment or order to which the Borrower is a Party or by which the Borrower's property is bound, (b) contravenes any law or regulation having applicability to the Borrower, or (c) results in or requires the creation or imposition of any encumbrance of any nature upon, or with respect to, any properties or assets now owned.

Section 3.4. Litigation. To the knowledge of the Borrower, there is no claim, action, proceeding, arbitration, investigation or hearing, pending or threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal, against the Borrower or any Participating Subsidiary, involving this Agreement.

Section 3.5. Approvals/Consents. Other than those consents and approvals which have already been obtained, no consent or approval of the any governmental or administrative body is required to authorize the Borrower to enter into this Agreement or perform its obligations hereunder.

Section 3.6. Financial Statements. The audited **[or unaudited if audited is not available]** consolidated balance sheet of the Borrower as at [**insert month and day**], 199[**insert year**], (including notes thereto, the "Balance Sheet"), and the related consolidated statements of income, changes in shareholders' equity, and cash flow for each of the two fiscal years then ended, together with the report thereon of [**insert**], independent certified public accountants,] and (b) a subsequent unaudited interim consolidated balance sheet of the Borrower as at [**insert date**] (the "Interim Balance Sheet") and the related unaudited consolidated statements of income, changes in shareholders' equity, and cash flow for the [**insert**] months then ended, including the notes thereto, and the corresponding unaudited financial statements for the corresponding period in the preceding year, copies of which have been furnished to the Lender, are complete and correct and fairly present the financial condition of the Borrower and its subsidiaries as at such dates and the results of the operations, changes in shareholders'

225

equity, and cash flow of the Borrower and its subsidiaries for the periods covered by such statements, all in accordance with applicable generally accepted accounting principles, subject, in the case of interim financial statements, to normal recurring year-end adjustments and the absence of notes (that, if presented, would not differ materially from those included in the Balance Sheet), and since the date of the interim of the interim financial statements, there has been no material adverse change in the financial condition of the Borrower or any Participating Subsidiary.

Section 3.7. Title to Properties; Encumbrances. In all material respects, the Borrower has good and marketable title to the real property that is reflected in the Balance Sheet, Interim Balance Sheet or Disclosure Statement as owned by it, except for (i) rights of public utilities to maintain wires, lines, cables and other facilities and equipment, easements or right-of-way which would not in the aggregate materially interfere with or impair the use or diminish the value of the property affected thereby or the operation of the Business, (ii) mortgages or security interests reflected in the Balance Sheet or Interim Balance Sheet or as set forth on the Disclosure Statement. No default (or event that, with notice or lapse of time or both, would constitute a default) exists with respect to any material mortgages or security interests affecting the Borrower's properties and assets.

Section 3.8 Legal Compliance. Except as disclosed in the Disclosure Statement or the financial statements furnished the Lender, the Borrower is not aware, and has not received any notice or communication, that it or any Participating Subsidiary, (i) is not in compliance with all applicable laws and regulations affecting the conduct or operation of the respective Businesses or the ownership or use of the respective assets in any material respect, or (ii) is not in compliance with all of their respective material contracts.

Section 3.9. Limitation on Representations and Warranties. The representations and warranties set forth in this Article III hereof constitute the only representations made by the Borrower in connection with the Loan.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF LENDER

The Borrower represents and warrants to the Lender that:

Section 4.1. Organization, Good Standing, Etc. Lender is a joint stock company duly organized, duly registered, validly existing and in good standing under the [**insert**] laws , and (b) has all requisite corporate power and authority to conduct its business and affairs and perform all its contractual obligations. .

Section 4.2. Authorization; Due Execution. Lender has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by Lender, and constitutes the binding, legal and valid obligation of Lender enforceable against Lender in accordance with its terms.

Section 4.3. No Violation. Neither the execution or delivery by Lender of this Agreement, nor the consummation of the Loan.

Section 4.4. Approvals, Consents, Etc. No consent, authorization or approval of, or waiver or exemption by, or filing or registration with, any governmental agency or any other Person is required to be obtained or made in connection with the execution, delivery or performance by Lender of this Agreement.

Section 4.5. Litigation. There is no claim, action, proceeding, arbitration, investigation or hearing, pending or, to the knowledge of Lender, threatened, by or before any court or governmental or administrative agency or authority or private arbitration tribunal, against Lender involving the Loan.

Section 4.6. Financing. Lender has sufficient funds available to it to enable it to perform the Loan.

226

Section 4.7 Limitation on Representations and Warranties. The representations and warranties set forth in this Article IV hereof constitute the only representations made by the Lender in connection with the Loan.

ARTICLE V.

CONDITIONS PRECEDENT

Section 5.1 Conditions Precedent to the Loan. The obligation of the Lender to make the Loan to Borrower is subject to the condition precedent that the Lender will have received at the time of the Loan the Note duly executed by the Borrower; and, if applicable a security agreement providing the Lender with the specific security as to specified assets and property of the Borrower as provided in such agreement.

ARTICLE VI.

AFFIRMATIVE COVENANTS OF BORROWER

Section 6.1 Maintenance of Existence, Records, Properties and Insurance. The Borrower and the Participating Subsidiaries will maintain their respective (i) corporate existences and good standings in the jurisdictions of their formation and operations; (ii) adequate financial controls and books and records to reflect their financial transactions; (iii) properties (tangible and intangible) necessary or useful in the proper conduct of their respective businesses in proper working order and condition, and (iv) insurance, if reasonably available as to cost and coverage, with financially reputable insurance entities in such amounts and covering such risks as are normal, reasonable and in their respective best interests under the circumstances.

Section 6.2 Conduct of Businesses. The Borrower and its Participating Subsidiaries will conduct their respective operations in a cost-effective, efficient and safe manner consistent with current operations and in accordance with the plans and budgets discussed with the Lender.

Section 6.3 Compliance with Laws. The Borrower and its Participating Subsidiaries will conduct their respective operations in compliance with applicable laws and good practices, and will notify the Lender if for any reason they are not in compliance in any material respect with the provision of an environmental, health or safety law.

Section 6.4 Right of Inspection. The Borrower and it Participating Subsidiaries will permit the Lender from time to time at reasonable hours permit the Lender or its Representative to visit their properties and discuss the status of their businesses and affairs.

Section 6.5 Reporting Requirements. The Borrower and its Participating Subsidiaries will furnishing the Lender:

(1). Within 90 days after the end of each fiscal year, the audited consolidated Balance Sheet of the Borrower as at the end of the preceding fiscal year (including notes thereto), and the related consolidated statements of income, changes in shareholders' equity, and cash flow for the fiscal year then ended, together with the report thereon of **[insert]**, independent certified public accountants, prepared on a basis consistent with the requirements of Section 3.6 above;

(2). Within 30 days after end of each fiscal quarter (other than the fiscal year-end), an unaudited interim consolidated Balance Sheet of the Borrower as at **[insert date]** and the related unaudited consolidated statements of income, changes in shareholders' equity, and cash flow for the three months then ended, including the notes thereto, prepared on a basis consistent with the requirements of Section 3.6 above;

(3). Within 90 days after the end of each fiscal year, a certificate of the chief financial officer of the Borrower (a) certifying that to the best of her or his knowledge and belief no Default or Event of Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto, and (b) with computations demonstrating compliance with the covenants contained in Article VIII;

227

(4). Within 15 days, notice of any claim, action, proceeding, arbitration, investigation or hearing, pending or threatened, by or before any court or governmental or administrative agency or authority or arbitration tribunal, affecting the Borrower or any Participating Subsidiary, which, if determined adversely to the Borrower or such Participating Subsidiary, could have a material adverse effect on the financial condition, properties, or operations of the Borrower or such Participating Subsidiary, as the case may be;

(5). As soon as reasonably possible and in any event within 30 days after the occurrence of each Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower, or Participating Subsidiary, as the case may be, with respect thereto.

ARTICLE VII.

NEGATIVE COVENANTS OF BORROWER

The Borrower and its Participating Subsidiaries agree that they will not, without first having procured the Lender's written consent, which will not be unreasonably withheld:

Section 7.1 Security Interests. Create, incur assume, or suffer to exist any security interest of any kind upon any of the properties or assets of the Borrower or any Participating Subsidiary, whether now owned or hereafter acquired, except:

(1) security interest imposed by law in connection with employee arrangements;

(2) deposits or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money);

(3) security interest for taxes which are not delinquent or which are being contested in good faith;

(4) security interests arising in the ordinary course of business in respect of obligations which are not overdue or which are being contested in good faith; or

(5) security interests on outstanding loans or loans approved by Lender.

Section 7.2 Debt. Create, incur, assume, or suffer to exist any liability for borrowed money, or permit any consolidated subsidiary to do so, except:

(1) Company's indebtedness represented by the Notes issued hereunder;

(2) future unsecured borrowings by the Borrower in the ordinary course of business not in excess of [**insert amount**] outstanding at any one time for the Borrower;

(3) current outstanding indebtedness in the amounts of [**insert amounts**] evidenced by [**insert description of each separate borrowing**]; and

(4) a consolidated subsidiary may borrow from the Borrower or from another consolidated subsidiary.

Section 7.3 Mergers, Etc. Merge, consolidate, liquidate, enter into any other corporation transaction of similar significance or magnitude, reorganize, or sell, transfer, lease, or otherwise dispose of substantially all of its properties and assets to any Person, except that any consolidated subsidiary may merge into consolidate with, or sell, or otherwise dispose of its assets to, the Borrower.

Section 7.4 Leases. Create, incur, assume, or suffer to exist, any obligation as lessee for the rental or hire of any real or personal property, except:

(1) leases existing on the date of this Agreement and any extensions or renewals thereof;

(2) leases incurred or assumed after the date of this Agreement, which do not in the aggregate require the Borrower and Participating Subsidiaries on a consolidated basis to make payments (including taxes, insurance, maintenance, and similar expenses which are required to be paid by the terms of the leases) in any fiscal years of the Borrower in excess of [**insert amount**]; and

228

(3) leases among Borrower and Participating Subsidiaries.

Section 7.5 Sale and Leaseback. Sell, transfer, or otherwise dispose of any real or personal property to any Person and thereafter directly or indirectly lease back the same or similar property.

Section 7.6 Dividends. Declare or pay any dividends or other distributions from a capital account; redeem or otherwise acquire for value Shares; make any form of distributions, loans or advances, or guaranty loans or other obligations for the benefit of the Borrower's shareholders or its Affiliates.

Section 7.7 Sale of Properties. Sell, assign, transfer, or otherwise dispose of any properties or other assets, currently owned or hereafter acquired, except:

(1) current assets acquired and disposed of in the ordinary course of business;

(2) the sale or other disposition of properties and other assets no longer used or useful in the conduct of business; and

(3) the sale or other disposition of properties and other assets not exceeding [**insert amount**]

Section 7.8 Investments. Not otherwise permitted by this Agreement, make any loan or advance to any third-party Person, or purchase or otherwise acquire any obligations or securities of any third-party Person, properties or other assets for use in the conduct of operations, except:

(1) provided in Borrower's Consolidated Investment Program as provided the Lender;

(2) current assets acquired in the ordinary course of business;

(3) the purchase of properties and other fixed assets not exceeding [**insert** amount]; or

(4) otherwise approved in writing by the Lender, which approval will not be unreasonably withheld.

Section 7.9 Related Transactions. Except as otherwise provided herein, the Borrower and Participating Subsidiaries and Affiliates to be on terms and conditions (including compensation and payment) which are not more favorable to the Affiliates than the terms and conditions which would prevail in a transaction involving parties which do not have any ownership interest in one another.

Section 7.10 Guaranties. Guaranty, or otherwise be or become directly, indirectly or otherwise contingently liable for any obligations not otherwise permitted under the terms and conditions of this Agreement.

ARTICLE VIII.

FINANCIAL COVENANTS OF BORROWER

Section 8.1 Minimum Working Capital. The Borrower and Participating Subsidiaries will maintain at all times (i) an excess of consolidated current assets over consolidated current liabilities of [**insert amount**], (ii) a ratio of consolidated current assets to consolidated current liabilities of not less than [**insert number**] to [**insert number**], and (iii) ratio of (A) consolidated cash on deposit in banks, readily marketable short-term securities, and receivables not overdue and due within 30 days to (B) current liabilities payable within 30 days of not less than [**insert number**] to [**insert number**].

Section 8.2 Minimum Total Tangible Net Assets In Excess of Total Liabilities. The Borrower and Participating Subsidiaries will maintain at all times total consolidated tangible net assets in excess of total consolidated liabilities of not less than [**insert amount**]. Within the meaning of "tangible," there may be included the lower of the actual cost or the fair market value of the Intellectual Property.

229

Section 8.3 Capital Ratio. The Borrower and the Participating Subsidiaries will maintain at all times a ratio of total consolidated liabilities to total consolidated equity capital of not greater than **[insert]** to **[insert]**.

ARTICLE IX.

EVENTS OF DEFAULT

Section 9.1 Events of Default. Each of the following events specified in this Section will constitute an event of default ("Event of Default") under this Agreement:

(1) The Borrower or any of the Participating Subsidiaries makes any material representation or warranty in this Agreement which proves to have been untrue in any material respect when made;

(2) The Borrower or any of the Participating Subsidiaries defaults in the due and punctual payment of either principal of or interest on the Notes, and any such default with respect to interest continues uncured for a period of ten (10) Business Days;

(3) The Borrower or any of the Participating Subsidiaries defaults in the due performance or observance of any term, covenant, or agreement contained in Articles VI, VII and VIII;

(4) The Borrower or any of the Participating Subsidiaries (i) will generally not pay, or will be unable to pay, or will admit in writing its inability to pay its debts as such debts become due, (ii) will make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; (iii) will commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, (iv) will have had any such petition or application filed or any such proceeding commenced against it in which or order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of 20 Business Days or more, (v) will take any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; (vi) will suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of **[insert]** days or more, or (vii) otherwise subject to adjudication as bankrupt;

(5) One or more judgments, decrees, or orders for the payment of money in excess of **[insert amount]** in the aggregate will be rendered against the Borrower or Participating Subsidiaries, and such judgments, decrees, or orders shall continue unsatisfied and in effect for a period of **[insert number]** consecutive Business Days or more without being vacated, discharged, or stayed or bonded pending appeal;

(6) Any obligation for the payment of borrowed money (other than the Note), or any interest or premium thereon, when due (whether by schedules maturity, required prepayment, acceleration, demand, or otherwise), or fail to perform or observe any term, covenant, or condition under any agreement relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, after the giving of notice or passage of time, or both, the maturity of such indebtedness, whether or not such failure to perform or observe shall be waived by the holder of such indebtedness, or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(7) An action, suit or proceeding is commenced against the Borrower or any Participating Subsidiaries before any court or by any governmental entity which would, if adversely decided and there is a reasonable likelihood that it may be

230

adversely decided, result in a material adverse change in the business or financial condition of the Borrower on a consolidated basis.

If any one or more of the above Events of Default occurs, and continues, the Lender may, by written notice declare the principal of and interest accrued on the Note or Notes to be immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived.

ARTICLE X

TERMINATION

Section 9.1. Termination. This Agreement will be terminated (i) upon payment of the Note, or (ii) upon the mutual consent of Lender and Borrower.

ARTICLE XI.

GENERAL

Section 11.1. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each of the Parties hereto will pay its own costs and expenses and the fees and expenses of its counsel and accountants and other representatives incurred in connection with the transactions contemplated by this Agreement.

Section 11.2. Governing Law and Dispute Resolution. This Agreement and the rights of the Parties hereunder will be construed and interpreted in accordance with [**insert**] laws without reference to conflict of laws provisions. [**Insert, if applicable**] Further, this Agreement is concluded in compliance with an effective Treaty on the Protection of Investments between the [**appropriate country to be inserted**] and [**appropriate country to be inserted**], as amended. Lender and the Borrower will endeavor to reach an amicable settlement of any disputes that may arise under this Agreement. However, if they are unable to resolve any dispute by amicable settlement, such dispute will be settled by binding arbitration under the UNCITRAL Arbitration Rules (the "Rules") by three (3) arbitrators nominated pursuant to the Rules. **[The parties may wish to either designate a method such as, "Each Party will nominate one arbitrator, and the designated two arbitrators will nominate a third arbitrator in accordance with the Rules" or designate a person as the appointing authority, such as, "The [designate appropriate person having ability to select arbitrators] will act as the "appointing authority" under the Rules".]** Lender and the Borrower each hereby irrevocably waive the right to submit such disputes, or to appeal, to any court. The seat of the arbitration tribunal will be in [**insert appropriate location**]. The language of the arbitration will be English. This submission and agreement to arbitrate will be specifically enforceable. Any award rendered by an arbitration tribunal will be final and binding on the Parties and the judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 11.3. Waiver. None of the terms of this Agreement will be deemed to have been waived by a Party or a Representative, unless such waiver is in writing and signed by that Party or the Representative. The waiver by a Party or a Representative of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder will be deemed to be an extension of time for the performance of any other obligation or act.

231

Section 11.4. Notices. All notices and other communications that are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by registered mail, or telefaxed and addressed as follows:

(a) if to the Borrower:

_____
_____
_____
_____
Attention: _____

(b) if to Lender:

_____
_____
_____
Attention: _____

and/or to such other addressee and/or address as any of the above will have specified by notice delivered in accordance with this Section. Each notice or other communication which will be delivered personally, mailed, telexed or telefaxed in the manner described above will be deemed sufficiently given, served, sent, received or delivered for all purposes on the first business day following the date that it is delivered to the addressee (with the delivery receipt, the affidavit of messenger or (with respect to a telex or telecopy) the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Section 11.5. Entire Agreement. This Agreement constitute the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof.

Section 11.6. Amendments and Modifications. This Agreement may not be modified, amended or changed in any respect except in writing duly signed by the Party against whom such modification, amendment or change is sought or effected.

Section 11.7. Binding Effect. All of the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 11.8. Assignment, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Agreement without the prior written consent of the other Party, and any such assignment will be null and void and of no force or effect. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and assigns.

Section 11.9. Separability. Whenever possible, each provision of this Agreement will be interpreted in its plain meaning in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be unenforceable or invalid under applicable law, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement will continue to be binding and in full force and effect. In the event of such unenforceability, the Parties shall negotiate in good faith and use their Best Efforts to agree on changes or amendments to such provision of this Agreement which are required to carry out the intent of this Agreement in light of such unenforceability or invalidity.

Section 11.10. Counterparts. This Agreement will be executed in one or more counterparts, each of which will be deemed to be an original, and all such counterparts together will constitute one and the same legal document.

Section 11.11. Languages. This Agreement and any amendments or other modifications hereof will be executed in the English and **[insert]** languages. In the event of a conflict

232

between the different language versions of this Agreement, both versions will be deemed to be equally authoritative.

Section 11.12. Headings; Construction. The Section and other headings contained in this Agreement are for convenience only and will not be deemed to limit, characterize or interpret any provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 11.13. Confidentiality.

(a) The Lender shall not disclose to any Person (other than to a Lender's representative ("Lender's Representative") or use or exploit for any purpose whatsoever any information which it obtains or has heretofore obtained in relation to the Company ("Confidential Information"), except:

(i) with the prior written consent of the Borrower;

(ii) as may be required by law or order of a court of competent jurisdiction; or

(iii) to the extent expressly permitted by this Agreement.

In the event that the Lender or a Lender's Representative or is required to disclose Confidential Information as provided in clause (ii) above, such Person shall use its best efforts to obtain a protective order preserving the confidentiality thereof, and to the extent unsuccessful in obtaining a protective order, to ensure that such information is treated by any recipient as constituting confidential information that is not subject to further disclosure.

(b) For purposes of this Section 11.14, Confidential Information shall not include any information which:

(i) has become available to the general public at the time of disclosure, use or exploitation (other than by manner of unauthorized disclosure, use or exploitation); or

(ii) is provided to Lender or Lender's Representative by a Person (other than the Borrower or the Company) who is lawfully in possession of such information and has the lawful right to publicly disclose, use or exploit it.

(c) Lender shall cause each Lender's Representative not to disclose to any Person or use or exploit for any purpose whatsoever the Confidential Information except as expressly permitted in this Section 11.14. The Lender shall limit the disclosure and dissemination of the Company's Confidential Information within its own organization to those of its personnel and to other Representatives who have a need to know for the purposes of this Agreement and who have been bound, in writing, not to use (except in the course of their work with respect to this Agreement) and to maintain Confidential Information in confidence both during and after the term of their employment or retention. In case of termination of this Agreement, each Lender's Representative shall (i) promptly return to the Borrower all copies of any Confidential Information and any other written material containing or reflecting any Confidential Information then in its possession or under their control, (ii) not retain any copies, extracts or other reproductions in whole or in part of such written material, (iii) not use or exploit for any purpose whatsoever the Confidential Information, and (iv) all Confidential Information or information derived from Confidential Information not returned to the Borrower shall be destroyed and expunged from any computer, word processor or other device containing or derived from Confidential Information. The destruction and expunction shall be certified in writing to the Borrower by an authorized officer of the Lender responsible for reporting that such destruction and expunction has been fully and completely performed.

Section 11.14. Further Assurances. Lender and the Borrower will each, at the request of the other, execute, acknowledge, deliver and file, without further consideration, all documents and take such other action as may be reasonably requested to consummate this Agreement.

In Witness Whereof, this Agreement has been signed by or an behalf of each of the Parties hereto as of the Agreement Date.

[NAME OF LENDER]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[NAME OF BORROWER]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[NAME OF PARTICIPATING SUBSIDIARY]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

[NAME OF PARTICIPATING SUBSIDIARY]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Exhibit A

FORM OF TERM NOTE

[INSERT AMOUNT OF LOAN](the "Loan") **[DATE]**

FOR VALUE RECEIVED, the undersigned, **[Insert name of Borrower]**, a **[insert jurisdiction of formation]** joint-stock company (the "Borrower"), **HEREBY PROMISES TO PAY** to the order of **[Insert name of Lender]**, a **[insert jurisdiction of formation]** joint-stock company (the "Lender"), at its Principal Office the amount of the Loan in lawful money of the **[insert jurisdiction]**, and in immediately available funds **[if principal is to be paid in single payment, include the following:** the unpaid principal amount of this Term Note in full by **[insert date]**,] **[if principal is to be paid in installments, include following:** in **[insert in writing number]**(**[insert number]**) equal, consecutive **[insert month, annual, other period of year]** installments, each in the amount of **[insert in writing the amount and currency symbol]** (**[insert the numbers for the amount and currency symbol]**) and the first installment will be due on **[insert date]** and subsequent installments on **[insert which]** day of each **[insert month, year or other period of year]** thereafter to and including **[insert date]**; provided, however that the last such installment will be in the amount necessary to repay in full the unpaid principal amount of this Term Loan.], and to pay interest upon the unpaid principal amount of this Term Note from the date of this Term Note until such principal amount becomes due (computed on the basis of a year of **[number]** days for the actual number of days elapsed) at a rate per annum equal to **[insert rate in writing]** percent (**[insert rate in numbers]**%) above **[insert symbol, if applicable]**, due and payable on the **[insert day]** of each **[insert month or quarter]** commencing **[insert date]**, and ending at maturity. If and to the extent any principal amount and/or interest is not paid when due (and the due date is not extended by the Lender), such payment will bear interest thereafter until paid in full, payable on demand, at a rate which will be **[insert]** percent (**[insert]**%) above the rate which would otherwise be applicable. **[Insert the following, if applicable.** Any change in the interest rate resulting from a change in the**[insert symbol]** shall be effective at the beginning of the day on which such change in **[insert symbol]** becomes effective.

If any installment of this Term Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall not be payable thereon at the rate herein specified during such extension.

This Term Note is subject to the Term Loan Agreement, dated as of [insert date], between the Borrower and Participating Subsidiaries and the Lender (the "Agreement"). Terms used herein which are defined in the Agreement shall have their defined meanings when used herein.

_____
[Insert name of Borrower]

By: _____

Title:_____

235