Agreement Providing for the Amendment and Restatement of the Development Credit Agreement

(Private Sector Development and Competitiveness Project)

between

DEMOCRATIC REPUBLIC OF CONGO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 16, 2004
AGREEMENT PROVIDING FOR
THE AMENDMENT AND RESTATEMENT OF
THE DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 16, 2004, between DEMOCRATIC REPUBLIC
OF CONGO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION
(the Association) (the Agreement Providing for the Amendment and Restatement of the
Development Credit Agreement).

WHEREAS the Borrower and the Association have agreed to amend the
Development Credit Agreement between the Borrower and the Association dated
August 11, 2003 (hereinafter referred to as the Development Credit Agreement) in the
manner hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Section 1.01. The Development Credit Agreement is hereby amended and
restated so as to read as set forth in the Annex hereto.

Section 1.02. This Agreement shall become effective upon signature by both
parties.
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names, as of the day and year first above written.

SIGNATURES ON PAGE 25.

DEMOCRATIC REPUBLIC OF CONGO

By

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative
ANNEX
To Agreement providing for Amendment and Restatement of the
Development Credit Agreement

CREDIT NUMBER 3815-1 DRC

AMENDED AND RESTATED
DEVELOPMENT CREDIT AGREEMENT

(Private Sector Development and Competitiveness Project)

between

DEMOCRATIC REPUBLIC OF CONGO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION
CREDIT NUMBER 3815-1 DRC

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 11, 2003, as amended on August 16, 2004, between DEMOCRATIC REPUBLIC OF CONGO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

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

(B) Part A.3 of the Project will be carried out by the African Trade Insurance Agency (ATI) with the Borrower’s assistance, and as part of such assistance, the Borrower will make available to ATI part of the proceeds of the Credit as provided in this Agreement and in that certain participation agreement to be entered into between the Borrower and ATI, as such participation agreement may be amended from time to time (the Participation Agreement);

(C) the Borrower may contract donor funds from bilateral funding agencies (Donor Funds) for co-financing the Project on terms and conditions consistent with those in this Agreement; and

(D) the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the project agreement between the Association and ATI with respect to Part A.3 of the Project (the Project Agreement);

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999) (the General Conditions), constitute an integral part of this Agreement, provided however that for purposes of Part A.3 of the Project, the modifications set forth below constitute an integral part of this Agreement:

(a) The following sentence is added at the end of Section 4.01:
“For purposes of Part A.3 of the Project, except as the Borrower and the Association shall otherwise agree, withdrawals from the Credit Account shall be made in the currency of the Security Trust Account specified in definition (dd) of Part II of Section 1.02 of the Development Credit Agreement.”;

(b) at the end of Section 6.01, following the words “Section 5.02” the words “or in respect of which an Insurance Contract (as such term is defined in the Development Credit Agreement) has been issued and remains outstanding” are added;

(c) In Section 6.02, at the end of the first phrase which precedes sub-paragraph (a), ending with the word “Account”, the words “with respect to any amount of the Credit which has not been committed under an Insurance Contract (as such term is defined in the Development Credit Agreement)” are added;

(d) The following sentence is added at the end of Section 6.03:

“Furthermore, any Unwithdrawn ATI Credit Amount (as such term is defined in the Development Credit Agreement) for Part A.3 of the Project shall be canceled by the Association after the Insurance Facility First Closing Date and the right of the Borrower to make withdrawals with respect to such Amount shall be terminated.”; and

(e) Section 9.06 (c) is modified to include the following at the end of the Section:

“(c) Not later than six months after the expiry of the Insurance Facility Second Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the implementation of Part A.3 of the Project, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement, as well as the performance by the Borrower and ATI of their respective obligations under the Participation Agreement, and the accomplishment of the purposes of Part A.3 of the Credit.”

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:
Part I Definitions for all Parts of the Project except Part A.3

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

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

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

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

(e) “Beneficiary” means small-scale and artisan miners and Eligible Employees (as hereafter defined) as recipients of a Grant (as hereafter defined) extended for the purposes of financing activities under Part D of the Project;

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

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

(h) “COPIREP” means Comité de Pilotage de la Réforme des Entreprises Publiques, the Borrower’s entity in charge of public enterprise reform, established pursuant to Presidential Decree No. 136/2002 dated October 30, 2002, Official Gazette No. 22 dated November 15, 2002;

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

(j) “Environmental Pre-Audit” or “EPA” means the Borrower’s action plan dated April 23, 2003 containing the assessment of potential adverse environmental and social impacts related to Project activities and providing for mitigating measures;
“Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.03 of this Agreement;

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

“Franc Congolais” or “CDF” means the currency of the Borrower;

“Gecamines” means la Génerale des Carrières et des Mines, a mining company established and operating under the laws of the Borrower;

“Grant” means a grant made, or proposed to be made, by the Borrower to a Beneficiary for the implementation of a Subproject (as hereinafter defined) pursuant to the conditions set forth in paragraphs 5, 6 and 7 of Section II of Schedule 4 to this Agreement;

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

“Inspection Générale de Justice” and “IGJ” means the Borrower’s inspection office for the Judiciary;

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

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

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

“NGO” means a non-governmental organization established and operating under the laws of the Borrower;

“OCPT” means Office Congolais des Postes et de Telecommunications, a postal and telecommunications agency established and operating under the laws of the Borrower;

“Project Account” means the account referred to in Section 3.03 (a) of this Agreement;
“Project Preparation Facility” means the project preparation advance granted by the Association to the Borrower pursuant to the letter agreement signed on behalf of the Association on December 4, 2002, and on behalf of the Borrower on December 5, 2002;

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

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

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

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

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

Part II Definitions for Part A.3 of the Project

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

“ATI Development Credit Agreement” means the development credit agreement between ATI and the Association dated June 8, 2001, as such agreement may be amended from time to time, and such term includes all schedules and agreements supplemental to the ATI Development Credit Agreement;
(c) “Civil Commotion” has the meaning given to such expression in the general conditions of insurance included in the Standard Form of Insurance Contract;

(d) “Claim” means the amount claimed by an Insured (as hereinafter defined) as payable by ATI or by the Insurers (as hereinafter defined), as the case may be, pursuant to an Insurance Contract (as hereinafter defined);

(e) “COMESA” means the Common Market for Eastern and Southern Africa;

(f) “Committed Insurance Facility Amounts” means, as at any date, the amount equal to the aggregate of the Maximum Amount of Insurance (as such term is defined in the general conditions of insurance included in the Standard Form of Insurance Contract (as hereinafter defined)) under all the Insurance Contracts (as hereinafter defined) outstanding and in effect at such date;

(g) “Corrupt Practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of: (i) a public official of the Borrower, including, without limiting the generality of the foregoing, any official of any organ of the executive, legislative or judicial power or function of the Borrower; and (ii) a director (or equivalent position), officer, employee, agent or representative of ATI, as the case may be;

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

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

(j) “Eligible Investments” has the meaning given to such expression in paragraph 7 of Part A of Section III of Schedule 4 to this Agreement;

(k) “Emargo” has the meaning given to such expression in the general conditions of insurance included in the Standard Form of Insurance Contract (as hereinafter defined);

(l) “Fraudulent Practice” means a misrepresentation of facts in order to influence a process, the execution of a contract, or the provision of funds, including,
without limiting the generality of the foregoing: (i) the assessment of any application for an Insurance Contract (as hereinafter defined); (ii) the provision of any Insurance Contract (as hereinafter defined); (iii) the assessment of any Claim; or (iv) the making of any Payment (as hereinafter defined), in any case to the detriment of the Borrower or ATI, as the case may be;

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

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

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

(p) “Insurance Facility” and “Insurance” mean, respectively, the insurance facility specified in Part A (3) of Schedule 2 to this Agreement and the insurance provided thereunder;

(q) “Insurance Facility Agreement” and “Insurance Facility Agreements” mean, respectively, the insurance facility agreement in form and substance satisfactory to the Association, between the Insurers (as hereinafter defined) and ATI, as such agreement may be amended with the approval of the Insurers, ATI and the Association, and, collectively, the Insurance Facility Agreement and the Security Trust Agreement(s) (as hereinafter defined);

(r) “Insurance Facility First Closing Date” means April 30, 2010, or such later date as the Association shall establish pursuant to paragraph 2 of Part B of Section III of Schedule 4 to this Agreement;

(s) “Insurance Facility Second Closing Date” means the date 180 days following the last expiry or termination date of any Insurance Contract issued prior to the Insurance Facility First Closing Date;

(t) “Insured” means a natural or juridical person to whom ATI or the Insurers, as the case may be, has issued an Insurance Contract in accordance with the Operations Manual (as hereinafter defined);
(u) “Insurers” means, collectively, the insurers, whether acting alone or participating in a syndicate of insurers, that subscribe to the Insurance Facility from time to time, and includes any other insurer approved by ATI and the Association at any time;

(v) “Loss” means any amount paid by ATI or by the Insurers in settlement of a Claim by an Insured under an Insurance Contract, and includes costs and expenses (including professional fees and disbursements) incurred by ATI or by the Insurers directly associated with or arising out of: (i) the investigation of; or (ii) the resolution of a dispute concerning a Claim, but such term shall not include any costs or expenses associated with or arising out of the litigation or arbitration involving a Claim.”;

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

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

(y) “Payment” means any payment on account of a Loss made by the Insurers or ATI, as the case may be;

(z) “Project Agreement” means the agreement to be concluded between the Association and ATI, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(aa) “Project Documents” means, collectively, this Development Credit Agreement, the Project Agreement, the Participation Agreement, the Insurance Facility Agreements, the Agreement Establishing ATI, the Insurance Contracts, and the Operations Manual;

(bb) “Protocol on Transit Trade and Trade Facilities” means, the COMESA Protocol on Transit Trade and Trade Facilities annexed to the Treaty Establishing COMESA as Annex I;

(cc) “Revolving Insurance Facility Amounts” means, as at any date, the Unpaid Insurance Facility Amounts at such date that are retained in the Security Trust
Account(s) following the expiry or termination of the relevant Insurance Contracts and, before the Insurance Facility First Closing Date, that are used on a revolving basis for the purpose of providing new Insurance under the Insurance Facility pursuant to paragraph 3 of Part B of Section III of Schedule 4 to this Agreement;

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

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

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

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

(hh) “Unpaid Insurance Facility Amounts” means, as at any date, the Committed Insurance Facility Amounts at such date that remain unpaid at the expiry or termination of the relevant Insurance Contracts;

(ii) “Unwithdrawn ATI Credit Amount” means the amount, if any, of the Credit remaining unwithdrawn from the Credit Account for Part A.3 of the Project after
the Insurance Facility First Closing Date; and

(jj) “War or Civil Disturbance” has the meaning given to such expression in the general conditions of insurance included in the Standard Form of Insurance Contract.

ARTICLE II

The Credit

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

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

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

(c) For purposes of Part A.3 of the Project, the Borrower shall cause ATI, pursuant to the Participation Agreement and promptly following the signature of this Agreement, to open one Security Trust Account and one Income Account on behalf of the Borrower on terms and conditions satisfactory to the Association, and promptly following receipt thereof from ATI, shall provide to the Association one copy of all account-related documentation. Deposits into and payments made out of the Security Trust Account(s) and Income Account(s) shall be made in accordance with the provisions of Schedule 4 to this Agreement.
(d) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be canceled.

Section 2.03. The Closing Date shall be April 30, 2010, or such later date, as the Borrower and the Association shall agree upon.

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

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

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

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

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

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

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

(A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and

(B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

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

Section 2.08. The currency of the United States is hereby specified for the purposes of Section 4.02 of the General Conditions.
Section 2.09. (a) The Managing Director of ATI and any person or persons whom he or she shall designate in writing is or are designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 (a) of this Agreement, Article V of the General Conditions and Section 3.02 of the Participation Agreement for Part A.3 of the Project.

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

ARTICLE III

Execution of the Project

Section 3.01. (a) the Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, shall carry out the Project, with the exception of Part A.3 thereof, with due diligence and efficiency and in conformity with appropriate administrative, technical, financial practices and due regard to private sector management and environmental concerns, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project, in accordance with the implementation program set forth in Schedule 4 to this Agreement;

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

(d) the Borrower shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable ATI to realize the purposes for which it was created under the Agreement Establishing ATI, and shall not take or permit to be taken any action which would prevent or interfere with such realization or the fulfillment of the objectives of the Project; and
(e) if a member of COMESA, the Borrower shall at all times comply with the provisions of the COMESA Protocol on Transit Trade and Trade Facilities and, whether or not a member of COMESA, undertakes to grant all transitors and transit traffic freedom to traverse its territory by any means of transport suitable for that purpose.

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

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

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

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

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

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

Section 3.04. For purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date for all other Parts of the Project except Part A.3, or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project;

(b) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Insurance Facility Second Closing Date, or such later date as may be agreed for this purpose between the
Borrower and the Association, a plan for the future operation of Part A.3 of the Project; and

  (c) afford the Association a reasonable opportunity to exchange views with the Borrower on the said plan.

Section 3.05. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07, and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of Part A.3 of the Project shall be carried out by ATI pursuant to Section 2.03 of the Project Agreement.

ARTICLE IV

Financial and Other Covenants

Section 4.01. (a) The Borrower shall maintain or cause to be maintained a financial management system, including records and accounts and prepare financial statements in a format acceptable to the Association, adequate to reflect the operations, resources and expenditures in respect of all parts of the Project (with the exception of Part A.3 of the Project), for which the departments or agencies of the Borrower responsible.

  (b) The Borrower shall:

    (i) have the records, accounts and financial statements referred to in paragraph (a) of this Section and the records and accounts for the Special Account for each Fiscal Year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;

    (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited; and (B) an opinion on such statements, records and accounts and report of such audit, by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

    (iii) furnish to the Association such other information concerning such records and accounts, and the audit thereof, and concerning
said auditors, as the Association may from time to time reasonably request.

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

(i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and separate accounts reflecting such expenditures;

(ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

(iii) enable the Association’s representatives to examine such records; and

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

Section 4.02. To the limit of its ability pursuant to the Agreement Establishing ATI and the Participation Agreement, the Borrower shall cause ATI to:

(a) maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Association, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the Project;

(b) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;
(c) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited; and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Association shall have reasonably requested;

(d) perform its obligations in respect of the audit of each Security Trust Account and each Income Account in accordance with the provisions of Section 5.01 of the Participation Agreement; and

(e) furnish to the Association such other information concerning such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.03. (a) Without limitation upon the provisions of Section 4.01 of this Agreement, and the Borrower’s progress reporting obligations set out in paragraphs 2 and 3 of Section I of Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a Financial Monitoring Report for all parts of the Project except Part A.3, in a form and substance satisfactory to the Association, which:

(i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, and projected sources and applications of funds for the Project for the six-month period following the period covered by said report;

(ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned implementation targets; and

(iii) sets forth the status of procurement under the Project as at the end of the period covered by said report.

(b) The first Financial Monitoring Report shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each Financial Monitoring Report shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.
ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

(a) promptly following notice from the Association and, in any event, within ten business days of its receipt of such notice from the Association, the Borrower shall have failed to remedy a default under Section 4.02 of the Participation Agreement to deposit into the relevant Security Trust Account, within the delay therein provided, an amount equal to the amount set forth by ATI in the notice delivered by ATI to the Borrower pursuant to said Section 4.02 regarding Payment of a Claim resulting from the action or omission of the Borrower.

For the purposes of this paragraph (a), “business day” shall mean a day on which banks are normally open for business in Kinshasa;

(b) the Borrower shall have failed to perform any of its obligations under the Agreement Establishing ATI or any of its obligations under the Participation Agreement other than under Section 4.02;

(c) ATI, the Insurers, or the Security Trust Account Trustee shall have failed to perform any of their respective obligations under any of the Project Documents to which they are respectively a party or by which they are respectively bound;

(d) in the opinion of the Association, the Agreement Establishing ATI shall have been amended, suspended, abrogated, repealed or waived so as to materially and adversely affect the ability of ATI to perform any of its obligations under any of the Project Documents to which it is a party or by which it is bound, or under the ATI Development Credit Agreement;

(e) as a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that ATI, the Insurer, or the Security Trust Account Trustee will be able to perform their respective obligations under any of the Project Documents to which they are respectively a party or by which they are respectively bound, or which shall make it improbable that the Insurance Facility will be able to continue operating in a manner satisfactory to the Association;

(f) the occurrence of War or Civil Disturbance, Civil Commotion or Embargo;
(g) the Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of ATI, or for the suspension or termination of its operations insofar as they relate to the Insurance Facility;

(h) in the opinion of the Association, any material provision of the Operations Manual shall have been amended, or ATI shall have failed to apply or observe any of its provisions, in either case without the prior written consent of the Association;

(i) any provision of the Standard Form of Insurance Contract shall have been amended without the prior written consent of the Association;

(j) any provision of the Insurance Facility Agreements shall have been amended, assigned, suspended, abrogated, terminated or waived without the prior written consent of the Association;

(k) a Payment shall have been made to an Insured, or an amount shall have been withdrawn from a Security Trust Account by a Security Trust Account Trustee or by an Insurer, as the case may be, pursuant to the Insurance Facility Agreements for the purpose of making a Payment or reimbursing the Insurer or ATI, as the case may be, the amount of a Payment;

(l) in the opinion of the Association, the Borrower shall have introduced a material reversal of its foreign exchange and trade policies in effect as at the date of this Development Credit Agreement, or there shall have been a material deterioration in the implementation of such policies;

(m) at any time, the Association determines, with respect to the issuance of any Insurance Contract, or the making of any Payment, that a Corrupt Practice or a Fraudulent Practice occurred without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation following receipt of written notice from the Association to such effect; or

(n) the Borrower shall have been suspended from membership in or ceased to be a member of ATI.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional events are specified:

(a) any event specified in paragraphs (b), (c), (e) and (m) of Section 5.01 of this Agreement shall occur and shall continue for a period of 60 days after notice thereof shall have been given by the Association to the Borrower; and
(b) any of the events specified in paragraphs (a), (d), (f), (g), (h), (i), (j), (k), (l) or (n) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 of this Agreement the Minister of the Borrower at the time responsible for Finance is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.
Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

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

Facsimile:
243 88 02 381

For the Association:

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

Cable address: Telex: Facsimile:
INDEVAS 248423 (MCI) or (202) 477 6391
Washington, D.C. 64145 (MCI)
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names, as of the day and year first above written.

DEMOCRATIC REPUBLIC OF CONGO

By: /s/ André-Philippe Futa
   Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Emmanuel Mbi
   Authorized Representative
SCHEDULE 1
Withdrawal of the Proceeds of the Credit

A. General

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Credit Allocated (Expressed in SDR Equivalent)</th>
<th>% of Expenditures to be Financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Grants under Part D of the Project</td>
<td>1,450,000</td>
<td>100% of amounts disbursed</td>
</tr>
<tr>
<td>(2) Severance payments under Part E of the Project</td>
<td>13,100,000</td>
<td>100% of expenditures incurred</td>
</tr>
<tr>
<td>(a) for El. Empl. in Gecamines</td>
<td>10,900,000</td>
<td></td>
</tr>
<tr>
<td>(b) for El. Empl. in BCA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) for El. Empl. in BCCE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) for El. Empl. in NBK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) for El. Empl. in OCPT</td>
<td>5,000,000</td>
<td></td>
</tr>
<tr>
<td>(3) Works</td>
<td>1,450,000</td>
<td>100% of foreign expenditures and 80% of local expenditures</td>
</tr>
<tr>
<td>(4) Goods</td>
<td></td>
<td>100% of foreign expenditures and 80% of local expenditures</td>
</tr>
<tr>
<td>(a) for Part A.4 of the Project</td>
<td>550,000</td>
<td></td>
</tr>
<tr>
<td>(b) other</td>
<td>2,000,000</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Amount of the Credit Allocated (Expressed in SDR Equivalent)</td>
<td>% of Expenditures to be Financed</td>
</tr>
<tr>
<td>----------------------------------------------------</td>
<td>-------------------------------------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>(5) Consultants’ services and audits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) for Part A.4 of the Project</td>
<td>500,000</td>
<td>85%</td>
</tr>
<tr>
<td>(b) other</td>
<td>24,000,000</td>
<td>85%</td>
</tr>
<tr>
<td>(6) Training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) for Part A.4 of the Project</td>
<td>300,000</td>
<td>100%</td>
</tr>
<tr>
<td>(b) other</td>
<td>4,000,000</td>
<td>100%</td>
</tr>
<tr>
<td>(7) Insurance Facility</td>
<td></td>
<td>100% of amounts disbursed</td>
</tr>
<tr>
<td>under Part A.3 of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Initial Capital Stock Contribution</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>(b) Insurance Facility</td>
<td>7,250,000</td>
<td></td>
</tr>
<tr>
<td>(8) Operating costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) BCECO</td>
<td>750,000</td>
<td>85%</td>
</tr>
<tr>
<td>(b) COPIREP</td>
<td>10,500,000</td>
<td>85%</td>
</tr>
<tr>
<td>(c) other</td>
<td>500,000</td>
<td>85%</td>
</tr>
<tr>
<td>(9) Refunding of Project Preparation Advance</td>
<td>1,100,000</td>
<td>Amount due pursuant to Section 2.02 (b) of this Agreement</td>
</tr>
<tr>
<td>(10) Unallocated</td>
<td>3,650,000</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>87,100,000</td>
<td></td>
</tr>
</tbody>
</table>
2. For the purposes of this Schedule:

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

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

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

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

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

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

(b) under Category (1) of the table set forth under paragraph 1 of this Schedule 1, for any Grant, unless such Grant has been made under a Subproject Grant Agreement in accordance with the provisions set forth in: (i) a Subproject Grant manual of the Borrower, in form and substance acceptable to the Association; and (ii) the provisions set forth in paragraphs 5, 6, and 7 of Section II of Schedule 4 to this Agreement;

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

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

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

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

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

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

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

(i) the Borrower has become a member of ATI by depositing an instrument of accession to the Depository and depositing its initial contribution to the capital stock of ATI in the amount of one hundred thousand Dollars ($100,000);

(ii) the Borrower has entered into the Participation Agreement with ATI, in a form and substance acceptable to the Association, and such agreement has been duly executed and delivered on behalf of the Borrower and ATI, and all conditions precedent to its effectiveness, if any have been fulfilled or waived;
(iii) the Insurance Facility Agreement and Security Trust Agreement(s) shall have been entered into in a form and substance that is acceptable to the Association;

(iv) ATI has opened one Security Trust Account and one Income Account on behalf of the Borrower and provided one copy of the account-related information to the Association;

(v) the Project Agreement has been entered into by the Association and ATI; and

(vi) legal opinions satisfactory to the Association have been submitted establishing that:

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

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

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

(D) that the execution and delivery of the Project Agreement has been duly authorized or ratified by ATI by all necessary action, and is legally binding upon ATI in accordance with its terms; and

(j) under Category (8) (b) of the table set forth under paragraph 1 of this Schedule 1, unless COPIREP has furnished evidence, in form and substance acceptable to the Association, of the satisfactory functioning of its financial management system in view of administering the Project.
4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures for works or goods, as the case may be, under contracts costing less than $100,000 equivalent each, and for expenditures for services under contracts with firms costing less than $100,000 or with individuals costing less than $100,000 equivalent each, all under such terms and conditions as the Association shall specify by notice to the Borrower.
SCHEDULE 2

Description of the Project

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

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

Part A: Improving the Investment Climate

1. **Strengthening the judiciary system**

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

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

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

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

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

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

2. **Supporting financial intermediation**

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

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

3. **Insurance Facility**

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

4. **Institutional Strengthening of MMH**

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

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

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

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

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

(c) Improving Information of and Access to Mining Reserves through the
carrying out of studies to, *inter alia*:
(i) improve geodetic information gathering and analysis;

(ii) improve accuracy of, and access to, mineral resource information; and

(iii) assess consequences of mining activities, such as environmental and social risks, through the provision of technical advisory services and training for selected staff, and the acquisition of equipment.

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

Promotion of private investment through, *inter alia*:

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

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

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

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

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

2. Improvement of services provided to the public in the telecommunication, finance, transport, and energy sectors through, *inter alia*:
(a) Facilitation of divestiture of government ownership in enterprises currently dominating each of said sectors; and

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

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

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

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

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

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

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

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

Part C: Improving Mining Competitiveness in the Katanga Region

1. Support to private mining enterprise in the Katanga region

   Support to private sector mining activity in the Katanga region of the Borrower through:
(a) The provision of technical advisory services in investment opportunity research and counseling;

(b) Provision of technical and management training;

(c) Facilitation of dialogue with local community and business representatives and the small-scale mining community; and

(d) Exploration of the feasibility of commercial exchanges and cooperation with mining activities in Zambia.

2. **Strengthening local communities in the provision of social services**

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

3. **Establishment of development frameworks for the Katanga Region**

   (a) Establishing local and regional development plans as reference guidelines for public and private investment programming, outlining priority areas and assessing potential results on the business, social and environmental levels, through the provision of technical advisory services;

   (b) Provision of technical advisory services to carry out studies to assess: (i) the fiscal consequences of the privatization of *Gecamines* and respective administrative, social and infrastructure-related obligations of the communities; and (ii) the capacity of local and regional community administrations to provide business and social services, and infrastructure administration and maintenance.

**Part D: Support to Economic Activities in Katanga**

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

1. improvements in the efficiency of artisans and small-scale entrepreneurs in the Katanga region in the Borrower’s territory, such as: (a) worker training in technical skills; (b) management training in marketing and production techniques; and (c) acquisition of equipment; and
2. supporting the re-insertion into the economic mainstream of affected Eligible Employees having resided in the Katanga region at the time of leaving employment, through, \textit{inter alia}, (a) technical skills training courses; (b) setting up of equipment rentals and sharing systems; and (c) setting up of operating cost financing systems.

Part E: Retrenchment

Support to Eligible Employees.

Part F: Project Management and administration

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

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

3. Financing of COPIREP’s operating costs;

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

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

* * *

The Project is expected to be completed by October 30, 2009.
SCHEDULE 3

Procurement and Consultants’ Services

Section I. Procurement of Works and Goods

Part A: General

Works and goods shall be procured in accordance with the provisions of Section I of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the provisions of the following Parts of this Section I.

Part B: International Competitive Bidding

1. (a) Except as otherwise provided in Part C of this Section, works and goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto;

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

   (c) Goods estimated to cost the $200,000 equivalent or mores shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

3. Preference for domestically manufactured goods

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

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

Part C: **Other Procurement Procedures**

1. **National Competitive Bidding**

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

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

2. **National Shopping**

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

   (b) Goods, including field equipment; environmental monitoring instruments; technical documentation and literature; office equipment; furniture; training material and office supplies other than vehicles, estimated to cost less than $50,000 equivalent per contract, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. **Procurement through International Agencies**

   Vehicles may be procured from IAPSO.
Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be updated and furnished annually to the Association for its review and approval in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for works and goods estimated to cost the equivalent of $100,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

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

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants’ services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.
2. The following provisions shall apply to consultants’ services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph. The short list of consultants for services estimated to cost less than $100,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Least cost Selection

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

2. Selection Based on Consultant’s Qualification

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

3. Individual Consultants

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

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

1. Selection Planning

The proposed plan for the selection of consultants under the Project shall be updated and furnished annually to the Association for its review and approval in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants’ services shall be undertaken in accordance with
such selection plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. **Prior Review**

   (a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of $100,000 or more, the procedures set forth in paragraphs 1, 2 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

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

3. **Post Review**

   With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.
SCHEDULE 4

Implementation Program

Section I: General Covenants for the Project

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

Coordination and Management

2. The Borrower shall:

   (a) maintain policies and procedures adequate to enable it to monitor and evaluate, on an ongoing basis, in accordance with the indicators set forth in the PIP and summarized in Schedule 6 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof;

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

   (c) review with the Association, within four weeks following the submission of the report referred to in subparagraph (b) of this paragraph said report (Annual Review), and thereafter take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of said report, the Association’s views on the matter and in accordance with the PIP.
Midterm Review

3. The Borrower shall:

   (a) by June 30, 2006, or such other date as the Association shall agree upon, carry out jointly with the Association, a midterm review (Midterm Review). The Borrower shall invite the members of sector ministries and agencies affected by the Project and ATI to participate in such review, and take all actions it considers necessary to ensure the participation of representatives of community associations concerned by the Project. Such Midterm Review shall cover inter alia: (i) the progress achieved in the implementation of the Project taking into account the results of the Annual Reviews, and, more specifically, the achievements attained under Part B of the Project; (ii) the status of issuance of inter alia Insurance Contracts from the Insurance Facility under Part A.3 of the Project to establish if at least fifty per cent (50%) of the portion of the Credit allocated to such Facility has been withdrawn from the Credit Account in accordance with the provisions of Schedule 4 to this Agreement; and (iii) ATI’s operational performance.

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

   (c) Following such Midterm Review, the Borrower shall act promptly and diligently in order to take any corrective action deemed necessary by the Association to remedy any shortcoming noted in the implementation of the Project, or to implement such other measures as may have been agreed upon between the Borrower and the Association in furtherance of the objectives of the Project and in accordance with the PIP.

Section II: Other Covenants for All Parts of the Project Except Part A.3

4. The Borrower shall:

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

   (b) within six months following the Effective Date establish and maintain in the Katanga Region a committee, comprising representatives of the public and the private sector active in the region, to assist URK/GCM with monitoring Project activities and consultative services, respectively;
(c) maintain until the completion of the Project, BCECO and COPIREP, each staffed with a management team with qualifications and experience satisfactory to the Association and with qualified support staff in sufficient numbers; and

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

**Eligibility Criteria for Subprojects**

5. **General**

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

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

6. **Terms and Conditions for Subproject Grant Agreements**

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

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

   (b) the obligation that: (i) works, goods and services to be financed out of the proceeds of the Credit for a Subproject shall be procured according to the provisions of Schedule 3 to this Agreement; and (ii) that such goods, works and services shall be used exclusively for the carrying out of the Subproject;
(c) the right to inspect, by the Borrower or the Association, or jointly with qualified representatives of the Association, or the Borrower, if the Association, or the Borrower, shall so request, the works, plans, studies and construction sites relevant to the Subproject, and any relevant documents;

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

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

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

Section III. Part A.3 of the Project

Withdrawals; Security Trust Account(s); Income Account(s)

Part A: General

1. Security Trust Accounts shall each be interest-bearing, Dollar denominated trust accounts opened by ATI in the name of the Borrower for purposes of the Insurance Facility and the provision of Insurance Contracts in the manner contemplated by this Development Credit Agreement.

2. If, at any time prior to the Insurance Facility Second Closing Date, the Insurer either terminates or suspends the Insurance Facility provided under the Insurance Facility Agreement or such Insurance Facility expires in accordance with its terms, then, subject to Article V of this Agreement and Section 6.02 of the General Conditions, ATI and the Borrower shall in good faith, as expeditiously as possible, seek to put in place an alternative structure for the Insurance Facility, subject to the Association’s prior written consent.

3. Subject to paragraph 7 of Part A of Section III of this Schedule, the Committed Insurance Facility Amounts shall be used exclusively to make Payments in accordance with the provisions of Part B of Section III of this Schedule.
4. Subject to the terms of the Insurance Facility Agreements, the Unpaid Insurance Facility Amounts shall be used exclusively to finance a new Insurance facility established by the Borrower or ATI, subject to the terms and conditions and in accordance with the procedures specified in Part C of Section III of this Schedule.

5. All Income Amounts shall be deposited and kept separately in one or more additional interest-bearing, Dollar denominated trust accounts opened by ATI in the name of the Borrower at a Security Trust Account Trustee, on terms and conditions satisfactory to the Association, into which the relevant Security Trust Account Trustee shall deposit the interest payable by it under the relevant Security Trust Agreement in respect of that part of the proceeds of the Credit held from time to time in such Security Trust Account.

6. Subject to paragraph 7 of Part A of Section III of this Schedule, the Income Amounts shall be used exclusively for the purposes of the Project as specified in Part D of Section III of this Schedule.

7. Subject to the terms of the Insurance Facility Agreements in this respect, if any, the Committed Insurance Facility Amounts and the Income Amounts, respectively, may from time to time, pending utilization as specified in paragraphs 3 and 6 hereof, be used to make Eligible Investments.

For the purposes of this paragraph 7, “Eligible Investments” means investments made with the prior written approval of the Association by ATI on behalf of the Borrower, which investments shall: (i) not be speculative in nature, (ii) be such that the capital thereof not be susceptible to depreciation or otherwise at risk of loss, and (iii) be liquid in nature so as to ensure that funds are available for the purpose of making Payments, which investments shall be held in one or more segregated accounts on terms and conditions acceptable to the Association.

8. To the limit of its ability pursuant to the Agreement Establishing ATI and the Participation Agreement, the Borrower shall cause ATI to:

(a) have the Security Trust Account(s) and the Income Account(s) for each fiscal year audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association who shall be employed by the Borrower, on terms and conditions satisfactory to the Association;

(b) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Security Trust Account(s) and the Income Account(s) and the audit thereof as the Association shall have reasonably requested.
Part B: Insurance Facility

1. (a) Deposits into the Security Trust Account(s) shall be made from the Credit Account in accordance with the procedures set forth below, after the Association has received evidence satisfactory to it that one Security Trust Account and one Income Account have been duly opened.

(b) Subject to the provisions of paragraphs 1 (c), (d) and (e) below, ATI shall submit applications for withdrawal of the Credit on behalf of the Borrower pursuant to the designation provided in paragraph (a) of Section 2.09 of this Agreement and request transfer of the proceeds to the Security Trust Account(s), and shall cause any donor funds also to be deposited in the Security Trust Account(s).

(c) Applications for withdrawal of the Credit made on behalf of the Borrower by the Managing Director of ATI and any person or persons whom he or she shall designate in writing, pursuant to paragraph (a) of Section 2.09 of this Agreement:

(i) shall each be in an amount equivalent to twenty-five per cent (25%) of the Credit;

(ii) shall include the documentation required pursuant to Article V of the General Conditions;

(iii) where only one Security Trust Account has been opened at the relevant date, shall each request that the Association transfer to the Security Trust Account the entire proceeds of the amount of the Credit applied to be withdrawn thereunder or, in the event that there is more than one Security Trust Account at the relevant date, the proportion of such proceeds that is to be deposited into each one of the Security Trust Accounts;

(iv) shall, with respect to the first such application for withdrawal, be delivered to the Association promptly following confirmation by the Association that the conditions of disbursement specified or referred to in this Agreement have been fulfilled; and

(v) shall, with respect to the second and subsequent applications for withdrawal, be delivered to the Association promptly once the aggregate principal amount of new Insurance Contracts issued by ATI since the date of delivery of the immediately preceding application for withdrawal is equal to two hundred per cent
(200%) of the amount specified in clause (i) of this paragraph (c), unless the Insurance Facility Agreement stipulates a leverage ratio in respect of the Borrower which is less than 2.00 to 1.00, in which latter case the percentage aforementioned shall be equal to one hundred per cent (100%) of the amount specified in said clause (i) of this paragraph (c).

(d) With the exception of funds to be released to the Borrower following the winding up of the trust created by the Security Trust Agreement(s), and subject to paragraph 7 of Part A of Section III of this Schedule, funds in the Security Trust Account(s) shall be released by the Security Trust Account Trustee(s) only for the purpose of making Payments.

(e) For each withdrawal made from a Security Trust Account for the purpose of making a Payment, the Borrower shall request ATI under the Participation Agreement, at such time as the Association shall reasonably request, to furnish to the Borrower and provide copies to the Association of such documents and other evidence showing that such Payment was made exclusively on account of a Loss.

(f) (i) If the Association shall have determined at any time that any withdrawal out of a Security Trust Account: (A) was made for other than making an eligible Payment or an Eligible Investment; or (B) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (I) provide such additional evidence as the Association may request; or (II) refund to the Association an amount equal to the amount of such withdrawal or the portion thereof not so eligible or justified.

(ii) Refunds to the Association made pursuant to sub-paragraph (f) (i) (B) (II) of this paragraph shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

(g) (i) If the Association shall have determined at any time that any withdrawal out of an Income Account: (A) was made for other than a purpose eligible under Part D of Section III of this Schedule or making an Eligible Investment; or (B) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (I) provide such additional evidence as the Association may request; or (II) refund to the Association an amount equal to the amount of such withdrawal or the portion thereof not so eligible or justified.
(ii) Refunds to the Association made pursuant to sub-paragraph (g) (I) (B) (II) of this paragraph shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

2. No withdrawals from the Credit Account for deposit into a Security Trust Account shall be made after April 30, 2010, or such later date as the Association shall establish. The Association shall promptly notify the Borrower and ATI of such later date.

3. Unpaid Insurance Facility Amounts shall be retained in the Security Trust Account(s) and, before the Insurance Facility First Closing Date, shall be used on a revolving basis for the purpose of providing new Insurance Contracts under the Insurance Facility.

Part C: Financing of New Insurance Facility and Other Activities

1. Subject to the Insurance Facility Agreements and paragraph 4 of Part C of Section III of this Schedule, following: (i) the Insurance Facility First Closing Date, or (ii) the termination of the Insurance Facility for a reason acceptable to the Association, or (iii) the midterm review of the Project, the Borrower shall be entitled to obtain the release of any remaining balance of the Revolving Insurance Facility Amounts for their use in any activity or to finance any other purpose agreed between the Borrower and the Association.

2. Subject to the Insurance Facility Agreements and paragraph 4 of Part C of Section III of this Schedule, any balance of the Revolving Insurance Facility Amounts remaining after the Second Closing Date shall be released to the Borrower.

3. In the event that pursuant to paragraph 1 of Part C of Section III of this Schedule the Borrower and the Association agree to the establishment of a new Insurance facility, then except as the Association shall otherwise agree, funds made available pursuant hereto for that purpose shall be used in accordance with the procedures acceptable to the Association, including the procedures outlined in paragraph 1 of Schedule 2 to the Project Agreement and the Operations Manual.

4. If: (i) the Borrower at any time has failed to pay the Association any amount owing under a Development Credit Agreement or under any guarantee of any sums advanced by the Association to a third party at the request of the Borrower, or (ii) an event specified in paragraph 5.01 (a), in paragraph 5.01 (f) or in paragraph 5.01 (k) of this Agreement has occurred at any time, then the Borrower shall not have the right to obtain the release of any part of the Revolving Insurance Facility Amounts.
**Part D: Income Amounts**

The Income Amounts or part thereof shall, until the expiry of the Insurance Facility First Closing Date, be used only for the following purposes and in the following order of priority:

(a) first, to pay any commitment charges and any service charges due and payable to the Association pursuant to this Agreement; and, if and to the extent only that there is any available balance remaining of said Income Amounts after having been applied as provided in this paragraph (a), then

(b) second, if and to the extent that the Board of Directors of ATI shall have adopted a resolution to such effect and, thereafter, the Managing Director of ATI shall have provided written notice to the Borrower requesting payment of same, to pay the Borrower’s proportional share of ATI’s operational costs, based on the Borrower’s contribution to the business of ATI (or based on such other formula as may be adopted by ATI at any time with the approval of its Board of Directors), in the event that such operations are not self-financing; and, if and to the extent only that there is any available balance remaining of said Income Amounts after having been applied as provided in paragraph (a) above and this paragraph (b), then

(c) third, to contribute to the reserves of ATI in addition to the amounts allocated thereto in accordance with paragraph 1 (b) of Article 9 of the Agreement Establishing ATI; and, if and to the extent only that there is any available balance remaining of said Income Amounts after having been applied as provided in paragraphs (a) and (b) above and this paragraph (c), then

(d) fourth, to make any reimbursement to a Security Trust Account due and payable by the Borrower pursuant to Section 4.02 of the Participation Agreement.

After the Insurance Facility First Closing Date, the Income Amounts or remaining balance thereof shall be released to the Borrower at the request of the Borrower.
SCHEDULE 5

SPECIAL ACCOUNT

1. For the purposes of this Schedule:

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

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

   (c) the term “Authorized Allocation” means an amount equivalent to ten million Dollars ($10,000,000) to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to five million dollars ($5,000,000) until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR twenty million (SDR 20,000,000).

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

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

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

   (b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.
(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account and the 90-Day Advance Accounts, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

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

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

   (b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account or any of the 90-Day Advance Accounts;

   (c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

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

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

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

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

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

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

Implementation and Evaluation Indicators

Part A: All Parts of the Project except Part A.3

1. Foreign direct investment in the telecommunications, finance, energy, transport and mining sectors reaches one billion Dollars per year by 2009 (from $200 million in 2002).

2. Private sector participation in Gecamines, Société Nationale d'Electricité, Société Nationale des Chemins de Fer du Congo, Régie des Voies Aériennes, Lignes Aeriennes du Congo and OCPT achieved at Closing Date, whether through public/private partnerships, full privatization, management contracts or other arrangements.

3. Net fiscal contribution from parastatal companies increased by ten million dollars annually.

Part B: Part A.3 of the Project

I. Primary Indicators

4. Issuance of Insurance Contracts in an aggregate principal amount of ten million Dollars ($10,000,000) or equivalent by the third anniversary of the effective date of the Agreement Providing for the Amendment and Restatement of the Development Credit Agreement and issuance of Insurance Contracts in an aggregate principal amount of one hundred million Dollars ($100,000,000) or equivalent by the sixth anniversary of the effective date of the Agreement Providing for the Amendment and Restatement of the Development Credit Agreement, all in respect of transactions pertaining to the Borrower.

5. The operations of ATI are self-financing after three years following the commencement of its operations.

6. On average, in any twelve-month period commencing on the effective date of the Agreement Providing for the Amendment and Restatement of the Development Credit Agreement, fewer than one Claim per year resulting from Covered Risks other than War or Civil Disturbance, Civil Commotion or Embargo has been made, which Claim, in the opinion of the Association, would have arisen as a result of the action or omission of the Borrower, including any department, agency or political or administrative subdivision thereof.

7. Signature and delivery of the Insurance Facility Agreements.
II. Secondary Indicators

8. The Project has catalyzed the introduction of comprehensive trade credit insurance available within the Borrower’s territory.

9. On average, in any twelve-month period commencing on the effective date of the Agreement Providing for the Amendment and Restatement of the Development Credit Agreement, there has been a ten per cent (10%) increase per annum in the volume of bank lending for trade transactions pertaining to the Borrower (including both local and foreign banks).

10. A decreasing trend in cost and an increasing trend in maturity of trade finance available for transactions pertaining to the Borrower – to be measured by surveying users of the Insurance Facility.

11. An increasing number of Participating States participate in the Insurance Facility over the life of the Project.

12. A broadening of ATI’s client base within the Borrower’s territory over the life of the Project.