

Chapter 122.

I.D.A. (Agricultural Development) Credit Agreements Ratification Act 1970.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 122.

I.D.A. (Agricultural Development) Credit Agreements Ratification Act 1970.

ARRANGEMENT OF SECTIONS.

1. Interpretation.
 "the 1969 Agreement"
 "the 1970 Agreement"
2. Approval of Agreements.
3. Effect on other laws.
4. Pre-appropriation of moneys.

SCHEDULE 1

SCHEDULE 2

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

I.D.A. (Agricultural Development) Credit Agreements Ratification Act 1970,

Being an Act to ratify Agreements between the Administration of the former Territory of Papua and New Guinea and the International Development Association for credits for the purpose of agricultural development and associated purposes.

1. INTERPRETATION.

In this Act—

“**the 1969 Agreement**” means the agreement dated 21 January 1969, a copy of which is set out in Part 1 of the First Schedule, which agreement includes the Loan Regulations set out in Part 2 of that Schedule;

“**the 1970 Agreement**” means the agreement dated 30 January 1970, a copy of which is set out in Part 1 of the Second Schedule, which agreement includes the General Conditions Applicable to Development Credit Agreements set out in Part 2 of that Schedule.

2. APPROVAL OF AGREEMENTS.

The Agreements are approved, and take effect according to their tenor.

3. EFFECT ON OTHER LAWS.

The Agreements have the force of law as if contained in this Act, and apply notwithstanding anything in any other law.

4. PRE-APPROPRIATION OF MONEYS.

All repayments of principal and payments of service charges and other charges payable under the Agreements shall be made out of the Consolidated Revenue Fund which, to the necessary extent, is appropriated accordingly.

Sch. 1 *I.D.A. (Agricultural Development) Credit Agreements Ratification 9999*

SCHEDULE 1

PART 1 – DEVELOPMENT CREDIT AGREEMENT.

DEVELOPMENT CREDIT AGREEMENT

Credit Number 137-PNG.

PART 1.—Development Credit Agreement
(New Britain Smallholder Development Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ADMINISTRATION OF THE TERRITORY

OF

PAPUA NEW GUINEA

Dated January 21, 1969.

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated January 21, 1969 between INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association) and ADMINISTRATION OF THE TERRITORY OF PAPUA AND NEW GUINEA (hereinafter called the Borrower).

ARTICLE I.—Credit Regulations; Special Definitions

SECTION 1.01. The parties to this Agreement accept all the provisions of Development Credit Regulations No. 1 of the Association dated June 1, 1961 as amended February 9, 1967, with the same force and effect as if they were fully set forth herein, subject however, to the following modifications thereof (said Development Credit Regulations No. 1 as so modified being hereinafter called the Regulations), namely:

(a) Paragraph (f) of Section 5.02 is deleted and the following paragraph is substituted therefor:

"(f) An extraordinary situation shall have arisen which shall make it improbable that the Borrower will be able to perform its obligations under the Development Credit Agreement or there shall occur any such change in the nature and constitution of the Borrower as shall make it improbable that the Borrower will be able to carry out its obligations under the Development Credit Agreement".

(b) The words "The Borrower" are deleted in paragraph (b)(i) of Section 3.01 and in paragraphs (g) and (h) of Section 5.02 and the words "The Commonwealth of Australia" are substituted therefor.

(c) Paragraph (a) of Section 8.01 is deleted and the following paragraph is substituted therefor:

"(a) the execution and delivery of the Development Credit Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action, including action of the Commonwealth of Australia; and"

(d) Paragraph 5 of Section 9.01 is deleted and the following paragraph is substituted therefor:

"5. The term "Borrower" means the Administration of the Territory of Papua and New Guinea."

(e) The second sentence of paragraph 6 of Section 9.01 is deleted.

SECTION 1.02. Unless the context otherwise requires, the following terms, wherever used in the Development Credit Agreement, have the following meanings:

- (a) "NBPOD" means "New Britain Palm Oil Development Limited", a company limited by shares, established under the Bottower's Companies Ordinance 1963 and in accordance with a Memorandum of Association and Articles of Association, both dated May 12, 1967; and such term "NBPOD" also includes:
- (i) "Mosa Plantation Pty. Limited", a company limited by shares, established under the Bottower's Companies Ordinance 1963 and in accordance with a Memorandum of Association and Articles of Association, both dated May 23, 1967, which company is wholly owned by NBPOD and is sometimes hereinafter referred to as "the Plantation Company"; and
 - (ii) "Mosa Oil Mill Pty. Limited", a company limited by shares, established under the Bottower's Companies Ordinance 1963 and in accordance with a Memorandum of Association and Articles of Association, both dated May 23, 1967, which company is wholly owned by NBPOD and is sometimes hereinafter referred to as "the Factory Company".
- (b) "PNGDB" means "The Papua and New Guinea Development Bank", an instrumentality of the Bottower established by the Papua and New Guinea Development Bank Ordinance 1965 (No. 2 of 1966).
- (c) "Management Agreement" means the Management Agreement and Amending Agreement between NBPOD, the Plantation Company and the Factory Company, of the one part, and Hattisons and Crosfield (A.N.Z.) Limited, a Company incorporated under the laws of the State of Victoria, Commonwealth of Australia, of the other part, dated May 29, 1967, as the same may be amended or supplemented from time to time.
- (d) "NBPOD Agreement" means the agreement or agreements between the Bottower and NBPOD, providing for the undertaking by NBPOD of certain obligations in respect of the carrying out of Part C of the Project and related matters, as the same may be amended or supplemented from time to time.
- (e) "Subsidiary Loan Agreement" means the loan agreement to be entered into between the Bottower and PNGDB, pursuant to Section 3.01(b) of this Agreement, on terms and conditions satisfactory to the Association, as the same may be amended or supplemented from time to time.

ARTICLE II—The Credit

SECTION 2.01. The Association agrees to make available to the Bottower, on the terms and conditions in this Agreement set forth or referred to, a development credit in an amount in various currencies equivalent to one million five hundred thousand dollars (\$1,500,000).

SECTION 2.02. (a) The Association shall open a Credit Account in the name of the Bottower and shall credit to such Credit Account the amount of the Credit.

(b) The amount of the Credit may be withdrawn from the Credit Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Agreement and the Regulations, and in accordance with the allocation of the proceeds of the Credit set forth in Schedule 1 to this Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement between the Association and the Borrower.

SECTION 2.03. (a) The Borrower shall be entitled to withdraw from the Credit Account in respect of the reasonable cost of goods required for the Project and to be financed under this Agreement:

- (i) such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for expenditures under Category 1 of the allocation of the proceeds of the Credit set forth in Schedule 1 to this Agreement; and
- (ii) the equivalent of eighty per cent. (80%) of such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for expenditures under Category 2 of the allocation of the proceeds of the Credit set forth in Schedule 1 to this Agreement;

provided, however, that if there shall be an increase in the estimate of expenditures under Category 2, the Association may by notice to the Borrower adjust the above percentage as required in order that withdrawals of the amounts of the Credit then allocated to such Category 2 and not withdrawn may continue *pro rata* with the expenditures remaining to be made under such category.

(b) Except as shall be otherwise agreed between the Association and the Borrower, no withdrawals shall be made on account of expenditures made prior to the date of this Agreement.

SECTION 2.04. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent. ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

SECTION 2.05. Service and other charges shall be payable semi-annually on March 1 and September 1 in each year.

SECTION 2.06. The Borrower shall repay the principal amount of the Credit in semi-annual instalments payable on each March 1 and September 1 commencing September 1, 1979 and ending March 1, 2019, each instalment to and including the instalment payable on March 1, 1989 to be one-half of one per cent. ($\frac{1}{2}$ of 1%) of such principal amount, and each instalment thereafter to be one and one-half per cent. ($1\frac{1}{2}$ %) of such principal amount.

SECTION 2.07. The currency of the United States of America is hereby specified for purposes of Section 3.02 of the Regulations.

ARTICLE III.—Use of the Proceeds of the Credit

SECTION 3.01. (a) The Borrower shall apply the proceeds of the Credit in accordance with the provisions of this Agreement to expenditures on Parts A and B of the Project, described in Schedule 2 to this Agreement.

(b) In the carrying out of the provisions of the foregoing paragraph (a) of this Section, the Borrower shall refer to PNGDB, pursuant to the Subsidiary Loan Agreement, the amount of the Credit allocated from time to time to Category 2 of the allocation of the proceeds of the Credit set forth in Schedule 1 to this agreement.

SECTION 3.02. Except as the Association shall otherwise agree, the goods to be financed out of the proceeds of the Credit shall be procured in accordance with such methods and procedures as shall be determined by agreement between the Association and the Borrower, subject to modification by further agreement between them.

SECTION 3.03. Except as the Association shall otherwise agree, the Borrower shall cause all goods financed out of the proceeds of the Credit to be used exclusively in the carrying out of Parts A and B of the Project.

ARTICLE IV.—Particular Covenants

SECTION 4.01. The Borrower shall (i) carry out Part A of the Project, (ii) make and maintain arrangements with PNGDB under the Subsidiary Loan Agreement, satisfactory to the Association, for the carrying out by PNGDB of Part B of the Project, and (iii) make and maintain arrangements with NBPOD under the NBPOD Agreement, for the carrying out by NBPOD of Part C of the Project, all with due diligence and efficiency and in conformity with sound agricultural, engineering, administrative, economic and financial practices and shall provide, and cause PNGDB and NBPOD to be provided with, promptly as needed, the funds, facilities, services and other resources required for the purpose.

SECTION 4.02. (a) The Borrower shall (i) cause PNGDB punctually to perform all the covenants, agreements and obligations of PNGDB set forth in the Subsidiary Loan Agreement and (ii) take or cause to be taken all action necessary or appropriate to enable PNGDB and NBPOD to perform all covenants, agreements and obligations of PNGDB and NBPOD respectively set forth in the Subsidiary Loan Agreement and the NBPOD Agreement and shall not take or permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by PNGDB or NBPOD of such covenants, agreements and obligations.

(b) The Borrower shall exercise its rights in relation to the Subsidiary Loan Agreement and the NBPOD Agreement in such manner as to protect the interests of the Borrower and the Association; and except as the Association shall otherwise agree, the Borrower shall not take or consent in any action which would have the effect of amending, abrogating, assigning or waiving any provision of the Subsidiary Loan Agreement.

SECTION 4.03. The Borrower shall furnish or cause to be furnished to the Association, promptly upon their preparation, the reports, plans, specifications, contract documents and work schedules for the Project and any material modifications subsequently made therein, in such detail as the Association shall reasonably request.

SECTION 4.04. (a) The Borrower shall maintain or cause to be maintained records adequate to identify the goods financed out of the proceeds of the Credit and out of the proceeds of PNGDB loans made under Part B of the Project, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations, administration and financial condition, in respect of the Project, of any department or agency of the Borrower (including PNGDB) responsible for the carrying out of the Project or any part thereof or the maintenance of all works, facilities and equipment related thereto and shall enable the Association's representatives to inspect the Project, the goods financed out of the proceeds of the Credit and out of the proceeds of PNGDB loans made under Part B of the Project, and any relevant records and documents.

(b) The Borrower shall at all times maintain auditing arrangements satisfactory to the Association, with regard to all expenditures made in connection with Parts A and B of the Project.

SECTION 4.05. (a) The Borrower and the Association shall cooperate fully to ensure that the purposes of the Credit will be accomplished. To that end, the Borrower and the Association shall from time to time at the request of either party, exchange views through their representatives with regard to: the performance by the Borrower of its obligations under this Agreement, the administration, operations and financial condition of any department or agency of the Borrower (including PNGDB) responsible for the carrying out of the Project or any part thereof or the maintenance of all works, facilities and equipment related thereto, and other matters relating to the purposes of the Credit.

(b) The Borrower shall furnish to the Association all such information as the Association shall reasonably request concerning: the expenditure of the proceeds of the Credit and of the proceeds of PNGDB loans made under Part B of the Project, the goods financed out of such proceeds, the Project, and the administration, operations and financial condition of any department or agency of the Borrower (including PNGDB) responsible for the carrying out of the Project or any part thereof or the maintenance of all works, facilities and equipment related thereto.

(c) The Borrower shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit or the maintenance of the service thereof or the performance by the Borrower, PNGDB or NBPOD of the obligations under this Agreement, the Subsidiary Loan Agreement and the NBPOD Agreement. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower and, to the extent possible, the international balance of payments position of the Borrower.

(d) The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to visit any part of the territories of the Borrower for purposes related to the Credit.

SECTION 4.06. The Borrower shall adequately maintain or cause to be maintained all works, facilities and equipment related to the Project and from time to time shall make or cause to be made all necessary renewals and repairs thereof in accordance with sound agricultural and engineering practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

SECTION 4.07. The Borrower undertakes to insure or cause to be insured, or make other provision satisfactory to the Association for the insurance of, the imported goods to be financed out of the proceeds of the Credit or out of the proceeds of PNGDB loans made under Part B of the Project against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

SECTION 4.08. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of the Borrower or laws in effect in its territories.

SECTION 4.09. This Agreement shall be free from any taxes that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, delivery or registration thereof.

SECTION 4.10. In the carrying out of Part A of the Project, the Borrower shall:

- (a) grant to qualified settlers (hereinafter called the smallholders) 99-year leases on Borrower's plots, each containing about 15 acres of land suitable for oil palm cultivation, under good husbandry and residence conditions and under such other conditions as shall be satisfactory to the Borrower and the Association, including, but without being limited to, the Borrower's right to terminate any such lease in the event of failure by the smallholder to perform his obligations thereunder;
- (b) cause the smallholders to (i) plant with oil palms a minimum aggregate of 4,600 acres not later than June 30, 1972, and to properly maintain and harvest such minimum aggregate acreage thereafter, or make alternative arrangements, satisfactory to the Association, for the purpose and (ii) supply to the Factory Company, until they have fully repaid the principal of, and interest and other charges on, the loans made to them by PNGDB under Part B of the Project, their entire production of fresh fruit bunch, or make alternative arrangements, satisfactory to the Association, the Borrower and NBPOD; and
- (c) make arrangements satisfactory to the Association for the procurement and use of adequate quantities of cover crop seed and a suitable kind of pollen in the smallholders' settlement.

SECTION 4.11. Unless the Association shall otherwise agree, the Borrower shall make and maintain arrangements, satisfactory to the Association, with NBPOD under the NBPOD Agreement, for:

- (a) the Plantation Company to grow or import high-yield oil palm seedlings and to sell adequate quantities thereof to the smallholders to be settled under Part A of the Project; and

(b) the Factory Company to (i) accept, process and market for a period of twenty-five years the fresh fruit bunch production of not less than 4,640 acres of oil palms planted by such smallholders at a purchase price to be established in accordance with a formula to be agreed from time to time between the Borrower and NBPOD in consultation with the Association, on the basis set forth in Schedule 3 to this Agreement and (ii) withhold, for PNGDB's account, from any amounts payable to such smallholders on account of such production such part thereof as shall be established by PNGDB as amortization and interest on PNGDB loans made under Part B of the Project, such withholding not to exceed one-half of any amounts so payable to such smallholders.

SECTION 4.12. In the event that the Factory Company's processing and marketing facilities shall not be available as provided in Section 4.11(b)(i) of this Agreement, the Borrower shall make arrangements, satisfactory to the Association, providing for alternative fresh fruit bunch processing and marketing facilities.

SECTION 4.13. The Borrower shall make arrangements satisfactory to the Association under the Subsidiary Loan Agreement for the establishment and maintenance by PNGDB of operating policies and procedures in respect of the Project as are set forth in Schedule 4 to this Agreement, subject to modification in consultation with the Association and the Borrower.

SECTION 4.14. If, at any time, the Borrower, or the Governor-General of the Commonwealth of Australia, pursuant to Sections 65(b) and 78 of the Papua and New Guinea Act 1949-1968 of the Commonwealth of Australia, shall enact or amend, or propose to enact or amend, any regulations applicable in the territories of the Borrower, on the marketing of palm oil, palm kernels or derivatives thereof, the Borrower shall promptly inform the Association and exchange views with it thereon.

ARTICLE V.—Remedies of the Association

SECTION 5.01. (i) If any event specified in paragraph (a) or paragraph (c) of Section 5.02 of the Regulations shall occur and shall continue for a period of thirty days, or (ii) if any event specified in paragraph (b) of Section 5.02 of the Regulations or in paragraph (a), paragraph (b), paragraph (c), paragraph (d) or paragraph (e) of Section 5.02 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower, then at any subsequent time during the continuance thereof, the Association, at its option, may declare the principal of the Credit then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Development Credit Agreement to the contrary notwithstanding.

SECTION 5.02. The following are specified as additional events for the purpose of paragraph (k) of Section 5.02 of the Regulations:

- (a) Any provision of (i) the Palm Oil industry (New Britain Agreement) Ordinance 1967 (No. 23 of 1967) of the Borrower including the Schedule thereto; or (ii) the Memoranda and Articles of Association, referred to in Section 1.02(a) of this Agreement, of New Britain Palm Oil Development Limited, the Plantation Company or the Factory Company; or (iii) the Management Agreement, shall have been amended, suspended or abrogated so as to adversely affect the Project or the performance by NBPOD of its obligations under the NBPOD Agreement.
- (b) Any provision of the Papua and New Guinea Development Bank Ordinance 1965 (No. 2 of 1966) of the Borrower shall have been amended, suspended or abrogated so as to adversely affect the Project, the operations or financial condition of PNGDB or the performance by PNGDB of its obligations under the Subsidiary Loan Agreement.
- (c) NBPOD shall have failed to perform any covenant or agreement of NBPOD under the NBPOD Agreement.
- (d) PNGDB shall have failed to perform any covenant or agreement of PNGDB under the Subsidiary Loan Agreement.
- (e) A default shall have occurred in the performance of any covenant or agreement on the part of the Borrower under the NBPOD Agreement or the Subsidiary Loan Agreement.
- (f) An extraordinary situation shall have arisen which shall make it improbable that NBPOD or PNGDB will be able to perform their respective obligations under the NBPOD Agreement or the Subsidiary Loan Agreement.

ARTICLE VI.—Effective Date; Termination

SECTION 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 8.01(b) of the Regulations:

- (a) the execution and delivery of the NBPOD Agreement on behalf of the Borrower and NBPOD have been duly authorized or ratified by all necessary corporate and governmental action; and
- (b) the execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and PNGDB have been duly authorized or ratified by all necessary corporate and governmental action.

SECTION 6.02. The following are specified as additional matters, within the meaning of Section 8.02(b) of the Regulations, to be included in the opinion or opinions to be furnished to the Association:

- (a) that the Ordinance of the Borrower authorizing or ratifying this Agreement has been laid before each House of Parliament of the Commonwealth of Australia;
- (b) that the NBPOD Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and NBPOD and constitutes a valid and binding obligation of the Borrower and NBPOD in accordance with its terms; and
- (c) that the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and PNGDB and constitutes a valid and binding obligation of the Borrower and PNGDB in accordance with its terms.

SECTION 6.03. If this Agreement shall not have come into force and effect by May 16, 1969, this Agreement and all the obligations of the parties hereunder shall terminate, unless the Association, after consideration of the reasons for the delay, establishes a later date for the purposes of this Section. The Association shall promptly notify the Borrower of such later date.

ARTICLE VI.—Miscellaneous

SECTION 7.01. The Closing Date shall be December 31, 1972 or such other date as may from time to time be agreed between the Borrower and the Association.

SECTION 7.02. The following addresses are specified for the purposes of Section 7.01 of the Regulations.

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America
Cable address:
INDEVAS
Washington, D.C.

For the Borrower:

His Honour
The Administrator of Papua and New Guinea
Port Moresby
Papua and New Guinea
Cable address:
ADMIN
Port Moresby

SECTION 7.03. The Administrator of Papua and New Guinea is designated for the purposes of Section 7.03 of the Regulations.

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By (Sgd) J. Burke Knapp

Vice-President.

ADMINISTRATION OF THE TERRITORY OF PAPUA AND NEW GUINEA

By (Sgd) G. A. Low

Authorized Representative.

SCHEDULE 1.—Allocation of the Proceeds of the Credit

Category.	Amounts Expressed in U.S. Dollar Equivalent
1. Bottowet's services to smallholders:	
(a) Land subdivision and crop extraction roads	430,000
(b) Agricultural extension services	320,000
2. Long-term PNGDB loans for investment in smallholdings	600,000
3. Unallocated	150,000
Total:	1,500,000

Re-allocation upon Change in Cost Estimates

1. If the estimate of the cost of the items included in Categories 1 or 2 shall decrease, the amount of the Credit then allocated to, and no longer required for, such Category will be re-allocated by the Association to Category 3.
2. If the estimate of the cost of the items included in Categories 1 or 2 shall increase, an amount equal to such increase in the case of Category 1 or an amount equal to 80% of such increase in the case of category 2, will be allocated by the Association, at the request of the Bottowet, to such Category from Category 3, subject, however, to the requirements for contingencies, as determined by the Association, in respect of the cost of the items in the other Category.

SCHEDULE 2.—Description of Project

The Project is the initial phase of development of about 9,000 acres in the West New Britain District and includes:

- Part A (i) Settlement by the Bottowet, before June 30, 1969, of about 580 smallholders on about 8,700 acres in the blocks known as Kapote, Tamba, Satakolok and Lakiemata and, within 3 years after each settlement, clearing and planting with oil palms of 8 acres on each smallholder plot.
- (ii) Provision by the Bottowet of adequate educational and health services to the smallholders.
- (iii) Provision by the Bottowet of adequate extension services, including supervision, for oil palm cultivation and harvesting by the smallholders.
- (iv) Construction by the Bottowet of all-weather crop extraction roads linking each smallholder plot with the factory.
- (v) Construction by the Bottowet of an overseas wharf capable of handling the export by ocean-going freighters of the palm oil factory production, to be operative not later than June 30, 1971, and of an all-weather road and associated bridges linking the overseas wharf and the factory.
- Part B Provision by PNGDB of long-term loans to smallholders.
- Part C Establishment and operation of a palm oil factory and of oil pumping and storage facilities at the overseas wharf.

SCHEDULE 3

Basic principles to be followed by NBPOD and the Bottowet to formulate the purchase price of fresh fruit bunch, payable by NBPOD to the smallholders:

- (a) Each calendar month, the Bottowet will gazette a local f.o.b. equivalent of the European main port c.i.f. price for palm oil and palm kernels as of an agreed date in the preceding month, less agreed freight, insurance, commissions, normal wastage and overseas port rates.

- (b) An agreed deduction will be made for wharf handling charges and for running NBPOD's oil pumping and storage facilities at the wharf to determine the "in-tank" value of palm oil and the "in-store" value of palm kernels.
- (c) To cover the cost of financing bulk storage, a deduction of three months' simple interest at 0.5 per cent, per annum over NBPOD's bankers' current lending rate on commercial advances will be allowed on the said "in-tank" and "in-store" values of oil and kernels.
- (d) An agreed deduction will be made for transportation of palm oil and palm kernels from factory to wharf and for bulk handling, bagging, handling and storage of palm kernels to determine the factory tank value of palm oil and the factory store value of naked palm kernels.
- (e) The ex-factory value of the derivatives of a ton of small holders' fresh fruit bunch will be derived from the factory tank value of palm oil and the factory store value of naked palm kernels by:
 - (i) first, deducting an agreed amount, per ton of palm oil and per ton of naked palm kernels, in lieu of profit, depreciation and working capital charges and standard company tax;
 - (ii) second, deducting any levies, cesses, export or other charges or duties imposed by any taxing authority of the Bortowet, other than standard company tax; and then
 - (iii) applying rates of extraction of oil and kernels from small holders' fresh fruit bunch, as agreed on the basis of monthly factory tests satisfactory to the Bortowet.
- (f) The purchase price of fresh fruit bunch payable by NBPOD to the small holders shall be the ex-factory value of the derivatives of a ton of small holders' fresh fruit bunch less the following agreed charges:
 - (i) agreed factory operating costs, including management, but excluding depreciation and working capital charges; and
 - (ii) transport costs for collection and delivery to the factory of small holders' fresh fruit bunch, if this service is performed by NBPOD.

SCHEDULE 4.—Operating Policies and Procedures of PNGDB

PNGDB's Lending Policy published in July, 1967 shall be applied by PNGDB in making loans under Part B of the Project described in Schedule 2 to this Agreement together with the following supplemental policies and procedures, as such Lending Policy and supplemental policies and procedures (other than the interest rate set forth in paragraph 3 below) shall be amended from time to time by PNGDB after consultation with the Association and the Bortowet.

Eligibility

1. All credit-worthy settlers selected by the Bortowet for participation in Part A of the Project shall be eligible for PNGDB loans.

Loans

2. PNGDB shall lend to each smallholder up to \$2,000 Australian Dollars to be disbursed over about five years, repayable within 11 years including a 5-year grace period. Standard loan agreements shall include such terms and conditions as shall be satisfactory to the Association, *inter alia*, good husbandry, prompt harvesting and residence covenants on the part of the smallholder withholding of amounts payable by NBPOD to the smallholder in accordance with Section 4.11(b)(ii) of this Agreement and adequate rights for suspension of disbursements and foreclosure or other enforcement of security in favour of PNGDB.

Interest

3. PNGDB's loans under Part B of the Project shall bear interest at a rate of not less than 6% per annum on the outstanding balance. PNGDB shall not increase such interest rate without prior consultation with the Association.

Amount

4. Subject to the maximum established in paragraph 2 above, the amount of each loan shall be determined by PNGDB in consultation with the Borrower's Department of Agriculture, Stock and Fisheries (DASF), on the basis of a standard budget showing the maximum amount to be lent for each type of expenditure listed therein, including a smallholder's monthly cash allowance and interest to accrue during the grace period.

Disbursement and Records

5. PNGDB shall make arrangements with DASF for DASF to (i) disburse the monthly cash allowance to smallholders, (ii) suspend such disbursements whenever smallholders fall behind schedule in the clearing, planting or maintenance of their plots or in harvesting their crops; (iii) report to PNGDB on the foregoing, and (iv) inform PNGDB of the amounts to be charged to each smallholder's loan account for goods and services supplied, such information to be supported with the smallholder's receipts for such goods and services in the amounts to be charged. PNGDB shall furnish semi-annual statements to each smallholder showing the amounts drawn on the smallholder's loan account, including interest, payments made and the outstanding balance of the loan.

Supervision

6. PNGDB shall ensure that amounts drawn on smallholder's loans are applied exclusively to expenditures on Part A of the Project, and its staff shall regularly visit the smallholders' plots to ensure that the smallholders are complying with the terms of their loan agreements.

Relending

7. Proceeds of payments received by PNGDB on account of loans made by PNGDB under Part B of the Project, which are not required by PNGDB to service the loan from the Borrower under the Subsidiary Loan Agreement or to meet PNGDB's expenses arising from Part B of the Project, shall be lent by PNGDB for the purpose of financing further agricultural development in the territories of the Borrower.

Reports and Information

8. PNGDB shall furnish to the Association semi-annual statements of amounts disbursed under the loans made under Part B of the Project indicating, in such detail as PNGDB and the Association shall agree, the specific goods and services financed therefrom.

9. PNGDB shall transmit to the Association, promptly after their preparation and not later than four months after the close of PNGDB's fiscal year, certified copies of its financial statements (balance sheet and related statement of earnings and expenses) as audited by the banking section of the Auditor-General's Department of the Commonwealth of Australia and a signed copy of such Auditor-General's report.

10. The Association and PNGDB shall cooperate fully to ensure that the purposes of the Credit will be accomplished. To that end, the Association and PNGDB shall from time to time at the request of either party, exchange views through their representatives with regard to the performance by PNGDB of its obligations under the Subsidiary Loan Agreement, the administration, operations and financial condition of PNGDB and other matters relating to the purposes of the Credit.

11. PNGDB shall furnish to the Association all such information as the Association shall reasonably request concerning the expenditure of the proceeds of the Credit made available to it under the Subsidiary Loan Agreement, the goods financed out of such proceeds, Part B of the Project and the administration, operations and financial condition of PNGDB.

12. PNGDB shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit in connection with Part B of the Project or the performance by PNGDB of its obligations under the Subsidiary Loan Agreement.

Miscellaneous

13. PNGDB shall promptly exercise its powers, rights and remedies under the loan agreements with smallholders.

14. PNGDB shall satisfy itself that the rights and obligations of smallholders are clearly drawn to their attention.

PART 2 – DEVELOPMENT CREDIT REGULATIONS NO. 1.

REGULATIONS

Dated June 1, 1961, as amended February 9, 1967

ARTICLE I.—Purpose; Application to Development Credit Agreements

SECTION 1.01. *Purpose.* The purpose of these Regulations is to set forth certain terms and conditions generally applicable to development credits granted by the Association directly to its members.

SECTION 1.02. *Application of Regulations.* Any development credit agreement between the Association and a member may provide that the parties thereto accept the provisions of these Regulations. To the extent so provided, these Regulations shall apply to such agreement and shall govern the rights and obligations thereunder of the parties thereto with the same force and effect as if they were fully set forth therein. No revocation or amendment of these Regulations shall be effective in respect of any development credit agreement unless the parties thereto shall so agree.

SECTION 1.03. *Inconsistency with Development Credit Agreements.* If any provision of a development credit agreement is inconsistent with a provision of these Regulations, the provision of the agreement shall govern.

ARTICLE II.—Credit Account; Service Charges; Repayment; Place of Payment

SECTION 2.01. *Credit Account.* The amount of the Credit shall be credited to a Credit Account which the Association shall open on its books in the name of the Borrower. The amount of the Credit may be withdrawn from the Credit Account as provided in the Development Credit Agreement and in these Regulations.

SECTION 2.02. *Service Charges.* A service charge at the rate specified in the Development Credit Agreement shall be payable on the principal amount of the Credit withdrawn from the Credit Account and outstanding from time to time. A service charge at the rate of one-half of one per cent. (1/2 of 1%) per annum shall be payable on the principal amount of any special commitment entered into by the Association pursuant to Section 4.02 and outstanding from time to time.

SECTION 2.03. *Computation of Service Charges.* Service charges shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2.04. *Repayment.* (a) The principal amount of the Credit withdrawn from the Credit Account shall be repayable in instalments as provided in the Development Credit Agreement.

(b) The Borrower shall have the right to repay in advance of maturity all or any part of the principal amount of one or more maturities of the Credit specified by the Borrower.

SECTION 2.05. *Place of Payment.* The principal of, and service charges on, the Credit shall be paid at such places as the Association shall reasonably request.

ARTICLE III.—Currency Provisions

SECTION 3.01. *Currencies in which Cost of Goods is to be Paid and Proceeds of the Credit are to be withdrawn.* (a) Except as the Borrower and the Association shall otherwise agree, the cost of goods financed out of the proceeds of the Credit shall be paid in the respective currencies of the countries from which such goods are acquired.

(b) The proceeds of the Credit shall be withdrawn from the Credit Account:

- (i) on account of expenditures in currency of the Borrower or for goods produced in (including services supplied from) the territories of the Borrower, in such currency or currencies as the Association shall from time to time reasonably select;
 - (ii) in all other cases, in the currency in which the cost of the goods financed out of such proceeds has been paid or is payable.
- (c) The Borrower and the Association may from time to time agree on any other currency in which withdrawals shall be made.

SECTION 3.02. Currencies in which Principal and Service Charges are Payable.

(a) The Borrower shall pay the principal amount of, and service charges on, the Credit in the currency specified in the Development Credit Agreement for the purposes of this Section or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to paragraphs (c) or (e) of this Section.

(b) For the purposes of this Section, the term "eligible currency" means the currency of any member of the Association which the Association from time to time determines to be freely convertible or freely exchangeable by the Association for currencies of other members of the Association for the purposes of its operations.

(c) If at any time the Borrower shall desire that, commencing with a given future payment date, such principal and service charges shall be payable in an eligible currency other than that so specified or than one theretofore designated pursuant to this paragraph (c) or selected pursuant to paragraph (e) below, the Borrower shall deliver to the Association, not less than three nor more than five months prior to such payment date, a notice in writing to that effect and designating such other eligible currency, whereupon the currency so designated shall, commencing with such payment date, be the currency in which such principal and service charges shall be payable.

(d) If at any time the Association shall determine that a currency payable pursuant to the provisions of this Section is not an eligible currency, the Association shall so notify the Borrower in writing and furnish the Borrower with a list of eligible currencies.

(e) Within thirty days from the date of such notice, the Borrower shall notify the Association in writing of its selection from such list of a currency in which payment shall be made, failing which the Association shall select a currency for such purpose from such list, whereupon, in either case, such principal and service charges shall, commencing with the payment date next succeeding such thirty-day period, be payable in the currency so selected.

SECTION 3.03. Amount of Repayment. The principal amount of the Credit repayable shall be the equivalent (determined as of the date, or the respective dates, of repayment) of the value of the currency or currencies withdrawn from the Credit Account expressed in terms of United States dollars of the weight and fineness in effect on January 11, 1960, determined as of the respective dates of withdrawal; provided, however:

- (i) that if a uniform proportionate reduction in the par values of the currencies of all its members is made by the International Monetary Fund, the principal amount of the Credit then outstanding and repayable after such reduction shall be reduced by the same proportion; and

(ii) that if the Association shall at any time determine that there has been a substantial reduction in the par value or the foreign exchange value of one or more major currencies of members of the Association in terms of United States dollars of the weight and fineness in effect on January 1, 1960, which in the opinion of the Association shall justify a general reduction in the principal amount repayable on development credits then outstanding, the principal amount of the Credit then outstanding and repayable after such determination shall be reduced by such proportion as the Association shall decide.

SECTION 3.04. *Purchase of Currency of Withdrawal with Other Currency.* If withdrawal shall be made in any currency which the Association shall have purchased with another currency for the purpose of such withdrawal, the portion of the Credit so withdrawn shall be deemed to have been withdrawn from the Credit Account in such other currency for the purposes of Section 3.03.

SECTION 3.05. *Valuation of Currencies.* Whenever it shall be necessary for the purpose of the Development Credit Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Association.

ARTICLE IV.—Withdrawal of Proceeds of Credits

SECTION 4.01. *Withdrawal from the Credit Account.* The Borrower shall be entitled to withdraw from the Credit Account amounts expended or to be expended for the Project in accordance with the provisions of the Development Credit Agreement and of these Regulations. Except as shall be otherwise agreed between the Borrower and the Association no withdrawals shall be made on account of expenditures in the territories of any country (other than Switzerland) which is not a member of the Bank or for goods produced in (including services supplied from) such territories.

SECTION 4.02. *Special Commitments by the Association.* Upon the Borrower's request and upon such terms and conditions as shall be agreed upon between the Association and the Borrower, the Association may enter into special commitments in writing to pay amounts to the Borrower or others in respect of the cost of goods to be financed under the Development Credit Agreement notwithstanding any subsequent suspension or cancellation.

SECTION 4.03. *Applications for Withdrawal or for Special Commitment.* When the Borrower shall desire to withdraw any amount from the Credit Account or to request the Association to enter into a special commitment pursuant to Section 4.02, the Borrower shall deliver to the Association a written application in such form, and containing such statements and agreements, as the Association shall reasonably request. Applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall, except as the Association and the Borrower shall otherwise agree, be made promptly in relation to expenditures for the Project.

SECTION 4.04. *Supporting Evidence.* The Borrower shall furnish to the Association such documents and other evidence in support of the application as the Association shall reasonably request, whether before or after the Association shall have permitted any withdrawal requested in the application.

SECTION 4.05. *Sufficiency of Applications and Documents.* Each application and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Association that the Borrower is entitled to withdraw from the Credit Account the amount applied for and that the amount to be withdrawn from the Credit Account is to be used only for the purposes specified in the Development Credit Agreement.

SECTION 4.06. *Payment by the Association.* Payment by the Association of amounts which the Borrower is entitled to withdraw from the Credit Account shall be made to or on the order of the Borrower.

ARTICLE V.—Cancellation and Suspension

SECTION 5.01. *Cancellation by the Borrower.* The Borrower may by notice to the Association cancel any amount of the Credit which the Borrower shall not have withdrawn prior to the giving of such notice, except that the Borrower may not so cancel any amount of the Credit in respect of which the Association shall have entered into a special commitment pursuant to Section 4.02.

SECTION 5.02. *Suspension by the Association.* If any of the following events shall have happened and be continuing, the Association may by notice to the Borrower suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account:

- (a) A default shall have occurred in the payment of principal or service charges or any other payment required under the Development Credit Agreement or any other development credit agreement or any guarantee agreement between the Borrower and the Association.
- (b) A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under the Development Credit Agreement.
- (c) A default shall have occurred in the payment of principal or interest or any other payment required under any loan agreement or guarantee agreement between the Bank and the Borrower, or any bonds or other obligations issued thereunder.
- (d) The Association (i) shall have suspended in whole or in part the right of the Borrower to make withdrawals under any development credit agreement between the Borrower and the Association because of a default on the part of the Borrower, or (ii) shall have suspended in whole or in part the right of the Borrower to make withdrawals under any development credit agreement with the Association guaranteed by the Borrower because of a default on the part of the Borrower.
- (e) The Bank (i) shall have suspended in whole or in part the right of the Borrower to make withdrawals under any loan agreement between the Borrower and the Bank because of a default on the part of the Borrower, or (ii) shall have suspended in whole or in part the right of the Borrower to make withdrawals under any loan agreement with the Bank guaranteed by the Borrower because of a default on the part of the Borrower.
- (f) An extraordinary situation shall have arisen which shall make it improbable that the Borrower will be able to perform its obligations under the Development Credit Agreement.

- (g) The Borrower shall have been suspended from membership in or ceased to be a member of the Association.
- (h) The Borrower shall have ceased to be a member of the international Monetary Fund or shall have become ineligible to use the resources of the said Fund under Section 6 of Article IV of the Articles of Agreement of said Fund or shall have been declared ineligible to use said resources under Section 5 of Article V, Section 1 of Article VI or Section 2(a) of Article XV of the Articles of Agreement of said Fund.
- (i) After the date of the Development Credit Agreement and prior to the Effective Date any event shall have occurred which would have entitled the Association to suspend the Borrower's right to make withdrawals from the Credit Account if the Development Credit Agreement had been effective on the date such event occurred.
- (j) The Borrower shall have failed to fulfill an obligation to make payment of principal, interest, service charge or any other payment required under the Development Credit Agreement or any other development credit agreement between the Borrower and the Association or under any loan agreement or guarantee agreement between the Borrower and the Bank or under any bond delivered pursuant to any such agreement, notwithstanding the fact that such payment is made by a third party.
- (k) Any other event specified in the Development Credit Agreement for the purposes of this Section shall have occurred.

The right of the Borrower to make withdrawals from the Credit Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Association shall have notified the Borrower that the right to make withdrawals has been restored, whichever is the earlier; provided, however, that in the case of any such notice of restoration, the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of the Association in respect of any other or subsequent event described in this Section.

SECTION 5.03. *Cancellation by the Association.* If (a) the right of the Borrower to make withdrawals from the Credit Account shall have been suspended with respect to any amount of the Credit for a continuous period of thirty days or (b) by the date specified in the Development Credit Agreement as the Closing Date an amount of the Credit shall remain unwithdrawn from the Credit Account, the Association may by notice to the Borrower terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Credit shall be cancelled.

SECTION 5.04. *Amounts Subject to Special Commitment Not Affected by Cancellation or Suspension by the Association.* No cancellation or suspension by the Association shall apply to amounts subject to any special commitment entered into by the Association pursuant to Section 4.02 except as expressly provided in such commitment.

SECTION 5.05. *Application of Cancellation to Maturities of the Credit.* Except as otherwise agreed between the Association and the Borrower, any cancellation shall be applied *pro rata* to the several instalments of the principal amount of the Credit.

SECTION 5.06. Effectiveness of Provisions after Suspension or Cancellation. Notwithstanding any cancellation or suspension all the provisions of the Development Credit Agreement and these Regulations shall continue in full force and effect except as in this Article specifically provided.

ARTICLE VI.—Enforceability of Development Credit Agreement; Failure to Exercise Rights; Arbitration

SECTION 6.01. Enforceability. The rights and obligations of the Association and the Borrower under the Development Credit Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any state, or political subdivision thereof, to the contrary. Neither the Association nor the Borrower shall be entitled in any proceeding under this Article to assert any claim that any provision of these Regulations or the Development Credit Agreement is invalid or unenforceable because of any provision of the Articles of Agreement of the Association or for any other reason.

SECTION 6.02. Failure to Exercise Rights. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the Development Credit Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

SECTION 6.03. Arbitration. (a) Any controversy between the parties to the Development Credit Agreement and any claim by either such party against the other arising under the Development Credit Agreement which shall not be determined by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be the Association and the Borrower.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Association; a second arbitrator shall be appointed by the Borrower; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either of the parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Umpire. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought, and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after the giving of such notice, the adverse party shall notify the party instituting the proceeding of the name of the arbitrator appointed by such adverse party.

(e) If, within 60 days after the giving of such notice instituting the arbitration proceeding, the parties shall not have agreed upon an Umpire, either party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(h) The Arbitral Tribunal shall afford to the parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Development Credit Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by the parties. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of controversies between the parties to the Development Credit Agreement and any claims by either party against the other party arising thereunder.

(k) The Association shall not be entitled to enter judgment against the Borrower upon the award, to enforce the award against the Borrower by execution or to pursue any other remedy against the Borrower for the enforcement of the award, except as such procedure may be available against the Borrower otherwise than by reason of the provisions of this Section. If, within 30 days after counterparts of the award shall be delivered to the parties, the award shall not be complied with by the Association, the Borrower may take any such action for the enforcement of the award against the Association.

(l) Service of any notice or process in connection with any proceeding under this Section or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 7.01. The parties to the Development Credit Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE VII.—Miscellaneous Provisions

SECTION 7.01. *Notices and Requests.* Any notice or request required or permitted to be given or made under the Development Credit Agreement and any agreement between the parties contemplated by the Development Credit Agreement shall be in writing. Except as otherwise provided in Section 8.03 such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in the Development Credit Agreement, or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

SECTION 7.02. *Evidence of Authority.* The Borrower shall furnish to the Association sufficient evidence of the authority of the person or persons who will sign the applications provided for in Article IV or who will, on behalf of the Borrower, take any other action or execute any other documents required or permitted to be taken or executed by the Borrower under the Development Credit Agreement, and the authenticated specimen signature of each such person.

SECTION 7.03. *Action on Behalf of the Borrower.* Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Development Credit Agreement on behalf of the Borrower may be taken or executed by the representative of the Borrower designated in the Development Credit Agreement for the purposes of this Section or any person thereto authorized in writing by him. Any modification or amplification of the provisions of the Development Credit Agreement may be agreed to on behalf of the Borrower by written instrument executed on behalf of the Borrower by the representative so designated or any person thereto authorized in writing by him; provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Development Credit Agreement. The Association may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of the Development Credit Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower thereunder.

SECTION 7.04. *Execution in Counterparts.* The Development Credit Agreement may be executed in several counterparts, each of which shall be an original. All such counterparts shall collectively be but one instrument.

ARTICLE VIII.—Effective Date; Termination

SECTION 8.01. *Conditions Precedent to Effectiveness of Development Credit Agreement.* The Development Credit Agreement shall not become effective until evidence satisfactory to the Association shall have been furnished to the Association that:

- (a) the execution and delivery of the Development Credit Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action; and
- (b) all other events specified in the Development Credit Agreement as conditions to its effectiveness have occurred.

SECTION 8.02. *Legal Opinions.* As part of the evidence to be furnished pursuant to Section 8.01, the Borrower shall furnish to the Association an opinion or opinions satisfactory to the Association of counsel acceptable to the Association showing:

- (a) that the Development Credit Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms; and
- (b) such other matters as shall be specified in the Development Credit Agreement.

SECTION 8.03. *Effective Date.* Except as shall be otherwise agreed by the Association and the Borrower, the Development Credit Agreement shall come into force and effect on the date on which the Association dispatches to the Borrower notice of its acceptance of the evidence required by Section 8.01.

SECTION 8.04. *Termination of Development Credit Agreement for Failure to Become Effective.* If the Development Credit Agreement shall not have come into force and effect by the date specified therein for the purposes of this Section, the Development Credit Agreement and all obligations of the parties thereunder shall terminate, unless the Association, after consideration of the reasons for the delay, establishes a later date for the purposes of this Section. The Association shall promptly notify the Borrower of such later date.

SECTION 8.05. *Termination of Development Credit Agreement on Full Payment.* If and when the entire principal amount of the Credit and all charges which shall have accrued on the Credit shall have been paid, the Development Credit Agreement and all obligations of the parties thereunder shall forthwith terminate.

ARTICLE IX—Definitions; Headings

SECTION 9.01. *Definitions.* Except where the context otherwise requires, the following terms have the following meanings wherever used in these Regulations or in a development credit agreement to which these Regulations have been made applicable:

1. The term "Association" means International Development Association.
2. The term "Bank" means International Bank for Reconstruction and Development.
3. The term "Development Credit Agreement" means the particular development credit agreement to which these Regulations shall have been made applicable, as amended from time to time; and such term includes these Regulations as thus made applicable, all agreements supplemental to the Development Credit Agreement and all schedules to the Development Credit Agreement.
4. The term "Credit" means the development credit provided for in the Development Credit Agreement.
5. The term "Borrower" means the member of the Association to which the Credit is granted.

6. The term "currency" means such coin or currency as at the time referred to is legal tender for the payment of public and private debts in the territories of the government referred to. Whenever reference is made to the currency of the Borrower, the term "currency" includes the currencies of all territories on whose behalf at the time referred to the Borrower has accepted membership in the Association.
7. The term "dollars" and the sign "\$" means dollars in currency of the United States of America.
8. The term "Credit Account" means the account on the books of the Association to which the amount of the Credit is to be credited as provided in Section 2.01.
9. The term "Project" means the project or projects or programme or programmes for which the Credit is granted, as described in the Development Credit Agreement and as the description thereof shall be amended from time to time by agreement between the Association and the Borrower.
10. The term "goods" means equipment, supplies and services which are required for the Project. Whenever reference is made to the cost of any goods, such cost shall be deemed to include the cost of importing such goods into the territories of the Borrower.
11. The term "Effective Date" means the date on which the Development Credit Agreement shall come into force and effect as provided in Section 8.03.
12. The term "tax" and "taxes" shall include imposts, levies, fees and duties of any nature, whether in effect at the date of the Development Credit Agreement or thereafter imposed.

References in these Regulations to Articles or Sections are to Articles or Sections of these Regulations; references in a development credit agreement to Articles or Sections are to Articles or Sections of such agreement.

SECTION 9.02. *Headings.* The headings of the Articles and Sections and the Table of Contents are inserted for convenience of reference only and are not a part of these Regulations.

Sch. 2 *I.D.A. (Agricultural Development) Credit Agreements Ratification 9999*

SCHEDULE 2

PART 1 – DEVELOPMENT CREDIT AGREEMENT.

DEVELOPMENT CREDIT AGREEMENT

Credit Number 175 PNG
DEVELOPMENT CREDIT AGREEMENT
(Agricultural Development Project)
between
INTERNATIONAL DEVELOPMENT ASSOCIATION
and
ADMINISTRATION OF THE TERRITORY OF PAPUA AND NEW GUINEA
Dated January 30, 1970.
DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated January 30, 1970, between International Development Association (hereinafter called the Association) and Administration of the Territory of Papua and New Guinea (hereinafter called the Borrower).

ARTICLE I.—General Conditions; Definitions

SECTION 1.01. The parties to this Development Credit Agreement accept all the provisions of the General Conditions Applicable to Development Credit Agreements of the Association dated January 31, 1969, with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said General Conditions Applicable to Development Credit Agreements of the Association as so modified being hereinafter called the General Conditions), namely:

(a) Paragraph 5 of Section 2.01 is deleted and the following paragraph is substituted therefor:

"5. The term 'Borrower' means the Administration of the Territory of Papua and New Guinea."

(b) Paragraph (d) of Section 6.02 is deleted and the following paragraph is substituted therefor:

"(d) An extraordinary situation shall have arisen which shall make it improbable that the Project can be carried out or that the Borrower will be able to perform its obligations under the Development Credit Agreement or there shall occur any such change in the nature and constitution of the Borrower as shall make it improbable that the Borrower will be able to carry out its obligations under the Development Credit Agreement".

(c) The words "The Borrower" are deleted in the second sentence of Section 4.01 and in paragraph (e) of Section 6.02 and the words "The Commonwealth of Australia" are substituted therefor.

(d) Paragraph (a) of Section 10.01 is deleted and the following paragraph is substituted therefor:

"(a) the execution and delivery of the Development Credit Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action, including action of the Commonwealth of Australia; and"

Section 1.02. Unless the context otherwise requires, the following terms, wherever used in this Development Credit Agreement, have the following meanings:

- (a) "NBPOD" means "New Britain Palm Oil Development Limited", a company limited by shares, established under the Borrower's Companies Ordinance 1963 and in accordance with a Memorandum of Association and Articles of Association, both dated May 12, 1967; and such term "NBPOD" also includes:
- (i) "Mosa Plantation Pty. Limited", a company limited by shares, established under the Borrower's Companies Ordinance 1963 and in accordance with a Memorandum of Association and Articles of Association, both dated May 23, 1967, which company is wholly owned by NBPOD and is sometimes hereinafter referred to as "the Plantation Company"; and
 - (ii) "Mosa Oil Mill Pty. Limited", a company limited by shares, established under the Borrower's Companies Ordinance 1963 and in accordance with a Memorandum of Association, both dated May 23, 1967, which company is wholly owned by NBPOD and is sometimes hereinafter referred to as "the Factory Company".
- (b) "PNGDB" means "The Papua and New Guinea Development Bank", an instrumentality of the Borrower established by the Papua and New Guinea Development Bank Ordinance 1965 (No. 2 of 1966).
- (c) "Management Agreement" means the Management Agreement and Amending Agreement between NBPOD, the Plantation Company and the Factory Company, of the one part, and Hattisons and Crosfield (A.N.Z.) Limited, a Company incorporated under the laws of the State of Victoria, Commonwealth of Australia, of the other part, dated May 29, 1967, as the same may be amended or supplemented from time to time.
- (d) "NBPOD Agreement" means the agreement between the Borrower and NBPOD, providing for the undertaking by NBPOD of certain obligations in respect of the carrying out of Part C of the Project and related matters, dated May 30, 1969, as the same may be amended or supplemented from time to time.
- (e) "Subsidiary Loan Agreement" means the loan agreement to be entered into between the Borrower and PNGDB, pursuant to Section 3.01(b) of this Agreement, on terms and conditions satisfactory to the Association, as the same may be amended or supplemented from time to time.
- (f) "Freight and Disease Control Subsidy" means any subsidies to reimburse ranchers for expenditures incurred in connection with the importation of livestock into the territories of the Borrower, including, but without limitation, shipping expenses, disease inspection and control at port of origin, freight to the port of destination and agent's fees, whether pursuant to the provisions of the Animal Disease and Control Ordinance 1952-1966 of the Borrower or otherwise.

ARTICLE II—The Credit

SECTION 2.01. The Association agrees to make available to the Borrower, on the terms and conditions in this Development Credit Agreement set forth or referred to, a development credit in an amount in various currencies equivalent to five million dollars (\$5,000,000).

SECTION 2.02. (a) The Association shall open a Credit Account on its books in the name of the Borrower and shall credit to such Account the amount of the Credit.

(b) The amount of the Credit may be withdrawn from the Credit Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Development Credit Agreement and in accordance with the allocation of the proceeds of the Credit set forth in Schedule 1 to this Development Credit Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement between the Association and the Borrower.

SECTION 2.03. The Borrower shall be entitled to withdraw from the Credit Account in respect of the reasonable cost of goods and services required for the Project and to be financed under this Development Credit Agreement:

- (i) such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for loans included in Category 2 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement;
- (ii) the equivalent of thirty-six per cent (36%) of such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for loans included in Category 1 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement;
- (iii) the equivalent of sixty-four per cent (64%) of such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for loans or for goods or services included in Categories 4, 5 and 6 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement;
- (iv) the equivalent of sixty-eight per cent (68%) of such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for goods or services included in Category 7 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement; and
- (v) the equivalent of eighty-four per cent (84%) of such amounts as shall have been paid (or, if the Association shall so agree, as shall be required to meet payments to be made) for goods or services included in Category 3 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement;

provided, however, that if there shall be an increase in the estimate of such payments under loans or for goods or services included in any of the Categories 1, 3, 4, 5, 6 or 7, the Association may by notice to the Borrower adjust the stated percentage applicable to any such Category as required in order that withdrawals of the amount of the Credit then allocated to any such Category and not withdrawn may continue *pro rata* with the payments remaining to be made for goods or services included in any such category.

SECTION 2.04. (a) No withdrawal from the Credit Account shall be made on account of payments for taxes imposed by the Borrower or by the Commonwealth of Australia or any of their political subdivisions on or in connection with the importation or supply of goods or services included in Category 2 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement;

(b) It is hereby agreed, pursuant to Section 5.01 of the General Conditions, that withdrawals from the Credit Account may be made on account of payments made prior to the date of this Development Credit Agreement but after July 1, 1969.

SECTION 2.05. The currency of the United States of America is hereby specified for purposes of Section 4.02 of the General Conditions.

SECTION 2.06. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

SECTION 2.07. Service and other charges shall be payable semi-annually on June 15 and December 15 in each year.

SECTION 2.08. The Borrower shall repay the principal amount of the Credit withdrawn from the Credit Account in semi-annual instalments payable on each June 15 and December 15 commencing December 15, 1979 and ending June 15, 2019, each instalment to and including the instalment payable on June 15, 1989 to be one-half of one per cent ($\frac{1}{2}$ of 1%) of such principal amount, and each instalment thereafter to be one and one-half per cent ($1\frac{1}{2}$ %) of such principal amount.

ARTICLE III.—Use of the Proceeds of the Credit

SECTION 3.01. (a) The Borrower shall apply the proceeds of the Credit in accordance with the provisions of this Development Credit Agreement to expenditures on the Project, described in Schedule 2 to this Development Credit Agreement.

(b) In the carrying out of the provisions of the foregoing paragraph (a) of this Section, the Borrower shall lend to PNGDB, pursuant to the Subsidiary Loan Agreement, the amount of the Credit allocated from time to time to Categories 1, 2 and 4 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement.

SECTION 3.02. Except as the Association shall otherwise agree, (a) the goods and services to be financed out of the proceeds of the Credit shall be procured (i) in the case of goods and services included in Category 7 of the allocation of the proceeds of the Credit referred to in Section 2.02 of this Development Credit Agreement, on the basis of international competitive bidding in accordance with the Guidelines for Procurement under World Bank Loans and IDA Credits, published by the Bank in August 1969, and (ii) in all other cases, in accordance with such methods and procedures as shall be determined by agreement between the Association and the Borrower, subject to modification by further agreement between them, and (b) contracts for the procurement of goods and services referred to in sub-paragraph (a)(i) of this Section shall be subject to the prior approval of the Association.

SECTION 3.03. Except as the Association shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Credit to be used exclusively in carrying out the Project (other than Part C.I thereof).

ARTICLE IV.—Particular Covenants

SECTION 4.01. The Borrower shall (i) carry out Parts B.2, B.3, C.2, C.3, C.4, C.5 and D of the Project, (ii) make and maintain arrangements with PNGDB under the Subsidiary Loan Agreement, satisfactory to the Association, for the carrying out by PNGDB of Parts A, B. 1 and C.6 of the Project, and (iii) make and maintain arrangements with NBPOD under the NBPOD Agreement, for the carrying out by NBPOD of Part C.1 of the Project, all with due diligence and efficiency and in conformity with sound agricultural, engineering, administrative, economic and financial practices and shall provide, and cause PNGDB and NBPOD to be provided with, promptly as needed, the funds, facilities, services and other resources required for the purpose.

SECTION 4.02(a) The Borrower shall (i) cause PNGDB punctually to perform all the covenants, agreements and obligations of PNGDB set forth in the Subsidiary Loan Agreement and (ii) take or cause to be taken all action necessary or appropriate to enable PNGDB and NBPOD to perform all covenants, agreements and obligations of PNGDB and NBPOD respectively set forth in the Subsidiary Loan Agreement and the NBPOD Agreement and shall not take or permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by PNGDB or NBPOD of such covenants, agreements and obligations.

(b) The Borrower shall exercise its rights in relation to the Subsidiary Loan Agreement and the NBPOD Agreement in such manner as to protect the interests of the Borrower and the Association; and except as the Association shall otherwise agree, the Borrower shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving any provision of the Subsidiary Loan Agreement or the NBPOD Agreement.

SECTION 4.03. The Borrower shall make arrangements satisfactory to the Association under the Subsidiary Loan Agreement for the establishment and maintenance by PNGDB of operating policies and procedures which shall be followed by PNGDB in executing the Project. The provisions of such arrangements dealing with interest rates shall not be altered so as to decrease interest rates without the prior approval of the Borrower and the Association. Otherwise, such arrangements shall be subject to modification in consultation with the borrower and the Association.

SECTION 4.04. The Borrower shall promptly take all steps required on its part under the Borrower's Land Ordinance 1962-1966 in order to acquire the ownership of fifty thousand acres of land suitable for leasing to ranchers engaged or to be engaged in the execution of the ranch development plans referred to in Part B.1(ii) of the Project.

SECTION 4.05. The Borrower in consultation with the Association shall review the Freight and Disease Control Subsidy on or before December 31, 1972 with a view to its termination by December 31, 1973 or as soon thereafter as the development of the cattle industry in the territories of the Borrower shall permit.

SECTION 4.06. In the carrying out of Parts C.2, C.3, C.4 and C.5 of the Project, the Borrower shall:

(a) grant to qualified settlers (hereinafter called the small holders) 99-year leases on Borrower's plots, each containing about 15 acres of land suitable for oil palm cultivation, under good husbandry and residence conditions and under such other conditions as shall be satisfactory to the Borrower and the Association, including, but without being limited to, the Borrower's right to terminate any such lease in the event of failure by the small holder to perform his obligations thereunder;

(b) cause the small holders to (i) plant with oil palms a minimum aggregate of about 7,800 acres not later than June 30, 1975, and to properly maintain and harvest such minimum aggregate acreage thereafter; provided, however, that if any or all of such small holders fail to plant, maintain or harvest as specified in the foregoing, the Borrower shall take steps, satisfactory to the Association, to accomplish such planting, maintaining and/or harvesting; and (ii) supply to the Factory Company, until they have fully repaid the principal of, and interest and other charges on, the loans made to them by PNGDB under Part C.6 of the Project, their entire production of fresh fruit bunch, or make alternative arrangements, satisfactory to the Association, the Borrower and NBPOD; and

(c) make arrangements satisfactory to the Association for the prompt reallocation of the Borrower's plots referred to in paragraph (a) of this Section in the case of any small holder failing to execute a lease within three months from the date such lease is offered by the Borrower to such small holder.

SECTION 4.07. Unless the Association shall otherwise agree, the Borrower shall make and maintain arrangements, satisfactory to the Association, with NBPOD under the NBPOD Agreement, for:

(a) the Plantation Company to grow or import high-yield oil palm seeds and to sell adequate quantities of seedlings therefrom to the small holders to be settled under Part C of the Project; and

(b) the Factory Company to (i) accept, process and market for a period of twenty-five years the fresh fruit bunch production of not less than 7,840 acres of oil palms planted by such small holders at a purchase price to be established in accordance with a formula to be agreed from time to time between the Borrower and NBPOD in consultation with the Association, on the basis set forth in Schedule 3 to this Development Credit Agreement and (ii) withhold, for PNGDB's account, from any amounts payable to such small holders on account of such production such part thereof as shall be established by PNGDB as amortization and interest on PNGDB loans made under Part C.6 of the Project, such withholding not to exceed one-half of any amounts so payable to such small holders.

SECTION 4.08. In the event that the Factory Company's processing and marketing facilities shall not be available as provided in Section 4.07(b)(i) of this Development Credit Agreement, the Borrower shall make arrangements, satisfactory to the Association, providing for alternative fresh fruit bunch processing and marketing facilities.

SECTION 4.09. If, at any time, the Borrower, or the Governor-General of the Commonwealth of Australia, pursuant to Sections 65(b) and 78 of the Papua and New Guinea Act 1949-1968 of the Commonwealth of Australia, shall enact or amend, or propose to enact or amend, any regulations applicable in the territories of the Borrower, on the marketing of coconut, copra, cattle, palm oil, palm kernels or derivatives thereof, the Borrower shall promptly inform the Association and exchange views with it thereon.

SECTION 4.10. The Borrower shall adequately maintain or cause to be maintained all works, facilities and equipment related to the Project and from time to time shall make or cause to be made all necessary renewals and repairs thereof in accordance with sound agricultural and engineering practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

SECTION 4.11. The Borrower undertakes to insure or cause to be insured, or make other provisions satisfactory to the Association for the insurance of, the imported goods to be financed out of the proceeds of the Credit or out of the proceeds of PNGDB loans made under Parts A, B.1 and C.6 of the Project against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

SECTION 4.12. The Borrower shall: (a) furnish or cause to be furnished to the Association, promptly upon their preparation, the reports, plans, specifications, contract documents and work schedules for the Project and any material modifications subsequently made therein, in such detail as the Association shall reasonably request; and (b) not start construction of Part D of the Project until such plans, specifications, contract documents and work schedules for Part D of the Project have been approved by the Association.

SECTION 4.13. (a) The Borrower shall maintain or cause to be maintained records adequate to identify the goods financed out of the proceeds of the Credit and out of the proceeds of PNGDB loans made under Parts A, B.1 and C.6 of the Project, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations, administration and financial condition, in respect of the Project, of any department or agency of the Borrower (including PNGDB) responsible for the carrying out of the Project or any part thereof or the maintenance of all works, facilities and equipment related thereto and shall enable the Association's representatives to inspect the Project, the goods financed out of the proceeds of the Credit and out of the proceeds of PNGDB loans made under Parts A, B.1 and C.6 of the Project, and any relevant records and documents.

(b) The Borrower shall at all times maintain auditing arrangements satisfactory to the Association, with regard to all expenditures made in connection with Parts A, B, C.2 through 6 and D of the Project.

SECTION 4.14. (a) The Borrower and the Association shall cooperate fully to ensure that the purposes of the Credit will be accomplished. To that end, the Borrower and the Association shall from time to time at the request of either party, exchange views through their representatives with regard to, the performance by the Borrower of its obligations under this Development Credit Agreement, the administration, operations and financial condition of any department or agency of the Borrower (including PNGDB) responsible for the carrying out of the Project or any part thereof or the maintenance of all works, facilities and equipment related thereto, and other matters relating to the purposes of the Credit.

(b) The Borrower shall furnish to the Association all such information as the Association shall reasonably request concerning, the expenditure of the proceeds of the Credit and of the proceeds of PNGDB loans made under Parts A, B.1 and C.6 of the Project, the goods financed out of such proceeds, the Project, and the administration, operations and financial condition of any department or agency of the Borrower (including PNGDB) responsible for the carrying out of the Project or any part thereof or the maintenance of all works, facilities and equipment related thereto.

(c) The Borrower shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit or the maintenance of the service thereof or the performance by the Borrower, PNGDB or NBPOD of their obligations under this Development Credit Agreement, the Subsidiary Loan Agreement and the NBPOD Agreement. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower and, to the extent possible, the international balance of payments position of the Borrower.

(d) The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to visit any part of the territories of the Borrower for purposes related to the Credit.

SECTION 4.15. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of the Borrower or laws in effect in its territories.

SECTION 4.16. This Development Credit Agreement shall be free from any taxes that shall be imposed under the laws of the borrower or laws in effect in its territories on or in connection with the execution, delivery or registration thereof.

ARTICLE V.—Remedies of the Association

SECTION 5.01. If any event specified in Section 7.01 of the General Conditions or in Section 5.02 of this Development Credit Agreement shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Association, at its option, may declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal, together with such charges, shall become due and payable immediately, anything in this Development Credit Agreement to the contrary notwithstanding.

SECTION 5.02. For the purpose of Section 7.01 of the General Conditions, the following additional events are specified, namely:

any event specified in paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e) or paragraph (f) of Section 5.03 of this Development Credit Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower.

SECTION 5.03. For the purpose of Section 6.02 of the General Conditions, the following additional events are specified:

(a) Any provision of (i) the Palm Oil industry (New Britain Agreement) Ordinance 1967 (No. 23 of 1967) of the Borrower including the Schedule thereto; or (ii) the Memoranda and Articles of Association, referred to in Section 1.02(a) of this Development Credit Agreement, of New Britain Palm Oil Development Limited, the Plantation Company or the Factory Company; or (iii) the Management Agreement, shall have been amended, suspended or abrogated so as to adversely affect the Project or the performance by NBPOD of its obligations under the NBPOD Agreement.

(b) Any provision of the Papua and New Guinea Development Bank Ordinance 1965 (No. 2 of 1966) of the Borrower shall have been amended, suspended or abrogated so as to adversely affect the Project, the operations or financial condition of PNGDB or the performance by PNGDB of its obligations under the Subsidiary Loan Agreement.

(c) Any provision of the Subsidiary Loan Agreement shall have been amended without prior agreement of the Association.

(d) NBPOD shall have failed to perform any covenant or agreement of NBPOD under the NBPOD Agreement.

(e) PNGDB shall have failed to perform any covenant or agreement of PNGDB under the Subsidiary Loan Agreement.

(f) A default shall have occurred in the performance of any covenant or agreement on the part of the Borrower under the NBPOD Agreement or the Subsidiary Loan Agreement.

(g) An extraordinary situation shall have arisen which shall make it improbable that NBPOD or PNGDB will be able to perform their respective obligations under the NBPOD Agreement or the Subsidiary Loan Agreement.

ARTICLE VI.—Effective Date; Termination

SECTION 6.01. The following events are specified as additional conditions to the effectiveness of this Development Credit Agreement within the meaning of Section 10.01(b) of the General Conditions:

- (a) the NBPOD Agreement has been amended so as to be in accordance with this Development Credit Agreement, in a manner satisfactory to the Association, the Borrower and NBPOD and the execution and delivery of such amendment on behalf of the Borrower and NBPOD have been duly authorized or ratified by all necessary corporate and governmental action; and
- (b) the execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and PNGDB have been duly authorized or ratified by all necessary corporate and governmental action.

SECTION 6.02. The following are specified as additional matters, within the meaning of Section 10.02(b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

- (a) that the Ordinance of the Borrower authorizing or ratifying this Development Credit Agreement has been laid before each House of Parliament of the Commonwealth of Australia;
- (b) that the amendment to the NBPOD Agreement referred to in Section 6.01(a) of this Development Credit Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and NBPOD and constitutes a valid and binding obligation of the Borrower and NBPOD in accordance with its terms; and
- (c) that the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and PNGDB and constitutes a valid and binding obligation of the Borrower and PNGDB in accordance with its terms.

SECTION 6.03. The date of 29th May, 1970, is hereby specified for the purposes of Section 10.04 of the General Conditions.

ARTICLE VII.—Miscellaneous

SECTION 7.01. The Closing Date shall be June 30, 1974 or such other date as may from time to time be agreed between the Borrower and the Association.

SECTION 7.02. The Administrator of Papua and New Guinea is designated for the purposes of Section 9.03 of the General Conditions.

SECTION 7.03. The following addresses are specified for the purposes of Section 9.01 of the General Conditions:

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America
Cable Address:
INDEVAS
Washington, D.C.

For the Borrower:

His Honour
The Administrator of Papua and New Guinea
Port Moresby
Papua and New Guinea
Cable Address:
ADMIN
Port Moresby

SECTION 7.04. Part A(v) of Schedule 2 to the Development Credit Agreement between the Association and the Borrower, dated January 21, 1969, is hereby deleted.

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By (S) Simon Aldewereld

Vice President

ADMINISTRATION OF THE TERRITORY PAPUA AND NEW GUINEA By

(S) Gordon A. Low

Authorized Representative

SCHEDULE 1.—Allocation of the Proceeds of the Credit

Category.	Amounts Expressed in U.S. Dollar Equivalent.
<i>Coconuts</i>	
1. Long-term PNGDB loans to coconut planters	300,000
<i>Livestock</i>	
2. Long-term PNGDB loans to ranchers	1,075,000
3. On-farm investment, including livestock and educational facilities and freight and disease control, in Bottowet's ranches	590,000
<i>Oil Palmes</i>	
4. Long-term PNGDB loans to small-holders	940,000
<i>Bottowet's services to smallholders:</i>	
5. Land subdivision and crop extraction tools	640,000
6. Agricultural extension services	360,000
7. Kiriabe Wharf	680,000
8. Unallocated	415,000
TOTAL	5,000,000

Reallocation upon Change in Cost Estimates

1. If the estimate of the cost of the items included in Categories 1 to 7 shall decrease, the amount of the Credit then allocated to, and no longer required for, such Category will be reallocated by the Association to Category 8.

2. If the estimate of the cost of the items included in any of the Categories 1 to 7 shall increase, an amount equal to such increase in the case of Category 2, or in the case of Categories 1, 3, 4, 5, 6 and 7 an amount equal to 36%, 84%, 64%, 64%, 64% and 68%, respectively, of such increase, will be allocated by the Association, at the request of the Bottowet, to such Category from Category 8, subject, however, to the requirements for contingencies, as determined by the Association, in respect of the cost of the items in the other Categories.

SCHEDULE 2.—Description of Project

The Project consists of:

Part A: Coconuts.

Provision by PNGDB of long-term loans to about 25 planters to help finance planting and replanting coconuts on about 10,000 acres of existing coconut estates.

Part B: Cattle Ranching

1. Provision by PNGDB of long-term loans to about 15 ranches to help finance ranch development plans for (i) the improvement and stocking of about 100,000 acres on partly developed ranches and (ii) the development and stocking of about 50,000 acres of additional grazing land.
2. Completion of development of the Bottower's ranches at Baiyet Rivet and Utimo, to produce cattle for sale to native ranches.
3. Provision by the Bottower of cattle management training to native ranches, including the construction, furnishing and equipping of educational facilities at two of the Bottower's ranches and extension of similar facilities in the Bottower's ranch at Baiyet Rivet.

Part C: Oil Palms.

1. Expansion of the Factory Company's oil mill capacity to process the fresh fruit bunch production of not less than 12,480 acres of oil palms planted by smallholders not later than June 30, 1974.
2. Settlement by the Bottower, before December 31, 1972, of about 980 smallholders on about 14,700 acres in two blocks adjacent to the Plantation Company's nucleus estate and in a third block within 10 miles of Mosa in the West New Britain District and, within 3 years after each settlement, clearing and planting with oil palms of 8 acres on each smallholder plot.
3. Provision by the Bottower of adequate educational and health services to the said smallholders.
4. Provision by the Bottower of adequate extension services, including supervision, for oil palm cultivation and harvesting by the said smallholders.
5. Construction by the Bottower of all-weather crop extraction roads linking each smallholder plot with the Factory Company's oil mill.
6. Provision by PNGDB of long-term loans to the said smallholders.

Part D: Kimbe Wharf.

Construction by the Bottower of an overseas wharf at Kimbe in the West New Britain District, capable of handling the export by ocean-going freighters of the Factory Company's oil mill production, to be operative not later than June 30, 1971, and of an all-weather road and associated bridges linking the said wharf and oil mill.

SCHEDULE 3

Basic principles to be followed by NBPOD and the Bottower to formulate the purchase price of fresh fruit bunch, payable by NBPOD to the smallholders:

- (a) Each calendar month, the Bottower will gazette a local f.o.b. equivalent of the European main port c.i.f. price for palm oil and palm kernels as of an agreed date in the preceding month, less agreed freight, insurance, commissions, normal wastage and overseas port rates.
- (b) An agreed deduction will be made for wharf handling charges and for running NBPOD's oil pumping and storage facilities at the wharf to determine the "in-tank" value of palm oil and the "in-store" value of palm kernels.

- (c) To cover the cost of financing bulk storage, a deduction of three months' simple interest at 0.5 per cent per annum over NBPOD's bankers' current lending rate on commercial advances will be allowed on the said "in-tank" and "in-store" values of oil and kernels.
- (d) An agreed deduction will be made for transportation of palm oil and palm kernels from factory to wharf and for bulk handling, bagging, handling and storage of palm kernels to determine the factory tank value of palm oil and the factory store value of naked palm kernels.
- (e) The ex-factory value of the derivatives of a ton of smallholders' fresh fruit bunch will be derived from the factory tank value of palm oil and the factory store value of naked palm kernels by:
 - (i) first, deducting an agreed amount, per ton of palm oil and per ton of naked palm kernels, in lieu of profit, depreciation and working capital charges and standard company tax;
 - (ii) second, deducting any levies, cesses, export or other charges or duties imposed by any taxing authority of the Borrower, other than standard company tax; and then
 - (iii) applying rates of extraction of oil and kernels from smallholders' fresh fruit bunch, as agreed on the basis of monthly factory tests satisfactory to the Borrower.
- (f) The purchase price of fresh fruit bunch payable by NBPOD to the smallholders shall be the ex-factory value of the derivatives of a ton of smallholders' fresh fruit bunch less the following agreed charges:
 - (i) agreed factory operating costs, including management, but excluding depreciation and working capital charges; and
 - (ii) transport costs for collection and delivery to the factory of smallholders fresh fruit bunch, if this service is performed by NBPOD.

Dated January 31, 1969

PART 2 – GENERAL CONDITIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS.

GENERAL CONDITIONS

SECTION 1.01. *Application of General Conditions.* These General Conditions set forth certain terms and conditions generally applicable to development credits granted by the Association to its members and shall apply to any development credit agreement providing for any such development credit to such extent and subject to such modifications as shall be provided in such agreement.

SECTION 1.02. *Inconsistency with Development Credit Agreements.* If any provision of a development credit agreement is inconsistent with a provision of these General Conditions, the provision of the agreement shall govern.

ARTICLE II—Definitions; Headings

SECTION 2.01. *Definitions.* The following terms have the following meanings whenever used in these General Conditions:

1. The term Association means International Development Association.
2. The term Bank means International Bank for Reconstruction and Development.
3. The term Development Credit Agreement means the particular development credit agreement to which these General Conditions shall have been made applicable, as such agreement may be amended from time to time, and such term includes these General Conditions as thus made applicable, all agreements supplemental to the Development Credit Agreement and all schedules to the Development Credit Agreement.
4. The term Credit means the development credit provided for in the Development Credit Agreement.
5. The term Borrower means the member of the Association to which the Credit is granted.
6. The term currency of a country means such coin or currency as at the time referred to is legal tender for the payment of public and private debts in that country.
7. The term dollars and the sign \$ mean dollars in currency of the United States of America.
8. The term Credit Account means the account on the books of the Association to which the amount of the Credit is to be credited as provided in Section 3.01.
9. The term Project means the project or projects or program or programs for which the Credit is granted, as described in the Development Credit Agreement and as the description thereof shall be amended from time to time by agreement between the Association and the Borrower.
10. The term Effective Date means the date on which the Development Credit Agreement shall come into force and effect as provided in Section 10.03.
11. The terms tax and taxes include imposts, levies, fees and duties of any nature, whether in effect at the date of the Development Credit Agreement or thereafter imposed.
12. The term Closing Date means the date specified in the Development Credit Agreement as of which the Association may by notice to the Borrower terminate the right of the Borrower to withdraw from the Credit Account any amount theretofore unwithdrawn.

SECTION 2.02. *References.* References in these General Conditions to Articles or Sections are to Articles or Sections of these General Conditions.

SECTION 2.03. *Headings.* The headings of the Articles and Sections and the Table of Contents are inserted for convenience of reference only and are not a part of these General Conditions.

ARTICLE III.—Credit Account; Service Charges; Repayment; Place of Payment

SECTION 3.01. *Credit Account.* The amount of the Credit shall be credited to a Credit Account which the Association shall open on its books in the name of the Borrower. The amount of the Credit may be withdrawn from the Credit Account as provided in the Development Credit Agreement and in these General Conditions.

SECTION 3.02. *Service Charges.* A service charge at the rate specified in the Development Credit Agreement shall be payable on the principal amount of the Credit withdrawn from the Credit Account and outstanding from time to time. A service charge at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) per annum shall be payable on the principal amount of any special commitment entered into by the Association pursuant to Section 5.02 and outstanding from time to time.

SECTION 3.03. *Computation of Service Charges.* Service charges shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 3.04. *Repayment.* (a) The principal amount of the Credit withdrawn from the Credit Account shall be repayable in installments as provided in the Development Credit Agreement.

(b) The Borrower shall have the right to repay in advance of maturity all or any part of the principal amount of one or more maturities of the Credit specified by the Borrower.

SECTION 3.05. *Place of Payment.* The principal of, and service charges on, the Credit shall be paid at such places as the Association shall reasonably request.

ARTICLE IV.—Currency Provisions

SECTION 4.01. *Currencies in which Withdrawals are to be Made.* Except as the Borrower and the Association shall otherwise agree, the cost of goods and services financed out of the proceeds of the Credit shall be paid in the respective currencies of the countries from which such goods and services are acquired. Withdrawals from the Credit Account shall be made either in the respective currencies in which the cost of goods and services has been paid or is payable or in dollars, as the Association may from time to time elect; except that where withdrawals may be made in respect of expenditures in the currency of the Borrower, such withdrawals shall be made in such currency or currencies as the Association shall from time to time reasonably select.

SECTION 4.02. *Currencies in which Principal and Service Charges are Payable.* (a) The Borrower shall pay the principal amount of, and service charges on, the Credit in the currency specified in the Development Credit Agreement for the purposes of this Section or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to paragraphs (c) or (e) of this Section.

(b) For the purposes of this Section, the term "eligible currency" means the currency of any member of the Association which the Association from time to time determines to be freely convertible or freely exchangeable by the Association for currencies of other members of the Association for the purposes of its operations.

(c) If at any time the Borrower shall desire that, commencing with a given future payment date, such principal and service charges shall be payable in an eligible currency other than that so specified or than one theretofore designated pursuant to this paragraph (c) or selected pursuant to paragraph (e) below, the Borrower shall deliver to the Association, not less than three nor more than five months prior to such payment date, a notice in writing to that effect and designating such other eligible currency, whereupon the currency so designated shall, commencing with such payment date, be the currency in which such principal and service charges shall be payable.

(d) If at any time the Association shall determine that a currency payable pursuant to the provisions of this Section is not an eligible currency, the Association shall so notify the Borrower in writing and furnish the Borrower with a list of eligible currencies.

(e) Within thirty days from the date of such notice, the Borrower shall notify the Association in writing of its selection from such list of a currency in which payment shall be made, failing which the Association shall select a currency for such purpose from such list, whereupon, in either case, such principal and service charges shall, commencing with the payment date next succeeding such thirty-day period, be payable in the currency so selected.

SECTION 4.03. *Amount of Repayment.* The principal amount of the Credit repayable shall be the equivalent (determined as of the date, or the respective dates, of repayment) of the value of the currency or currencies withdrawn from the Credit Account expressed in terms of United States dollars of the weight and fineness in effect on January 1, 1960, determined as of the respective dates of withdrawal; provided, however:

- (i) that if a uniform proportionate reduction in the par value of the currencies of all its members is made by the International Monetary Fund, the principal amount of the Credit then outstanding and repayable after such reduction shall be reduced by the same proportion; and
- (ii) that if the Association shall at any time determine that there has been a substantial reduction in the par value or the foreign exchange value of one or more major currencies of members of the Association in terms of United States dollars of the weight and fineness in effect on January 1, 1960, which in the opinion of the Association shall justify a general reduction in the principal amount repayable on development credits then outstanding, the principal amount of the Credit then outstanding and repayable after such determination shall be reduced by such proportion as the Association shall decide.

SECTION 4.04. *Purchase of Currency of Withdrawal with Other Currency.* If withdrawal shall be made in any currency which the Association shall have purchased with another currency for the purpose of such withdrawal, the portion of the Credit so withdrawn shall be deemed to have been withdrawn from the Credit Account in such other currency for the purposes of Section 4.03.

SECTION 4.05. *Valuation of Currencies.* Whenever it shall be necessary for the purpose of the Development Credit Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Association.

SECTION 4.06. *Exchange Restrictions.* Any payment required under the Development Credit Agreement to be made to the Association in the currency of any country shall be made in such manner, and in currency acquired in such manner, as shall be permitted under the laws of such country for the purpose of making such payment and effecting the deposit of such currency to the account of the Association with a depository of the Association in such country.

ARTICLE V.—Withdrawal of Proceeds of Credits

SECTION 5.01. *Withdrawal from the Credit Account.* The Borrower shall be entitled to withdraw from the Credit Account amounts expended or, if the Association shall so agree, amounts to be expended for the Project in accordance with the provisions of the Development Credit Agreement and of these General Conditions. Except as shall be otherwise agreed between the Borrower and the Association no withdrawals shall be made on account of (a) expenditure prior to the date of the Development Credit Agreement or (b) expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories.

SECTION 5.02. *Special Commitments by the Association.* Upon the Borrower's request and upon such terms and conditions as shall be agreed upon between the Association and the Borrower, the Association may enter into special commitments in writing to pay amounts to the Borrower or others in respect of the cost of goods and services to be financed under the Development Credit Agreement notwithstanding any subsequent suspension or cancellation.

SECTION 5.03. *Applications for Withdrawal or for Special Commitment.* When the Borrower shall desire to withdraw any amount from the Credit Account or to request the Association to enter into a special commitment pursuant to Section 5.02, the Borrower shall deliver to the Association a written application in such form, and containing such statements and agreements, as the Association shall reasonably request. Applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall be made promptly in relation to expenditures for the Project.

SECTION 5.04. *Evidence of Authority to Sign Applications for Withdrawal.* The Borrower shall furnish to the Association evidence of the authority of the person or persons authorized to sign applications for withdrawals and the authenticated specimen signature of any such person.

SECTION 5.05. *Supporting Evidence.* The Borrower shall furnish to the Association such documents and other evidence in support of the application as the Association shall reasonably request, whether before or after the Association shall have permitted any withdrawal requested in the application.

SECTION 5.06. *Sufficiency of Applications and Documents.* Each application and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Association that the Borrower is entitled to withdraw from the Credit Account the amount applied for and that the amount to be withdrawn from the Credit Account is to be used only for the purposes specified in the Development Credit Agreement.

SECTION 5.07. *Payment by the Association.* Payment by the Association of amounts which the Borrower is entitled to withdraw from the Credit Account shall be made to or on the order of the Borrower.

ARTICLE VI.—Cancellation and Suspension

SECTION 6.01. *Cancellation by the Borrower.* The Borrower may by notice to the Association cancel any amount of the Credit which the Borrower shall not have withdrawn prior to the giving of such notice, except that the Borrower may not so cancel any amount of the Credit in respect of which the Association shall have entered into a special commitment pursuant to Section 5.02.

SECTION 6.02. *Suspension by the Association.* If any of the following events shall have occurred and be continuing, the Association may by notice to the Borrower suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account:

- (a) The Borrower shall have failed to make payment (notwithstanding the fact that such payment has been made by a third party) of principal, interest, service charges or any other payment required under: (i) the Development Credit Agreement, or (ii) any other development credit agreement with the Association, or (iii) any loan agreement or guarantee agreement with the Bank or any bond or any similar instrument delivered pursuant to any such agreement.
- (b) The Borrower shall have failed to perform any other obligation under the Development Credit Agreement.
- (c) (i) The Association or the Bank shall have suspended in whole or in part the right of the Borrower to make withdrawals under any development credit agreement with the Association or any loan agreement with the Bank because of a failure by the Borrower to perform any of its obligations under such agreement; or (ii) the Bank shall have suspended in whole or in part the right of the Borrower to make withdrawals under any loan agreement with the Bank guaranteed by the Borrower because of a failure by the Borrower to perform any of its obligations under such agreement.
- (d) An extraordinary situation shall have arisen which shall make it improbable that the Project can be carried out or that the Borrower will be able to perform its obligations under the Development Credit Agreement.
- (e) The Borrower: (i) shall have been suspended from membership in or ceased to be a member of the Association, or (ii) shall have ceased to be a member of the International Monetary Fund or shall have become, or shall have been declared ineligible to use the resources of said Fund.

- (f) After the date of the Development Credit Agreement and prior to the Effective Date any event shall have occurred which would have entitled the Association to suspend the Borrower's right to make withdrawals from the Credit Account if the Development Credit Agreement had been effective on the date such event occurred.
- (g) A representation made by the Borrower, in or pursuant to the Development Credit Agreement, or any statement furnished in connection therewith, and intended to be relied upon by the Association in making the Credit shall have been incorrect in any material aspect.
- (h) Any event specified in the Development Credit Agreement for the purposes of Section 7.01 shall have occurred.
- (i) Any other event specified in the Development Credit Agreement for the purposes of this Section shall have occurred.

The right of the Borrower to make withdrawals from the Credit Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Association shall have notified the Borrower that the right to make withdrawals has been restored, whichever is the earlier; provided, however, that in the case of any such notice of restoration, the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of the Association in respect of any other or subsequent event described in this Section.

SECTION 6.03. *Cancellation by the Association.* If (a) the right of the Borrower to make withdrawals from the Credit Account shall have been suspended with respect to any amount of the Credit for a continuous period of thirty days, or (b) at any time the Association determines, after consultation with the Borrower, that an amount of the Credit will not be required to finance the Project's costs to be financed out of the proceeds of the Credit, or (c) after the Closing Date an amount of the Credit shall remain unwithdrawn from the Credit Account, the Association may by notice to the Borrower terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Credit shall be cancelled.

SECTION 6.04. *Amounts Subject to Special Commitment Not Affected by Cancellation or Suspension by the Association.* No cancellation or suspension by the Association shall apply to amounts subject to any special commitment entered into by the Association pursuant to Section 5.02 except as expressly provided in such commitment.

SECTION 6.05. *Application of Cancellation to Maturities of the Credit.* Except as otherwise agreed between the Association and the Borrower, any cancellation shall be applied *pro rata* to the several instalments of the principal amount of the Credit maturing after the date of such cancellation.

SECTION 6.06. *Effectiveness of Provisions after Suspension or Cancellation.* Notwithstanding any cancellation or suspension, all the provisions of the Development Credit Agreement and these General Conditions shall continue in full force and effect except as in this Article specifically provided.

ARTICLE VI.—Acceleration of Maturity

SECTION 7.01. *Events of Default.* If any of the following events shall occur and shall continue for the period specified, if any, then at any subsequent time during the continuance thereof, the Association, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal, together with such charges, shall become due and payable immediately:

- (a) A default shall occur in the payment of principal or any other payment required under the Development Credit Agreement and such default shall continue for a period of thirty days.
- (b) A default shall occur in the payment of principal or interest or any other payment required under any other development credit agreement between the Association and the Borrower or under any loan agreement or under any guarantee agreement between the Borrower and the Bank or under any bond or similar instrument delivered pursuant to any such agreement and such default shall continue for a period of thirty days.
- (c) A default shall occur in the performance of any other obligation on the part of the Borrower under the Development Credit Agreement, and such default shall continue for a period of sixty-days after notice thereof shall have been given by the Association to the Borrower.
- (d) Any other event specified in the Development Credit Agreement for the purposes of this Section shall have occurred and shall continue for the period if any, specified in the Development Credit Agreement.

ARTICLE VIII.—Enforceability of Development Credit Agreement; Failure to Exercise Rights, Arbitration

SECTION 8.01. *Enforceability.* The rights and obligations of the Association and the Borrower under the Development Credit Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any state, or political subdivision thereof, to the contrary. Neither the Association nor the Borrower shall be entitled in any proceeding under this Article to assert any claim that any provision of these General Conditions or the Development Credit Agreement is invalid or unenforceable because of any provision of the Articles of Agreement of the Association or for any other reason.

SECTION 8.02. *Failure to Exercise Rights.* No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the Development Credit Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

SECTION 8.03. *Arbitration.* (a) Any controversy between the parties to the Development Credit Agreement and any claim by either such party against the other arising under the Development Credit Agreement which shall not be determined by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

- (b) The parties to such arbitration shall be the Association and the Borrower.

- (c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Association; a second arbitrator shall be appointed by the Borrower; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either of the parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Umpire. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.
- (d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought, and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after the giving of such notice, the other party shall notify to the party instituting the proceeding the name of the arbitrator appointed by such other party.
- (e) If, within 60 days after the giving of such notice instituting the arbitration proceeding, the parties shall not have agreed upon an Umpire, either party may request the appointment of an Umpire as provided in paragraph (c) of this Section.
- (f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.
- (g) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.
- (h) The Arbitral Tribunal shall afford to the parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Development Credit Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

- (i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by the parties. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.
- (j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of controversies between the parties to the Development Credit Agreement and any claims by either party against the other party arising thereunder.
- (k) The Association shall not be entitled to enter judgment against the Borrower upon the award, to enforce the award against the Borrower by execution or to pursue any other remedy against the Borrower for the enforcement of the award except as such procedure may be available against the Borrower otherwise than by reason of the provisions of this Section. If, within 30 days after counterparts of the award shall be delivered to the parties, the award shall not be complied with by the Association, the Borrower may take any such action for the enforcement of the award against the Association.
- (l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 9.01. The parties to the Development Credit Agreement waive any and ALL OTHER REQUIREMENTS FOR THE SERVICE OF ANY SUCH NOTICE OR PROCESS.

ARTICLE IX—Miscellaneous Provisions

SECTION 9.01. Notices and Requests. Any notice or request required or permitted to be given or made under the Development Credit Agreement and any agreement between the parties contemplated by the Development Credit Agreement shall be in writing. Except as otherwise provided in Section 10.03 such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in the Development Credit Agreement, or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

SECTION 9.02. Evidence of Authority. The Borrower shall furnish to the Association sufficient evidence of the authority of the person or persons who will, on behalf of the Borrower, take any action or execute any documents required or permitted to be taken or executed by the Borrower under the Development Credit Agreement, and the authenticated specimen signature of each such person.

SECTION 9.03. *Action on Behalf of the Borrower.* Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Development Credit Agreement on behalf of the Borrower may be taken or executed by the representative of the Borrower designated in the Development Credit Agreement for the purposes of this Section or any person thereto authorized in writing by him. Any modification or amplification of the provisions of the Development Credit Agreement may be agreed to on behalf of the Borrower by written instrument executed on behalf of the Borrower by the representative so designated or any person thereto authorized in writing by him; provided, that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Development Credit Agreement. The Association may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of the Development Credit Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower hereunder.

SECTION 9.04. *Execution in Counterparts.* The Development Credit Agreement may be executed in several counterparts, each of which shall be an original.

ARTICLE X—Effective Date; Termination

SECTION 10.01. *Conditions Precedent to Effectiveness of Development Credit Agreement.* The Development Credit Agreement shall not become effective until evidence satisfactory to the Association shall have been furnished to the Association that:

- (a) the execution and delivery of the Development Credit Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action; and
- (b) all other events specified in the Development Credit Agreement as conditions to its effectiveness have occurred.

SECTION 10.02. *Legal Opinions.* As part of the evidence to be furnished pursuant to Section 10.01, the Borrower shall furnish to the Association an opinion or opinions satisfactory to the Association of counsel acceptable to the Association showing:

- (a) that the Development Credit Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms; and
- (b) such other matters as shall be specified in the Development Credit Agreement.

SECTION 10.03. *Effective Date.* Except as shall be otherwise agreed by the Association and the Borrower, the Development Credit Agreement shall come into force and effect on the date on which the Association dispatches to the Borrower notice of its acceptance of the evidence required by Section 10.01.

SECTION 10.04. *Termination of Development Credit Agreement for failure to Become Effective.* If the Development Credit Agreement shall not have come into force and effect by the date specified therein for the purposes of this Section, the Development Credit Agreement and all obligations of the parties thereunder shall terminate, unless the Association, after consideration of the reasons for the delay, establishes a later date for the purposes of this Section. The Association shall promptly notify the Borrower of such later date.

SECTION 10.05. *Termination of Development Credit Agreement on Full Payment.* If and when the entire principal amount of the Credit withdrawn from the Credit Account and all charges which shall have accrued on the Credit shall have been paid, the Development Credit Agreement and all obligations of the parties thereunder shall forthwith terminate.

Office of Legislative Counsel, PNG