

CONDITIONAL LOAN AGREEMENT

Dated 14<sup>th</sup> March 2003  
for  
a maximum of USD 10,000,000  
between

(1) The Trustees, SG Hambros Trust Company Ltd.  
Minimax Ltd. and  
MC Trust Ltd,

acting on behalf of the Private Infrastructure Development Group Trust (the PIDG Trust)

as Borrower

and

(2) The Government of Switzerland  
represented by SECO  
the Swiss State Secretariat for Economic Affairs

as Lender

TABLE OF CONTENTS

1. DEFINITIONS..... 2

2. AMOUNT AND USE OF THE LOAN AND THE SPECIAL GRANT ..... 5

3. CONDITIONS PRECEDENT ..... 5

4. DISBURSEMENTS..... 7

5. REPAYMENT OF THE LOAN..... 7

6. INTEREST ..... 8

7. PAYMENTS AND CURRENCY ..... 8

8. REPRESENTATIONS AND WARRANTIES ..... 9

9. COVENANTS..... 10

10. EVENTS OF DEFAULT ..... 11

11. IRREGULARITIES..... 12

12. NOTICES AND DEMANDS ..... 12

13. ASSIGNMENTS..... 13

14. NO WAIVER..... 13

15. FORCE MAJEURE, LIABILITY AND INDEMNIFICATION ..... 13

16. MISCELLANEOUS..... 14

17. GOVERNING LAW AND JURISDICTION..... 14

SCHEDULES

- 1. Form of Disbursement Request

**THIS CONDITIONAL LOAN AGREEMENT** hereinafter called the "Agreement", as the same may be amended from time to time, is made between

- (1) The Trustees represented by SG Hambros Trust Company Ltd 41 Tower Hill London EC3N 4SG England MC Trust Ltd., P O Box 799, 10 Frère Felix de Valois Street, Port Louis, Mauritius and Minimax Ltd., P O Box 799, 10 Frère Felix de Valois Street, Port Louis, Mauritius, acting on behalf of the Private Infrastructure Development Group Trust (hereinafter referred to as the "PIDG Trust" or "the Borrower" and each a "Trustee"); and
- (2) The Government of Switzerland represented by SECO - The Swiss State Secretariat for Economic Affairs, Effingerstrasse 1, CH-3003, Berne, Switzerland (hereinafter referred to as the "Lender" or "SECO").

WHEREAS:-

The Government of the United Kingdom and Northern Ireland, acting through the Secretary of State for International Development at the Department for International Development (hereinafter referred to as "DFID"), the Swedish Government, acting through Sida, the Netherlands Minister for Development Co-Operation (hereinafter referred to as the "Netherlands Minister") and the Swiss State Secretariat for Economic Affairs of the Government of the Confederation of Switzerland (hereinafter referred to as "SECO"), (jointly hereinafter referred to as the "Initial Donors" and each as an "Initial Donor"), in December 2001 and January 2002 exchanged letters of intent and subsequently executed a Memorandum of Understanding, dated 14<sup>th</sup> March 2003 for the establishment of the Private Infrastructure Development Group, (hereinafter referred to as "PIDG") and a special purpose trust in Mauritius, the PIDG Trust as a vehicle for co-ordinating the application of PIDG's funds (hereinafter referred to as the "PIDG Constitution"). PIDG aims to facilitate the provision of infrastructure needed to eliminate poverty in developing countries by encouraging long-term private investment, with particular importance attached to the provision of adequate and affordable services to poorer sections of society, having regard to economic, ethical, environmental, social development and poverty concerns. The principles and rules relating to the cooperation within PIDG are set out in the PIDG Constitution.

WHEREAS:-

As an initial project the PIDG Trust has established an on-shore limited liability company in Mauritius, the Emerging Africa Infrastructure Fund (hereinafter referred to as the "EAIF") for the purpose of increasing the volume of private sector flows into infrastructure projects with private sector participation in Sub-Saharan Africa.

WHEREAS:-

The activities of the PIDG Trust are more closely set out in a Declaration of Trust executed by the Trustees on 1 December 2001 as amended on 14<sup>th</sup> March 2003 relating to the establishment of the Trust (hereinafter referred to as the "Declaration of Trust"). The Donors have appointed the Trustees to administer the PIDG Trust in accordance with the Declaration of Trust.

**WHEREAS:-**

The Initial Donors have on 14<sup>th</sup> March 2003 entered into a Funders' Arrangement specifying the respective rights and obligations of each Donor vis a vis each other in connection with payments to and repayments of proceeds of investments in the PIDG Trust with respect to its investment in EAIF (hereinafter referred to as the "EAIF Funders' Arrangement").

**WHEREAS:-**

The Government of Switzerland, acting through the Lender, desiring to support the objectives set out above, wishes to cooperate with PIDG in establishing the EAIF, has in accordance with undertakings set out in the Memorandum of Understanding decided that a conditional loan in the maximum total amount of USD ten million (10,000,000) (hereinafter referred to as the "Loan") shall be extended to the Borrower as a contribution to the financing of and the establishment and operation of the EAIF or such other purpose of the PIDG as may be agreed by the Lender with the PIDG.

**WHEREAS:-**

Under the terms of a Master Agreement, a Senior Loan and Guarantee Facility Agreement, a Subordinated Loan and Guarantee Facility Agreement, between i.a. the Borrower, the PIDG Trust, a group of commercial lenders (comprising the Standard Bank London Ltd, Barclays Bank plc, Standard Corporate and Merchant Bank (a division of the Standard Bank of South Africa Ltd) and Stanbic Africa (hereinafter together referred to as the "Senior Lenders"), Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden NV Deutsche Investition und Entwicklungsgesellschaft mbH and Development Bank of Southern Africa) (hereinafter together referred to as the "Subordinate Lenders", and, jointly with the Senior Lenders, as the "Consortium") the Senior and Subordinate Lenders will provide senior and subordinated loan facilities to the Borrower of not less than USD 200,000,000 at the same time that the Trust makes its initial commitment of not less than USD 100,000,000 to the EAIF.

**WHEREAS:-**

EAIF is being operated and administered as more closely set out in the Master Agreement.

**NOW THEREFORE** the Lender and the Borrower hereby agree as follows:-

**1. DEFINITIONS**

1.1 For the purpose of the Agreement, the following definitions will be applicable:

**"Disbursement Request"**

means the request substantially in the form set out in Schedule 1 signed by duly authorised officers of the Borrower;

**"Donors"**

means the Initial Donors, together with any new members of PIDG having joined PIDG in accordance with the PIDG Constitution but excluding any Donors who cease to be members in accordance with the PIDG Constitution;

**"Drawdown Period"**

means the period beginning ten (10) Banking Days from the date when the conditions precedent under Clause 3 have been satisfied to the Final Disbursement Date;

**"EAIF"**

means the Emerging Africa Infrastructure Fund Limited, registered in Mauritius, the company wholly owned by the Trust, established in accordance with the Declaration of Trust and the PIDG Constitution for the purpose of providing long term debt financing, on commercial terms, to companies seeking to implement infrastructure projects in Sub-Saharan Africa;

**"EAIF Loans"**

means any subordinated loans made by the PIDG Trust to EAIF;

**"EAIF Shares"**

means shares in EAIF for which the PIDG Trust has subscribed;

**"Final Disbursement Date"**

means 31 December 2005;

**"Funders' Arrangement"**

means the EAIF Funders' Arrangement and any other arrangement entered into between the Donors in respect of an investment of the PIDG Trust;

**"IASC"**

means generally internationally recognised auditing principles as established by the International Auditing Standards Committee, London;

**"Master Agreement"**

means the agreement dated 30 January 2002 between i.a. the PIDG Trust, EAIF, the Consortium under which i.a. the Consortium will provide a senior and subordinated loan facility to EAIF of not less than USD 200 million;

**"Lender"**

means the Swiss Government represented by SECO,

**WHEREAS:-**

The Initial Donors have on 14<sup>th</sup> March 2003 entered into a Funders' Arrangement specifying the respective rights and obligations of each Donor vis a vis each other in connection with payments to and repayments of proceeds of investments in the PIDG Trust with respect to its investment in EAIIF (hereinafter referred to as the "EAIIF Funders' Arrangement").

**WHEREAS:-**

The Government of Switzerland, acting through the Lender, desiring to support the objectives set out above, wishes to cooperate with PIDG in establishing the EAIIF, has in accordance with undertakings set out in the Memorandum of Understanding decided that a conditional loan in the maximum total amount of USD ten million (10,000,000) (hereinafter referred to as the "Loan") shall be extended to the Borrower as a contribution to the financing of and the establishment and operation of the EAIIF or such other purpose of the PIDG as may be agreed by the Lender with the PIDG.

**WHEREAS:-**

Under the terms of a Master Agreement, a Senior Loan and Guarantee Facility Agreement, a Subordinated Loan and Guarantee Facility Agreement, between i.a. the Borrower, the PIDG Trust, a group of commercial lenders (comprising the Standard Bank London Ltd, Barclays Bank plc, Standard Corporate and Merchant Bank (a division of the Standard Bank of South Africa Ltd) and Stanbic Africa (hereinafter together referred to as the "Senior Lenders"), Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden NV Deutsche Investition und Entwicklungsgesellschaft mbH and Development Bank of Southern Africa) (hereinafter together referred to as the "Subordinate Lenders", and, jointly with the Senior Lenders, as the "Consortium") the Senior and Subordinate Lenders will provide senior and subordinated loan facilities to the Borrower of not less than USD 200,000,000 at the same time that the Trust makes its initial commitment of not less than USD 100,000,000 to the EAIIF.

**WHEREAS:-**

EAIIF is being operated and administered as more closely set out in the Master Agreement.

**NOW THEREFORE** the Lender and the Borrower hereby agree as follows:-

**1. DEFINITIONS**

1.1 For the purpose of the Agreement, the following definitions will be applicable:

<b>"Disbursement Request"</b>	means the request substantially in the form set out in Schedule 1 signed by duly authorised officers of the Borrower;
<b>"Donors"</b>	means the Initial Donors, together with any new members of PIDG having joined PIDG in accordance with the PIDG Constitution but excluding any Donors who cease to be members in accordance with the PIDG Constitution;
<b>"Drawdown Period"</b>	means the period beginning ten (10) Banking Days from the date when the conditions precedent under Clause 3 have been satisfied to the Final Disbursement Date;
<b>"EAIIF"</b>	means the Emerging Africa Infrastructure Fund Limited, registered in Mauritius, the company wholly owned by the Trust, established in accordance with the Declaration of Trust and the PIDG Constitution for the purpose of providing long time debt financing, on commercial terms, to companies seeking to implement infrastructure projects in Sub-Saharan Africa;
<b>"EAIIF Loans"</b>	means any subordinated loans made by the PIDG Trust to EAIIF;
<b>"EAIIF Shares"</b>	means shares in EAIIF for which the PIDG Trust has subscribed;
<b>"Final Disbursement Date"</b>	means 31 December 2005;
<b>"Funders' Arrangement"</b>	means the EAIIF Funders' Arrangement and any other arrangement entered into between the Donors in respect of an investment of the PIDG Trust;
<b>"IASC"</b>	means generally internationally recognised auditing principles as established by the International Auditing Standards Committee, London;
<b>"Master Agreement"</b>	means the agreement dated 30 January 2002 between i.a. the PIDG Trust, EAIIF, the Consortium under which i.a. the Consortium will provide a senior and subordinated loan facility to EAIIF of not less than USD 200 million;
<b>"Lender"</b>	means the Swiss Government represented by SECO,

Effingerstrasse 1, CH-3003, Berne, Switzerland, fax number +41 (0)31 324 0960;

means the credit in the total amount of USD twenty million (20,000,000) to be extended to the Borrower and outstanding at any relevant time hereunder;

means the principal debt and the accumulated interest of the Loan and costs relating thereto from time to time;

means the trust established by the Trustees under Mauritian law by execution of the Declaration of Trust;

means SG Hambros Trust Company Ltd. England;

means all dividends, interest and other monies payable to the PIDG Trust in respect of the EAFIF Shares or any EAFIF Loans and all other proceeds received in respect of or derived from the EAFIF Loans or the EAFIF Shares (whether by way of redemption, bonus, preference, option, substitution, conversion or otherwise) and any monies received by the PIDG Trust from or in connection with any sale, expropriation, requisition or seizure, or similar action, with respect to the EAFIF Shares or EAFIF Loans;

means the lawful currency of the United States of America;

means any tax, levy, impost, toll, customs, duty or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

means the Master Agreement and the Facility Agreements, the Declaration of Trust, the Collateral Documents, the Accounts Administration Agreement, the Intercreditor Agreement and all Fee Letters, as defined in the Master Agreement;

References in this Agreement to any agreement, document or instrument shall include such agreement, document or instrument as the same may from time to time be varied, amended, supplemented or substituted. Unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa.

A "person" shall be construed as a reference to any person, firm company, corporation, government, state or agency of a state or any association or

partnership (whether or not having separate legal personality) of two or more of the foregoing.

The "winding-up", "dissolution" or "administration" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, examination, arrangement, adjustment, protection or relief of debtors.

Any document, instrument or arrangement means such document, instrument or agreement as originally implemented or executed, or as amended, modified, varied, supplemented or novated from time to time.

The attached schedules form an integral part of this Agreement.

2. AMOUNT AND USE OF THE LOAN

2.1 Amount of the Loan

The Lender hereby agrees to make available to the Borrower, on and subject to the terms and provisions of this Agreement a conditional loan of USD ten million (10,000,000).

2.2 Use of the Loan

(a) Subject to sub-clause 2.2(b), The Borrower shall cause the proceeds of the Loan to be applied for EAFIF Shares and/or EAFIF Loans in proportions agreed with the Donors, as set out in the EAFIF Funders' Arrangement, or such other purposes as may be agreed in writing between the Lender and the Borrower.

(b) Where any of the Loan extended to the Borrower has not been applied towards EAFIF Shares and/or EAFIF Loans on or before 1 March, 2007, the Lender may require the Borrower to apply the remainder of the Loan to other projects of the PIDG approved by the Lender.

(c) The Loan or the proceeds thereof shall in no event be used to finance UK Taxes relating to the Borrower.

3. CONDITIONS PRECEDENT

3.1 Conditions precedent for effectiveness

The obligation of the Lender to make the Loan (or part thereof) available, to the Borrower shall be subject to the following conditions having been fulfilled (and remain fulfilled) to the satisfaction of the Lender:-

- (a) the execution and the performance of this Agreement, the Declaration of Trust and all obligations of the PIDG Trust under the Transaction Documents by the Borrower and the relevant contracting parties shall have been duly authorised by all necessary legal action;
- (b) the individuals having signed this Agreement and the Transaction Documents on behalf of the Borrower shall have been duly authorised to sign the same;
- (c) a review and the rendering of an opinion to the Lender by such counsel acceptable to the Lender relating i.a. to the legal status of the PIDG Trust and the relation to the Trustees, the tax position of the PIDG Trust, a confirmation that funds held by the Trustees are adequately protected in the case of the Trustees insolvency and such other matters as the Lender may reasonably request;
- (d) the due establishment of EAIF with such operative and management entities and functions as set out in the Transaction Documents and customary opinions relating thereto;
- (e) the binding commitment from the Consortium to provide financing to EAIF with an amount not less than USD 200 million;
- (f) the Lender having duly received copies of the Transaction Documents and given its "no objection" to the terms and conditions thereof in so far as the terms of such contracts are relevant for the scope of this Agreement.

3.2 Conditions Precedent for each Disbursement

All disbursements from the Loan are subject to:

- (a) the continued fulfilment of the conditions referred to in Sub-Clause 3.1 above and the other terms and conditions of this Agreement;
- (b) the receipt of a Disbursement Request by the Lender in the format set out in Schedule 1;
- (c) information satisfactory to the Lender that the relevant Disbursement would be needed, within the next six months, for financing investments, or any costs, obligations or liabilities incurred in relation to investments, by EAIF in projects and that previous disbursements have been, or are immediately scheduled for being used for financing investments, or any costs, obligations or liabilities incurred in relation to investments, by EAIF in projects ; and
- (d) no material adverse change in the financial or operational conditions of the Borrower shall have occurred since the date of signing of the

Agreement which would, in the opinion of the Lender be likely to materially prejudice the ability to complete the aim of the PIDG Trust

3.3 Declaration of Effectiveness

The Lender undertakes to provide to the Borrower a declaration of effectiveness when the conditions precedent indicated in Sub-Clause 3.1 above have been fulfilled to the satisfaction of the Lender.

3.4 Authorisation and Specimen Signatures

Prior to the first Disbursement Request the Borrower shall submit a list of specimen signatures to the Lender of persons authorised to submit a Disbursement Request on behalf of the Borrower.

4. **DISBURSEMENTS**

4.1 Disbursement Procedures

Disbursement of the Loan will be effected by direct payment to the Account and is to be held separate from the Trustees' property.

The Lender shall make any disbursement from the Loan within ten (10) Banking Days after receipt by the Lender of the Disbursement Request. The Disbursement Period and preliminary timing of disbursements is set out in Schedule 1 to the EAIF Funders' Arrangement.

4.2 Disbursement Currency

The Loan shall be disbursed in USD.

4.3 Disbursement levels and maximum number of disbursements

Each of the disbursements from the Loan shall be made at the disbursement levels and in the number set out in Schedule 1 to the EAIF Funders' Arrangement.

5. **REPAYMENT OF THE LOAN**

5.1 Conditions for Repayment

The Borrower shall, upon request from the Lender, repay the Loan (wholly or partly as the case may be) in the following circumstances:

- (a) upon liquidation, dissolution or winding up of EAIF;
- (b) in the case of EAIF having paid any Proceeds to the Borrower and such Proceeds have not been or are not intended to be used to cover

administration costs of the PIDG Trust or other disbursements approved by the Donors;

- (c) in the case of liquidation, dissolution or winding up of the PIDG Trust; or
- (d) in the case of an Event of Default as described below having occurred.

5.2 Repayment

The Donors have agreed in the EAIF Funders' Arrangement how, in the case of a repayment situation, distribution shall be effected among the Donors and any repayment due under (a) - (d) of Sub-Clause 5.1 above is subject to such arrangement.

5.3 Remaining Outstanding Indebtedness

In the case of a part repayment of the Outstanding Indebtedness the Lender retains for the avoidance of doubt its right to repayment of the Loan and other Outstanding Indebtedness until all payments have been satisfied in full.

6. INTEREST

6.1 Interest Rate

The Loan shall bear interest at the rate of zero (0) percent p.a.

6.2 Delay Interest

In case the Borrower fails to pay any principal or interest payable under this Agreement on the due date thereof, the Borrower shall pay to the Lender on demand, interest on such overdue principal at a rate of six months' LIBOR (London interbank offered rates). Any interest shall be calculated on the exact number of days based upon a 360 day year.

7. PAYMENTS AND CURRENCY

7.1 Currency

All payments due hereunder shall be made to the Lender in USD in Switzerland.

7.2 Payments falling due on a non-Banking Day

All payments falling due on a non-Banking Day shall be made on the next following Banking Day or if such Banking Day would fall in the next calendar month, the immediately preceding Banking Day.

7.3 Payments to be free of claims, Taxes, etc.

Payment of any amount due hereunder shall be made without notice, demand or protest of any kind, unless otherwise expressly stipulated in this Agreement. All payments to be made by the Borrower hereunder, shall be made without any set-off or counterclaim whatsoever. If at any time any laws of the Borrower or of any other jurisdiction to which the Borrower may make payment hereunder require the Borrower to make any deduction or withholding of whatsoever nature from any payment due under the Agreement or if any Tax or duty of any kind is payable in the state of the Borrower or in any other jurisdiction as aforesaid by the Lender in respect of sums paid by the Borrower under the Agreement, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding or after the discharge of the Tax or duty payable by the Lender, the Lender receives a net sum equal to the sum which it would have received had no such Tax or duty been payable.

7.4 The Borrower's unconditional liability to pay

The liability of the Borrower to discharge any amount due under the Agreement is, subject always to Sub-Clauses 5.1 and 5.2, unconditional and in no respect dependent on the fulfilment by a supplier, or by any party co-operating with said supplier of its obligations under a commercial contract, or any related contract, respectively, and will not be affected in any way by reason of any claim which the Borrower or any importer might have or might consider that it has against a supplier, against any other Donor or any such co-operating party or by any other reason whatsoever.

7.5 Appropriation of payments

If and whenever a payment is made by the Borrower hereunder and the Lender receives an amount less than the due amount of such payment the Lender may apply the amount received towards the obligations of the Borrower under this Agreement in the following order: first, in or towards payment of any unpaid costs and expenses of the Lender, secondly, in or towards payment of any accrued interest due but unpaid; thirdly, in or towards payment of any principal due but unpaid; and fourthly, in or towards payment of any other sum due but unpaid.

8. REPRESENTATIONS AND WARRANTIES

8.1 The Borrower represents and warrants to the Lender that

- (a) the Borrower has all requisite power and authority to enter into and perform this Agreement and has taken all necessary action to authorise its borrowing under the Agreement and to authorise the execution, delivery and performance of the Agreement and the Transaction Documents;

- (b) the individual(s) having signed this Agreement were duly authorised so to sign;
- (c) the Agreement constitutes and will constitute valid and legally binding obligations of the Borrower enforceable in accordance with its terms and would be so treated in the courts of the state of the Borrower and the Agreement is in proper form for its enforcement in such courts;
- (d) the Borrower has duly obtained all authorisations of, and have duly effected any declarations or registrations with any authority which are required or appropriate in connection with the execution, delivery and performance of the Agreement and the Transaction Documents and such approvals, consents and authorisations are in full force and effect;
- (e) no Taxes will be levied on this Agreement;
- (f) all monies deriving from the Loan and held by the Trustees, shall at all times be separated from the Trustees' other assets and thus will not be included in the Trustees' bankruptcy or in any other way be seized for the Trustees' debts;
- (g) the Borrower is subject to civil and commercial laws. Thus, neither the Borrower nor any of its respective property enjoys any right of immunity;
- (h) the Borrower is not in breach of or in default under any agreement to which it is a party or which is binding on the Borrower or any of its assets to an extent or in a manner, which might have an adverse effect on the condition financial or otherwise, prospects, results or operations, or general affairs of them or would adversely affect the ability of them to fulfil its obligations hereunder;
- (i) no action or administrative proceeding of or before any court or agency, which might have a material adverse effect on the financial condition of the Borrower, has been started or is threatening;
- (j) the execution of this Agreement and the Borrower's performance of its obligations hereunder do not and will not (i) contravene any provisions of any law, statute, decree, rule or regulation to which it or any of their assets or revenues is subject, (ii) violate any provisions of their statutes or (iii) result in any breach of any agreement or treaty, to which it is a party.

9. COVENANTS

9.1 General Covenants

The Borrower undertakes:

- (a) to comply with the provisions of the Declaration of Trust and the Transaction Documents (such as, without limitation, rules relating to

- reporting, audit, procurement, gender policies, health, safety and social welfare policies and environmental policies);
- (b) to ensure that no material amendments are made to the Declaration of Trust and Transaction Documents, without the Lender's consent.
- (c) to retain until at least five (5) years after the Lender has received the audit report for the fiscal year in which the last disbursement of the Loan was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing the expenditures and ensure that such records and accounts are included in the annual audit of the Borrower;
- (d) not to apply the Loan or the Proceeds to payment of any UK Taxes relating to the Borrower.

10. EVENTS OF DEFAULT

10.1 The Lender may terminate its obligations under this Agreement and the Borrower shall on demand repay the Outstanding Indebtedness if:

- (a) the Borrower fails to pay on the due date any interest or principal sum or any other amount due under this Agreement; or
- (b) any representation or warranty of the Borrower herein or in any certificate or other document furnished pursuant hereto proves to be or becomes at any time incorrect in any material respect and continues unremedied for 30 days after written notice hereof has been given to the Borrower; or
- (c) the Borrower defaults in the performance of any other material provision of this Agreement or under the other Transaction Documents, if such default is, in the opinion of the Lender, incapable of remedy or, if capable of remedy, continues unremedied for 30 days after notice hereof has been given to the Borrower; or
- (d) any present or future indebtedness of the Borrower in excess of USD 1,000,000 is being declared or has been declared prematurely due and payable; or
- (e) an execution order be levied or sued out upon or against any part of the assets of the Borrower and not be discharged within 30 days;
- (f) any change in the laws of any relevant state occurs which has the effect to render any material provision of this Agreement invalid, illegal or unenforceable; or
- (g) any governmental license, authorisation, consent, approval or registration necessary to permit the Lender to enforce its rights hereunder is revoked,



- withdrawn, modified or withheld or shall otherwise fail to remain in full force and effect; or
- (h) the Borrower declares a moratorium or stops payment of all or part of its indebtedness or admits in writing its inability to pay its debts as they fall due; or
- (i) the Borrower is declared bankrupt, has taken steps to liquidate or wind up its business; or
- (j) any other event occurs which may materially jeopardise the ability of the Borrower to perform or observe any of its obligations hereunder; or
- (k) the continuing of making the Loan available should be considered to be against public policy as officially declared by competent authority of the European Union.

**11. IRREGULARITIES**

11.1 The Lender may, upon prior written notice to the Borrower, terminate its obligations under this Agreement with immediate effect should the Borrower, or any of its respective representatives in connection with entering into this Agreement, in connection with communication with the Lender, or in connection with the disbursement of the Loan or part thereof, have misled the Lender or have rendered incorrect or misleading information or made intentional misrepresentations which influenced the Lender's decision to give the Loan or the Lender's decision to effect disbursement of the Loan, or, should any other event occur, which - in the opinion of the Lender - may be characterised as corruption or fraudulent practices.

11.2 For the purpose of this provision corrupt shall mean: "the offering, giving, receiving, or soliciting of anything of value to influence the action in the procurement process, in contract execution or in contract performance" and fraudulent practice shall mean "a misrepresentation of facts in order to influence a procurement process or the execution or fulfilment of a contract to the detriment of the Borrower and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition" relating to its business activities. In such case no further disbursements shall be made and the Loan shall be immediately repaid together with commercial interest applied on the Loan calculated as from the date the fraud or misrepresentation occurred.

**12. NOTICES AND DEMANDS**

12.1 Any notice and demand in relation to this Agreement shall be given or made by telex, fax, mail, cable or otherwise in writing, sent or delivered to the addressee at its address, telex or fax set forth in Sub-Clause 1.1 above or to such other address,

telex or fax number as it may from time to time designate in writing to the other party. Each communication as aforesaid shall be deemed to have been effectively given:

- (a) if given by telex, upon receipt by the sender of the recipients' answerback code at the end of the transmission;
- (b) if given by fax, upon receipt by the sender of the confirmation-receipt at the end of the transmission;
- (c) if given by certified or registered mail, fourteen days after such communication was deposited in the mail (postage prepaid); and
- (d) if given by any other means, when delivered.

12.2 Notwithstanding the provisions of Sub-Clause 12.1 hereof, it is agreed that all notices and demands shall be sent by certified or registered mail or telex if not of a routine nature.

12.3 Any communication to either party hereunder which is received by that party after 4.00 p.m. (local time in the place of receipt) shall be deemed to have been received by that party on the next day on which commercial banks in the place of receipt are open for business.

12.4 If the Borrower or the Lender should change its address, fax or telex number, it shall promptly give written notice to that effect to the other party.

**13. ASSIGNMENTS**

13.1 The Borrower may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Lender.

13.2 The Lender may at any time assign or transfer its rights or obligations to another governmental or state agency, bank or financial institution, under this Agreement upon notification to the Borrower.

**14. NO WAIVER**

No failure to exercise and no delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right.

**15. FORCE MAJEURE, LIABILITY AND INDEMNIFICATION**

15.1 The Lender shall not be held responsible for any loss or damage or failure to perform any of its obligations hereunder resulting from a Swiss legal enactment,

the intervention of a Swiss public authority, an act of war, a strike, a blockade, a boycott, a lockout, viz major or any other similar circumstance. The reservation in respect of strikes, blockades, boycotts, lockouts applies even if the Lender is subject to such measures or takes such measures.

The Lender shall only be held responsible towards the Borrower under this Agreement in case of wilful misconduct or gross negligence and in no event for any indirect damage.

- 15.2 The Borrower shall bear all risks arising from, or incurred through, operations performed by the Trustees under any project relating to or financed by this Agreement. The Borrower shall, in particular, be responsible for all claims, if any, that may be brought by third parties against the Lender, its agents or representatives arising from or attributable to the operations under such projects. The Borrower shall, in respect of such claims, indemnify and hold the Lender harmless by bearing all costs and pay all damages a third party may be entitled to, except in the case it is found that such a particular claim or damages arose from the Lender's act of wilful misconduct or gross negligence.

#### 16. MISCELLANEOUS

16.1 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision hereof, and any illegal, invalid or unenforceable provisions shall at the request of the Lender be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

16.2 Each document, certificate and statement referred to in this Agreement or to be delivered hereunder shall, unless otherwise agreed by the Lender, be in the English or Swiss language. If the document is in the Swiss language it should be accompanied by an English translation thereof certified by such person as the Lender may determine as being an authorised translator and such translation shall be binding upon the Borrower.

16.3 A certificate or statement given or made by the Lender as to any amount payable under this Agreement shall be conclusive, except in the case of manifest error.

16.4 Any amendment to this Agreement shall be made in writing.

16.5 This Agreement shall remain in full force and effect until all monies hereunder have been repaid.

#### 17. GOVERNING LAW AND JURISDICTION

##### Governing law

This Agreement shall be governed by the laws of Switzerland.

##### Immunity

The Borrower hereby irrevocably waives any claim it may now or hereafter have that any proceeding has been brought in an inconvenient forum or claim immunity due to sovereignty or otherwise.

##### Dispute resolution

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, which cannot be settled by agreement of the parties shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The parties to such arbitration shall be the Lender on the one side and the Borrower on the other side.

The appointing authority shall be the Arbitration Institute of the Swiss Chamber of Commerce. The number of arbitrators shall be three. The language to be used in the arbitral proceedings shall be English.

The place of arbitration shall be London. The court may not determine any question of law arising in the course of the arbitral proceedings. No appeal may be made to the court on any question of law arising out of an award made in the arbitral proceedings.

Notwithstanding the aforesaid any matter relating to clear and undisputed payments of outstanding amounts hereunder may be by the Lender submitted to Berne District court and superior courts or to such other courts where the Borrower have assets located. The Borrower hereby irrevocably agrees that such courts shall have jurisdiction to such matters arising out of the relating to this Agreement and waives any objection which they might now or hereafter have to such courts not being convenient or appropriate forum.

This Agreement is made on this day of 14<sup>th</sup> March 2003 in the English language in two originals of which the Borrower and the Lender have taken one each.

The Trustees, representing The Private The Government of Switzerland Infrastructure Development Trust by represented by SECO

SG Hambros Trust Company Ltd

*Barr, 14 March 03*



By: Claude Barras  
Title: Head of Investment Promotion Division

Minimax Ltd.

By:  
Title:

MC Trust Ltd.

By:  
Title:

This Agreement is made on this day of 14<sup>th</sup> March 2003 in the English language in two originals of which the Borrower and the Lender have taken one each.

The Trustees, representing The Private The Government of Switzerland Infrastructure Development Trust by represented by SECO

SG Hambros Trust Company Ltd

  
*DIRECTOR*  
*P. Buckton*  
*DIRECTOR*

By: Claude Barras  
Title: Head of Investment Promotion Division

Minimax Ltd.

By:  
Title:

MC Trust Ltd.

By:  
Title:

SCHEDULE 1  
FORM OF DISBURSEMENT REQUEST

Place and date

To: SECO  
Investment Promotion Division  
State Secretariat for Economic Affairs  
Effingerstrasse 1,  
CH-3003, Berne,  
Switzerland  
Attention: Claude Barras  
cc: [ ]

Dear Sirs,

Re: Conditional Loan Agreement dated between SECO and The Private Infrastructure Development Trust

We refer to the above Conditional Loan Agreement and hereby request a disbursement in the following amount [ ]. Terms not defined hereunder shall have the same meanings as in the Conditional Loan Agreement.

In accordance with the Conditional Loan Agreement we enclose the following documents supporting the request.

Payment Instructions:  
Beneficiary/Payee:  
Bank, name branch and address:

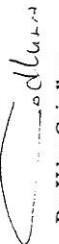
This Agreement is made on this day of 14<sup>th</sup> March 2003 in the English language in two originals of which the Borrower and the Lender have taken one each.

The Trustees, representing The Private The Government of Switzerland Infrastructure Development Trust by represented by SECO


SG Hambros Trust Company Ltd

By: Claude Barras  
Title: Head of Investment Promotion Division

Minimax Ltd.

  
By: Uday Gujadhur  
Title: Director

MC Trust Ltd.

  
By: Louis Emmanuel Ng Cheong Tin  
Title: Director

**Execution Copy**

Swift code:

On behalf of the Borrower we confirm that the representations and warranties made in the Conditional Loan Agreement are correct as of this day and that no Event of Default has occurred or is threatening.

**The Trustees, representing  
The Private Infrastructure Development Trust by  
SG Hambros Trust Company Ltd**

Signature:

Printed name:

Title:

Place and date

2003