

No. 9644

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
NIGERIA

Guarantee Agreement—*Nigerian Industrial Development Bank Project* (with annexed Loan Regulations No. 4, as amended, and Loan Agreement between the Bank and the Nigerian Industrial Development Bank Limited). Signed at Washington on 5 March 1969

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 19 June 1969.

BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
NIGÉRIA

Contrat de garantie — *Projet relatif à la Nigerian Industrial Development Bank* (avec, en annexe, le Règlement n° 4 sur les emprunts, tel qu'il a été modifié, et le Contrat d'emprunt entre la Banque et la Nigerian Industrial Development Bank Limited). Signé à Washington le 5 mars 1969

Texte authentique: anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 19 juin 1969.

GUARANTEE AGREEMENT¹

AGREEMENT, dated March 5, 1969, between FEDERAL REPUBLIC OF NIGERIA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and the Nigerian Industrial Development Bank Limited (hereinafter called the Borrower), which agreement and the Schedules therein referred to are hereinafter called the Loan Agreement,² the Bank has agreed to make to the Borrower a loan in various currencies equivalent to six million dollars (\$6,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the payment of the principal, interest and other charges on such loan; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to guarantee the payment of the principal, interest and other charges on such loan;

NOW THEREFORE the parties hereto hereby agree as follows:

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961, as amended February 9, 1967,³ subject, however, to the modifications thereof set forth in Schedule 2 to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement shall have the respective meanings therein set forth.

¹ Came into force on 29 May 1969, upon notification by the Bank to the Government of Nigeria.

² See p. 12 of this volume.

³ See p. 12 of this volume.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, all as set forth in the Loan Agreement and in the Bonds, and the punctual performance of the obligations of the Borrower under Section 5.08 of the Loan Agreement.

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on public assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term “ assets of the Guarantor ” as used in this Section includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including, without limitation, the Central Bank of Nigeria or any other institution performing the functions of a central bank.

Section 3.02. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as either shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes, with or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Section 3.03. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Agreement, the Loan Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Section 3.05. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. The Government Agreements shall not be amended except by agreement between the parties thereto and the Bank.

Section 3.07. The Guarantor covenants that it will not take, or cause or permit any of its agencies or instrumentalities to take, any action which would prevent or materially interfere with the carrying on by the Borrower of its operations and affairs in accordance with sound financial and investment standards and practices, or with the performance by the Borrower of its obligations under the Loan Agreement, and will take or cause to be taken all reasonable action which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Bonds to be executed and

delivered by the Borrower. The Federal Commissioner for Finance of the Guarantor and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Article V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations:

For the Guarantor:

The Permanent Secretary,
Federal Ministry of Finance
Mosaic House, Tinubu Square
P.M.B. 2591, Lagos

Alternative address for cables:

Permfir
Lagos

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cables:

Intbafrad
Washington, D.C.

Section 5.02. The Federal Commissioner for Finance of the Guarantor is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee 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.

Federal Republic of Nigeria:

By J. T. F. IYALLA
Authorized Representative

International Bank for Reconstruction and Development:

By M. SHOAB
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 FEBRUARY 1961,
AS AMENDED 9 FEBRUARY 1967REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS
OTHER THAN MEMBER GOVERNMENTS

[Not published herein. See *United Nations, Treaty Series, vol. 598, p. 270.*]

LOAN AGREEMENT

AGREEMENT, dated March 5, 1969, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and NIGERIAN INDUSTRIAL DEVELOPMENT BANK LIMITED (hereinafter called the Borrower), a company duly incorporated under the Companies Act, Cap. 37 of the Laws of the Guarantor.

Article I

LOAN REGULATIONS; SPECIAL DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961 as amended February 9, 1967,¹ subject, however, to the modifications thereof set forth in Schedule 2 to this Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Loan Agreement, or any Schedule thereto, the following terms shall have the following meanings unless the context otherwise requires:

(a) The term "sub-loan" shall mean a loan made or proposed to be made by the Borrower out of the proceeds of the Loan to an Investment Enterprise for an Investment Project.

(b) The term "investment" shall mean an investment other than a sub-loan, made or proposed to be made by the Borrower out of the proceeds of the Loan in an Investment Enterprise for an Investment Project.

(c) The term "Investment Enterprise" shall mean an enterprise to which the Borrower shall propose to make or shall have made a sub-loan, or in which it shall propose to make or shall have made an investment, in accordance with and as provided in Section 3.01 of this Agreement.

¹ See above.

(d) The term “ Investment Project ” shall mean a specific investment project to be carried out by an Investment Enterprise, as approved by the Bank pursuant to Section 2.02 (b) of this Agreement, or in respect of which amounts shall have been credited to the Loan Account pursuant to the provisions of Section 2.02 (c) of this Agreement.

(e) The term “ Government Agreements ” shall mean the agreements of January 22, 1964 and September 3, 1966, between the Guarantor and the Borrower providing for loans by the Guarantor to the Borrower, and any other agreements between the Guarantor and the Borrower providing for loans or advances by the Guarantor to the Borrower, as the same shall be amended from time to time by agreement between the parties thereto and the Bank.

(f) The term “ subsidiary ” shall mean any company of which a majority of the outstanding voting stock or other proprietary interest shall be owned, or which shall be effectively controlled, by the Borrower or by any one or more subsidiaries of the Borrower or by the Borrower and one or more of its subsidiaries.

(g) The term “ foreign currency ” shall mean any currency other than the currency of the Guarantor.

(h) The term “ Nigerian pounds ” and the symbol “ £N ” shall mean the currency of the Guarantor.

(i) The term “ ICONSEC ” shall mean ICON Securities Limited, a subsidiary of the Borrower.

(j) The term “ Policies ” shall mean the policies and procedures of the Borrower set forth in the Resolutions of its Board of Directors, dated January 22, March 18, and August 19, 1964 (as amended on November 26, 1965 and February 25, 1966).

Words importing the singular number include the plural number and *vice versa*.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in this Loan Agreement set forth or referred to, an amount in various currencies equivalent to six million dollars (\$6,000,000).

Section 2.02. (a) The Bank shall open a Loan Account on its books in the name of the Borrower. The amount of the Loan shall be credited to the Loan Account in installments as provided in paragraphs (b) and (c) of this Section.

(b) Except as the Bank and the Borrower shall otherwise agree, upon approval by the Bank of any Investment Project submitted to it for approval as in Section 3.03 (a) of this Agreement provided, there shall be credited, as of the date of dispatch of notice by the Bank to the Borrower relating thereto, in respect of the estimated foreign currency cost of such Investment Project, such amount of the Loan as the Bank shall have approved.

(c) (i) Upon request by the Borrower from time to time as provided in Section 3.03 (b) of this Agreement, there shall be credited, as of the date of dispatch of notice by the Bank to the Borrower relating thereto, in respect of that amount of a sub-loan representing the estimated foreign currency cost of any Investment Project in respect of which no application has been made pursuant to Section 3.03 (a) of this Agreement and for which no credit has been made to the Loan Account pursuant to paragraph (b) of this Section, an amount of the Loan not exceeding, for each such Investment Project, such limit as shall from time to time be determined by the Bank with respect to amounts to be credited pursuant to this paragraph (c).

(ii) The amount to be credited to the Loan Account for each Investment Project pursuant to this paragraph (c), together with any amount or amounts previously so credited for such Investment Project and not repaid, shall not exceed such limit as shall from time to time be determined by the Bank.

(d) The Loan Account may, by agreement between the Bank and the Borrower, be reduced, as of the date of dispatch of notice by the Bank to the Borrower relating thereto, by any amount credited thereto pursuant to paragraphs (b) and (c) of this Section and not required for the Investment Project in respect of which it was so credited. No such reduction shall be deemed *ipso facto* to be a cancellation of any amount of the Loan.

Section 2.03. Notwithstanding any other provision of this Agreement, no amount in excess of the aggregate amount of three million dollars (\$3,000,000) shall be credited to the Loan Account, nor in any case, shall any further amounts be credited to the Loan Account after December 31, 1969, unless the Bank shall otherwise agree after reviewing the operations of the Borrower.

Section 2.04. Each amount credited to the Loan Account in respect of an Investment Project may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, the Loan Agreement, and shall be applied exclusively for the sub-loan for, or the investment in, the Investment Project in respect of which such amount was credited to the Loan Account.

Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the amount of each part of the Loan standing to the credit of the Borrower from time to time in the Loan Account. Such commitment charge shall accrue from the several dates on which amounts shall be credited to the Loan Account to the respective dates on which (a) they are withdrawn from the Loan Account or are cancelled pursuant to Article V of the Loan Regulations or (b) the Loan Account is reduced in respect of such amounts pursuant to the provisions of Section 2.02 (d) of this Agreement.

Section 2.06. The Borrower shall pay interest at the rate of six and one-half per cent ($6\frac{1}{2}\%$) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

Section 2.07. Except as the Bank and the Borrower shall otherwise agree, the charge payable for special commitments entered into by the Bank at the request of the Borrower pursuant to Section 4.02 of the Loan Regulations shall be at the rate of one-half of one per cent ($\frac{1}{2}$ of 1 %) per annum on the principal amount of any such special commitments outstanding from time to time.

Section 2.08. Interest and other charges shall be payable semi-annually on January 1 and July 1 in each year.

Section 2.09. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 1 to this Agreement as such Schedule shall be amended from time to time as determined by the Bank and as reasonably required (i) to conform in relevant part substantially to the aggregate of the amortization schedules applicable to the sub-loans and investments, and (ii) to take into account any cancellations pursuant to Article V of the Loan Regulations and any reductions under Section 2.02 (d) of this Agreement, except that payments due hereunder shall be made on January 1 and July 1 in each year. Such amendments of said Schedule 1 shall include amendments of the premiums on prepayment and redemption if required. The amortization schedules applicable to the Investment Projects shall provide for appropriate periods of grace, and, unless the Bank and the Borrower shall otherwise agree, (i) shall not extend beyond fifteen years from the date when the corresponding amounts are credited to the Loan Account and (ii) shall provide for approximately equal aggregate semi-annual, or more frequent, payments of principal plus interest or approximately equal semi-annual, or more frequent, payments of principal.

Section 2.10. Unless the Bank and the Borrower shall otherwise agree:

(a) (i) If a sub-loan or any portion thereof shall be repaid to the Borrower in advance of maturity, or (ii) if the Borrower shall sell, transfer, assign or otherwise dispose of a sub-loan or investment or any portion thereof, the Borrower shall promptly notify the Bank and shall repay to the Bank on the next following interest payment date an amount of the Loan equivalent to the amount credited to the Loan Account and at the time outstanding in respect of such sub-loan or investment, or to such portion thereof, as the case may be, together with the premium specified in Schedule 1 to this Agreement or in any amendment thereof under Section 2.09. The policy stated in Section 2.05 (c) of the Loan Regulations with respect to premiums shall apply to any such repayment.

(b) Any amount so repaid by the Borrower shall be applied by the Bank to the maturity or maturities of the principal amount of the Loan corresponding to the maturity or maturities of the sub-loan or investment or portion thereof so repaid or disposed of.

Section 2.11. The amount of the Loan not credited to the Loan Account by the date specified in, or agreed upon pursuant to, paragraph (c) of Section 3.03 of this Agreement may at any time thereafter be cancelled by the Bank by notice to the Borrower.

Article III

DESCRIPTION OF THE PROJECT; USE OF PROCEEDS OF THE LOAN

Section 3.01. The Project for which the Loan is granted is the financing by the Borrower of development in Nigeria through loans for productive purposes to enterprises in Nigeria which are or will be controlled by private investors, and through other productive investments in such enterprises, all for specific development projects, in accordance with the Borrower's Memorandum and Articles of Association and its Policies, as amended from time to time, and in furtherance of the corporate purposes of the Borrower as therein set forth.

Section 3.02. The proceeds of the Loan shall be applied exclusively to the foreign currency cost of goods required to carry out Investment Projects in respect of which amounts shall have been credited to the Loan Account pursuant to the provisions of Section 2.02 of this Agreement. Except as the Bank and the Borrower shall otherwise agree, no withdrawals shall be made on account of expenditures made for any such Investment Project more than ninety days prior to the date on which the Bank shall have received in respect of such Investment Project: (i) the application in accordance with Section 3.03 (a) of this Agreement or (ii) in the case of credits to the Loan Account under Section 2.02 (c) of this Agreement, the request for credit to the Loan Account in accordance with Section 3.03 (b) of this Agreement.

Section 3.03. (a) When submitting an Investment Project to the Bank for approval pursuant to Section 2.02 (b) of this Agreement, the Borrower shall furnish to the Bank an application, in form satisfactory to the Bank, containing a description of such Investment Project, the terms and conditions of the proposed sub-loan or investment, including the amortization schedule proposed therefor, and such other information as the Bank shall reasonably request.

(b) When submitting a request to the Bank for credit to the Loan Account pursuant to Section 2.02 (c) of this Agreement, the Borrower shall furnish to the Bank a brief description, in form satisfactory to the Bank, of the Investment Project in respect of which such request is made and of the terms and conditions of the proposed sub-loan, including the amortization schedule proposed therefor.

(c) Except as the Bank and the Borrower shall otherwise agree, applications for approval of Investment Projects and requests for credits to the Loan Account pursuant to the provisions of this Article shall be acceptable only if received on or before September 30, 1971.

Article IV

BONDS

Section 4.01. The Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in the Loan Regulations.

Section 4.02. The General Manager and the Secretary of the Borrower are hereby designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations. The foregoing shall be in addition to any other designation by the Borrower for such purpose.

Article V

PARTICULAR COVENANTS

Section 5.01. The Borrower shall carry out the Project and conduct its operations and affairs in accordance with sound financial and investment standards and practices, under the supervision of qualified and experienced management and in accordance with its Memorandum and Articles of Association and its Policies.

Section 5.02. In the carrying out of the Project, the Borrower shall employ a qualified and competent adviser to its General Manager acceptable to the Bank and the Borrower. The qualifications, functions and responsibilities of such an adviser and the duration of his employment shall be agreed between the Bank and the Borrower.

Section 5.03. (a) The Borrower shall exercise its rights in relation to each Investment Project financed in whole or in part out of the proceeds of the Loan in such manner as to protect the interests of the Bank and the Borrower.

(b) The Borrower undertakes that any sub-loan will be made on terms whereby the Borrower shall obtain, by the written agreement of such Investment Enterprise or by other appropriate legal means: (i) rights adequate to protect the interests of the Bank and Borrower, including the right to require such Investment Enterprise to carry out and operate the Investment Project with due diligence and efficiency and in accordance with sound engineering and financial standards, including the maintenance of adequate records; (ii) the right to require that the goods to be financed out of the proceeds of the Loan shall be used exclusively in the carrying out of such Investment Project; (iii) the right of the Bank and the Borrower to inspect such goods and the sites, works and construction included in such Investment Project, the operation thereof and any relevant records and documents; (iv) the right to require that such

Investment Enterprise shall take out and maintain such insurance, against such risks and in such amount, as shall be consistent with sound practice, that without any limitation upon the foregoing, such insurance shall cover marine, transit and other hazards incident to acquisition, transportation and delivery of the goods financed out of the proceeds of the Loan to the place of use or installation, and that any indemnity thereunder shall be payable in a currency freely usable by such Investment Enterprise to replace or repair such goods; (v) the right to obtain all such information as the Bank and the Borrower shall reasonably request relating to the foregoing and to the operations, administration and financial condition of such Investment Enterprise; and (vi) the right of the Borrower to suspend and terminate access by the Investment Enterprise to the proceeds of the Loan upon failure by such Enterprise to perform its obligations under its agreement with the Borrower.

(c) The Borrower shall at all times make adequate provision to protect itself against any loss resulting from changes in the rate of exchange between Nigerian Pounds and the currency or currencies in which the Borrower shall be obligated to make repayments of the principal of the Loan and the Bonds and payments of interest and other charges thereon.

Section 5.04. (a) The Borrower shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the Investment Enterprises, the Investment Projects and the administration, operations and financial condition of the Borrower.

(b) The Borrower shall maintain records adequate to record the progress of the Project and of each Investment Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Borrower. The Borrower shall enable the Bank's representatives to examine such records.

(c) The Borrower shall have its financial statements and those of ICONSEC (balance sheet and related statement of earnings and expenses) certified annually by an independent accountant or accounting firm acceptable to the Bank, in accordance with generally accepted accounting principles consistently applied, and shall promptly after their preparation and not later than four months after the close of the fiscal year to which they apply transmit to the Bank certified copies of such statements and a signed copy of the accountant's or accounting firm's report.

Section 5.05. (a) The Bank and the Borrower shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, the Bank and the Borrower shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance by the Borrower of its obligations under the Loan Agreement, the administration, operations and financial condition of the Borrower (including the adequacy of amounts appropriated to its reserves) and any other matters relating to the purposes of the Loan.

(b) The Borrower shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan, the maintenance of the service thereof or the performance by the Borrower of its obligations under the Loan Agreement.

Section 5.06. The Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower, or of any subsidiary of the Borrower, as security for any debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

Section 5.07. Except as shall be otherwise agreed between the Bank and the Borrower, the Borrower shall not incur or permit any subsidiary to incur any debt if, after the incurring of any such debt, the consolidated debt of the Borrower and all its subsidiaries then incurred and outstanding would be greater than three times the consolidated capital and surplus of the Borrower and all its subsidiaries.

For the purposes of this Section:

(a) The term “debt” means any debt incurred by the Borrower or a subsidiary maturing more than one year after the date on which it is originally incurred, including debt assumed or guaranteed by the Borrower or a subsidiary.

(b) The term “incur” with reference to any debt shall include any modification of the terms of payment of such debt. Debt shall be deemed to be incurred (i) under a loan contract or agreement, on the date it is drawn down pursuant to such loan contract or agreement and (ii) under a guarantee agreement, on the date the agreement providing for such guarantee shall have been entered into.

(c) Whenever in connection with this Section it shall be necessary to value in terms of the currency of the Guarantor debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt.

(d) The term “consolidated debt of the Borrower and all its subsidiaries” means the total amount of debt of the Borrower and all its subsidiaries excluding debt owed by the Borrower to any subsidiary or by any subsidiary to the Borrower or to any other subsidiary and excluding debt referred to in paragraph (e) (ii) of this Section.

(e) The term “consolidated capital and surplus of the Borrower and all its subsidiaries” means the aggregate of (i) the total unimpaired capital, surplus and free

reserves of the Borrower and all of its subsidiaries after excluding such items of capital surplus and reserves as shall represent equity interest of the Borrower in any subsidiary or of any subsidiary in the Borrower or any other subsidiary and (ii) the amount of the advance under the Government Agreement dated January 22, 1964, payable after the date of the last outstanding maturity of any sub-loan or investment made by the Borrower out of the proceeds of the Loan.

Section 5.08. Subject to such exemption as shall be conferred by the provisions of Section 3.03 and Section 3.04 of the Guarantee Agreement¹ or otherwise, the Borrower shall pay or cause to be paid all taxes, if any, imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration of the Loan Agreement, the Guarantee Agreement or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.09. The Borrower shall pay or cause to be paid all taxes, if any, imposed under the laws of the country or countries in whose currency the Loan and the Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution, issue, delivery or registration of the Loan Agreement, the Guarantee Agreement, or the Bonds.

Section 5.10. The Borrower shall not, without the approval of the Bank (i) sell, lease, transfer or otherwise dispose of its property and assets, except in the ordinary course of business; or (ii) establish any subsidiary.

Section 5.11. The Borrower shall duly perform all of its obligations under the Government Agreements and, except as the Bank and the Borrower shall otherwise agree, the Borrower shall not take or concur in any action which would have the effect of assigning, or of amending, abrogating or waiving any provision of any Government Agreement.

Section 5.12. Without the prior approval of the Bank, the Borrower shall make no repayment in advance of maturity in respect of the Government Agreements.

Section 5.13. The Borrower shall cause each of its subsidiaries to observe and perform the obligations of the Borrower hereunder to the extent to which the same may be applicable thereto as though such obligations were binding upon each of such subsidiaries.

¹ See p. 8 of this volume.

Article VI

REMEDIES OF THE BANK

Section 6.01. (i) If any event specified in paragraph (a), paragraph (e) or paragraph (f) of Section 5.02 of the Loan Regulations or in paragraph (c) of Section 6.02 of this Agreement shall occur and shall continue for a period of thirty days, or (ii) if a default shall occur in the payment of principal or interest or any other payment required under any other loan agreement between the Bank and the Borrower or under any bond delivered pursuant thereto and such default shall continue for a period of thirty days, or (iii) if a default shall occur in the payment of principal or interest or any other payment required under any loan agreement or under any guarantee agreement between the Guarantor and the Bank or under any bond delivered pursuant to any such agreement or under any credit agreement between the Association and the Guarantor under circumstances which would make it unlikely that the Guarantor would meet its obligations under the Guarantee Agreement and such default shall continue for a period of thirty days, or (iv) if any event specified in paragraphs (a) or (b) of Section 6.02 of this Agreement shall occur, or (v) if any event specified in paragraph (c) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower, then at any subsequent time during the continuance thereof, the Bank, at its option, may declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement or in the Bonds to the contrary notwithstanding.

Section 6.02. Each of the following events is specified as an event for the purposes of paragraph (1) of Section 5.02 of the Loan Regulations:

- (a) any part of the principal amount of any loan made to the Borrower and having an original maturity of one year or more, shall, in accordance with the terms thereof, have become due and payable prior to the agreed maturity thereof by reason of any default specified in an agreement providing for any such loan or in any security representing such loan;
- (b) an order shall have been made or a resolution shall have been passed for the dissolution or liquidation of the Borrower;
- (c) a change shall have been made in the Borrower's Memorandum or Articles of Association or Policies, without the Bank's consent, which, in the Bank's judgment, shall be a substantial change; and
- (d) the total amount of the loan of two million Nigerian pounds (£N2,000,000) made by the Guarantor to the Borrower on September 3, 1966, shall not have been fully disbursed by June 30, 1969.

Article VII

EFFECTIVE DATE; TERMINATION

Section 7.01. The following event is specified as an additional condition to the effectiveness of this Agreement within the meaning of Section 9.01 (d) of the Loan Regulations, namely: that, except as the Bank shall otherwise agree, all necessary acts, consents and approvals to be performed or given by the Guarantor, its political subdivisions or agencies or by any agency of any political subdivision or otherwise to be performed or given in order to authorize the carrying out of the Project and to enable the Borrower to perform all of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained, together with all necessary powers and rights in connection therewith, have been performed or given.

Section 7.02. The following is specified as an additional matter within the meaning of Section 9.02 (c) of the Loan Regulations, to be included in the opinion or opinions to be furnished to the Bank, namely: that all acts, consents and approvals referred to in Section 7.01 (a) together with all necessary powers and rights in connection therewith, have been duly and validly performed or given and that no other such acts, consents or approvals are required in order to authorize the carrying out of the Project and to enable the Borrower to perform all of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained.

Section 7.03. The date of June 2, 1969 is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be December 31, 1972, or such other date as shall be agreed upon between the Bank and the Borrower.

Section 8.02. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations:

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cables and radiograms:

Intbafrad
Washington, D.C.

For the Borrower:

Nigerian Industrial Development Bank Limited
M. & K. House
96/102 Broad Street
P.O. Box 2357
Lagos, Nigeria

Alternative address for cables and radiograms:

Nidbank
Lagos

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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 Bank for Reconstruction and Development:

By M. SHOAB
Vice President

Nigerian Industrial Development Bank Limited:

By A. COOMASSIE
Authorized Representative

SCHEDULE 1

AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars) *</i>	<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars) *</i>
January 1, 1972	70,000	January 1, 1978	200,000
July 1, 1972	80,000	July 1, 1978	300,000
January 1, 1973	90,000	January 1, 1979	350,000
July 1, 1973	110,000	July 1, 1979	350,000
January 1, 1974	125,000	January 1, 1980	450,000
July 1, 1974	150,000	July 1, 1980	550,000
January 1, 1975	175,000	January 1, 1981	500,000
July 1, 1975	200,000	July 1, 1981	500,000
January 1, 1976	200,000	January 1, 1982	400,000
July 1, 1976	200,000	July 1, 1982	300,000
January 1, 1977	200,000	January 1, 1983	200,000
July 1, 1977	200,000	July 1, 1983	100,000

* To the extent that any portion of the Loan is repayable in a currency other than dollars (see Loan Regulations, Section 3.03), the figures in this column represent dollar equivalents determined as for purposes of withdrawal.

PREMIUMS ON PREPAYMENT AND REDEMPTION

The following percentages are specified as the premiums payable on repayment in advance of maturity of any part of the principal amount of the Loan pursuant to Section 2.05 (b) of the Loan Regulations or on the redemption of any Bond prior to its maturity pursuant to Section 6.16 of the Loan Regulations:

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than three years before maturity	1%
More than three years but not more than six years before maturity	2¼%
More than six years but not more than eleven years before maturity	3¾%
More than eleven years but not more than thirteen years before maturity	5¼%
More than thirteen years before maturity	6½%

SCHEDULE 2

MODIFICATIONS OF LOAN REGULATIONS No. 4

For the purposes of this Agreement, the provisions of Loan Regulations No. 4 of the Bank, dated February 15, 1961 as amended February 9, 1967, shall be modified as follows:

- (a) Sections 2.01 and 2.02 shall be deleted.
- (b) The first sentence of Section 2.05 (b) shall not apply to any repayment by the Borrower in accordance with paragraph (a) of Section 2.10 of the Loan Agreement.
- (c) The following subparagraph (d) shall be added to Section 2.05:
“ (d) The Bank and the Borrower may from time to time agree upon arrangements for prepayment and the application thereof in addition to, or in substitution for, those set forth in paragraph (b) of Section 2.05 and in Section 6.16 of these Regulations. ”
- (d) The second sentence of Section 4.01 shall read as follows:
“ Except as shall be otherwise agreed between the Bank and the Borrower, no withdrawals shall be made on account of (a) expenditures in the currency of the Guarantor or for goods produced in (including services supplied from) the territories of the Guarantor 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 (including services supplied from) such territories. ”
- (e) The words “ Investment Projects ” shall be substituted for the word “ Project ” in the second sentence of Section 4.03.
- (f) Section 5.03 shall be deleted and replaced by the following new Section:
“ SECTION 5.03. *Cancellation by the Bank.* If (a) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of thirty days, or (b) by the Closing Date any portion of the Loan shall not have been credited to the Loan Account or shall remain unwithdrawn from the Loan Account, the Bank may by notice to the Borrower terminate the right of the Borrower to request credits to the Loan Account or to make withdrawals from the Loan Account, as the case may be, with respect to such amount or portion of the Loan. Upon the giving of such notice such amount or portion of the Loan shall be cancelled. ”
- (g) Section 5.05 shall be deleted and replaced by the following new Section:
“ SECTION 5.05. *Application of Reduction of Loan Account and of Cancellation to Maturities.* Except as otherwise agreed between the Bank and the Borrower: (i) any cancellation pursuant to this Article of amounts credited to the Loan Account and any reduction of the Loan Account pursuant to Section 2.02 (d) of the Loan Agreement, which shall have been made in respect of any

portion of the Loan credited to the Loan Account, shall be applied *pro rata* to the several maturities which reflect such portion of the Loan as set forth in the amortization schedule to the Loan Agreement, except that the principal amount so cancelled of any such maturity shall not exceed the amount of such maturity remaining after deducting therefrom the principal amount of Bonds of such maturity theretofore delivered or requested pursuant to Article VI and Bonds or portions of the Loan of such maturity theretofore sold or agreed to be sold by the Bank; and (ii) any cancellation pursuant to Section 2.11 of the Loan Agreement or this Article of any amount of the Loan not credited to the Loan Account shall be applied *pro rata* to the principal amounts of the several maturities of the Loan as set forth in the amortization schedule to the Loan Agreement, except that the principal amount so cancelled of any maturity of the Loan shall not exceed the amount of such maturity remaining after deducting the principal amount of any part or parts of the Loan reflected in such maturity.”

(h) Section 6.04 shall be deleted and replaced by the following new Section:

“SECTION 6.04. *Interest on Bonds; Service Charge.* Bonds shall bear interest at such rate as the Bank shall request, not in excess, however, of the rate of interest on the portion of the Loan represented by such Bonds. If the rate of interest on any Bond shall be less than the rate of interest on the portion of the Loan represented by such Bond, the Borrower shall, in addition to the interest payable on such Bond, pay to the Bank a service charge on the principal amount of such portion of the Loan at a rate equal to the difference between the interest rate on such portion of the Loan and the interest rate on such Bond. Such service charge shall be payable on the dates on which and in the currency in which such interest is payable.”

(i) Paragraph (a) of Section 6.11 shall be deleted and the following paragraph shall be substituted therefor:

“(a) Bonds representing a portion of the Loan and bearing interest at one rate may be exchanged for Bonds bearing interest at any other rate not in excess of the rate of interest on such portion of the Loan.”

(j) Paragraph (b) of Section 6.16 shall be deleted and the following paragraph shall be substituted therefor:

“(b) If any Bond so to be redeemed shall bear interest at a rate less than the rate of interest on the portion of the Loan represented by such Bond, the Borrower shall pay to the Bank on the date fixed for redemption the service charge provided for in Section 6.04 accrued and unpaid at such date on the principal amount of such portion of the Loan represented by such Bond.”

(k) The first sentence of paragraph (h) of Section 7.04 shall be deleted and the following sentence shall be substituted therefor:

“The Arbitral Tribunal shall afford to all parties a fair hearing, shall render its award in writing and shall state the reasons upon which it is based.”

(l) Paragraph 4 of Section 10.01 shall be deleted and the following paragraph shall be substituted therefor:

“ 4. The term ‘ Loan ’ means the loan provided for in the Loan Agreement, and the term ‘ part of the Loan ’ means the portion of the Loan credited to the Loan Account in respect of an Investment Project. ”

(m) Paragraph 10 of Section 10.01 shall be deleted and the following paragraph shall be substituted therefor:

“ 10. The term ‘ Loan account ’ means the account on the books of the Bank to which the amount of each part of the Loan is to be credited as provided in the Loan Agreement. ”

(n) Paragraph 11 of Section 10.01 shall be deleted and the following paragraph shall be substituted therefor:

“ 11. The term ‘ Project ’ means the project for which the Loan is granted, as described in Section 3.01 of the Loan Agreement and as the description thereof shall be amended from time to time by agreement between the Bank and the Borrower. ”

(o) The first sentence of paragraph 12 of Section 10.01 shall be deleted and the following sentence shall be substituted therefor:

“ 12. The term ‘ goods ’ means equipment, supplies and services required by Investment Enterprises to carry out Investment Projects financed out of the proceeds of the Loan. ”
