



# Technical Assistance Consultant's Report

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## Tajikistan: Cotton Sector Restructuring (Financed by the Technical Assistance Special Fund)

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**Asian Development Bank**

# Asian Development Bank

## TA-4958 (TAJ): Sustainable Cotton Subsector Project



Report on legal aspects of Acid delinting/seed cleaning proposal  
of Legal Expert Gulnora Gaibova, Domestic Consultant

Dushanbe, Tajikistan

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## Acronyms and Abbreviations

ADB	Asian Development Bank
CC	Civil code of the Republic of Tajikistan
DF	Dehqun Farm (Peasant Farm)
GoT	Government of Tajikistan
NGO	Non-governmental organization
RT	Republic of Tajikistan
PPP	Private Public Partnership
TA	Technical Assistance
Hukumat	Local Government office
Jamoat	The lowest level structure of rayon administration
Oblast	Region

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## 1. BACKGROUND

1. Availability of, and access to, good quality cotton seed has suffered in Tajikistan. Access to it is now recognized as a major limiting factor to increasing crop yields. The import of high quality cotton seed from neighboring countries has been very limited and import from international cotton breeding companies is at a very low level. The net result is that the use of poor quality seed is resulting in a 30% yield reduction or \$200/hectare loss to farmers. A cotton seed processing initiative would provide farmers with improved cottonseed for planting. A modern seed cleaning plant would also be capable of processing a range of farm crops seeds. Presently there are no functioning acid delinting seed plants in Tajikistan.
2. There is an important linkage between the processing of cotton seeds for planting purposes and ginning. In the seed business, ensuring high germination and the integrity of seed purity is of utmost importance, and both parameters are difficult to achieve with traditional Central Asian gin designs. It is for this reason the Government has determined that, in order to preserve seed quality, improved ginning equipment is an essential component.
3. While it appears on paper there is adequate ginning capacity in Tajikistan, the quality of ginning services is extremely poor – ginning takes too long (up to 220 days), the out-turn is poor (32 – 34% versus the ideal of 37-39%) and lint quality is variable, causing discounting of Tajik cotton in the market place. Previous studies have shown that farmers are losing 20% of their potential income through poor quality ginning.
4. Very little new information has been made available to those working in cotton processing. Decision makers, at all levels, base their decisions on outdated and false information and traditional beliefs. From a demonstration perspective, the cotton ginning sector needs an example showing aspects of operating a gin more efficiently. Additionally, unlike most cotton growing countries, farmer ownership is not present in the post farm agricultural value chain. Farmer connectivity with buyers through the ginning sector is weak.
5. To address these constraints, development of improved seed quality and ginning services in Sugd Oblast was explored. The specific features of the proposal were:
  - (i) improved quality planting seed for cotton and other crops through a seed delinting facility and attracting expertise into the seed sector which can bring access to improved plant genetics and the management required to ensure good seed husbandry;
  - (ii) improved quality ginning services with modern, western ginning equipment;
  - (iii) farmer ownership and participation in a seed delinting and gin enterprise through a public-private partnership (PPP) arrangement;
  - (iv) the farmer-company will be able to negotiate contract agreements with an international seed company or research institute for the propagation and dissemination of high quality seeds, as well as be able to negotiate contracts with domestic farmers to propagate the high quality seeds; and
  - (v) use of grant funds that was earmarked originally for the pilot testing of the farm debt resolution mechanism under the Loan cum Grant Taj Sustainable Cotton Subsector Project. From ADB's Guidelines, this proposal would require a major change in Project scope.

6. ADB conducted a mission to provide the details of the proposed change in scope for the Project. Variants to this proposal were suggested by Government and were examined thoroughly by the ADB mission. These variants included: (i) gin and acid delinting/seed cleaning facilities, (ii) no gin involvement but instead 4 small acid delinting/seed cleaning facilities (with 0.5 ton per hour capacity per plant) two of which will be based in Sughd and the other two in Khatlon region; (iii) one large (2 ton per hour capacity) acid delinting/seed cleaning facility in Sughd; and (iv) one seed delinting/seed cleaning facility in Sughd and another facility in Khatlon (see Attachment #1 - Comparative table of establishing legal basis).
7. This study reviewed the legal aspects of establishing farmer-owned company through PPP scheme; the appropriate business organizational structure; and the legal and technical requirements to get the farmer-owned company registered and in operation within the Project's life term. It should be stressed that from a legal perspective, there are no any legal impediments on the capacity size of the equipment that it will procure (in other words business organizational structure is indifferent on equipment's capacity of 0.5, 1.0, 1.5 or 2.0 tons per hour of fuzzy seeds). The key issues were the modality of business organization, the shareholder's share of farmers in the company; the characteristics of farmers and the farmer-owned company; the PPP modality for the equipment ownership; technical requirements of the farmer-company; and legal contracts for seed growers and with the proposed multinational seed company. At the end of the Project, the business structure should ensure that the following outcome and outputs are achieved:

**Outcome:** Improved access to high quality seeds, finance, and market infrastructure

**Output:** Seed a quality improvement is farmer-owned seed cleaning facility established.

8. The following options were explored and discussed:

#### **OPTIONS 1. FARMERS' OWNED SEED PROCESSING and OPTION 3. FARMERS' OWNED 4 BATCH SEED PROCESSING**

##### **1. Private-public partnership schemes (Build-Operate-Transfer):**

ADB under the request of Government of Tajikistan (Executive office of the President, Executing Agency) will agree to provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate the build-operate-transfer (BOT) Public-Private Partnership.

##### **1.1 Public partner:**

The ownership of purchased equipment will belong to MOA (or its state enterprise) until the time then the ownership rights of acid delinting and seed cleaning equipment has to be transferred to the private partner (Farmers' company).

The conditions of fund transfer from ADB side will require MOA (or its state enterprise) to conclude a rent-purchase agreement with selected Farmers' company on a rent-purchase equipment, which will specify the following terms:

- First 3 years is privileged period of time (during this period acid delinting and seed cleaning facility will be free of any rental payment);
- From 4th to 7th year after privileged period rental payment should be paid before use of the acid delinting and seed cleaning facility;

- By 10th year MOA (or its state enterprise) will sell equipment to acid delinting and seed cleaning facility as per rent/purchase agreement. The seventh and final payment shall represent the purchase price.
- Early rental payments and final payment are acceptable.
- All rental payments received by MOA (or its state enterprise) should be reinvested with ADB approval in Seed Development Program

## **1.2 Private partner:**

There are 3 possible types of using private partner's involvement:

### **1.2.1 Existing company**

The existing company in Tajikistan can be involved. The criteria for the selection will be as follows:

1. be an existing business registered in Tajikistan;
2. should be formed in the form of Open Joint Stock company where shareholders are farmers;
3. will agree to enter into contract arrangements with farmers for seed reproduction;
4. will enter into ginning arrangements with selected gin operators;
5. should be involved in input supplying sector;
6. should have minimum 1600 shareholders;
7. strategically located to serve farmers in project raions in either Khatlon or Sugd Oblasts;
8. should be prepared to provide audit and financial reports verifying its financial capacity;
9. the business will need to enter into a tangible relationship with a regional or international seed company that has a minimum of 5 years expertise in seed reproduction and processing. This company will need to be able to supply parent seed which has genetic characteristics that are capable of yielding 20% higher than "Namangan 77" and which through their financial participation and/or contractual obligations, can bring expertise to the seed reproduction and processing business. The company would also be expected to cooperate with ongoing efforts to develop identifiable seed varieties especially suited for conditions in Tajikistan and must demonstrate the integrity to follow the laws of Tajikistan regarding seed import, processing and sale;
10. should be free of financial obligations to investors;
11. should demonstrate that they are able to access working capital of \$400,000 from the banking sector.

### **1.2.2 Establishment of new company**

The new acid delinting and seed cleaning company can be created for the project purpose. It takes around 3-4 months from the date of first shareholders' data collection till the company registration (detailed implementation schedule is in the Attachment #2).

After analyses of Tajik legislation and Project targets, the Open Joint Stock Company (OJSC) for Farmers' company was found to be the most viable. This form allows the involvement of an unlimited number of participants in the structure.

In order to avoid future problems with potentially invalid juridical structure, involving Dehqun farms in the Farmers' company is not recommended. Instead, individual persons/farmers as individual stockholders in the Farmers' company are desirable. The criteria for stockholders are as follows:

- be resident of the Sugd oblast;
- have passport;
- have land title;
- be permanently involved in daily routine farm's activity;
- grown cotton;
- no criminal record;
- not engaged in the production of tobacco or illegal products.

The number of stockholders will not be less than 1600 people. It is recommended that regional composition take into account the Project's pilot districts into account, specifically: 60% from the Zafarabad and Mastchoh districts, 40% from the other districts of Sugd oblast.

It is suggested that a sense of ownership among stockholders of the Farmers' company is ensured, each stockholder should pay financial shares into the company. The minimal nominal value of share should not be less than 1 somoni. If nominal value of a share exceeds 1 somoni, it must be a multiple of the minimum value of a share.

### **1.2.3 Establishment of 4 new companies (4 batch seed processing)**

Ministry of Agriculture proposes to have 4 small acid delinting and seed cleaning companies.

There are several ways of realization of this suggestion:

Variant 1. establish 4 acid delinting/seed cleaning facilities in one oblast in the form of JSC (each of them should have 400 shareholders)

Variant 2. establish 2 acid delinting/seed cleaning facilities in the South and 2 acid delinting/seed cleaning facilities in the North where (each of them should have 400 shareholders)

Variant 3. attach purchased equipment to the 4 existing gins.

The legal procedure and selection criteria are the same with the point 1.2.2 mentioned before.

From the legal point of view it means multiply by 4 volumes of work on the primary and final stages (presentation idea to the DF members, data collection, data analyses, 4 general meetings, registration procedure etc) which require additional number of consultants involved. That will result to higher costs.

Also from the management point of view it will be difficult to manage and control production's quality of four companies rather than one company.

The model of draft documents for company creation can be duplicated 4 times. Of course the legal procedure will be more expensive.

The detailed implementation schedule is attached (Attachment #2)

## **2. Budget**

It assumes that the Project budget will be \$1.5 m for the equipment purchase and installation.

## **3. Equipment**

ADB under the request of Government of Tajikistan (Executive Office of the President, Executive Agency (EA)) will agree to provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate a rent-purchase agreement with a Farmer company .

PIU through an Evaluation Committee has to go through the tender process for the selection of existing company (if p.1.2.1 of this proposal be implemented) that will implement a Project or Project needs to assist establishment of new company/ies (if p.1.2.2 and 1.2.3 of this proposal be implemented).

As soon as implementing company will be selected or established it needs to develop the list of equipment that should be purchased by MOA (or its state enterprise) with the prior approval by ADB and following the ADB Guidelines on Procurement. MOA (or its state enterprise) has to conclude the rent-purchase agreement with implementing company under the terms and conditions mentioned in the point 1.1. of this proposal.

## **4. Tender process**

It assumes that National Competitive Bidding (NCB) procurement process (see attachment #3) will be used if the option 1.2.1 be selected. Phase 1 is the procurement process that will identify on a competitive and transparent manner the Farmers' company or establish Farmers' company. Farmers' company will establish the acid delinting and seed cleaning facility and improve access to imported high quality seeds. Phase 2 is the actual construction phases

**5. Farmers' company is established or selected.** If necessary TA support for formation.

**6. Rent-purchase agreement concluded** (Attachment #4 (Draft of agreement of equipment rent with further purchase that is usually used in Tajik legal frame) and Attachments #5-1, 5-2, 5-3, 5-4 (Draft of Rent agreement used by ADB, adopted to the Tajik legal frame)

**7. Farmers' company is operational**

## **OPTION 2. GIN & SEED PROCESSING**

### **1. Private-public partnership (PPP) schemes**

ADB under the request of Government of Tajikistan (Executive office of the President, Executive Agency (EA)) will agree to provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate a . PPP through a rent-purchase agreement. The funds will be provided for future development of a selected acid delinting/seed cleaning and gin facility to include:

- acid delinting and seed cleaning/gin equipment modernization and a contribution towards installation;

- building structure.

## **1.1 Public partner**

The ownership on purchased equipment will belong to MOA (or its state enterprise) until the time then the ownership rights of acid delinting and seed cleaning equipment has to be transferred to the private partner (Farmers' company).

The conditions of ownership transfer will require MOA (or its state enterprise) to conclude a rent-purchase agreement with selected gin/seed cleaning facility on rent purchased equipment in which it will be mentioned that:

1. 2 years is privileged period of time (during this period selected acid delinting and seed cleaning facility/gin will be free of any rental payment);
2. next 3 years after privileged period rental payment should be paid by selected acid delinting and seed cleaning facility/gin;
3. after 5 years mentioned before MOA (or its state enterprise) will have to sell purchased equipment to selected acid delinting and seed cleaning facility/gin as per rent/purchase agreement. The fourth and final payment shall represent the purchase price.
4. early rental payments and final payment are acceptable.
5. all rental payments received by MOA (or its state enterprise) should be reinvested with ADB approval in Seed Development Program

## **1.2 Private partners**

### **1.2.1 Existing gin**

Specific criteria for the selection and identification of the participating Sugh-based gin are:

- (i) Be an existing business registered in Tajikistan which owns an industrial site that is currently being used for cotton processing and is capable of development into a seed and ginning facility;
- (ii) strategically located to serve farmers in project raions in Khatlon and Sugd Oblasts;
- (iii) The industrial site and associated business will need to be owned and operated by the business as a separate identifiable entity and not part of a larger business conglomerate (the current stockholders' list need to be disclosed). For industrial sites that are part of a larger conglomerate, it will be acceptable, if the proposal is accepted, that the industrial site and associated business is legally and financially separated from the conglomerate within two months of contract signing.
- (iv) The business will need to enter into a tangible relationship with a regional or international seed company that has a minimum of 5 years expertise in seed reproduction and processing. This company will need to be able to supply parent seed which has genetic characteristics capable of yielding 20% higher than "Namangan 77" and which through their financial participation and/or contractual obligations can bring expertise to the seed reproduction and processing business. The company would also be expected to cooperate with ongoing efforts to develop identifiable seed varieties especially suited for conditions in Tajikistan and must demonstrate the integrity to follow the laws of Tajikistan regarding seed import, processing and sale.

- (v) Provide documents that verify at least 10 years technical capability of operating and/or developing a seed and ginning facility. Specifically, proponent will need to demonstrate technical capacity to design, build and operate equipment which meets the following minimum criteria:
  - A minimum of 140 saws per ginning stand and capable to process 250 tons raw cotton every 24 hours.
  - seed cleaning, sorting, acid delinting and bagging equipment which produces seed equipment to a standard equivalent to International planting seed standards (to be specified), and capable of processing 2.0 tons per hour
- (vi) Provide audit and financial reports verifying its financial capacity
- (vii) Preparedness for inclusion of farmers' ownership as 49% stockholders in the expanded acid delinting and seed cleaning/gin company.
- (viii) Should be free of financial obligations to investors;
- (ix) If necessary the selected acid delinting and seed cleaning facility/gin will be required to increase its equity as soon as the Farmers' company is established.

Once the technical proposal is accepted, the tender selection committee will evaluate the financial tender based on the highest net present value of the offered rental payments, and discounted at 10%.

If selected, the business will need to agree to (i) maintain accounting systems and practice in accordance with international accounting standards; (ii) undertake and provide to the Government, an annual audit by company acceptable to ADB, in accordance with international accounting standards.

### **1.2.2 Establishment of Farmers' company**

Separate funds (up to \$ 0.5 million) provided by ADB will be used to establish Farmers' company in the form of an Open Joint Stock Company that will own not less a 49% shares in the selected acid delinting and seed cleaning facility/gin. The target number of stockholders is a minimum of 4000 people who should be residents of any districts in Sugd ... This will allow acid delinting and seed cleaning facility/gin to be sustainable in the future. Each shareholder should be mentioned in the land use certificate (so she/he has to have land title) and should be involved in daily activities of their dehqun farms on permanent basis. The share will be distributed according to the amount of irrigated land which is under the care of the farmer-shareholder

After analyses of Tajik legislation and Project considerations, the Open Joint Stock Company (OJSC) for Farmers' company was found to be the most appropriate. This form will allow the opportunity to involve a fairly large number of participants in the company in the future.

The question arises as whether stock should be issued to Dehqun farms or to individual cotton farmers working on the Dehqun farms. After a review of the legislation on the legal basis of Dehqun farms, the conclusion is that not all Dehqun farms are suitably organized/reorganized as per legislation requirements. Majority do not have any legal status.

In order to avoid future problems with regard juridical authority of shareholders, it was deemed appropriate not to involve Dehqun farms as potential members of the Farmers' company. Instead, shareholder membership will be limited to individual persons/farmers as stockholders in the Farmers' company. The criteria for stockholders are as follows:

- be resident of the Sugd oblast;

- have passport;
- have land use certificate
- permanently involved in daily routine farm's activity;
- grown cotton;
- no criminal records;
- not engaged in the production of tobacco or illegal products.

It is suggested that in order to provide a sense of ownership stockholders of the Farmers' company should pay for their shares in the company. The minimal nominal value of share should not be less than 1 somoni. If nominal value of a share exceeds 1 somoni, it must be a multiple of the minimum value of a share.

Implementation schedule is attached (Attachment#2)

### **1.3 Possibilities of Reorganization of Joint Stock Companies**

1. Civil legislation refers to reorganization of joint stock companies as a subject to the exclusive jurisdiction of the stockholders meeting. Correspondingly, general meetings of each JSC should make majority decision on reorganization. Joint general meetings are not foreseen.
2. Proposed reorganization of Joint Stock Company can be conducted in two ways, specifically through merger or through affiliation.

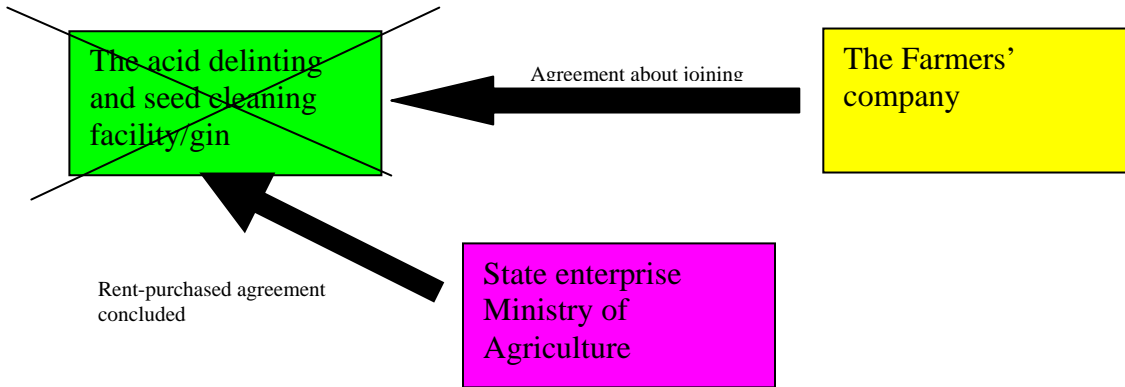
Merging is the amalgamation of two entities into one entity with liquidation of the merged entities.

In case of accession of a legal person to another legal person (affiliation), the rights and duties of the acceding legal person shall move to the latter in accordance with the transfer document. The acceding legal persons will be liquidated after accession.

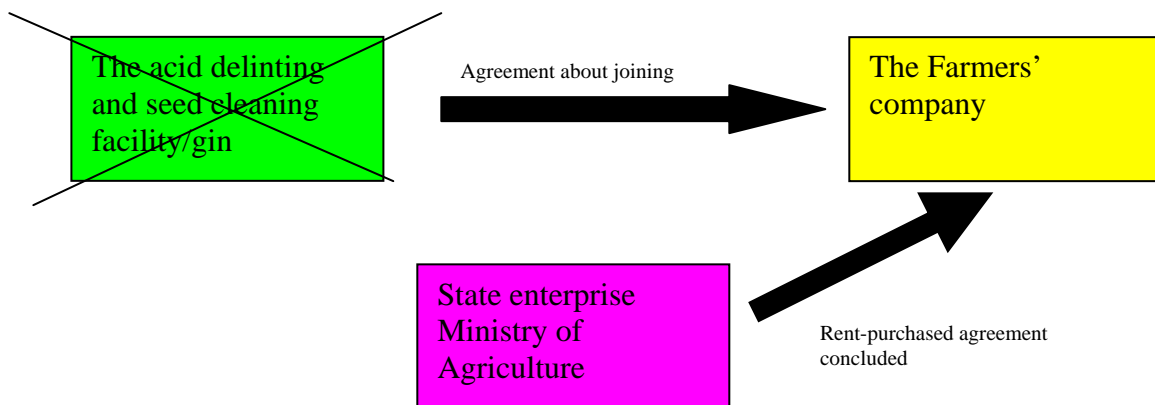
	<b>Merging</b>	<b>Affiliation</b>
Reorganization moment	From the moment when registered as a new JSC (company X)	From the moment date of discontinuation of the affiliated JSC into state registry
Assigning of future rights and responsibilities (including taxes)	Rights and obligations of seed/gin company and Farmers' company shall be assigned to company X	Rights and obligations of Farmers' company shall be assigned to seed/gin company
Founding documents	New charter of company X	Amendments to the charter of seed/gin company
Guaranties of creditors' rights	Written notification on the decision of reorganization	Written notification on the decision of reorganization

The two companies (acid delinting and seed cleaning facility/gin and Farmers' company) will become one by affiliation (see below). There are two possibilities of how affiliation can take place:

- Option 1: The Farmers' company will be affiliated to the acid delinting and seed cleaning facility/gin



- Option 2: The acid delinting and seed cleaning facility/gin will be affiliate to the Farmers' company



From the legal point of view there is no juridical difference between the two options. The procedure that should be followed shall be the same for both options. In both cases no less than 49% shares that are listed in the paid up equity should belong to Farmers' company. It is recommended that the Farmers' company be affiliated to the selected acid delinting and seed cleaning facility/gin because selected acid delinting and seed cleaning facility/gin has:

- appropriate experience;
- reputation;
- and licensed trade mark that it will guard its credibility.

The public benefit is threefold:

- introduction of farmer ownership into the seed and ginning sector;
- more competition in ginning sector;
- wider availability of improved seed quality.

Necessary legal documents (such as agreement of company establishment, Charter of company and agreement of affiliation) are attached. (Attachments 6,7,8)

## **2. Budget**

It assumes that the Project budget will be \$3,0 mln, where \$1,5 mln will be used for gin's modernization and \$1,5 mln – for the acid delinting/seed cleaning purchase and installation.

## **3. Equipment**

ADB under the request of Government of Tajikistan (Executive office of the President, Executive Agency (EA)) will agree to provide \$3.0 million to the Ministry of Agriculture (MOA) to initiate the rental-purchase agreement.

PIU in concert with MOA will administer the tender process applying the ADB Guidelines on Procurement for the selection of existing gin that will implement the Project and its needs to assist establishment of new company.

As soon as the gin will be selected it needs to develop the list of equipment that should be purchased by MOA with the prior approval from ADB. MOA has to conclude rent-purchase agreement with gin with the conditions mentioned in the point 2.1. of this proposal.

## **4. Tender process**

It assumes that NCB procurement process will be used. Phase 1 is the procurement process that will identify on a competitive and transparent manner the Sughd-based gin that will establish the seed delinting and modern gin facilities to ensure farmer ownership in the gin enterprise, and improve access to imported high quality seeds. Phase 2 is the actual construction phase; the establishment of the Farmers' company; culminating into gin operation by February 2010.

Activities for the NCB tender process are provided in Attachment #3.

**5. Farmers' company is established.** TA will support for its formation.

**6. Affiliation is done; Rent-purchase agreement concluded**

**7. New Gin is operational:**

- Farmers own 49% of shares;
- Operation of the facility – September 2010

## **OPTION 4. 3-SIDED COMMERCIAL ENTERPRISE**

### **1. Private-public partnership schemes (Design-Build-Operate-Transfer):**

ADB under the request of Government of Tajikistan (Executive office of the President, Executing Agency) will agree to provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate the Public-Private Partnership arrangement Project Implementation Unit (PIU) will purchase equipment through ICB and provide it to the established 3-sided commercial enterprise.

### **1.1 Public partner:**

The MOA through its state enterprise together with 2 selected through tender or established Farmers' companies (one on the North and one on the South) will establish 3-sided commercial enterprise in the form of Closed Joint Stock Company or Limited Liability company<sup>1</sup>, where shares (or stocks) will belong to the parties in the following proportion: 35% of shares will belong to the Farmers' company in the North, 35% of shares will belong to the Farmers' company in the South and 30% will belong to the MOA's state enterprise.

The 3-sided commercial enterprise is obliged to conclude rent agreement with Farmers' companies who are founders. The terms are:

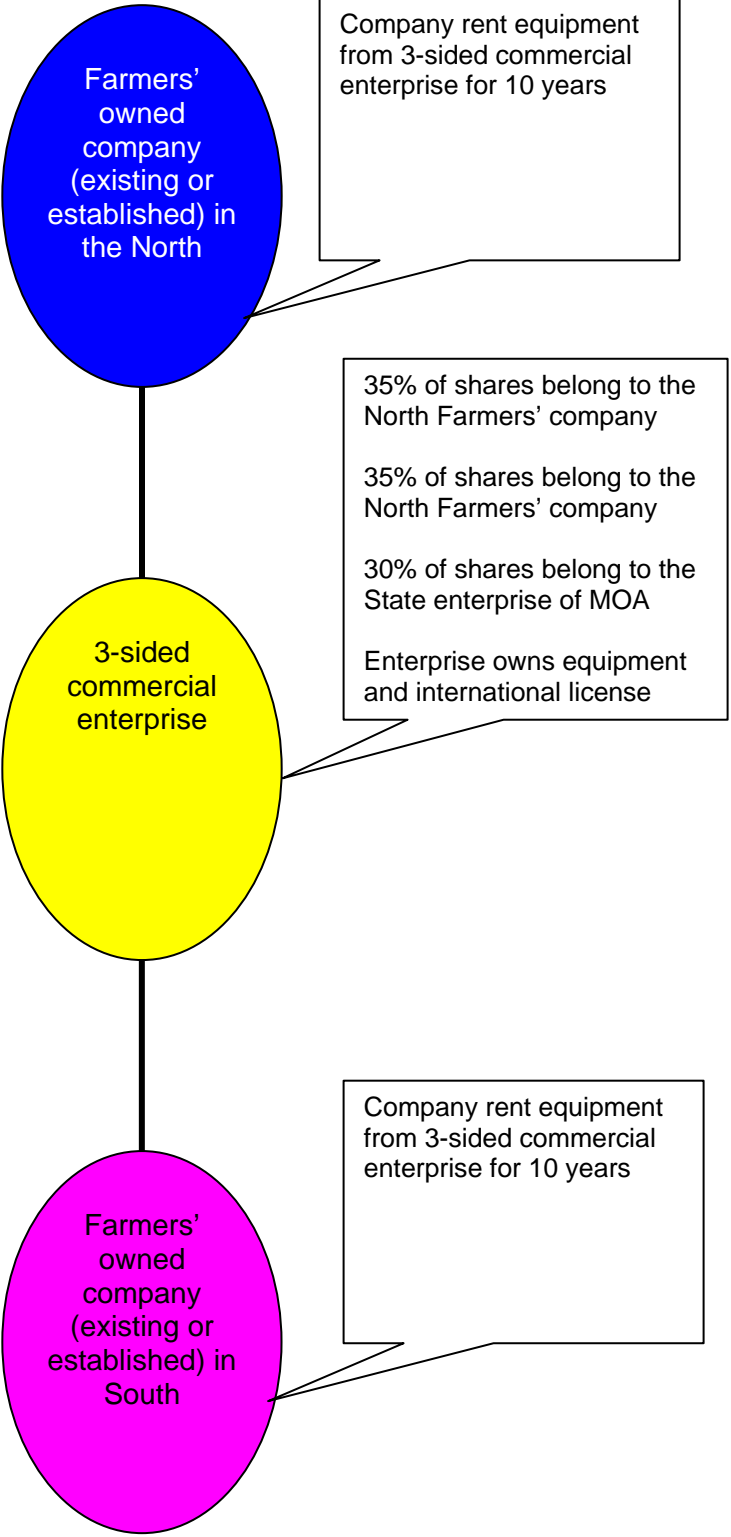
1. 2 years is privileged period of time (during this period Farmers' companies will be free of any rental payment);
2. next 7 years after privileged period rental payment should be paid by Farmers' companies as per rent agreement;
3. early rental payments and final payment are acceptable.

Establishment of 3-sided commercial enterprise will take around 2 months. 3-sided commercial enterprise will need to enter into a tangible relationship with a regional or international seed company that has a minimum of 5 years expertise in seed reproduction and processing. This company will need to be able to supply parent seed which has genetic characteristics that are capable of yielding 20% higher than "Namangan 77" and which through their financial participation and/or contractual obligations can bring expertise to the seed reproduction and processing business. The company would also be expected to cooperate with ongoing efforts for developing seed varieties that are especially suited under conditions in Tajikistan and must demonstrate its integrity to follow the laws of Tajikistan regarding seed import, processing and sale.

The ownership of purchased acid delinting and seed cleaning equipment will belong to 3-sided Company.

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<sup>1</sup> See Attachment 9



## **1.2 Private partners:**

There are 2 possible types of involving private partners, which are by involving existing companies or by establishing new companies

### **Variant 1.**

#### **1.2.4 Existing company**

The existing company in Tajikistan can be involved as private partners. The criteria for the selection will be as follows:

1. be an existing business that is registered in Tajikistan;
2. should be established as an Open Joint Stock company with farmer-stockholders;
3. should have a minimum of 1600 shareholders in the North with the following regional diversification: Zafarabad and Mastchoh districts -60% of shares, other districts of Sugd oblast– 40% of shares and should have minimum 1600 shareholders in the South with the following regional diversification: Vose and Yavan districts -60% of shares, other districts of Khatlon oblast– 40% of shares will agree to enter into contract arrangements with farmers for seed reproduction;
4. will enter into ginning arrangements with selected gin operators;
5. should be involved in input sector;
6. should be active in Zafarabad and Mastchoh districts in the North (for North's company) and in Yavan and Vose districts (for South's company);
7. should be prepared to provide audit and financial reports verifying its financial capacity.
8. should provide the highest rate of rental payment;
9. should be free of financial obligations to investors;
10. should demonstrate that they are able to access working capital of \$400,000 from the banking sector

### **Variant 2.**

#### **1.2.5 Establishment of new companies**

The new acid delinting and seed cleaning companies can be established for the project's purpose. One of the companies should be established in Sughd and the other in Khatlon. Each of the companies should be established as an Open Joint stock company and must have 1600 stockholders. It takes around 3-4 months from the date of first shareholders' data collection till the company fr registration.

After analyses of Tajik legislation, the Open Joint Stock Company (OJSC) for Farmers' company was found to be the most appropriate. This form allows for expansion of membership.

In order to avoid future problems with potentially invalid juridical structure, involvement of Dehqun farms as juridical members of the Farmers' company is not recommended because these entities are not considered as legal entities. Instead, physical persons/farmers as stockholders in the Farmers' company can become members. The criteria for stockholders are as follows:

- be resident of the Sugd oblast for the North's company and be resident of the Khatlon oblast for the South's company;
- have passport;
- have land title;
- be permanently involved in daily routine farm's activity;
- grow cotton;
- no criminal record;
- not engaged in the production of tobacco or illegal products.

It assumes that the number of participants will not be less than 1600 people for each company. The diversification for the North's company should be as follows: 60% from the Zafarabad and Mastchoh districts, 40% from the other districts of Sugd oblast. The diversification for the South's company should be as follows: 60% from the Vose and Yavan districts, 40% from the other districts of Khatlon oblast

It is suggested that in order to provide a sense of ownership stockholders of the Farmers' company should pay for their shares in the company. The minimal nominal value of share should not be less than 1 somoni. If nominal value of a share exceeds 1 somoni, it must be a multiple of the minimum value of a share.

## **2. Budget**

It assumes that the Project budget will be \$1.5 m for the equipment purchase and installation.

## **3. Equipment**

ADB under the request of Government of Tajikistan (Executive office of the President, Executive Agency (EA)) will agree to provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate the rental-purchase agreement for the seed cleaning facility.

PIU in concert with the MOA will administer the tender process for the selection of existing companies in case of implementing p.1.2.1 of this proposal or PIU needs to assist. Subsequently, the 3-sided company for acid delinting and seed cleaning needs to be established.

As soon as the new 3-sided company for acid delinting and seed cleaning will be established, it should provide the list of equipment and their technical specifications that should be purchased, with the prior approval by ADB.

Equipment should be rented to the founders of the 3-sided company

Equipment should be distributed equally between companies in the South and in the North.

## **4. Tender process**

It assumes that NCB procurement process will be used if the option 1.2.1 will be selected. The procurement process will identify on a competitive and in a transparent manner the Sughd- and Khatlon-based Farmers' company.

Implementation schedule is attached (Attachment #2)

## **OPTION 5. 3-SIDED COMMERCIAL ENTERPRISE WITH BRANCHES/DAUGHTER COMPANIES**

### **1. Private-public partnership scheme:**

ADB under the request of Government of Tajikistan (Executive office of the President, Executing Agency) will provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate a Public-Private Partnership through a rent-purchase agreement.

#### **1.1 Public partner:**

The MOA through its state enterprise together with 2 farmers' companies selected through tender or established as newly-formed Farmers' companies (one on the North and one on the South) will establish 3-sided commercial enterprise in the form of Closed Joint Stock Company or Limited Liability company<sup>2</sup>, where shares (or stocks) will belong to the parties in the following proportion: 35% of shares will belong to the Farmers' company in Sughd, 35% of shares will belong to the Farmers' company in Khatlon and 30% will belong to the MOA's state enterprise.

As soon as 3-sided commercial enterprise will be established it is obliged to open branches (or daughter companies)<sup>3</sup>; one in the North and one in the South where 3-sided commercial enterprise will set up the equipment purchased in Sughd and Khatlon companies within the time rame of the Project.

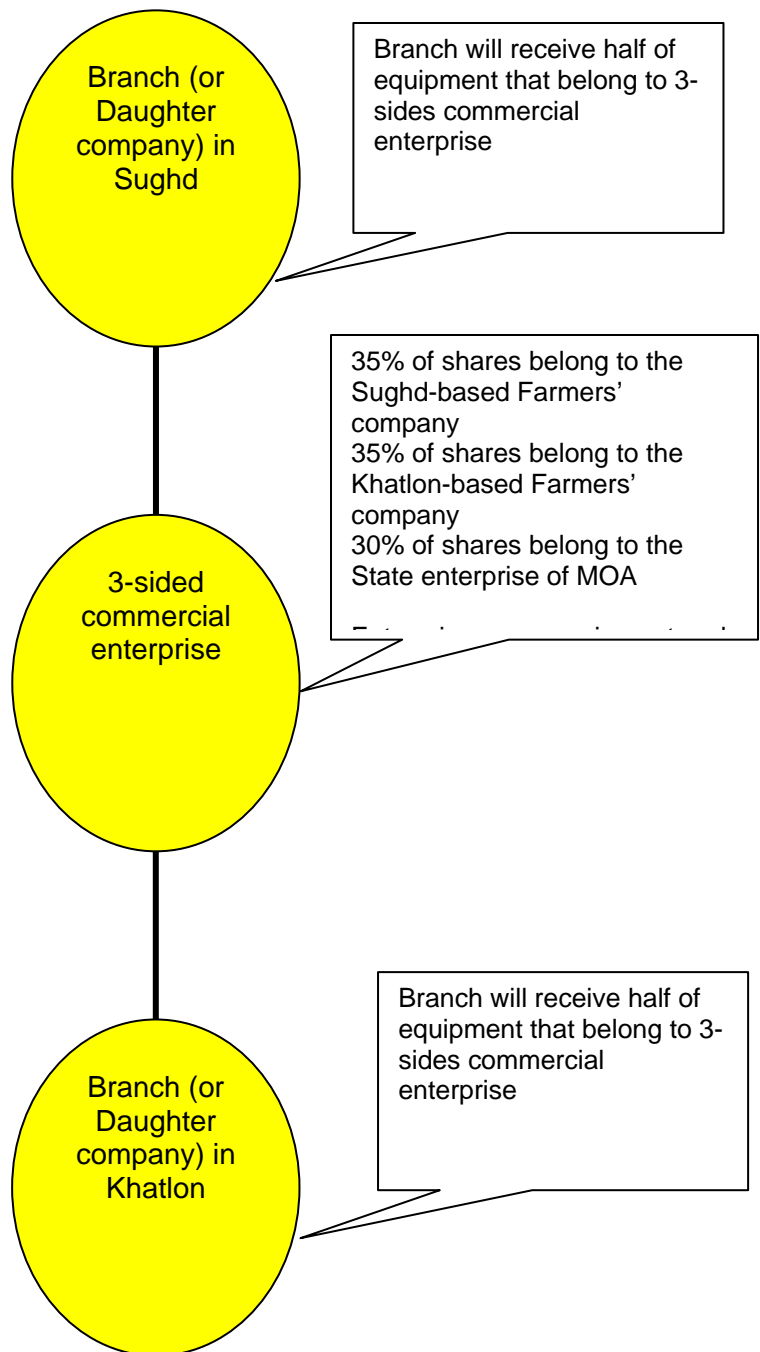
Establishment of 3-sided commercial enterprise will take around 2-3 months for registration. The 3-sided commercial enterprise will need to enter into a tangible relationship with a regional or international seed company that has a minimum of 5 years expertise in seed reproduction and processing. This company will need to be able to supply parent seed which has genetic characteristics that is capable of yielding 20% higher than "Namangan 77" and which through their financial participation and/or contractual obligations can bring expertise to the seed reproduction and processing business. The company would also be expected to cooperate with research and development efforts that will help generate seed varieties that are especially suited to Tajikistan conditions and must also demonstrate the integrity of abiding with the laws of Tajikistan regarding seed import, processing and sale.

The ownership of the purchased acid delinting and seed cleaning equipment will belong to 3-sided Company.

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<sup>2</sup> See Attachment #9

<sup>3</sup> See Attachment #10



**1.2 Private partners:**

There are 2 possible types of involving private partners, specifically through existing companies or through the establishment of new companies

## **Variant 1.**

### **1.2.1 Existing companies**

The existing companies in Tajikistan can be involved as private partners. The criteria for the selection will be as follows:

1. be an existing business that is registered in Tajikistan;
2. should be an Open Joint Stock company that is owned by farmers;
3. should have a minimum of 1600 shareholders in Sughd and should have a minimum of 1600 shareholders in Khatlon. The prospective stakeholders will agree to enter into contract arrangements with farmers for seed reproduction;
4. will enter into ginning arrangements with selected gin operators;
5. should be involved in the inputs sector;
6. Prospective stakeholders should have representation and are actively involved in agriculture affairs of Zafarabad and Mastchoh districts in Sughd, and in Yavan and Vose districts in Khatlon.;
7. should be prepared to provide audit and financial reports that verify its financial capacity.
8. should be free of financial obligations to investors;
9. should demonstrate that they are able to access working capital of \$400,000 from the banking sector

## **Variant 2.**

### **1.2.2 Establishment of new companies**

The new acid delinting and seed cleaning companies can be established for the project's purpose. One of the companies should be established in Khatlon and the other in Khatlon. Each company shall be established as an Open Joint stock company and should have at least 1600 stockholders. It takes around 3-4 months from the date of first shareholders' data collection until the company is officially registered as a business entity.

After analyses of Tajik legislation an Open Joint Stock Company (OJSC) is the preferred organizational modality for the Farmers' company. This form also allows the company to have an unlimited number of shareholders.

It is recommended that Dehqun farms cannot serve as shareholders of the Farmers' company because of their presently undefined legal status. Instead, it is suggested that individual Tajik nationalities/farmers become stockholders in the Farmers' company. The criteria for stockholders are as follows:

- be resident of the Sughd oblast for the North-based company and be resident of the Khatlon oblast for the South-based company;
- have passport;
- have land use certificates;
- be permanently involved in daily farm activity;
- grows cotton;
- has no criminal record;
- is not engaged in the production of tobacco or illegal products.

It assumes that the number of participants will be not less than 1600 people for each company.

To provide a sense of ownership among stockholders for the Farmers' company, each prospective shareholder should pay for their shares in the company. The minimal nominal value of share should not be less than 1 somoni. If nominal value of a share exceeds 1 somoni, it must be a multiple of the minimum value of a share.

## **2. Budget**

It assumes that the Project budget will be \$1.5 m for the equipment purchase and installation.

## **3. Equipment**

ADB under the request of Government of Tajikistan (Executive office of the President, Executive Agency (EA)) will agree to provide \$1.5 million to the Ministry of Agriculture (MOA) to initiate a Public-Private Partnership through a rental-purchase agreement.

PIU in concert with the MOA will administer the tender process for the selection of existing companies in case of implementing p.1.2.1 of this proposal or PIU needs to assist in the establishment of new companies in case if p.1.2.2 of this proposal be implemented. A 3-sided enterprise for acid delinting and seed cleaning may need to be established.

As soon as the new 3-sided enterprise for acid delinting and seed cleaning is established the list of equipment and its technical specifications should be developed for immediate tendering process for procurement with prior approval by ADB on key procurement steps.

Equipment should be distributed equally between branches (daughter companies) in the South and in the North.

## **4. Tender process**

It assumes that NCB procurement process will be used if the option 1.2.1 is selected. The procurement process will identify on a competitive and in a transparent manner the Sughd- and Khatlon-based equipment for the Farmers' company.

Implementation schedule see in the Attachment #2

## **CONCLUSION**

Five options were examined in this report. The detailed analysis demonstrates the validity of the proposed investment of options one and two. Both options provide a model for critical linkages with the international seed market, and a model for future replication in the south of Tajikistan. Given the funding constraints, the analysis supports an investment for the option of two acid delinting and seed cleaning facilities, specifically one in Sughd with a 1.0 ton per hour capacity, and another in Khatlon with a 1.5 to per hour capacity.

## **PROJECT BENEFITS**

The Project will :

1. improve access to high quality seeds, finance, and market infrastructure
2. restore profitability of the production sector;
3. develop better relations between producers and processors;
4. increase farmers' knowledge of company management and receive benefits from their owned enterprise;
5. provide appropriate knowledge skills to women farmers about their rights and how to safeguard these rights.

## **PROJECT RISKS**

1. Minimum number of farmer-shareholders may not be achieved because of lack of knowledge and limited finances to pay the shares. It is suggested that part of the grant amount be used to defray these shares payable during a certain period. The "equity contribution" can be under the loan amount.
2. Government will back out from its rent-purchase agreement obligations. It is suggested that the safeguards should be mentioned in the grant agreement between MOA (or government) and ADB. It should stipulate the responsibilities of MOA in case of non fulfillment of the obligations by the MOA (or government) under the rent contract.

Attachment #1. Comparative table of establishing legal basis:

	<u>Option 1. Farmers' owned 1 acid delinting facility in Sugd</u>	<u>Option 2. Gin &amp; Seed acid delinting facility</u>	<u>Option 3. 4Batch Seed acid delinting facilities</u>	<u>Option 4. 3-sides commercial enterprise (1 acid delinting facility in Sugd and 1 in Khatlon)</u>	<u>Option 5. 3-sides commercial enterprise with branches (or daughter companies) (1 acid delinting facility in Sugd and 1 in Khatlon)</u>
	<p>Variant 1. selection from the pre-existing Farmers' company</p> <p>Variant 2. establish acid delinting/seed cleaning facility in the form of a new JSC owned by farmers</p>	<p>establishment of acid delinting/seed cleaning facility/ gin modernization, affiliation</p>	<p>Variant 1. establish 4 acid delinting/seed cleaning facilities in one oblast in the form of JSC</p> <p>Variant 2. establish 2 acid delinting/seed cleaning facilities in the South and 2 acid delinting/seed cleaning facilities in the North</p> <p>Variant 3. attach purchased equipment to the 4 existing gins</p>	<p>Variant 1. selection from the pre-existing Farmers' companies: 1 in the North and 1 in the South, establish 3-sides commercial enterprise with state enterprise of MOA</p> <p>Variant 2. establish 2 companies: 1 in the North and 1 in the South in the form of a new JSC owned by farmers, establish 3-sides company with state enterprise of MOA</p>	<p>Variant 1. selection from the pre-existing Farmers' companies: 1 in the North and 1 in the South, establish 3-sides commercial enterprise with state enterprise of MOA, open branches (or daughter companies) in the North and in the South</p> <p>Variant 2. establish 2 companies: 1 in the North and 1 in the South in the form of a new JSC owned by farmers, establish 3-sides company with state enterprise of MOA, open branches (or daughter companies) in the North and in the South</p>
<b>Form of legal entity</b>	Proposed form is open joint stock company (see footnote1).	Proposed form is open joint stock company <sup>1</sup> .	Proposed form is open joint stock company (see footnote 1)	Proposed form for 3-sides commercial enterprise is Closed joint stock company or Limited liability company (see Attachment #1)	Proposed form for 3-sides commercial enterprise is Closed joint stock company or Limited liability company
<b>Equity (charter capital) of the company</b>	Not less then TJS 60000	Not less then TJS 60000	Not less then TJS 60000	Not less then TJS 24000	Not less then TJS 24000
<b>Legal procedure which should be followed</b>	<p>Variant 1.</p> <p>1.1 select pre-existing Farmers' company</p> <p>1.2. conclude rent-purchase agreement between MOA</p>	<p>1. establishment of new acid delinting/seed cleaning facility in the form of JSC owned by the farmers;</p> <p>2. select gin;</p>	<p>Variant 1.</p> <p>1.1 establish 4 acid delinting/seed cleaning facilities in the form of JSC owned by farmers;</p>	<p>Variant 1.</p> <p>1.1 selection from the pre-existing Farmers' companies: 1 in the North and 1 in the South,</p>	<p>Variant 1.</p> <p>1.1 selection from the pre-existing Farmers' companies: 1 in the North and 1 in the South;</p>

<sup>1</sup> A joint-stock company is a commercial company whose charter capital (equity) is divided into defined number of shares of stock; the participants in a joint-stock company (the stockholders) are not liable for its obligations and bear the risk of losses connected with the activity of the company within the limits of the value of the shares of stock belonging to them.

A joint-stock company whose participants can alienate the shares of stock belonging to them without the consent of the other stockholders is an open joint-stock company. Such a joint-stock company has the right to conduct open subscription to shares of stock issued by it and to their free sale on the conditions established by a statute and other legal acts.

	<p>state enterprise and Farmers' company</p> <p>Variant 2.</p> <p>2.1 establish acid delinting/seed cleaning facility in the form of JSC owned by the farmers.</p> <p>2.2conclude rent-purchase agreement between MOA state enterprise and established acid delinting/seed cleaning facility in the form of JSC owned by the farmers</p>	<p>3.conclude rent-purchase contract between MOA state enterprise and gin</p> <p>4.affiliate of new acid delinting/seed cleaning facility in the form of JSC owned by the farmers to gin</p>	<p>1.2 conclude 4 rent-purchase agreement between MOA state enterprise and established acid delinting/seed cleaning facilities in the form of JSC owned by farmers</p> <p>Variant 2.</p> <p>2.1 establish 2 acid delinting/seed cleaning facilities in the form of JSC owned by farmers in the South and 2 acid delinting/seed cleaning facilities in the form of JSC owned by farmers in the North;</p> <p>2.2conclude 4 rent-purchase agreement between MOA state enterprise and 4 established acid delinting/seed cleaning facilities in the form of JSC owned by farmers</p> <p>Variant 3.</p> <p>3.1 select 4 gins</p> <p>3.2 conclude 4 rent-purchase agreement between MOA state enterprise and 4 gins</p>	<p>1.2 establish 3-sides commercial enterprise with state enterprise of MOA</p> <p>1.3 Conclude rent agreement for 10 years</p> <p>Variant 2.</p> <p>2.1 establish 2 companies: 1 in the North and 1 in the South in the form of a new JSC owned by farmers;</p> <p>2.2 establish 3-sides company with state enterprise of MOA</p> <p>2.3 Conclude rent agreement for 10 years</p>	<p>1.2 establish 3-sides commercial enterprise with state enterprise of MOA;</p> <p>1.3 open branches (or daughter companies) in the North and in the South</p> <p>Variant 2.</p> <p>2.1 establish 2 companies: 1 in the North and 1 in the South in the form of a new JSC owned by farmers;</p> <p>2.2 establish 3-sides company with state enterprise of MOA;</p> <p>2.3 open branches (or daughter companies) in the North and in the South</p>
<b>Number of shareholders</b>	<p>Variant 1. not less than 1600 people</p> <p>Variant 2. not less than 1600 people</p>	4000 people	<p>Variant 1. not less than 400 people per facility</p> <p>Variant 2. not less than 400 people per facility</p> <p>Variant 3. N/A</p>	3 legal entities	3 legal entities
<b>Duration of legal procedure</b>	3-4 months for establishment or selection	5-6 months (see gin Implementation schedule. Appendix #4-1 to the Attachment 3)	3-4 months per each company	3-4 months for establishment or selection plus 2 months for establishment of 3 sides commercial enterprise	3-4 months for establishment or selection plus 2 months for establishment of 3 sides commercial enterprise plus 1 month for the open branches (daughter companies)
<b>Total technical assistance costs</b>	\$300000	\$300000	\$275000	\$300000	\$300000
<b>Advantages</b>	Variant 1.	1. allows combining gin and	Variant 1.	Variant 1.	Variant 1.

	<p>1.1 company is the existing legal person, no need to establish new one 1.2 company has experience on management 1.3 company belongs to farmers</p> <p>Variant 2. 2.1 company belongs to farmers</p>	<p>acid delinting/seed cleaning facility in one enterprise 2. give unique opportunity to the farmers to become of gin's owners 3.involves a lot of farmers into a structure 4. company has reputation and experience in management</p>	<p>none</p> <p>Variant 2. none</p> <p>Variant 3. none</p>	<p>1.1 Partners of MOA are existing companies, no need to establish new one. 1.2 both partners of MOA have experience in management 1.3 both partners of MOA has farmers' owned structure</p>	<p>1.1 Partners of MOA are existing companies, no need to establish new one. 1.2 both partners of MOA have experience in management 1.3 both partners of MOA has farmers' owned structure 1.4 establishment of one enterprise allows coordinate and dictate policy to the branches (daughter companies)</p>
<b>Disadvantages</b>	<p>Variant 1. 1.1 there are not many of Farmers' company which can be satisfy of quantity criteria. Therefore competition will be much less.</p> <p>Variant 2. 2.1 company needs to be established 2.2 company lack of experience</p>	<p>company needs to be established</p>	<p>Variant 1 and Variant 2. 1.1 4 companies need to be established 1.2. additional consultants need to be hired 1.3 company lack of experience 1.4 quality of services is different 1.5 high on-going costs</p> <p>Variant 3. 3.1 farmers will not be involved in the company's structure</p>	<p>Variant 1. 1.1 farmers will be involved by in-direct way to the 3-sides enterprise 1.2 risk of combining 2 regions (North and South) where one partner will not believe to other is high.</p> <p>Variant 2. 2.1 companies need to be established 2.2 companies lack of experience</p>	<p>Variant 1. 1.1 farmers will be involved by in-direct way to the 3-sides enterprise 1.2 risk of combining 2 regions (North and South) where one partner will not believe to other is high.</p> <p>Variant 2. 2.1 companies need to be established 2.2 companies lack of experience</p>

**Conclusion:** the Option 2 is more attractive because it allows involving 4000 farmers, giving unique opportunity to the farmers to become of gin's owners and combining gin and acid delinting/seed cleaning facility in one enterprise. Besides of that company has reputation and management experience. But this option required addition capital input from the partners' side.

In case of short of fund the option 1 should be selected because 1.farmers can be an owners of seed business; 2.manage of one company is much easy then manage of 4 companies. This option is not required lot of consultants input.



TASK	Required outcome or output	1st week	2nd week	3rd week	4th week	5th week	6th week	7th week	8th week
<b>Establishment of Farmers' company:</b>									
Finalise workplan		x	x						
Define framework and process for s/h suitability data collection	data collection forms, work schedule for data collection	x	x						
Conduct s/h pre-formation meetings	meetings complete			x					
Collect data for s/h suitability	forms filled out				x	x	x	x	x
Assess s/h suitability	analysis & list of suitable s/h						x	x	x
Determine who will be s/h, how many shares, and share price (if not defined before)	company share structure							x	x
Prepare letter to DF / farmers on eligibility and terms for share subscription, including date of Foundation Meeting	letters drafted, sent								
Prepare Charter and founding documents	founding agreement and charter		x	x					
Select Organizational Committee for Foundation meeting	committee names								
Organizational Committee reviews founding documents and prepares recommendations for Foundation Mtg	recommendations finalised								
Select Founding Directors	directors selected								
Conduct Farmers' company Formation Meeting and nomination of directors	company formation mtg held								
Open bank special account for approval payments not less than 50% shares	bank account open								
Start process of Company registration at obl.Ust (It takes approx. 20-30 days)									
Finalize registration process	Farmers' company registered								
After registration, open bank account, registrate in the tax, statistics office, pension organs and in the Ministry of Finance	bank acct open and all essential state registrations complete								
Min of Obl UST gives approval of 100% payment of shares/ funds capital	approval doc from Obl UST								
Farmers' company informs Obl UST about absence of creditors	letter to Obl UST								
<b>Affiliation Planning:</b>									
Draft affiliate prospectus/plan for presentation to Farmers' company and Seed/Gin company Directors	takeover plan and presentation ammendments doc			x					
Draft amendments required to Seed/Gin company Charter			x	x					
Meet with Directors of Seed/gin company and Farmers' company to review and agree affiliation plan	meeting held, takeover plan final								
Call Extraordinary Meeting Seed/gin company to approve affiliation plan, Charter amendments, and increase in nominal share price (if necessary)	meeting notice								
Call Extraordinary Meeting Farmers' company to confirm Directors and approve affiliation plan	meeting notice								
<b>Affiliation Implementation:</b>									
Conduct Extraordinary Meeting Farmers' company	EGM complete								
Conduct Extraordinary Meeting Seed/gin company	EGM complete								
Register affiliation in Obl. UST	Registration documents								
Complete correspondence required to state following takeover	various letters drafted and sent								

**Please note -**

1. consultants should be hired and start preparation work 6-7 weeks before starting company's creation
2. many variables outside the control can impact on this timeline. Persons responsible are committed to do their part to achieve completion within the proposed timelines.

TASK	Required outcome or output	Timing - week ending													
		9th week	10th week	11th week	12th week	13th week	14th week	15th week	16th week	17th week	18th week	19th week	20th week	21st week	22nd week
<b>Establishment of Farmers' company:</b>															
Finalise workplan															
Define framework and process for s/h suitability data collection	data collection forms, work schedule for data collection														
Conduct s/h pre-formation meetings	meetings complete														
Collect data for s/h suitability	forms filled out	x	x	x											
Assess s/h suitability	analysis & list of suitable s/h	x	x	x											
Determine who will be s/h, how many shares, and share price (if not defined before)	company share structure	x	x	x											
Prepare letter to DF / farmers on eligibility and terms for share subscription, including date of Foundation Meeting	letters drafted, sent		x	x											
Prepare Charter and founding documents	founding agreement and charter	x	x		x										
Select Organizational Committee for Foundation meeting	committee names		x												
Organizational Committee reviews founding documents and prepares recommendations for Foundation Mtg	recommendations finalised			x	x										
Select Founding Directors	directors selected				x	x									
Conduct Farmers' company Formation Meeting and nomination of directors	company formation mtg held				x										
Open bank special account for approval payments not less than 50% shares	bank account open				x										
Start process of Company registration at obl.Ust (It takes approx. 20-30 days)					x	x	x	x							
Finalize registration process	Farmers' company registered							x							
After registration, open bank account, register in the tax, statistics office, pension organs and in the Ministry of Finance	bank acct open and all essential state registrations complete							x	x	x?					
Min of Obl UST gives approval of 100% payment of shares/ funds capital	approval doc from Obl UST								x						
Farmers' company informs Obl UST about absence of creditors	letter to Obl UST								x						
<b>Affiliation Planning:</b>															
Draft affiliate prospectus/plan for presentation to Farmers' company and Seed/Gin company Directors	takeover plan and presentation	x	x		x										
Draft amendments required to Seed/Gin company Charter	ammendments doc	x	x												
Meet with Directors of Seed/gin company and Farmers' company to review and agree affiliation plan	meeting held, takeover plan final					x	x								
Call Extraordinary Meeting Seed/gin company to approve affiliation plan, Charter amendments, and increase in nominal share price (if necessary)	meeting notice								x						
Call Extraordinary Meeting Farmers' company to confirm Directors and approve affiliation plan	meeting notice								x						
<b>Affiliation Implementation:</b>															
Conduct Extraordinary Meeting Farmers' company	EGM complete											x			
Conduct Extraordinary Meeting Seed/gin company	EGM complete												x		
Register affiliation in Obl. UST	Registration documents											x	x		
Complete correspondence required to state following takeover	various letters drafted and sent											x	x	x	

**Please note -**

1. consultants should be hired and start preparation work 6-7 weeks before starting company's creation
2. many variables outside the control can impact on this timeline. Persons responsible are committed to







**IMPLEMENTATION SCHEDULE ACID DELINTING/SEED CLEANING FACILITY Variant 1. select 1 Farmers' company in the North and 1 in the South**

Task names	2008		2009												2010						
	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J
Change of project design	█																				
Tender and selection of Farmers' companies			█	█	█																
Establishment of 3 sides commercial enterprise						█	█														
Open branches or daughter companies: 1 in the North and 1 in the South*								█	█												
Technical Assistance with tender specification										█	█										
Tender for equipment												█	█								
Equipment's delivery														█	█						
Equipment's installation																█	█				
Contact Domestic and International Seed Producing Companies Regarding Procurement of Parent Seed											█	█	█								
Develop and Sign Licensing Agreements for Parent Seed														█	█						
Purchase and Take Possession of Parent Seed																█	█				
Develop List of Farmers Interested in Propagating Seed																	█	█			
Select Farmers and Sign Seed Propagation Contracts																		█	█		
Distribute Parent Seed																			█	█	
Contact Gins to Determine Interest in Processing Raw Cotton Grown for Seed													█	█							
Select Gin to Process Seed Cotton and Develop Contractual Agreement																					█

\* Needs additional consultants' input because of 2 branches in different regions

**IMPLEMENTATION SCHEDULE ACID DELINTING/SEED CLEANING FACILITY Variant 2. establish Farmers' companies: 1 in the North and 1 in the South in form of JSC**

Task names	2008		2009												2010							
	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
Change of project design	█																					
Consultants hired			█	█	█	█	█	█	█	█	█	█	█	█								
Consultants start activities																						
Establishment of 2 Farmers' companies: 1 in the North and 1 in the South simultaneously*						█	█	█	█	█	█	█	█	█								
Establishment of 3 sides commercial enterprise																						
Open branches or daughter companies: 1 in the North and 1 in the South																						
Technical Assistance with tender specification																						
Tender for equipment																						
Equipment's delivery																						
Equipment's installation																						
Contact Domestic and International Seed Producing Companies Regarding Procurement of Parent Seed																						
Develop and Sign Licensing Agreements for Parent Seed																						
Purchase and Take Possession of Parent Seed																						
Develop List of Farmers Interested in Propagating Seed																						
Select Farmers and Sign Seed Propagation Contracts																						
Distribute Parent Seed																						
Contact Gins to Determine Interest in Processing Raw Cotton Grown for Seed																						
Select Gin to Process Seed Cotton and Develop Contractual Agreement																						

\* Needs additional consultants' input because of 2 branches in different regions

**ESTABLISHMENT OF FARMER COMPANY\***

TASK	Required outcome or output	Timing - week ending																		
		1st week	2nd week	3rd week	4th week	5th week	6th week	7th week	8th week	9th week	10th week	11th week	12th week	13th week	14th week	15th week	16th week	17th week		
<b>Establishment of Farmers' company:</b>																				
Finalise workplan		x	x																	
Define framework and process for s/h suitability data collection	data collection forms, work schedule for data collection	x	x																	
Conduct s/h pre-formation meetings	meetings complete			x																
Collect data for s/h suitability	forms filled out				x	x	x	x	x	x	x	x								
Assess s/h suitability	analysis & list of suitable s/h						x	x	x	x	x	x								
Determine who will be s/h, how many shares, and share price (if not defined before)	company share structure							x	x	x	x	x								
Prepare letter to DF / farmers on eligibility and terms for share subscription, including date of Foundation Meeting	letters drafted, sent										x	x								
Prepare Charter and founding documents	founding agreement and charter		x	x							x	x	x							
Select Organizational Committee for Foundation meeting	committee names										x									
Organizational Committee reviews founding documents and prepares recommendations for Foundation Mtg	recommendations finalised											x	x							
Select Founding Directors	directors selected											x	x							
Conduct Farmers' company Formation Meeting and nomination of directors	company formation mtg held												x							
Open bank special account for approval payments not less than 50% shares	bank account open												x							
Start process of Company registration at obl.Ust (It takes approx. 20-30 days)														x	x	x	x			
Finalize registration process	Farmers' company registered																x			
After registration, open bank account, register in the tax, statistics office, pension organs and in the Ministry of Finance	bank acct open and all essential state registrations complete																	x	x	x

\* Process of company establishment is identical for 3th,4th,5th,6sh sheets mentioned before and can be applied in every case where it is necessary to establish new company

### Attachment #3 NCB tender

#	Tasks	Duration
1	finalization list of goods and works with ADB prior approval	15-30 days (or should be prepared by consultant as draft before)
2	indication for bids and bidding documents preparation	7 days
3	advertisement of bid in mass-media and ADB website	30 days
4	Bidding duration: Interesting bidders have to purchase bidding documents	42-45 days
5	Public opening of bids, develop records on bids	2-3 days
6	Development of evaluation of bids with recommendation of contract's award which should be send to ADB for approval	28-30 days
7	ADB will review and approve	15-25 days
8	PIU prepare the contract's agreement and sign it	10-15 days
	<b>Total (approximately):</b>	<b>144 days</b>

Draft

**AGREEMENT OF EQUIPMENT RENT  
WITH FURTHER PURCHASE # \_\_\_\_\_**

Dushanbe city " \_\_\_\_ " \_\_\_\_\_ y.

between

(1) \_\_\_\_\_  
" \_\_\_\_\_ ", represented by Mr. \_\_\_\_\_, Manager acting in accordance with the Charter, hereinafter referred to as the "Lesser"

and

(2) \_\_\_\_\_  
" \_\_\_\_\_ ", represented by Mr. \_\_\_\_\_, the chairman, acting in accordance with the Charter, hereinafter referred to as the "Lessee".

concluded present Agreement on below mentioned:

**1. Subject of Agreement**

1.1 The Lesser provides to the Lessee equipment to the rent, namely

\_\_\_\_\_  
\_\_\_\_\_ ,

for the purpose of

\_\_\_\_\_  
\_\_\_\_\_

with further its purchase on the basis

Проект

**ДОГОВОР АРЕНДЫ ОБОРУДОВАНИЯ С  
ПОСЛЕДУЮЩИМ ВЫКУПОМ №. \_\_\_\_**

г. Душанбе " \_\_\_\_ " \_\_\_\_\_ г.

\_\_\_\_\_  
\_\_\_\_\_, именуем \_\_\_\_\_ в дальнейшем "Арендодатель", в лице \_\_\_\_\_, действующ \_\_\_\_\_ на основании \_\_\_\_\_, с одной стороны, и

\_\_\_\_\_  
\_\_\_\_\_, именуем \_\_\_\_\_ в дальнейшем "Арендатор", в лице \_\_\_\_\_, действующ \_\_\_\_\_ на основании \_\_\_\_\_, с другой стороны, заключили настоящий договор аренды о нижеследующем:

**1. Предмет договора**

1.1 Арендодатель предоставляет Арендатору в аренду оборудование

\_\_\_\_\_  
\_\_\_\_\_, в целях

\_\_\_\_\_  
\_\_\_\_\_

с последующим его выкупом на

<p>of the present Agreement conditions.</p> <p>1.2 The detailed list of the equipment that are given into the rent are mentioned in the Attachment 1 to the present Agreement that is constitute part of this Agreement.</p> <p>1.3 The total cost of the equipment at the date of put (clearing) it into operation are _____</p> <p>1.4. Transferring of equipment into rent is formalized by the acceptance protocol that should be signed by authorized representatives of the parties</p> <p>1.5. Authorized representatives of the parties should sign acceptance protocol at the time of transferring of equipment into the Ownership rights to Lessee.</p>	<p>условиях настоящего договора.</p> <p>1.2 Перечень оборудования, передаваемого в аренду, приводится в Приложении №1 к настоящему договору, которое является его неотъемлемой частью.</p> <p>1.3 Общая стоимость оборудования на дату его ввода в эксплуатацию составляет _____</p> <p>1.4. Передача оборудования в аренду оформляется актом приемки-приемки сдачи, подписанным уполномоченными представителями сторон.</p> <p>1.5. При передаче оборудования в собственность Арендатора стороны уполномоченные представители сторон подписывают двусторонний акт передачи оборудования</p>
<p>2. Terms</p>	<p>2. Сроки</p>
<p>2.1 The duration of the rent by the parties of the present Agreement is defined in ____ years starting from the date of finishing installation process and start-up work. The Lessee should send written notification to the Lesser about the date of commissioning.</p> <p>2.2 The parties of the Agreement agreed that at the expiration of the present Agreement Lessee purchase equipment</p>	<p>2.1 Срок аренды оборудования сторонами настоящего договора определен в ____ (____) лет, начиная с момента окончания монтажа и пусконаладочных работ оборудования. О дате ввода оборудования в эксплуатацию Арендатор письменно извещает Арендодателя.</p> <p>2.2 Стороны договора согласились, что по истечении срока действия договора Арендатор приобретает в собственность</p>

<p>that are subject of present Agreement into the ownership after repayment of its cost in accordance with p.4 of the present Agreement.</p>	<p>оборудование, являющееся объектом данного договора, после оплаты его стоимости в соответствии с п.4 настоящего договора.</p>
<p>3. Rights and obligations of the parties</p>	<p>3. Права и обязанности сторон</p>
<p>3.1. Lesser is obliged to:</p>	<p>3.1. Арендодатель обязуется:</p>
<p>3.1.1. Provide equipment mentioned in the Attachment #1 with all its accessories and documents (such as manuals of use, technical passports etc.) to the Lessee by «_____»_____200___;</p>	<p>3.1.1. В срок до «_____»_____200___ предоставить указанное в Приложении №1 оборудование со всеми его принадлежностями и относящейся к нему документацией (инструкции по пользованию, технические паспорта и т. д.) Арендатору.</p>
<p>3.1.2. Render necessary assistance to Lessee in issues that link with execution of the conditions of the present Agreement;</p>	<p>3.1.2. Оказывать Арендатору необходимое содействие в вопросах, связанных с исполнением условий настоящего договора.</p>
<p>3.1.3 During ___ days prepare all necessary documentations for formalization and registration of transferring ownership rights of the equipment, mentioned in the Attachment #1 to the present Agreement, to Lessee at the end of rent terms and payment the cost of the equipment, mentioned in p.4.1.3 by Lessee</p>	<p>3.1.3 По истечении срока аренды и оплаты Арендатором суммы, указанной в п.4.1.3, в течение ___ дней подготовить необходимую документацию для оформления и регистрации передачи права собственности на оборудование, указанное в Приложении №1 к настоящему договору, Арендатору.</p>
<p>3.1.4 Conclude a agreement of equipment pledge with Lessee where the Lessee</p>	<p>3.1.4 во исполнение п.3.1.3 настоящего договора заключить с Арендатором</p>

<p>will be the Pledge holder for the proper fulfillment of the p.3.1.3 of the present agreement.</p>	<p>договор залога оборудования, где последний будет выступать Залогодержателем.</p>
<p>3.2. Lessee is obliged to:</p>	<p>3.2. Арендатор обязуется:</p>
<p>3.2.1. Use the rented equipment in accordance of its work assignments.</p>	<p>3.2.1. Использовать переданное ему оборудование в соответствии с его назначением.</p>
<p>3.2.2. Keep the instruction of producer factory on equipment operation. я.</p>	<p>3.2.2. Соблюдать положения инструкций завода-изготовителя по эксплуатации оборудования.</p>
<p>3.2.3. Maintain capital and current repair as well as provide current maintenance of equipment at his expenses during terms of the present Agreement.</p>	<p>3.2.3. Производить за свой счет капитальный и текущий ремонт, а также иное текущее обслуживание оборудования в течение срока действия настоящего договора.</p>
<p>3.2.4. Repay the rent payment every month.</p>	<p>3.2.4. Ежемесячно производить оплату за аренду оборудования.</p>
<p>3.2.5 Purchase an equipment at the price, mentioned in p.4.1.3, at the end of the term of the rent, mentioned in p.4.1.1 and 4.1.2 of the present Agreement</p>	<p>3.2.5 По истечении срока действия аренды, указанного в п.4.1.1 и 4.1.2 настоящего договора, выкупить оборудование, по цене, указанной в п.4.1.3 настоящего договора</p>
<p>3.3 Lesser has right:</p>	<p>3.3 Арендодатель имеет право:</p>
<p>3.3.1 In case of early termination of Agreement by Lessee on his own initiative with Lesser's notification not less then 3 months before the termination Lesser has right to</p>	<p>3.3.1 При досрочном расторжении договора Арендатором по его инициативе с предупреждением Арендодателя не менее, чем за 3 (три) месяца, Арендодатель вправе потребовать от</p>

<p>request Lessee to pay off unpaid part of rent payment as well as compensate losses caused by early termination of Agreement.</p>	<p>Арендатора внесения неоплаченной арендной платы, а также возмещения убытков, причиненных Арендодателю досрочным прекращением договора.</p>
<p>3.4 Lessee has right:</p>	<p>3.4 Арендатор имеет право:</p>
<p>3.4.1 Lessee has right pay off total cost of equipment and rent payments, mentioned in p.4 of the present Agreement, ahead of schedule till the end of payment terms, mentioned in p.4 of the present Agreement. In this case ownership rights should be transferred to the Lessee during ____ days from the moment of repayment of the final payment.</p>	<p>3.4.1 Арендатор имеет право оплатить полную стоимость оборудования и арендные платежи, предусмотренные п.4 настоящего договора, досрочно до окончания сроков оплаты, указанных в п.4 настоящего договора. В этом случае право собственности на оборудование должно быть передано Арендатору в течение ____ дней по исполнению им финального платежа.</p>
<p>3.4.2 If Lesser refused to prepare all necessary documentations for formalization and registration of transferring ownership rights of the equipment, mentioned in the Attachment #1 to the present Agreement, at the expiration of the present Agreement then Lessee has right to initiate court suit about recognition of ownership rights to that equipment and compensation of losses caused by this refusal.</p>	<p>3.4.2 Если Арендодатель отказал Арендатору по истечении срока настоящего договора в подготовке документов, необходимых для оформления и регистрации передачи права собственности на оборудование, указанное в Приложении №1 к настоящему договору, Арендатор вправе потребовать в суде признания за ним права собственности на это оборудование и возмещения убытков, причиненных этим отказом.</p>
<p>4. Calculation and payments</p>	<p>4. Расчеты и платежи</p>

<p>4.1. Rent payment for equipment use should be made in the following order:</p> <p>4.1.1. Lessee is excused from any of rent payments to Lesser during first 3 years (privilege period) from the moment, mentioned in p.3.1.1 of the present Agreement.</p> <p>4.1.2. During next 7 years from the moment of expiration of the privilege period, mentioned in p.4.1.1, Lessee should pay off rent payment in the amount of _____ every month, not later than _____ date of the month that is after month of payment. Size of the rent payment can't be changed.</p> <p>4.1.3. At the expiration 10 years mentioned in p.4.1.1 and p.4.1.2, Lesser sell and Lessee purchase the equipment, mentioned in the Attachment #1 to the present Agreement, at the price of _____. This price should be consider as a final payment.</p>	<p>4.1. Арендная плата за пользование оборудованием осуществляется в следующем порядке:</p> <p>4.1.1. В течение первых 3 лет (льготный период) с момента, указанного в п.3.1.1, Арендатор освобождается от уплаты любых арендных платежей Арендодателю;</p> <p>4.1.2. В течение следующих 7 лет с момента истечения льготного периода, указанного в п.4.1.1 Арендатор должен уплачивать арендную плату в размере _____ каждый месяц, не позднее ____ числа месяца, следующего за месяцем оплаты. размеры платы за пользование имуществом не могут быть изменены</p> <p>4.1.3. По истечении 10 (десяти) лет, указанных в п.4.1.1 и 4.1.2, Арендодатель продаст, Арендатор купит оборудование, указанное в Приложении №1, по цене _____, которая и будет рассматриваться как финальный платеж.</p>
<p>5. Responsibilities of the parties</p> <p>5.1. In case of default or improper performance by one of the sides of the obligations as of this Agreement, it is</p>	<p>5. Ответственность сторон</p> <p>5.1 В случае неисполнения или ненадлежащего исполнения одной из сторон обязательств по настоящему</p>

<p>liable for reimbursement of the losses due to the default incurred by the other party;</p>	<p>договору, она обязана возместить другой стороне причиненные таким неисполнением убытки.</p>
<p>5.2. In case of default of performance of obligation to sell the equipment by the Lesser, he obliged to pay back all the rental payments that he received as well as pay sum in the amount of price of new equipment (the same volume and the same size).</p>	<p>5.2 В случае неисполнения Арендодателем его обязанности по продаже оборудования, он обязан выплатить Арендатору все произведенным последним арендные платежи и оплатить сумму в размере стоимости нового оборудования (такого же объема и такого же размера)</p>
<p>5.3. The non-performance of the terms of this Agreement by one of the parties which led to material losses for the other party has a consequence of fine sanctions being imposed on the responsible party in the amount of _____ for each day, but not more than _____.</p>	<p>5.3 Неисполнение одной из сторон условий настоящего договора приведшее к материальным потерям другой стороны, влечет за собой применение к виновной стороне штрафных санкций в размере _____ за каждый день, но не более чем _____</p>
<p>5.4. Charge of the fine sanction stipulated by the present Agreement is not acquitted parties from the execution of their Agreement's obligation.</p>	<p>5.4 Начисление штрафных санкций, установленных настоящим договором, не освобождает стороны от выполнения лежащих на них обязательств по настоящему договору.</p>
<p>6. Termination of the Agreement</p>	<p>6. Порядок расторжения договора</p>
<p>6.1 Agreement can be terminated by the Agreement of the parties.</p>	<p>6.1. Расторжение договора допускается по соглашению сторон.</p>
<p>6.2 The rent Agreement is the subject of earlier termination on the request of the</p>	<p>6.2. Договор аренды подлежит досрочному расторжению по требованию</p>

<p>Lesser by the court if Lessee:</p> <ul style="list-style-type: none"> <li>- uses the equipment with a substantial violation of the terms of the Agreement or purpose of the equipment or with repeated violations despite written warnings of the Lesser;</li> <li>- substantially worsens the equipment;</li> <li>- fails to make rent payment for the use of equipment more than twice in succession upon the expiration of the time for payment established by the Agreement;</li> </ul> <p>The Lesser has right to request Agreement's termination under before mentioned grounds only if he gave to the Lessee rational possibility for the performance of his obligations.</p> <p>6.3 The rent Agreement is the subject of earlier termination on the request of the Lessee by the court:</p> <ul style="list-style-type: none"> <li>- if Lesser doesn't fulfill obligation on providing equipment or its accessories and documents relating to them without of which equipment can't be used</li> <li>- under the other conditions stipulated in the legislation of RT.</li> </ul>	<p>Арендодателя судом, если Арендатор:</p> <ul style="list-style-type: none"> <li>- пользуется имуществом с существенным нарушением условий договора или назначения имущества либо с неоднократными нарушениями, несмотря на письменное предупреждение Арендодателя;</li> <li>- существенно ухудшает состояние оборудования;</li> <li>- более двух раз подряд по истечении установленного договором срока платежа не вносит плату за пользование имуществом</li> </ul> <p>Арендодатель вправе требовать досрочного расторжения договора только после предоставления Арендатору разумной возможности исполнения своего обязательства</p> <p>6.3. Договор аренды может быть досрочно расторгнут судом по требованию Арендатора:</p> <ul style="list-style-type: none"> <li>- при неисполнении Арендодателем обязанности передать оборудование либо его принадлежности и относящиеся к нему документы, без которых оборудование не может быть использовано по назначению</li> <li>- по иным основаниям, указанным в законодательстве РТ.</li> </ul>
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<p>7. Confidentiality</p> <p>7.1. The terms of the present Agreement, amendments into the Agreements as well as other information that was received by parties in accordance to the Agreement, are confidential and should be hold confidential.</p>	<p>7. Конфиденциальность</p> <p>7.1. Условия настоящего договора, дополнительных соглашений к нему и иная информация, полученная сторонами в соответствии с договором, конфиденциальны и не подлежат разглашению.</p>
<p>8. Force majeure</p> <p>8.1 Parties are not liable for partial or full non-performance of the obligations of the Agreement if such non-performance was a consequence of the force majeure event which started after the signing of this Agreement as a result of extraordinary circumstances, which the parties could not foresee or prevent.</p>	<p>8. Форс-мажор</p> <p>8.1. Стороны освобождаются от ответственности за частичное или полное неисполнение обязательств по настоящему договору, если это неисполнение явилось следствием обстоятельств непреодолимой силы, возникших после заключения настоящего договора в результате обстоятельств чрезвычайного характера, которые стороны не могли предвидеть или предотвратить.</p>
<p>8.2 In case of mentioned in section 8.1 circumstances each party shall promptly give written notice to the other party of a Force Majeure Event. The written notice shall contain data about the character of these circumstances as well as official documents certifying the presence of such circumstances and, if possible, assessing their impact on the possibility</p>	<p>8.2. При наступлении обстоятельств, указанных в п. 8.1, каждая сторона должна без промедления известить о них в письменном виде другую сторону. Извещение должно содержать данные о характере обстоятельств, а также официальные документы, удостоверяющие наличие этих обстоятельств и, по возможности,</p>

<p>of performance by the party of its obligations according to this Agreement.</p>	<p>дающие оценку их влияния на возможность исполнения стороной своих обязательств по данному договору.</p>
<p>8.3 If a party did not send or sent the written notice in time envisaged by section 8.2. it is obliged to reimburse the losses to the second party.</p>	<p>8.3. Если сторона не направит или несвоевременно направит извещение, предусмотренное в п.8.2, то она обязана возместить второй стороне понесенные ею убытки.</p>
<p>8.4 In case of events described in section 8.1. the term for the performance of obligations of this Agreement shall be delayed for the duration of the Force Majeure Event and its consequences.</p>	<p>8.4. В случаях наступления обстоятельств, предусмотренных в п. 8.1, срок выполнения стороной обязательств по настоящему договору отодвигается соразмерно времени, в течении которого действуют эти обстоятельства и их последствия.</p>
<p>8.5 If the events described in section 8.1. and the consequences continue for more than two (2) months, parties shall have additional negotiations for the purpose of finding acceptable alternative ways of executing this Agreement</p>	<p>8.5. Если, наступившие обстоятельства, перечисленные в п. 8.1 и их последствия продолжают действовать более двух месяцев, стороны проводят дополнительные переговоры для выявления приемлемых альтернативных способов исполнения настоящего договора</p>
<p>9. Dispute resolution</p>	<p>9. Разрешение споров</p>
<p>9.1 All disputes and disagreements related to this Agreement and its execution shall be resolved by negotiations on the basis of the legislation of RT.</p>	<p>9.1. Все споры и разногласия, связанные с настоящим договором и его исполнением, будут разрешаться путем переговоров на основе законодательства</p>

<p>9.2 In case disputes or disagreements cannot be resolved by negotiations parties pass them on to Court in accordance with order mentioned in legislation of the Republic of Tajikistan.</p>	<p>РТ. 9.2. При неурегулировании в процессе переговоров спорных вопросов и разногласий, они разрешаются в суде в порядке, установленном законодательством РТ.</p>
<p>10. Other conditions</p>	<p>10. Прочие условия</p>
<p>10.1 Transferring of ownership right on the rented equipment to the other persons is not the basis for changing and termination of the present Agreement. In case of reorganization of Lesser or Lessee their rights and obligation of the present Agreement should be transfer to the Successor.</p>	<p>10.1. Переход права собственности на сданное в аренду оборудование к другому лицу не является основанием для изменения или расторжения настоящего договора. В случае реорганизации Арендодателя и/или Арендатора его права и обязанности по настоящему договору переходят к правопреемнику.</p>
<p>10.2 In case of termination of the present Agreement equipment should be returned to the Lesser.</p>	<p>10.2. В случае расторжения настоящего договора оборудование возвращается Арендодателю.</p>
<p>10.3 The present Agreement is in two copies, both having equal legal effect, one for each party.</p>	<p>10.3. Настоящий договор составлен в двух экземплярах, имеющих одинаковую юридическую силу, по одному для каждой из сторон.</p>
<p>10.4 Any changes or amendments to this Agreement are valid if done in written form and signed by authorized representatives of the parties.</p>	<p>10.4. Все изменения, дополнения к настоящему договору действительны, если они изложены в письменной форме и подписаны обеими сторонами.</p>
<p>10.5 This Agreement is in force from the date of its signing by the parties and is valid</p>	<p>10.5. Договор вступает в силу с момента его подписания и действует до его полного</p>

<p>till the full execution of obligations by parties.</p>	<p>исполнения сторонами</p>
<p>10.6 The risk of accidental loss of the rented equipment shall be borne by the Lesser till the moment of re-registration of the documents verifying equipment ownership rights to the name of Lessee.</p>	<p>10.6 Риск случайной гибели оборудования, предоставленного в аренду, лежит на Арендодателе до момента переоформления документов, удостоверяющих право собственности на оборудования, на Арендатора.</p>
<p>Juridical address of parties and bank's details:</p>	<p>Адреса и платежные реквизиты сторон:</p>
<p>Lessee:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>Арендатора:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Lesser:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>Арендодателя:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Signatures and stamps:</p>	<p>Подписи сторон:</p>
<p>Lessee:</p> <p>_____</p> <p>_____</p>	<p>Арендатор:</p> <p>_____</p> <p>_____</p>
<p>Lesser:</p> <p>_____</p> <p>_____</p>	<p>М.П.</p> <p>Арендодатель:</p> <p>_____</p> <p>_____</p>

<p><b>Contract</b></p> <p><b>between</b></p> <hr/> <p><b>and</b></p> <hr/> <p><b>Contract №</b> _____</p> <p><b>Dushanbe, 200</b> _____</p> <p><b>Contract</b></p>	<p><b>Контракт</b></p> <p><b>между</b></p> <hr/> <p><b>и</b></p> <hr/> <p><b>Контракт №</b> _____</p> <p><b>Душанбе, 200</b> _____ г.</p> <p><b>КОНТРАКТ</b></p>
<p>THIS CONTRACT made on  “ _____ ” _____ 200____, between the  _____, represented by  Mr. _____, Manager acting in  accordance with the _____,  hereinafter referred to as the "Lesser" on the one  part</p> <p>and</p> <p>_____, represented by  Mr. _____, Manager acting in  accordance with the _____,  hereinafter referred to as the "Lessee" on the  other part.</p> <p>WHEREAS the Lesser concluded with Lessee  Contract of rent equipment for acid delinting and  seed cleaning with further its buying by Lessee  where the price of equipment on the date of  installation is _____</p> <p>NOW THIS CONTRACT WITNESSETH AS  FOLLOWS:</p> <p>1. In this Contract words and expressions  shall have the same meanings as are respectively  assigned to them in the Contract referred to.</p> <p>2. The following documents shall be  deemed to form and be read and construed as part  of this Contract, viz.:</p> <p style="padding-left: 40px;">(a) the General Conditions of  Contract;</p>	<p>Настоящий контракт заключен “ _____ ”  200____ года, между _____, в лице  _____, действующего на основании  _____ (далее именуемый "Арендодатель") с  одной стороны,</p> <p>и</p> <p>« _____ » _____  _____, в лице _____,  действующего _____ на _____ основании  _____ (далее именуемый  "Арендатор") с другой стороны о  нижеследующем:</p> <p>ПОСКОЛЬКУ Арендодатель настоящим  заключает с Арендатором контракт аренды  оборудования по кислотной делинтировке и  очистке семян с последующим его выкупом, где  цена оборудования на дату его ввода в  эксплуатацию _____ составляет _____</p> <p>ПОСТОЛЬКУ НАСТОЯЩИЙ КОНТРАКТ  СВИДЕТЕЛЬСТВУЕТ О СЛЕДУЮЩЕМ:</p> <p>1. В настоящем Контракте слова и выражения  имеют те же значения, которые предписаны им в  общих условиях контракта и особых условиях  контракта.</p> <p>2. Считается, что следующие документы  формируют, рассматриваются и истолковываются  как часть настоящего договора, а именно:</p> <p style="padding-left: 40px;">(a) Общие условия контракта;</p>

<p>(b) the Special Conditions of Contract;</p> <p>(c) Act of acceptance-transferring of equipment into rent;</p> <p>(d) Act of acceptance-transferring equipment into the property of Lessee</p> <p>3. The Lesser is obliged to provide equipment for acid delinting and seed cleaning to Lessee on the payment basis for his the temporary possession and use and later sell this equipment under the . in all respects with the provisions of the Contract.</p> <p>4. The Lessee hereby covenants to pay the Lesser in consideration of the provision in rent equipment the rental and final payments at the times and in the manner prescribed by the Contract.</p> <p>IN WITNESS whereof the parties hereto have caused this Contract to be executed in accordance with the laws of Republic of Tajikistan on the day, month and year indicated above</p> <p><b>Signature of the parties and juridical address</b></p>	<p>(b) Особые условия контракта;</p> <p>(c) Акт приема-передачи оборудования, предоставленного в аренду;</p> <p>(d) Акт приема-передачи оборудования, переданного в собственность Арендатора.</p> <p>3. Настоящим Арендодатель за плату обязуется предоставить оборудование по кислотной делинтировке и очистке семян Арендатору во временное владение и пользование и впоследствии продать ему это оборудование на условиях настоящего Контракта.</p> <p>4. Настоящим Арендатор обязуется уплатить Арендодателю за предоставленное в аренду оборудование арендные платежи и итоговый платеж в соответствии с положениями контракта в сроки и способом, предписанными контрактом.</p> <p>В ПОДТВЕРЖДЕНИЕ вышесказанного, стороны заключили Контракт в вышеуказанные день, месяц и год, подлежащий исполнению в соответствии с законодательством Республики Таджикистан</p> <p><b>Подписи и реквизиты сторон</b></p>
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# General Conditions of Contract

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## 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
- (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Delivery” means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “Eligible Countries” means the countries and territories eligible as listed in Section V.
- (h) “GCC” means the General Conditions of Contract.
- (i) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (j) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).
- (k) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (l) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.

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- (m) “SCC” means the Special Conditions of Contract.
  - (n) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
  - (o) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.
  - (p) “The ADB” is the Asian Development Bank.
  - (q) “The Site,” where applicable, means the place named in the SCC.

**2. Contract Documents**

- 2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

**3. Corrupt Practices**

- 3.1 ADB’s Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

(b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

(c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract.

3.2 The Supplier shall permit the ADB to inspect the Supplier’s accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the ADB, if so required by the ADB.

#### **4. Interpretation**

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

(a) The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

(b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

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#### 4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

#### 4.5 Nonwaiver

(a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### **5. Language**

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

- 6. Joint Venture, Consortium or Association** 6.1 Unless otherwise specified in the SCC, if the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.
- 7. Eligibility** 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted or incorporated, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract and financed by the ADB shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 8. Notices** 8.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A Notice shall be effective when delivered or on the Notice’s effective date, whichever is later.
- 9. Governing Law** 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s country, unless otherwise specified in the SCC.
- 10. Settlement of Disputes** 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

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- 11. Scope of Supply**
- 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in Section VI, Schedule of Supply.
- 11.2 Unless otherwise stipulated in the Contract, the Scope of Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 12. Delivery**
- 12.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Section VI, Schedule of Supply. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 13. Supplier's Responsibilities**
- 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
- 14. Purchaser's Responsibilities**
- 14.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.
- 14.2 The Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 14.1.
- 15. Contract Price**
- 15.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 15.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.
- 16. Terms of Payment**
- 16.1 The Contract Price shall be paid as specified in the SCC.

16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.

16.4 The currency or currencies in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.

**17. Taxes and Duties**

17.1 For goods supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

17.2 For goods supplied from within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**18. Performance Security**

18.1 The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a Performance Security for the due performance of the Contract in the amounts and currencies specified in the SCC.

18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 The Performance Security shall be denominated in the currencies of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the SCC, or in another form acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

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**19. Copyright**

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

**20. Confidential Information**

20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) the Purchaser or Supplier need to share with the ADB or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

**21. Subcontracting**

21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

**22. Specifications and Standards**

22.1 Technical Specifications and Drawings

(a) The Supplier shall ensure that the Goods and Related Services comply with the technical specifications and other provisions of the Contract.

(b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

(c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Schedule of Supply and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods.

22.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Section VI, Schedule of Supply. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.

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- 23. Packing and Documents**
- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.
- 24. Insurance**
- 24.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.
- 25. Transportation**
- 25.1 Unless otherwise specified in the SCC, obligations for transportation of the Goods shall be in accordance with the Incoterms specified in Sections VI, Schedule of Supply.
- 26. Inspections and Tests**
- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in Sections VI, Schedule of Supply.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser's country as specified in the SCC. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

**27. Liquidated Damages**

- 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

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**28. Warranty**

- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 28.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give Notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

**29. Patent  
Indemnity**

- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

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**30. Limitation of Liability**

30.1 Except in cases of gross negligence or willful misconduct :

- (a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

**31. Change in Laws and Regulations**

31.1 Unless otherwise specified in the Contract, if after the date of the Invitation for Bids, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

**32. Force Majeure**

32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

**33. Change  
Orders and  
Contract  
Amendments**

33.1 The Purchaser may at any time order the Supplier through Notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

**34. Extensions of  
Time**

34.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

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34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

## **35. Termination**

### 35.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part:
  - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34; or
  - (ii) if the Supplier fails to perform any other obligation under the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- (c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive, or coercive practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

### 35.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

### 35.3 Termination for Convenience

- (a) The Purchaser, by Notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The Notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - (i) To have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

### **36. Assignment**

- 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

# Общие условия контракта

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## 1. Определения

- 1.1 Приведенные ниже слова и выражения имеют следующие значения предписанные им:
- (a) “Контракт” означает договор, заключенный между Арендодателем и Арендатором, вместе с контрактными документами, включая все приложения, дополнения и всю документацию, на которую осуществляются соответствующие ссылки.
  - (b) “Контрактная документация” означает документы, перечисленные в договоре, включая любые поправки к ним.
  - (c) “Арендные и финальный платежи контракта” означают платежи, подлежащие выплате Арендодателю согласно договору.
  - (d) “День” означает календарный день.
  - (e) “Аренда” означает передачу имущества во владение и пользование Арендодателем Арендатору в соответствии с указанными в контракте положениями и условиями.
  - (f) “ОУК” означает Общие условия контракта (ОУК).
  - (g) “Оборудование” означает перечень оборудования, который Арендодатель должен предоставить Арендатору по контракту.
  - (h) “Страна Арендодателя” – это страна, указанная в особых условиях контракта (ОСУК).
  - (i) “Арендатор” означает юридическое лицо, получившее оборудование во владение и пользование согласно ОСУК.
  - (j) «Арендодатель» означает юридическое лицо, предоставляющее оборудование во владение и пользование согласно ОСУК
  - (k) Акт приемки-передачи означает правовой документ, подтверждающий факт приема-передачи оборудования в собственность либо в аренду.
  - (l) “ОСУК” означает Особые условия контракта.
  - (m) “Субарендатор” означает любое физическое лицо, частное или государственное предприятие или какое либо сочетание вышеназванных, включая его законных правопреемников или уполномоченных представителей, с которыми Арендатор подписывает контракт на субаренду

оборудования с согласия Арендодателя.

- (n) «Представитель стороны» означает физическое лицо или юридическое лицо, имеющее оформленные в соответствии с требованиями законодательств РТ полномочия для представления интересов стороны, осуществления для нее юридически значимых фактов и действий и защиты ее интересов

## **2. Контрактная документация**

- 2.1 В зависимости от порядка приоритетности предусмотренного в контракте, все составляющие контракт документы (и все их составные части) должны быть сопоставимыми, взаимодополняющими и взаимообъясняющими.

## **3. Толкование**

- 3.1 Если того требует контекст, то единственное число означает множественное и наоборот.

### **3.2 Полный договор**

Контракт представляет собой полный договор между Арендатором и Арендодателем и заменяет собой все переписки, переговоры и договоренности сторон (письменные или устные), имевшие место до даты подписания контракта.

### **3.3 Поправки**

Никакие поправки и другие изменения контракта не имеют юридической силы, если они не отражены в письменном виде, не датированы и не имеют прямых ссылок на контракт и надлежащим образом не подписаны уполномоченными представителями каждой из сторон контракта.

### **3.4 Недопустимость отказа от прав**

- (a) В соответствии с нижеследующим подпунктом 3.4 (b) ОУК, никакое послабление, воздержание от действия, задержка или отсрочка платежей любой стороной при исполнении условий и положений настоящего контракта или предоставление времени одной стороной другой стороне не должны наносить ущерба, оказывать отрицательное воздействие или ограничивать права такой стороны по контракту, равно как и отказ от любого права любой стороной в нарушении контракта не является основанием для отказа от последующего или продолжающегося нарушения контракта.

- (b) Любой отказ какой-либо стороны от прав,

полномочий, средств правовой защиты по контракту должен быть оформлен письменно, датирован и подписан уполномоченным представителем отказывающейся от своего права стороны, отказ должен уточнять право и пределы, до которых такой отказ распространяется.

### 3.5 Возможность разделения

Если какое-либо положение или условие контракта отменяется или оказывается юридически недействительным, или не может быть принудительно исполнено, такое запрещение или недействительность или невыполнимость не оказывают влияния на действительность или выполнимость других положений или условий контракта.

## 4. Язык контракта

4.1 Контракт, равно как и вся переписка и документы, относящиеся к нему, которыми обмениваются Арендатор и Арендодатель, должны быть написаны на указанном в ОСУК языке. Вспомогательные документы и печатная литература, являющиеся частью контракта, могут быть на другом языке при условии, что они сопровождаются точным переводом соответствующих отрывков на указанный в ОСУК язык; в таком случае для целей толкования контракта преимущественную силу имеет перевод.

4.2 Арендатор несет все затраты, связанные с переводом, а также со всеми рисками, касающимися точности перевода.

## 5. Совместное предприятие, консорциум или объединение

5.1 Если иное не предусмотрено ОСУК, и если Арендатор представляет собой совместное предприятие, консорциум или объединение, все стороны несут солидарную ответственность перед Арендодателем за исполнение положений контракта и назначает одну сторону в качестве лидера, обладающего полномочиями связывать обязательством совместное предприятие, консорциум или объединение. Состав совместного предприятия, консорциума или объединения не должны меняться без предварительного согласия Арендодателя.

## 6. Правомочность

6.1 Арендатор или его субарендаторы должны иметь гражданство правомочной страны. Считается, что Арендатор или субарендатор имеет гражданство страны, если он является гражданином, основан или учрежден и действует в соответствии с положениями законодательства данной страны.

- 7. Уведомления**
- 7.1 Любое уведомление по контракту, направляемое одной стороной другой, осуществляется в письменном виде и отсылается по указанному в ОСУК адресу. Термин «в письменном виде» означает сообщенный в письменной форме с подтверждением получения.
- 7.2 Уведомление вступает в силу со времени его доставки или даты вступления уведомления в силу, в зависимости от того, какая из двух дат наступает позже.
- 8. Регулирующее право**
- 8.1 Контракт регулируется и истолковывается в соответствии с законодательством страны Арендодателя, если иное не указано в ОСУК.
- 9. Разрешение споров**
- 9.1 Арендатор и Арендодатель должны прикладывать все усилия для мирного разрешения любых разногласий и споров, возникающих между ними в связи с контрактом, путем прямых неофициальных переговоров.
- 9.2 Если сторонам не удастся разрешить такой спор или разногласие посредством совместных консультаций в течении двадцати восьми дней (28) с момента начала этих консультаций, любая сторона может потребовать разрешения спора посредством официальных механизмов, предусмотренных в ОСУК.
- 10. Сроки аренды**
- 10.1 Срок аренды оборудования определен в \_\_\_\_ (\_\_\_\_) лет, начиная с момента окончания монтажа и пусконаладочных работ оборудования. О дате ввода оборудования в эксплуатацию Арендатор письменно извещает Арендодателя.
- 10.2 Стороны договора согласились, что по истечении срока действия договора Арендатор приобретает в собственность оборудование, являющееся объектом данного договора, после оплаты его всех арендных и финального платежей
- 10.3 Досрочное исполнение арендных и финального платежей по договору аренды со стороны Арендатора допускается. В этом случае право собственности на оборудование должно быть передано Арендатору по исполнению им финального платежа.
- 11. Обязанности Арендодателя**
- 11.1 В срок до «\_\_\_\_» \_\_\_\_\_ 200\_\_ предоставить указанное в Перечене оборудования, предоставленного в аренду, оборудование со всеми его принадлежностями и относящейся к нему документацией (инструкции по пользованию, технические паспорта и т. д.) Арендатору.
- 11.2 Оказывать Арендатору необходимое содействие в вопросах, связанных с исполнением условий настоящего договора.
- 11.3 По истечении срока аренды и оплаты Арендатором суммы арендных и финального платежей, подготовить необходимую документацию для оформления и

регистрации передачи права собственности на оборудование Арендатору.

- 12. Обязанности Арендатора**
- 12.1 Использовать переданное ему оборудование в соответствии с его назначением.
  - 12.2 Соблюдать положения инструкций завода-изготовителя по эксплуатации оборудования.
  - 12.3 Производить за свой счет капитальный и текущий ремонт, а также иное текущее обслуживание оборудования в течение срока действия настоящего договора.
  - 12.4 Ежемесячно производить оплату за аренду оборудования.
  - 12.5 По истечении срока действия настоящего договора, выкупить оборудование, по цене, указанной в п.16 и 17 настоящего контракта
- 13. Права Арендодателя**
- 13.1 При досрочном расторжении договора Арендатором по его инициативе с предупреждением Арендодателя не менее, чем за 3 (три) месяца, Арендодатель вправе потребовать от Арендатора внесения неоплаченной арендной платы, а также возмещения убытков, причиненных Арендодателю досрочным прекращением договора
- 14. Права Арендатора**
- 14.1 Арендатор имеет право оплатить полную стоимость оборудования и арендные платежи досрочно до окончания сроков оплаты, указанных в п.17.1 ОСУК.
  - 14.2 Если Арендодатель отказал Арендатору по истечении срока настоящего договора в подготовке документов, необходимых для оформления и регистрации передачи права собственности на оборудование Арендатор вправе потребовать в суде признания за ним права собственности на это оборудование и возмещения убытков, причиненных этим отказом
- 15. Акт приема-передачи оборудования**
- 15.1 Передача оборудования в аренду оформляется актом приемки-приемки сдачи, подписанным уполномоченными представителями сторон
  - 15.2 При передаче оборудования в собственность Арендатора стороны уполномоченные представители сторон подписывают двусторонний акт передачи оборудования
- 16. Платежи контракта**
- 16.1 Арендные платежи по контракту и финальный платеж контракта должны соответствовать указанным в нем.
  - 16.2 Любые корректировки арендных платежей и финального платежа не разрешаются.
- 17. Условия оплаты**
- 17.1 Арендные платежи по контракту и финальный платеж контракта оплачивается согласно ОСУК.
  - 17.2 Валюта или валюты, в которых осуществляются платежи Арендодателю по контракту, указываются в ОСУК.
- 18. Гарантия исполнения**
- 18.1 Для обеспечения надлежащего исполнения обязанности Арендодателя по продаже оборудования, после истечения срока аренды, Арендодатель заключит с Арендатором

договор залога оборудования, где Арендатор выступит Залогодержателем.

18.2 Требования к договору залога и сроки его заключения указаны в ОСУК.

## **19. Конфиденциальная информация**

19.1 Арендатор и Арендодатель соблюдают конфиденциальность и без письменного согласия другой стороны по контракту не разглашают третьей стороне каких-либо документов, информации или любых других данных предоставленных прямо или косвенно другой стороной в связи с контрактом, независимо от того была ли информация предоставлена до, во время или после завершения или прекращения контракта.

19.2 Однако вышеупомянутые обязательства стороны согласно подпунктов 19.1 ОУК не распространяются на информацию:

- (a) Которая становится достоянием общественности не по вине сторон;
- (b) Если имеются доказательства того, что эта информация была известна данной стороне до ее раскрытия, равно как и того, что она не была ранее получена ни прямо, ни косвенно у другой стороны; или
- (c) Которая иным законным способом становится доступной другой стороне через третью сторону, не имеющую обязательств по соблюдению конфиденциальности.

19.3 Вышеуказанные положения пункта 19 ОУК никоим образом не изменяют обязательства по конфиденциальности, данного какой-либо стороной до даты вступления контракта в силу.

19.4 Положения пункта 19 ОУК остаются неизменными до завершения или прекращения контракта по любой причине.

## **20. Заключение контрактов субаренды**

20.1 Арендатор обязан уведомлять Арендодателя в письменной форме обо всех планируемых контрактах субаренды оборудования и получать от него согласие на них. Заключение контрактов субаренды ни в коем случае не освобождает Арендатора от исполнения обязательств, функций, обязанностей или финансовых обязательств по контракту.

20.2 Контракты по субаренде должны соответствовать

положениям пункта 6 ОУК.

- 21. Страхование** 21.1 Если иное не оговорено ОСУК, оборудование, передаваемое в аренду по контракту, должно быть полностью застраховано Арендодателем в валюте правомочной страны против потери или повреждений, или согласно указанных в ОСУК условий.
- 22. Ответственность сторон** 22.1 В случае неисполнения или ненадлежащего исполнения одной из сторон обязательств по настоящему договору, она обязана возместить другой стороне причиненные таким неисполнением убытки
- 22.2 . В случае неисполнения Арендодателем его обязанности по продаже оборудования, он обязан выплатить Арендатору все произведенным последним арендные платежи и оплатить сумму в размере стоимости нового оборудования (такого же объема и такого же размера
- 22.3 Неисполнение одной из сторон условий настоящего договора приведшее к материальным потерям другой стороны, влечет за собой применение к виновной стороне неустойки, указанной в ОСУК
- 22.4 Начисление неустойки, установленной настоящим договором, не освобождает стороны от выполнения лежащих на них обязательств по настоящему договору
- 23. Ограничение ответственности** За исключением случаев грубой халатности или преднамеренного проступка ни одна из сторон не отвечает перед другой стороной за любые не прямые или последующие убытки или за вред, ущерб использованию, убытки производству или потерю прибыли или за издержки по процентам.
- 24. Гарантия** 24.1 Арендодатель отвечает за недостатки сданного в аренду оборудования, полностью или частично препятствующие пользованию им, даже если во время заключения контракта он не знал об этих недостатках
- 24.2 При обнаружении таких недостатков Арендатор вправе по своему выбору потребовать от Арендодателя либо безвозмездного устранения недостатков оборудования, либо соразмерного уменьшения арендной платы, либо возмещения своих расходов на устранение недостатков оборудования, или непосредственно удержать сумму понесенных им расходов по устранению данных недостатков из арендной платы, досрочного расторжения договора
- 24.3 Арендодатель, извещенный о требованиях Арендатора или о его намерении устранить недостатки имущества за счет Арендодателя, может без промедления произвести замену предоставленного в арендном оборудовании другим

аналогичным оборудованием, находящимся в надлежащем состоянии, либо безвозмездно устранить недостатки оборудования.

24.4 Если удовлетворение требований Арендатора или удержание им расходов по устранению недостатков из арендной платы не покрывает причиненных Арендатору убытков, он вправе потребовать возмещения непокрытой части убытков

24.5 Арендодатель не отвечает за те недостатки сданного в аренду оборудования, которые были им оговорены при заключении контракта либо должны были быть обнаружены им во время осмотра оборудования или проверки его исправности при заключении контракта или передаче оборудования в аренду.

## **25. Форс-мажор**

25.1 Стороны освобождаются от ответственности за частичное или полное неисполнение обязательств по настоящему договору, если это неисполнение явилось следствием обстоятельств непреодолимой силы, возникших после заключения настоящего договора в результате обстоятельств чрезвычайного характера, которые стороны не могли предвидеть или предотвратить

25.2 При наступлении обстоятельств, указанных в п. 24.1, каждая сторона должна без промедления известить о них в письменном виде другую сторону. Извещение должно содержать данные о характере обстоятельств, а также официальные документы, удостоверяющие наличие этих обстоятельств и, по возможности, дающие оценку их влияния на возможность исполнения стороной своих обязательств по данному договору.

25.3 Если сторона не направит или несвоевременно направит извещение, предусмотренное в п.24.2, то она обязана возместить второй стороне понесенные ею убытки.

25.4 В случаях наступления обстоятельств, предусмотренных в п. 24.1, срок выполнения стороной обязательств по настоящему договору отодвигается соразмерно времени, в течении которого действуют эти обстоятельства и их последствия

25.5 Если, наступившие обстоятельства, перечисленные в п. 24.1 и их последствия продолжают действовать более двух месяцев, стороны проводят дополнительные переговоры для выявления приемлемых альтернативных способов исполнения настоящего договора

## **26. Указания по внесению изменений и**

26.1 В соответствии с пунктом 7 ОУК стороны посредством уведомления друг друга могут обсуждать внесение изменений и/или дополнений в рамках общего объема

- поправок к контракту**
- 26.2 Все изменения, дополнения к настоящему договору действительны, если они изложены в письменной форме и подписаны обеими сторонами.
- 27. Расторжение контракта**
- 27.1 Договор аренды подлежит досрочному расторжению судом по требованию Арендодателя, если Арендатор:
- a) пользуется имуществом с существенным нарушением условий договора или назначения имущества либо с неоднократными нарушениями, несмотря на письменное предупреждение Арендодателя;
  - b) существенно ухудшает состояние оборудования;
  - c) более двух раз подряд по истечении установленного договором срока платежа не вносит плату за использованием имуществом
- Арендодатель вправе требовать досрочного расторжения контракта только после предоставления Арендатору разумной возможности исполнения своего обязательства
- 27.2 Договор аренды может быть досрочно расторгнут по требованию Арендатора судом:
- a) при неисполнении Арендодателем обязанности передать оборудование либо его принадлежности и относящиеся к нему документы, без которых оборудование не может быть использовано по назначению либо создает препятствия пользованию оборудованием.
  - b) переданное Арендатору имущество имеет препятствующие пользованию им недостатки, которые не были оговорены Арендодателем при заключении договора, не были заранее известны Арендатору и не могли быть обнаружены им во время осмотра оборудования или проверки его исправности при заключении контракта;
  - c) по иным основаниям, указанным в законодательстве Республики Таджикистан
- 28. Уступка требования** 28.1 Уступка требования не допускается
- 29. Прочие условия** 29.1 Переход права собственности на сданное в аренду оборудование к другому лицу не является основанием для изменения или расторжения настоящего договора. В случае реорганизации Арендодателя и/или Арендатора его права и обязанности по настоящему договору переходят к

правопреемнику

29.2 В случае расторжения настоящего договора оборудование возвращается Арендодателю

29.3 Настоящий договор составлен в двух экземплярах, имеющих одинаковую юридическую силу, по одному для каждой из сторон.

29.4 Риск случайной гибели оборудования, предоставленного в аренду, лежит на Арендодателе до момента переоформления документов, удостоверяющих право собственности на оборудования, на Арендатора

# Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(j)</b>	The Purchaser's country is: Republic of Tajikistan
<b>GCC 1.1(k)</b>	The Purchaser is: State Establishment "Project Management Unit for resolution of cotton producing farm debt and cotton sector sustainable development"(PMU)
<b>GCC 1.1 (q)</b>	The Site is: Republic of Tajikistan 1. Khatlon region, Bokhtar district, village F. Saidov, section №3 2. Dushanbe city, Kahorov Street 111 3. Sogd region, Khujand city, Lenin Street 217
<b>GCC 4.2 (b)</b>	The version of Incoterms shall be: CIF: cost, insurance, freight CIP: freight/carriage and insurance paid to... FOB: Free on Board CFR: Cost and Freight EXW: Ex Works
<b>GCC 5.1</b>	The language shall be: English
<b>GCC 6.1</b>	The individuals or firms in a joint venture, consortium or association should be jointly and severally liable.

<b>GCC 8.1</b>	<p>For <b>notices</b>, the Purchaser's address shall be:</p> <p>Attention: Director of State Establishment "Project Management Unit for resolution of cotton producing farm debt and cotton sector sustainable development"(PMU)</p> <p>Street Address: 44 Rudaki Avenue</p> <p>Floor/ Room number: The 1<sup>st</sup> floor (building of the Ministry of Agriculture of RT)</p> <p>City: Dushanbe</p> <p>ZIP Code: 734025</p> <p>Country: Tajikistan</p> <p>Telephone: +992 372 213450, +992 372 211156</p> <p>Facsimile number: +992 372 213450</p> <p>Electronic mail address: pmu_cotton@tajnet.com</p>
<b>GCC 9.1</b>	<p>The governing law shall be: The Laws of Republic of Tajikistan</p>
<b>GCC 10.2</b>	<p>The formal mechanism for the resolution of disputes shall be:</p> <ul style="list-style-type: none"> <li>(a) in the case of dispute between Purchaser and Supplier, being citizen of the same country, as Purchaser the dispute should be resolved in accordance with legislation of the Republic of Tajikistan</li> <li>(b) in the case of dispute between Purchaser and foreign Supplier, dispute should be a resolved by arbitration in accordance with positions of the rules of the arbitration of the Commission UN on international trade rule; (UNICITRAL)</li> </ul>
<b>GCC 11.1</b>	<p>The scope of supply shall be defined in: Section VI Schedule of Supply</p> <p>During awarding the contract, the Purchaser should indicate any changes in scope of supply, in respect of Section VI Schedule of supply, included in Tender Documents. Similar changes can exist, for instance if during awarding the contract the quantity of Goods and Related Services will increase or decrease.</p>
<b>GCC 12.1</b>	<p>Details of shipping and documents to be furnished by the Supplier shall be:</p> <p>For goods to be offered from outside of the country according to C.I.F. or C.I.P:</p> <p>After shipment the Supplier should notify the Purchaser and insurance company by telex, fax or e-mail about all detail, in accordance with the shipment of the cargo, including number of the contract, description goods, quantity, ship, number of the bill of lading and its date, port of the loading, date of the shipment, port of destination and etc. The Supplier should send to</p>

	<p>the Purchaser by mail the following documentation with copy of the insurance company:</p> <ul style="list-style-type: none"> <li>(a) 4 copies of the bill of lading of Supplier with description of goods, quantity, unit price of goods and specifying of the sum total;</li> <li>(b) original and 3 copies of negotiable bill of lading, clean bill of lading, shipped bill of lading with notice "freight is paid" and 4 copies nonnegotiable bill of lading;</li> <li>(c) 4 copies of the packing sheet with indication of the contents in each place of the cargo;</li> <li>(d) insurance certificate;</li> <li>(e) Goods certificate of guarantee of the manufacturer or supplier;</li> <li>(f) Certificate on inspection of goods, issued by special inspection service, and/or act of inspection of goods in enterprise of the Supplier;</li> <li>(g) Certificate of origin.</li> </ul> <p>The abovementioned documents should be received by Purchaser, at least, for a week before arrival of goods in port or the destination and, in the case of their non-receipt, Supplier will have responsibility for all related with these expenses.</p> <p>For goods to be offered from within the Purchaser's country according to INCOTERM, franco-plant:</p> <p>After transfer of goods to carrier (the transport company) Supplier should notify the Purchaser and send necessary documents to the Purchaser:</p> <ul style="list-style-type: none"> <li>(a) 4 copies of the bill of lading of Supplier with description of goods, quantity, unit price of goods and specifying of the sum total;</li> <li>(b) notice of delivery, railway receipt, freight vehicle receipt;</li> <li>(c) Goods certificate of guarantee of the manufacturer or supplier;</li> <li>(d) Certificate on inspection of goods, issued by special inspection service, and/or act of inspection of goods in enterprise of the Supplier; and</li> <li>(e) Certificate of origin.</li> </ul> <p>The abovementioned documents should be received by Purchaser, at least, for a week before arrival of goods in port or the destination and, in the case of their non-receipt, Supplier will have responsibility for all related with these expenses.</p>
<b>GCC 15.2</b>	The price adjustment shall not be provided

<b>GCC 16.1</b>	<p>The terms of payment shall be:</p> <p>For goods and related services, to be offered from outside of the Purchaser's country:</p> <p>(a) Advance payment: Fifty (50) percent from the price of the contract within 28 days from the date of the signing of contract. The Payment is realized after submission of the payment requirement by Supplier and advance payment security in a bank guarantee form on equivalent amount, acting before the moment of delivery of goods. The Security will be submitted in the form, provided in Section IX - Contract Forms.</p> <p>(b) Purchaser shall pay to the Supplier thirty (30) percent from the contract price through bank transfer to the Supplier's bank account within 28 days upon receipt of written notification of the Supplier on readiness of the goods for shipment and relevant invoice. In a case on non-execution or improper execution of the contract the Supplier is obliged to pay back total sum of the transferred money within 21 day after receipt of written notification of the Purchaser without any expenditures occurred by the Purchaser.</p> <p>(c) After reception of goods: Twenty (20) percent from contract price of received goods should be paid within twenty eight (28) days from the date of submission of the invoice/requirement, confirmed by acceptance act and act on installation and commissioning, issued by Purchaser.</p>
<b>GCC 16.4</b>	<p>The currencies for payments shall be: Currency or currencies specified by winning bidder during the signing of contract</p>
<b>GCC 18.1</b>	<p>The Supplier shall provide a Performance Security of 10 percent of the Contract Price. The Performance Security shall be denominated in the following amounts and currencies: 111,235.00 USD</p>
<b>GCC 18.3</b>	<p>The Performance Security shall be in the following form: The Bank Guarantee issued by authoritative Bank in Purchaser's country or abroad, applicable for Purchaser, included in format in Section IX, Contract Forms.</p>
<b>GCC 18.4</b>	<p>The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract</p>

**GCC 23.2**

The packing, marking and documentation within and outside the packages shall be:

The Transportation in Tajikistan might turn out for the severe weather conditions and rough handling of cargo in transit. In order to minimize these effects, the following procedure of the transportation/packing should be accepted by all Suppliers:

- (a) All descriptions should be sent in metallic loading container. The Agent on loading must be instructed that containers should be shipped as "transportation in hold".
- (b) Where it is convenient all main description of the equipment must be crated. All boxes must have a tray escalated from below with hole for truck loader. Hereinafter all boxes must be clamped crosswise by rods and are bolted metallic strips. The List of the items must be attached outside of each box in metallic envelope.
- (c) Where it is not convenient to pack equipment in boxes, equipment should be so safely installed on consolidated bottom of the tray that appropriated to the point of the ascent while using the crane. Open equipment must be wrapped in clean plastic and then wrapped in weatherproof type of the covering.
- (d) All opened and not painted surfaces, including, hydraulic bars of the plunger must be, wrapped up by lubrication or wax.
- (e) All wheel components must be removed and sent separately in wooden boxes, which have metallic tape.
- (f) All equipment must be sent in dry type. (Neither water nor antifreeze must be in engine). Only loading oils must be filled in components of the equipment.
- (g) All batteries must be removed from equipment and sent separately in changeless position. The Supplier should deliver the sufficient amount of the acid for batteries (in sealed drum) to enable the Purchaser to fill the batteries before beginning regime. The Storage batteries must be packed in wooden boxes bandaged by metallic tape and the list of the items is attached.
- (h) All spare parts and literature of the manufacturer should be packed in greater fixed pasteboard packing box, which then will be packed in wooden boxes and bolted by metallic strips, and the list of the items is attached.
- (i) On all delivered wooden boxes and on any equipment, delivered not in box must be written by stencil the full name of Purchaser with full address of the delivery to Tajikistan for speeding up the process of identification.
- (j) All boxes must be numbered and full description of quantities of items must be attached on outer side of the box in metallic envelope.
- (k) All detail of the weight, cost and conditions of the transportation must be enclosed in offer. At determination of the price bidder should be free in choice to use the different types of the transportation, including ocean by the ship registered in any one of eligible countries or through recommendations on shipment, majority of line shipments is executed according to this authorized source. Similarly bidder can get the services on insurance from any of these eligible countries.

The Estimation will not be taken into consideration for the route or type of the transport, chosen by bidder during comparison of bid competency, but delivery date will be an estimated factor.

<b>GCC 24.1</b>	The insurance coverage shall be in accordance with: In accordance with GCC, sub item 24.1, Supplier must insure the Goods on amount equal to 110% from CIF, CIP or EXW of price of Goods from "storehouse" to "storehouse" by principle of "all risks", including the risk of the war and strikes.
<b>GCC 25.1</b>	Obligations for transportation of the Goods shall be in accordance with: (a) Supplier must be in charge for undertaking the check and examination of equipment before loading to make sure those Goods were made and collected duly in accordance with specification and that they function satisfactorily. The Supplier should give the certificates of check and examination of equipment to the Purchaser, which confirming that such checks and examination of equipment were duly organized before loading. (b) By the choice of the Purchaser, Supplier and Purchaser must together conduct the check and examination of equipment of Goods after their delivery to the place of delivery, specified in item 23.1 of Section VI before issuance of the permit for delivery by the Purchaser. All expenses related with organization and realization of the similar checks and the Supplier incurs examination of equipment. (c) Supplier and Purchaser must together conduct the final check and examination of equipment for Goods, after their delivery to the final destination, specified in item 23.2 before acceptance of Goods. All expenses related with organization and realization of the similar checks and the Supplier incurs examination of equipment.
<b>GCC 26.2</b>	Tests and Inspections specified in Section VI, Schedule of Supply, shall be carried out at the following times or milestones, and places :  The Tests must be executed in corresponding to soil-climatic conditions available in Tajikistan and in other Central Asian countries. Before acceptance of equipment the Supplier must carry out a test at the presence of Purchaser's representatives to show that equipment complies with the specification. A test should last 7 hours according to test methods specified in Section VI
<b>GCC 27.1</b>	The liquidated damage shall be: 0,1 % per day or part thereof
<b>GCC 27.1</b>	The maximum amount of liquidated damages shall be: <b>10% from Contract Price</b>
<b>GCC 28.3</b>	The period of validity of the Warranty shall be: 24 (twenty four) months.
<b>GCC 28.5</b>	The Supplier shall correct any defects covered by the Warranty within: 35 days of being notified by the Purchaser of the occurrence of such defects
<b>GCC 30.1</b>	The amount of aggregate liability shall be the cost of contract

## Особые условия контракта

Следующие Особые условия контракта (ОСУК) дополняют Общие условия контракта (ОУК). В случае конфликта, настоящие положения имеют преимущественную силу по сравнению с положениями ОУК.

ОУК 1.1(i)	Страна Арендодателя: <b>Республика Таджикистан</b>
ОУК 1.1(j)	Арендодатель:
ОУК 1.1(k)	Арендатор:
ОУК 4.1	Язык: <b>русский</b>
ОУК 5.1	Отдельные фирмы, представляющие совместное предприятие, консорциум или ассоциацию должны быть нести ответственность солидарно либо индивидуально
ОУК 7.1	Для <b>уведомлений</b> , адрес Арендодателя: К сведению Адрес, улица: Этаж/номер кабинета: город: индекс: название страны: телефон: номер факса: адрес электронной почты: Для <b>уведомлений</b> , адрес Арендатора: К сведению Адрес, улица: Этаж/номер кабинета: город: индекс: название страны: телефон: номер факса: адрес электронной почты:
ОУК 8.1	Регулирующее право: <b>Законодательство Республики Таджикистан</b>
ОУК 9.2	Официальный механизм разрешения споров: в случае спора между Арендатором и Арендодателем, являющимся гражданином или резидентом той же страны, что и Арендодатель спор должен быть разрешен в соответствии с законодательством Республики Таджикистан
ОУК 17.1	Арендная плата за пользование оборудованием осуществляется в следующем порядке:

	<p>a) В течение первых 3 лет (льготный период) с момента, указанного в п.10.1 ОУК, Арендатор освобождается от уплаты любых арендных платежей Арендодателю;</p> <p>b) В течение следующих 7 лет с момента истечения льготного периода, указанного в предыдущем пункте Арендатор должен уплачивать арендную плату в размере _____ каждый месяц, не позднее ____ числа месяца, следующего за месяцем оплаты. Размеры арендной платы за пользование имуществом не могут быть изменены</p> <p>c) По истечении 10 (десяти) лет, указанных в предыдущих двух пунктах, Арендодатель продаст, Арендатор купит оборудование по цене _____, который и составит финальный платеж по настоящему контракту</p>
<b>ОУК 17.2</b>	Валюта для платежей: сомони
<b>ОУК 18.2</b>	Договор залога должен быть составлен в соответствии с требованиями законодательства РТ, подписан и нотариально оформлен Арендодателем в течение _____ дней с (до) момента подписания договора аренды
<b>ОУК 21</b>	<p>Страхование осуществляется в соответствии со следующими требованиями:</p> <p>В соответствии с ОУК Арендодатель должен застраховать оборудование на сумму равную _____ по принципу «все риски», включая риск войны и забастовки.</p>
<b>ОУК 22.3</b>	Неустойка составляет 0.1 % (одна десятая доля процента) от стоимости контракта за каждый день неисполнения обязательств
<b>ОУК 22.3</b>	Максимальная сумма неустойки составляет: _____% от Стоимости Контракта

### Акт приема-передачи оборудования

« \_\_\_\_\_ » \_\_\_\_\_ 200 \_\_\_\_

г. \_\_\_\_\_

\_\_\_\_\_, в лице \_\_\_\_\_, действующего на основании \_\_\_\_\_ (далее именуемый "Арендодатель") с одной стороны, и « \_\_\_\_\_ », в лице \_\_\_\_\_, действующего на основании \_\_\_\_\_ (далее именуемый "Арендатор") с другой стороны составили настоящий акт о нижеследующем

Арендатор принимает, а Арендодатель передает нижеследующее оборудование в аренду (или в собственность):

№	Название оборудования	Технические характеристики	Количество (шт)	Цена

Примечания \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Подпись уполномоченного лица Арендатора:

Подпись уполномоченного лица Арендодателя: