

**AMENDED
MEMORANDUM OF UNDERSTANDING**

**Among the Governments of
the United States of America, the Swiss Confederation, and
the Republic of Kazakhstan**

WHEREAS, the Government of the United States of America, the Government of the Republic of Kazakhstan, and the Government of the Swiss Confederation (each a "Party" and together the "Parties") are seeking to put certain funds to use for the benefit of poor citizens of Kazakhstan (as described below);

WHEREAS, in and before July 1999, approximately \$84 million was held on deposit in the account of Orel Capital Ltd. ("Orel") at Credit Agricole Indosuez ("CAI") in Geneva, Switzerland. Orel was a British Virgin Islands corporation beneficially owned by a Liechtenstein foundation, the sole beneficiaries of which were individuals;

WHEREAS, on or about July 29, 1999, the contents of the Orel account were transferred to an account held in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie, Geneva, Switzerland;

WHEREAS, on or about August 16, 1999, the \$84 million transferred from the Orel account to the Pictet account was frozen by order of a Swiss examining magistrate;

WHEREAS, on or about April 2, 2003, Indictment 03 Cr. 404 was returned by a federal grand jury in the Southern District of New York charging defendant James H. Giffen with, *inter alia*, violation of the Foreign Corrupt Practices Act ("FCPA"), in violation of 15 U.S.C. § 78dd-2; wire fraud, in violation of 18 U.S.C. § 1343; and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957;

WHEREAS, the Indictment included a criminal forfeiture allegation charging that Giffen should forfeit to the United States pursuant to 18 U.S.C. § 982 all property, real and personal, involved in the money laundering offenses and all property traceable to such property;

WHEREAS, as used herein, the "Funds" include all assets transferred from the Orel account to Account No. T-94025 in the Name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie, Geneva, Switzerland, and all interest, income, benefits or other proceeds traceable thereto;

WHEREAS, the Funds have been restrained pursuant to a Mutual Legal Assistance Treaty request by the United States to Switzerland;

WHEREAS, the Government of the Republic of Kazakhstan claims that it is the sole beneficiary of the Funds and that the Funds are its property;

WHEREAS, the Government of the United States asserts that if it were to forfeit the Funds, in keeping with its practice of using forfeited funds, where practicable and not inconsistent with law, to restore forfeited property to victims of the underlying criminal violation or to protect the rights of innocent persons in the interest of justice, it would endeavor to have the Funds used for the benefit of the people of Kazakhstan;

WHEREAS, the Government of the Republic of Kazakhstan asserts that if it were to obtain release of the Funds, it would endeavor to utilize the Funds for the benefit of the people of Kazakhstan;

WHEREAS, the International Bank of Reconstruction and Development (the "World Bank"), at the request of the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, has agreed to provide technical assistance and supervision for the administration of the Funds for the benefit of the Kazakh people;

WHEREAS, in furtherance of the relationship between the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, the Parties have agreed that the Funds shall be used to benefit the most needy citizens of Kazakhstan, as set forth herein;

NOW, THEREFORE, the Parties hereto agree as follows:

1. Summary of Memorandum of Understanding

This Memorandum of Understanding (MOU), as amended and restated, sets forth the terms and conditions by and under which the Parties will consent to release of the Funds.

- 1.1 On May 2, 2007, the Governments of the United States of America and the Republic of Kazakhstan agreed to execute a Stipulation and Order of Settlement proposing a resolution of forfeiture allegations of the United States and claims of the Republic of Kazakhstan with respect to the Funds. Pursuant to that agreement, on May 3, 2007, the Government of the United States filed a civil action in the United States District Court for the Southern District of New York (the "Court") seeking forfeiture of the Funds to the United States (the "Civil Forfeiture Action"), along with the Stipulation and Order of Settlement. The Stipulation and Order of Settlement, as amended on February 7, 2008, ("Stipulation and Order") is attached to this MOU. (Annex 1 hereto). After the provision of notice and the expiration of the period for the filing of claims to the Funds, and provided there is no other timely, valid claim to the Funds, or any portion thereof, that complies with 18 U.S.C. § 983 and all other applicable provisions of law, the United States will request that the Court endorse the Stipulation and Order of Settlement and issue a Final Order (the "Final Order") in the action implementing its terms.

- 1.2 The Parties acknowledge and agree that prior to the release of the Funds, or any portion thereof, any and all other claims as to the Funds must have been resolved or extinguished and that the Stipulation and Order must be accepted and approved by the Court.
- 1.3 The release of the Funds, or any portion thereof, is expressly contingent upon the establishment and implementation of three programs to the satisfaction of each Party and in accordance with this MOU and the Stipulation and Order, including:
- (a) a **“BOTA Program,”** for the establishment and administration of projects to benefit poor children in Kazakhstan, as set forth in more detail in Section 3 below. The BOTA program shall be implemented by creation of a non-profit, non-governmental foundation known as the BOTA Foundation. The BOTA Foundation shall be established under the laws of Kazakhstan, and shall be independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The BOTA Program shall be subject to the monitoring of the Governments of the United States of America and the Swiss Confederation. The administration, management, and expenditures of the BOTA Foundation shall be conducted by a reputable international non-governmental organization serving as the BOTA Program Manager. The World Bank shall supervise and monitor the BOTA Program and the administration and expenditures of the Funds, as set forth in the Service Agreement that appears as Annex 2 hereto.
 - (b) a **“Public Finance Management Review (PFMR) Program,”** through which the Government of the Republic of Kazakhstan, with the support of the World Bank, shall undertake a programmatic Public Finance Management Review over a period of five years to examine and analyze the budget management process in order to formulate a comprehensive, realistic and strategic plan for improving public financial management in Kazakhstan, as set forth in the Memorandum of Understanding between the World Bank and the Government of the Republic of Kazakhstan annexed hereto as Annex 3, the reports of which shall be provided by the Government of the Republic of Kazakhstan to the other Parties; and
 - (c) an **“Extractive Industries Transparency Initiative (EITI) Program,”** through which the Government of the Republic of Kazakhstan, with the support of the World Bank, will prepare and implement a comprehensive strategy and action plan to increase transparency over payments and revenues of the extractive industries operating in Kazakhstan (including oil, gas, and mining), as set forth in the Memorandum of Understanding between the World Bank and the Government of the Republic of Kazakhstan annexed hereto as Annex 4, the reports of which shall be provided by the Government of the Republic of Kazakhstan to the other Parties.

- 1.4 The Parties agree that within five (5) months of the Effective Date, the Program Manager shall certify to each of the Parties that all necessary steps have been taken to establish the BOTA Foundation and engage a BOTA Program Manager. In addition, the Government of the Republic of Kazakhstan agreed to provide by August 31, 2007, a report to the other Parties on the progress made in implementation of the PFMR and EITI Programs. If any Party, in its sole discretion, determines that actions taken to constitute the BOTA Program, as described in §§3.2, 3.3, 3.4, 3.5, and 3.6 of this MOU, have not been satisfactorily completed or that the Government of the Republic of Kazakhstan has not made substantial and demonstrable progress in implementation of either the PFMR or EITI Programs, this MOU shall terminate upon written notice from that Party to the other Parties, provided that the time to comply with the conditions set forth may be extended by written agreement of all Parties.
- 1.5 The Parties acknowledge that at any time during the term of this MOU the respective United States and Swiss Executive Directors of the World Bank may request an oral briefing from the World Bank with respect to the status or progress of the BOTA Program, PFMR Program, or EITI Program.

2. The Funds

- 2.1 The Parties acknowledge and agree that the Funds shall remain under restraint in Account No. T-94025 at Pictet & Cie, Geneva, Switzerland, unless released by unanimous agreement of the Parties in accordance with this MOU and the Final Order entered by the Court, or until adjudicated in further proceedings as provided in the Stipulation and Order.
- 2.2 The Parties acknowledge and agree that the Funds shall be released to the BOTA Program Manager on behalf of the BOTA Foundation in installments as set forth in the Stipulation and Order. All Funds released shall be utilized for implementation of the BOTA Program in accordance with this MOU and the BOTA Program Operational Manual. At the individual discretion of either the Government of the United States of America or the Swiss Confederation, the release of any installment may be made contingent upon its satisfaction of adequate implementation of any of the programs described in Section 1.3.
- 2.3 The Government of the Republic of Kazakhstan hereby guarantees continuing and timely financial support for the BOTA Program up to the full amount of the Funds in the event that the Government of the Republic of Kazakhstan withdraws from participation in either the PFMR or EITI Programs or a Party objects to further release of the Funds based upon failure to implement the PFMR or EITI Programs.

- 2.4 In accordance with terms as set forth in Section 3, the BOTA Program Manager, on behalf of the BOTA Foundation, will make requests to the Parties for release of installments of the Funds for implementation of the BOTA Program. Any such request shall include notice to the World Bank and shall specify how the amounts sought shall be used. No such request shall be granted unless the World Bank provides notice to the Parties that it has no objection to the request. Any redistribution of the Funds among projects or to newly-identified projects must be approved in writing by the World Bank and each of the Parties.
- 2.5 **Costs.** The Parties agree that each Party shall be responsible for its own costs in undertaking its respective activities under this MOU. The Parties further agree that the World Bank shall receive a service fee for its participation in the BOTA Program based on cost recovery for its services rendered under and as specified in the Service Agreement. Should any monies be necessary for start-up costs of the BOTA Program prior to the release of the first installment of the Funds, such monies will be advanced by the Government of the Republic of Kazakhstan. Any such reasonable costs may be reimbursed by the Program Manager, acting on behalf of the BOTA Foundation, from the first installment of the Funds.
- 2.6 **Prohibited Use or Acquisition.** The Parties agree that neither the Funds nor any property of the BOTA Foundation shall be used for payments or other benefits, directly or indirectly, (a) prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; (b) that in any manner would involve, support, promote or facilitate, or would have the appearance or effect of involving, supporting, promoting or facilitating, any unlawful, corrupt or fraudulent activities or practices; or (c) to the Government of the Republic of Kazakhstan, its officials, or their personal or business associates. The Parties further agree that the Foundation shall not obtain property, or take actions or inactions that might create an appearance that it is obtaining property, directly or indirectly, through or involving the use of unlawful, corrupt, fraudulent, collusive or coercive practices or activities. A determination by any Party that there has been a violation of this Section, whether by the BOTA Foundation, the Program Manager, recipients of grants from the Funds or property of the Foundation, or any other natural or legal person, shall constitute sufficient grounds for unilateral termination by the Government of the United States or the Government of the Swiss Confederation under Section 9.4. In the event of such a termination, the Government of the United States or the Government of the Swiss Confederation in its discretion may invoke the return provisions of Section 8.3.

3. BOTA Program

- 3.1 **Scope of the BOTA Program.** Subject to the terms and conditions set forth herein and in the Final Order upon its entry by the Court, the Funds shall be utilized for the preparation, administration, and implementation of the “BOTA Program,” which shall constitute a program for the benefit of poor children and youth in Kazakhstan. The Funds will be utilized to support activities aimed at improving child and youth welfare, including: reducing child labor, provision of community-based services to disabled children, shelters for runaway and homeless children, improving child nutrition, promoting and developing family-based care for children deprived of parental care, raising awareness of and decreasing child abuse and violence, reducing juvenile delinquency, expanding youth activities and resource centers, and skills development for school drop-outs, and such other projects as may be determined by the BOTA Board of Trustees, BOTA Program Manager and the World Bank to be of benefit to poor children and youth of Kazakhstan and their families and enumerated in the BOTA Program Operational Manual. The BOTA Program may utilize the Funds for conditional cash payments to Kazakh families, scholarships to Kazakh residents, and grants to local and international NGOs in accordance with the BOTA Program Operational Manual.
- 3.2 **Foundation.** The BOTA Program shall be implemented through the creation of an independent, nongovernmental, nonprofit foundation (the “BOTA Foundation”) established to receive and disburse the Funds in accordance with this MOU and constituted under Kazakhstan’s Law on Non-Commercial Organizations with the assistance of the World Bank as provided in the Service Agreement. The Parties agree that in order to receive any of the Funds, such a foundation must be a purpose-built organization, founded for purposes of implementing development projects for poor children and youth in Kazakhstan; must have the capacity to undertake the contemplated activities; must be party to the Supervisory Agreement (as set forth below); and must be entirely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Parties further agree that the sole executive body of the BOTA Foundation shall be the BOTA Program Manager and that the BOTA Program Manager must exercise managerial capacity as set forth below. The BOTA Foundation shall be established with the intention that it continue to operate as a functioning foundation after the BOTA Program has been completed.
- 3.3 **Founders.** With the assistance of the World Bank (as set forth in the Service Agreement), the BOTA Foundation shall be established by five founders (“Founders”) selected by the unanimous agreement of all Parties. All Parties may nominate candidates to serve as Founders. All candidates must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Founders must be respected community figures and preferably shall be known for their championing of children’s causes. The Government of the Republic of Kazakhstan shall have responsibility for

notifying individual Founders of their selection. Any Founder may be removed at any time upon a joint decision by the Governments of the United States of America and the Swiss Confederation.

3.4 **Board of Trustees.** With the assistance of the World Bank (as set forth in the Service Agreement), a seven-member Board of Trustees (the “Board”) shall be the permanently operating collegial managing body of the BOTA Foundation. The members of the Board shall be a combination of respected international individuals and Kazakh citizens, preferably known for their championing of children’s causes, and must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Governments of the United States of America and the Swiss Confederation, at their option, may each select a member of the Board (and alternates, as appropriate), who may be a representative of their respective governments or other respected individuals (the “Government Trustees”). All other candidates (and alternates, as appropriate) may be proposed by the Founders or the Government of the United States of America or the Swiss Confederation for consideration by the Parties, who may object to or approve any of the Founder-proposed candidates (the “non-Government Trustees”). The final slate of Board members shall be individually notified of their selection by the Founders. In the event of a vacancy on the Board for a Government Trustee, the respective Government may select a replacement. In the event of a vacancy on the Board for a non-Government Trustee, the Founders or the Government of the United States of America or the Swiss Confederation shall propose a replacement member for consideration by and subject to the approval or objection of each Party. A Government Trustee may be removed at any time by the Government that selected the Trustee. Any non-Government Trustee may be removed at any time upon a joint decision by the Governments of the United States of America and the Swiss Confederation.

3.5 **Constitutive Documents.** With the assistance of the World Bank (as set forth in the Service Agreement), the Board shall prepare the Charter and any other constitutive documents of the BOTA Foundation required for its formation under Kazakh law (the “Constitutive Documents”). The Parties shall be provided opportunity to review the proposed Constitutive Documents, which must be approved by all Parties prior to their adoption. After approval of the Constitutive Documents by all Parties, the Board as a first order of business shall convene to adopt the agreed Constitutive Documents. If the Board desires any changes to the Constitutive Documents, either initially or subsequently during the term of this MOU, they must be approved by all Parties before becoming effective.

- 3.6 **BOTA Program Manager.** The implementation, administration, management, and expenditures of the BOTA Program shall be conducted by a reputable international non-governmental organization serving as BOTA Program Manager (“Program Manager”), with the assistance of the World Bank.
- (a) The specific responsibilities of the Program Manager shall be set forth in a Management Agreement between the BOTA Foundation and the Program Manager. The Management Agreement shall be drafted by the World Bank (as set forth in the Services Agreement), and must be approved by the Board and all Parties before becoming effective. The Management Agreement shall make the Program Manager subject to any obligations addressed to it in this MOU.
 - (b) **Selection of Program Manager.** The Board with the assistance of the World Bank (as set forth in the Services Agreement) will conduct an open, competitive bidding process to select the Program Manager. The Board and the Parties then shall select a Program Manager by unanimous agreement. All candidates for Program Manager must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates.
- 3.7 **Supervisory Agreement.** The relationship between the BOTA Foundation and the World Bank shall be governed by a supervisory agreement to be entered into by the Foundation and the World Bank (the “Supervisory Agreement”). The Supervisory Agreement must be approved by the Parties before signature and effectiveness. Supervisory services to be provided by the World Bank pursuant to the Supervisory Agreement are set forth in the Service Agreement. The Supervisory Agreement shall make the BOTA Foundation, its Founders, and the Board subject to any obligations addressed to them in this MOU.
- 3.8 **Operational Manual.** The World Bank (as set forth in the Service Agreement) shall prepare the BOTA Program’s operational manual (the “Operational Manual”). The Operational Manual must be approved by the Board and each of the Parties before it becomes effective. The Operational Manual will govern the daily operations of each element of the BOTA Program (as specified in Section 3.1 above and the Services Agreement), and will, among other things, set forth the procedures for the award of grants and disbursement of funds. The World Bank, the Board, the Program Manager, and any of the Parties may recommend or request changes to the Operational Manual, either initially or subsequently during the term of this MOU. All requested or recommended changes must be approved in writing by all the Parties and the Board before becoming effective.
- 3.9 **BOTA Program Operational Account (“Operational Account”).** Funds released to the BOTA Foundation in accordance with Section 3 and the Stipulation and Order shall be deposited into a BOTA Program Operational Account to be established and maintained by the BOTA Program Manager on

behalf of the Foundation and from which the BOTA Program Manager may make payments or disbursements in accordance with the terms of the Operational Manual and this MOU. The Board, the World Bank and the Parties shall at all times have the right to review records of the BOTA Program Operational Account upon request.

3.10 **Accounts and Audits.** The Board and the Program Manager, with the assistance of the World Bank (as set forth in the Service Agreement), shall:

(a) ensure that a financial management system is maintained and financial statements are prepared, in accordance with consistently applied accounting standards acceptable to the World Bank, both in a manner adequate to reflect the operations, resources and expenditures related to the activities funded;

(b) ensure that interim unaudited financial reports for the activities funded by the BOTA Foundation are prepared and furnished to the World Bank and the Parties not later than three months after the end of each six-month period, covering the six-month period, in form and substance satisfactory to the World Bank;

(c) select independent auditors (the “Auditors”), whose appointment must be approved by all Parties, with the World Bank providing terms of reference for the Auditors’ engagement and reviewing the short list of candidates on a no objection basis;

(d) have Financial Statements for the activities funded by the BOTA Foundation audited by the Auditors in accordance with consistently applied auditing standards acceptable to the World Bank, to be provided to the World Bank and the Parties not later than six months after the end of the BOTA Program’s fiscal year; and

(e) ensure that: (i) all records evidencing expenditures related to activities funded by the Funds are retained until at least five years after the World Bank and Parties have received all the audited Financial Statements covering the Term of this MOU; and (ii) the representatives of the World Bank and the Parties are able to examine such records, and are provided all such information concerning such records as they may from time to time request.

3.11 **Work Plan.** With the assistance of the World Bank (as set forth in the Service Agreement), the BOTA Foundation and Program Manager shall prepare annual work plans for use of the Funds in a manner consistent with this MOU and the Operational Manual. The Foundation shall present such work plans when completed to the Parties for their approval or objection.

- 3.12 **Progress Reports.** The Parties will receive regular reports on the status of the BOTA Program prepared by the World Bank in accordance with terms set forth in the Service Agreement.
- 3.13 **Timing.** The Funds are expected to be fully disbursed by the Foundation within five years of the Final Order. The Parties anticipate that establishment of the BOTA Program and start-up of operations shall take approximately one year.

4. PFMR Program

- 4.1 **Scope of PFMR Program.** On December 1, 2006, the Government of the Republic of Kazakhstan and the World Bank executed a written Memorandum of Understanding regarding Public Finance Management (“PFM MOU”), attached at Annex 3, through which the Government of the Republic of Kazakhstan has requested and the World Bank has agreed to provide technical assistance and advice for a minimum of five years in preparing a programmatic Public Finance Management Review and in implementing its recommendations. As set forth in the PFM MOU, under this program, the Government of the Republic of Kazakhstan, with the support of the World Bank, will examine and analyze the budget management process in specified sectors to formulate a comprehensive, realistic and strategic plan for improving public financial management in Kazakhstan. The PFM MOU contemplates that the review will begin with priority sectors such as education and health and progressively expand coverage to reach 90 percent of the budget over the PFM Review period of five years. Emphasis will also be given to analysis of recurrent expenditures and assessment of extra-budgetary funds. Pursuant to the PFM MOU, the Government of the Republic of Kazakhstan has committed to using the PFM Review as an analytical, information and consensus-building tool for policy design and implementation, and has also committed to consider other measures for implementation through active collaboration with NGOs.
- 4.2 **Disclosure of PFMR analyses.** Each report resulting from a programmatic PFM Review shall be considered a report emanating from economic and sector work (ESW) of the World Bank, and, therefore, consistent with the World Bank Policy on Disclosure of Information, shall be distributed to the Board of Executive Directors of the World Bank and made publicly available. Each such report may also be provided directly to the Parties.
- 4.3 **Reports to the Parties.** The Parties anticipate that the World Bank shall provide to the Government of the Republic of Kazakhstan periodic supervision reports regarding the PFMR Program. The Government of the Republic of Kazakhstan shall provide all supervision reports received from the World Bank pursuant to the PFMR MOU to the other Parties. The Government of the Republic of Kazakhstan hereby agrees and authorizes the World Bank to make available all such supervision reports to the United States and Swiss Executive Directors of the

World Bank. In addition, the Governments of the United States of America and the Swiss Confederation each may request, on an ad hoc basis, that the Government of the Republic of Kazakhstan provide an interim report on the status of the PFMR Program. The Government of the Republic of Kazakhstan agrees to provide such ad hoc reports upon request.

5. EITI Program

- 5.1 **Scope of the EITI Program.** On December 1, 2006, the Government of the Republic of Kazakhstan and the World Bank executed a written Memorandum of Understanding (the “EITI MOU”), attached as Annex 4, through which the Government of the Republic of Kazakhstan has requested and the World Bank has agreed to provide technical assistance and advice for a minimum of three years to support measures intended to increase transparency over payments and revenues of extractive industries operating in Kazakhstan. As set forth in the EITI MOU, the Government of the Republic of Kazakhstan has indicated that it has established a dedicated Secretariat to coordinate and support EITI efforts in Kazakhstan and has directed that the Secretariat develop a work plan by February 1, 2007, to improve management and transparency of extractive industries companies and to analyze actions needed for implementation of the Extractive Industries’ Transparency Initiative (EITI) in Kazakhstan. Under the EITI MOU, the Government of the Republic of Kazakhstan has committed to take specified steps to implement the Extractive Industries Transparency Initiatives and its principles, including, but not limited to, ensuring full participation of all extractive industry (oil, gas, and mining) companies; ensuring integrity of reported data; establishing a comprehensive work plan; ensuring adequate and sustainable financing for EITI implementation; appointing and managing an appropriate consulting and auditing firm; conducting national and regional workshops on EITI data reporting and implementation; and such other measures as may be deemed appropriate through active collaboration with non-governmental organizations. Under the EITI MOU, the World Bank has agreed to support the EITI process in Kazakhstan, provide technical assistance, assist in devising monitoring indicators, and provide additional implementation support, such as for civil society engagement in EITI.
- 5.2 **Annual Reports.** The Government of the Republic of Kazakhstan agrees to engage a qualified and independent expert to prepare reports on an annual basis regarding the actions taken and the results achieved to implement the EITI Program, which reports alternatively may be reports of independent validations performed in accordance with the guidelines and procedures issued by the Secretariat of the Extractive Industries Transparency Initiative. Such reports shall be provided to the other Parties and made publicly available.

- 5.3 **Reports to the Parties.** The Parties anticipate that the World Bank shall provide to the Government of the Republic of Kazakhstan periodic supervision reports regarding the EITI Program. The Government of the Republic of Kazakhstan shall provide all supervision reports received from the World Bank pursuant to the EITI MOU to the other Parties. The Government of the Republic of Kazakhstan hereby agrees and authorizes the World Bank to make available all such supervision reports to the United States and Swiss Executive Directors of the World Bank. In addition, the Governments of the United States of America and the Swiss Confederation each may request, on an ad hoc basis, that the Government of the Republic of Kazakhstan provide an interim report on the status of the EITI Program. The Government of the Republic of Kazakhstan agrees to provide such ad hoc reports upon request.

6. **Disclosure**

- 6.1 The Parties agree that this MOU and associated annexes shall be publicly disclosed upon filing in the Court by the United States of America. The Parties shall also provide copies of the MOU and associated annexes to each Founder, member of the Board, and the BOTA Program Manager.

7. **Communications**

- 7.1 Communications and notices under this MOU may be made by email, fax or letter as follows (all contacts specified in (a) through (c) below hereinafter called the "Contacts"):

(a) Communications made to the Government of the United States of America shall be directed to the Deputy Assistant Attorney General for the Criminal Division, United States Department of Justice (the US Contact);

(b) Communications made to the Government of the Swiss Confederation shall be directed to the Head of the Economic Cooperation and Development Division, State Secretariat for Economic Affairs (SECO) (the Swiss Contact);

(c) Communications made to the Government of the Republic of Kazakhstan shall be directed to the Prime Minister of the Republic of Kazakhstan (the Kazakh Contact).

- 7.2 Upon execution of this MOU, each Party shall promptly provide notice to each other Party of the name, title, address, electronic mail address, and telephone contact information for its Contact.
- 7.3 The Parties agree that to the extent this MOU refers to notices or communications to the Parties, or any consents, approvals or objections from the Parties, or any decision making on the part of the Parties, any communication to or from, as the

case may be, the respective Contact(s) shall constitute a communication to the Party represented by that Contact. Notices, consents, approvals, or objections of any Party must be in writing and may be made by (a) a written statement or agreement signed directly or by countersignature; (b) a series of faxes signed directly or by countersignature; or (c) an exchange of emails confirming agreement, consent, approval or objection on the part of the Contact.

- 7.4 Each Party may amend the identity of the Contact(s) specified above by providing written notice to the other Parties of the change of identity of the person(s) designated, together with address information sufficient to communicate with the amended Contact(s). Each Party's designated Contact may delegate his/her authority to receive or provide a notice, communication, consent, approval or objection that relates to a particular issue or matter by providing notice to the other Parties of the identity of the person(s) who shall have such delegated authority, together with address information sufficient to communicate with the amended Contact(s).

8. Irregularities

- 8.1 In the event the World Bank detects any irregularities while performing the Services, such as noncompliance with the Operational Manual, the World Bank shall, as set forth in the Service Agreement, notify the Parties, the BOTA Board and the BOTA Program Manager. Thereafter no further actions shall be expected or required from the World Bank, and any remedial actions shall be decided among the Parties in consultation with the BOTA Board, Program Manager and the World Bank.
- 8.2 In the event any of the Parties detects any irregularities in the operation of the BOTA Program, it shall notify all other Parties, the World Bank, the BOTA Board and the BOTA Program Manager. Any remedial actions shall be decided among the Parties in consultation with the World Bank, the BOTA Board and the Program Manager.
- 8.3 The Governments of the United States of America and the Swiss Confederation each shall independently retain the right at all times, including after the Term of this MOU, to seek the return of any or all of the Funds after their release if either in its sole discretion determines that (a) any of the Funds or other property of the Foundation have been misused, including but not limited to, any use in a manner inconsistent with the terms of this MOU, the Stipulation and Order, the Supervisory Agreement or the Operational Manual, or (b) actions or inactions have taken place, whether by the BOTA Foundation, BOTA Program Manager, recipients of grants from the Funds or property of the Foundation, or any other natural or legal person, that might create an appearance that any of the Funds or other property of the Foundation have been misused, including but not limited to, any use in a manner inconsistent with the terms of this MOU, the Stipulation and

Order, the Supervisory Agreement or the Operational Manual. Such request shall be made in writing to the Program Manager, with copies to the BOTA Board, the World Bank and the other Parties, and shall include a justification for such return. If no Party disputes the stated justification and the BOTA Program Manager fails to return any Funds so requested for deposit in the Pictet & Cie account within 60 days of the request, the Government of the Republic of Kazakhstan shall deposit into the Pictet & Cie account an amount equal to the requested sum, which amount shall be made part of the Funds remaining in the account. If the Government of the Republic of Kazakhstan disputes the stated justification, paragraph 18 of the Stipulation and Order shall apply.

9. Term and Termination

- 9.1 This MOU, as amended and restated, shall enter into force upon signature by all the Parties (the “Effective Date”) and shall continue in force for five years or such earlier period in which all of the Funds have been fully expended, except (i) as may be extended by unanimous agreement of the Parties, or (ii) as may be earlier terminated in accordance with this MOU (the “Term”). If this MOU is extended, the World Bank may correspondingly extend the terms of the Service Agreement, Supervisory Agreement and Management Agreement, if so requested by the Parties.
- 9.2 If the Court does not accept and approve the Stipulation and Order and enter a Final Order, this MOU shall terminate. If the Stipulation and Order becomes void for any other reason, this MOU shall also terminate. If the Stipulation and Order is terminated, this MOU may be terminated by any Party, upon written notice to the other Parties.
- 9.3 This MOU may be terminated at any time upon mutual agreement of all the Parties.
- 9.4 This MOU may also be terminated by either the Government of the United States of America or the Government of the Swiss Confederation upon written notice to the other Parties for insufficient progress in implementation in accordance with Section 1.4, upon a determination of prohibited use or acquisition as provided in Section 2.6, frustration of purpose as provided in Section 9.8, or in the event of irregularities as provided in Section 8. If this MOU is terminated, the return provisions of Section 8.3 shall become applicable.
- 9.5 If this MOU is terminated it shall have no further force or effect, except as provided in Section 9.7, and each Party shall reserve the right to assert all claims it possessed as May 2, 2007, with respect to any portion of the Funds remaining in or which may be re-deposited into the Pictet & Cie account.

- 9.6 Unless otherwise agreed by the Parties, if (i) the World Bank elects to terminate the Service Agreement (as provided in that Agreement), or (ii) this MOU is terminated or expires by its Term, then the Parties and the Foundation shall take all appropriate steps to terminate the BOTA Program activities in an orderly manner; to settle promptly all outstanding BOTA Program matters; and to cause the Foundation to return and re-deposit any uncommitted portion of the Funds to the Pictet & Cie account to be made part of the Funds remaining in the account.
- 9.7 Notwithstanding the expiration or termination of this MOU, the provisions of this MOU and the Stipulation and Order relating to (i) liability and indemnity, and (ii) return shall continue in force for five years after expiration or termination of this MOU as to any events occurring during the Term of the MOU.
- 9.8 This MOU may be terminated by either the Government of the United States of America or the Government of the Swiss Confederation if either in its sole discretion determines that circumstances exist (including, but not limited to, the enactment or enforcement of Kazakh legislation) that have the effect of frustrating the purpose of the BOTA Foundation or the administration of Projects under the BOTA Program, the PFMR Program or the EITI Program as set out in this MOU, the Stipulation and Order, the Supervisory Agreement or the Operational Manual. The right to terminate under this Section shall not be vitiated by the foreseeability or assumption of the risk of the occurrence of circumstances giving rise to the termination.

10. Limitations of Liability

- 10.1 Except as provided in the Stipulation and Order, nothing in this MOU is intended to be, or should be construed as, a waiver of the privileges and immunities of any Party or its officers and employees, which privileges and immunities are hereby specifically reserved.

11. General

- 11.1 The Stipulation and Order between the Governments of the United States of America and the Republic of Kazakhstan is expressly incorporated into this MOU.
- 11.2 This MOU, including any annexes, along with any other agreements referenced herein, comprises the entire agreement and understanding among the Parties relating to the subject matter hereof. It, along with the other referenced agreements, supersedes any prior or side arrangements, agreements or understandings relating to the subject matter. This MOU may not be amended except through the written agreement of all of the Parties. The Governments of

the United States and the Republic of Kazakhstan shall promptly notify the Court of any such amendment.

- 11.3 The Parties shall implement this MOU and all activities thereunder in accordance with their respective domestic law.
- 11.4 This MOU does not give rise to any rights on the part of any private person or non-party.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Agreement in counterpart originals in the English language.

FOR THE GOVERNMENT
OF THE SWISS
CONFEDERATION

Urs Ziswiler
Ambassador of Switzerland
to the United States of
America

Done at _____
this ____ day of _____, 2008

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA

Bruce C. Swartz
Deputy Assistant Attorney
General, Criminal Division
U.S. Department of Justice

Done at Washington, DC
this 4th day of April, 2008

FOR THE GOVERNMENT
OF THE REPUBLIC OF
KAZAKHSTAN

Erlan Idrissoy
Ambassador of Kazakhstan
to the United States of
America

Done at Washington DC
this 3rd day of April, 2008

Annex 1	Amended Stipulation and Order of Settlement
Annex 2	Amended Service Agreement
Annex 3	PFMR MOU
Annex 4	EITI MOU