

CONFORMED COPY

LOAN NUMBER 3740 EE

EE Project Agreement

(District Heating Rehabilitation Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

EESTI ENERGIA

Dated May 27, 1994

LOAN NUMBER 3740 EE

EE PROJECT AGREEMENT
AGREEMENT, dated May 27, 1994, between INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT (the Bank) and EESTI ENERGIA (EE).

WHEREAS (A) by the Loan Agreement of even date herewith between Republic of Estonia (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to thirty-eight million four hundred thousand dollars (\$38,400,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that EE agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and EE, a portion of the proceeds of the loan provided for under the Loan Agreement will be relented to EE on the terms and conditions set forth in said EE Subsidiary Loan Agreement; and

WHEREAS EE, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. EE declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out Part C of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall provide, or cause to be provided, promptly as needed, the

funds, facilities, services and other resources required for Part C of the Project.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and services required for Part C of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of the Schedule to this Agreement.

Section 2.03. EE shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Part C of the Project.

Section 2.04. EE shall duly perform all its obligations under the EE Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, EE shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the EE Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) EE shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Part C of the Project, the performance of its obligations under this Agreement and under the EE Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) EE shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Part C of the Project, the accomplishment of the purposes of the Loan, or the performance by EE of its obligations under this Agreement and under the EE Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of EE

Section 3.01. EE shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. EE shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices.

Section 3.03. EE shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) EE shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition with respect to Part C of the Project.

(b) EE shall:

- (i) have such records, accounts and financial statements (statements of income and expenses and cash flow statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02. (a) Except as the Bank shall otherwise agree, EE shall not incur any debt with respect to its Iru Power Plant unless a reasonable forecast of the revenues and expenditures of such Plant shows that the estimated net revenues of such Plant for each fiscal year during the term of the debt to be incurred shall be at least 1.3 times the estimated debt service requirements of such Plant in such year on all debt of such Plant including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of EE with respect to its Iru Power Plant maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations and net non-operating income; and
 - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if

any) of, and interest and other charges on, debt.

- (vi) The term "reasonable forecast" means a forecast prepared by EE not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and EE accept as reasonable and as to which the Bank has notified EE of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of EE with respect to its Iru Power Plant.
- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.03. EE shall prepare and furnish, or cause to be prepared and furnished, to the Bank annually during the Project implementation period, a report of the five year financial projections, which shall consist of income statements and cash flow statements (beginning with EE's financial year 1995) for the its Power Plant.

Section 4.04. EE shall establish tariffs for the heat-only operations of its Power Plant which would allow such plant, under conditions of efficient operation at reasonable levels of capacity utilization, to cover its costs of production, operations and maintenance, depreciation, interest and make a reasonable contribution to reserves.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of EE thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify EE thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

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

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For EE:

SE Eesti Energia
Estonia pst 1
EE 0100 Tallinn
Estonia

Telex:

173190 ESTENEE

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of EE may be taken or executed by the General Director or such other person or persons as General Director shall designate in writing, and EE shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Wilfried Thalwitz

Regional Vice President
Europe and Central Asia

EESTI ENERGIA

By /s/ Toomas Ilves

Authorized Representative

SCHEDULE
Procurement

Part A: International Competitive Bidding

Except as provided in Part C hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

(a) For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when contract award is delayed beyond the original bid validity period, the successful bidder's bid price will be increased for each week of delay by two predisclosed correction factors acceptable to the Bank, one to be applied to all foreign currency components and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

(b) In the procurement of goods and works in accordance with this

Part A, EE shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, EE shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in Estonia may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

1. Items or groups of items for office equipment and materials estimated to cost less than \$50,000 per item or group, up to an aggregate amount equivalent to \$60,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

2. Items or groups of items for works and installation estimated to cost less than \$50,000 per item or group, up to an aggregate amount equivalent to \$300,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

Part D: Review by the Bank of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 5 to the Loan Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Loan Account are to be made on the basis of statements of expenditure.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

