

Public Disclosure Authorized

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GEF TRUST FUND GRANT NUMBER TF054104

Global Environment Facility Trust Fund Grant Agreement

(Energy Efficiency Project)

between

REPUBLIC OF POLAND

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

acting as an Implementing Agency of the Global Environment Facility

Dated November 22, 2004

Public Disclosure Authorized

GEF TRUST FUND GRANT NUMBER TF054104

GLOBAL ENVIRONMENT FACILITY TRUST FUND

GRANT AGREEMENT

AGREEMENT, dated November 22, 2004, between REPUBLIC OF POLAND (the Recipient) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting as an implementing agency of the Global Environment Facility (GEF) in respect of grant funds provided to the GEF Trust Fund by certain members of the Bank as participants of the GEF.

WHEREAS (A) the Bank, pursuant to Resolution No. 91-5 of March 14, 1991 of the Executive Directors of the Bank, established the GEF to assist in the protection of the global environment and promote thereby environmentally sound and sustainable economic development;

(B) following the restructuring of the GEF, such arrangements continued in place on the basis set forth in Resolution No. 94-2 of May 24, 1994, of the Executive Directors of the Bank which, inter alia, established the GEF Trust Fund and appointed the Bank as trustee of the GEF Trust Fund (Resolution No. 94-2);

(C) the second replenishment of the GEF Trust Fund was approved on the basis set forth in Resolution No. 98-2 of July 14, 1998, of the Executive Directors of the Bank (Resolution No. 98-2);

(D) the Recipient, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested assistance from the resources of the GEF Trust Fund for funding the Project, and said request having been approved in accordance with the provisions of the Instrument for the Establishment of the Restructured Global Environment Facility approved under Resolution 94-2, and to be funded from contributions to the GEF Trust Fund under Resolution No. 98-2, which may include funds carried over from the first replenishment of the GEF Trust Fund under Resolution No. 94-2;

(E) the Project will be carried out by Bank Gospodarstwa Krajowego (BGK), a bank established and operating under the laws of the Republic of Poland, with the Recipient's assistance and, as part of such assistance, the Recipient will make the proceeds of the GEF Trust Fund Grant available to BGK, as set forth in this Agreement; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the GEF Trust Fund Grant to the Recipient upon the terms and conditions set forth in this Agreement and in the agreement of even date herewith between the Bank and BGK (the Project Agreement);

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The following provisions of the “General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans” of the Bank, dated May 30, 1995 (as amended through May 1, 2004) with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
 - (ii) Sections 2.01 (2), (3), (4), (5), (6), (7), (8), (14), (15), (16), (18) and (21), 2.02 and 2.03 of Article II;
 - (iii) Section 3.01 of Article III;
 - (iv) Sections 4.01 and 4.06 of Article IV;
 - (v) Article V;
 - (vi) Section 8.01 (b) of Article VIII;
 - (vii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of Article IX;
 - (viii) Sections 10.01, 10.03 and 10.04 of Article X;
 - (ix) Article XI; and
 - (x) Sections 12.01 (c), 12.03 and 12.04 of Article XII.
- (b) The General Conditions shall be modified as follows:
- (i) the term “Bank”, wherever used in the General Conditions, other than in Sections 2.01 (6), 6.02 (f) and 5.01 (a) thereof, means the Bank acting as an implementing agency of the GEF, except that in Section 6.02, the term “Bank” shall also include the Bank acting in its own capacity;

- (ii) the term “Borrower”, wherever used in the General Conditions, means the Recipient;
- (iii) the term “Loan Agreement”, wherever used in the General Conditions, means this Agreement;
- (iv) the term “Loan” and “loan”, wherever used in the General Conditions, means the GEF Trust Fund Grant;
- (v) the term “Loan Account”, wherever used in the General Conditions, means the GEF Trust Fund Grant Account; and
- (vi) a new subparagraph is added after subparagraph (o) in Section 6.02 of the General Conditions, as follows: “an extraordinary situation shall have arisen in which any further disbursement under the GEF Trust Fund Grant would exceed the resources available for disbursement from the GEF.”

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Beneficiaries” and “Beneficiary” mean collectively the individual energy end-users and individually the individual energy end-user meeting the Eligibility Criteria (hereinafter defined) for assistance under Part B of the Project;

(b) “Capital Grant Agreement” means the agreement to be entered into between BGK (hereinafter defined) and POE ESCO (hereinafter defined) for each grant made to POE ESCO under the Capital Grant Facility (hereinafter defined) for Energy Efficiency Investments (hereinafter defined) pursuant to the provisions of paragraph 1 of Part C of Schedule 3 to this Agreement, in accordance with the term and conditions set forth or referred to in the PIP (hereinafter defined), as the same may be amended from time to time;

(c) “Capital Grant Facility” means the capital grant facility under Part B of the Project, administered by BGK, to provide support to Energy Efficiency Investments in the Malopolskie Voivodship of the Recipient;

(d) “Eligibility Criteria” means the criteria adopted by POE ESCO and included in the PIP, for selection of Beneficiaries and Energy Efficiency Investments under Part B of the Project;

(e) “Energy Efficiency Investment” means an energy efficiency investment meeting the Eligibility Criteria set forth or referred to in the PIP;

(f) “Energy Performance Service Contract” means a contract to be entered into between POE ESCO and a Beneficiary, the content and terms and conditions of which are set forth in the PIP, as the same may be amended from time to time, and such term includes all schedules to any Energy Performance Service Contract;

(g) “Environmental Management Plan” means the plan, satisfactory to the Bank, prepared and adopted by BGK and included in the PIP, describing the environmental mitigation, monitoring and institutional measures for the Project, including the guidelines for environmental screening and assessment of Energy Efficiency Investments;

(h) “FMR” means each financial monitoring report prepared in accordance with Section 4.02 of this Agreement;

(i) “GEF Grant Implementation Agreement” means the agreement to be entered into between the Recipient and BGK pursuant to the provisions of Section 3.01 (a) of this Agreement;

(j) “Guarantee Facility Account” means the account established by BGK pursuant to paragraph 1 of Schedule 2 to the Project Agreement for the purposes of operating the Partial Credit Guarantee Facility under Part A of the Project;

(k) “Guarantee Facility Liability Limit” means a limit of a guarantee commitment under the respective Guarantee Framework Agreement (hereinafter defined);

(l) “Guarantee Framework Agreement” means an agreement, the content and terms and conditions of which are set forth in the PIP and which includes, without limitation, definitions of a guarantee holder, covered risks, default and other applicable terms, entered or to be entered into between BGK and a Participating Bank (hereinafter defined), in accordance with the terms and conditions set forth or referred to in the PIP;

(m) “Partial Credit Guarantee Facility” means the guarantee facility provided under Part A of the Project;

(n) “Participating Bank” means a commercial bank duly established and operating in the Republic of Poland which is eligible, in accordance with the criteria set forth in the PIP, to receive a partial credit guarantee from the Partial Credit Guarantee Facility under Part A of the Project for loans provided for Energy Efficiency Investments throughout the territory of the Recipient;

(o) “PIP” means the Project Implementation Plan for the carrying out of the Project prepared and adopted by BGK, as the same may be amended from time to time with the agreement of the Bank and the Recipient;

(p) "PMU" means the Project Management Unit established by BGK for purposes of Project coordination and management;

(q) "POE ESCO" means Przedsiębiorstwo Oszczędzania Energii "ESCO" Sp. Z o.o. (the Energy Service Company of Krakow) established March 8, 2000, and registered in Krakow on April 4, 2000, under registration number H/B 9292;

(r) "POE ESCO GEF Grant Implementation Agreement" means the agreement to be entered into between BGK and POE ESCO pursuant to the provisions of Section 2.01.(c) of the Project Agreement for the carrying out of Parts B and C.2 of the Project in accordance with the terms and conditions set forth or referred to in the PIP;

(s) "Procurement Plan" means the BGK's procurement plan, dated August 26, 2004 covering the initial 18 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.03 to this Agreement, to cover succeeding 18 month periods (or longer) of Project implementation;

(t) "Project Agreement" means the Agreement between the Bank and BGK of even date herewith, as the same may be amended from time to time following approval of such amendment by the Recipient, and such term includes all schedules and agreements supplemental to the Project Agreement; and

(u) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement.

ARTICLE II

The GEF Trust Fund Grant

Section 2.01. The Bank agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the GEF Trust Fund Grant in an amount equal to eleven million Dollars (\$11,000,000).

Section 2.02. (a) The amount of the GEF Trust Fund Grant may be withdrawn from the GEF Trust Fund Grant Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of: (i) the reasonable cost of goods, works and services required for carrying out Parts B and C of the Project; and (ii) the funding of the Partial Credit Guarantee Facility under Part A of the Project, required for carrying out the Project and to be financed out of the proceeds of the GEF Trust Fund Grant.

(b) The Recipient may, for the purposes of the Project, open and maintain, or cause BGK to open and maintain, in Dollars a special deposit account (the Special

Account) on terms and conditions satisfactory to the Bank, including appropriate protection against set off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 2011, or such later date as the Bank shall establish. The Bank shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Recipient declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall cause BGK to perform in accordance with the provisions of the Project Agreement all the obligations of BGK therein set forth, shall take or cause to be taken all action, including provision of funds, facilities, services and other resources, necessary or appropriate to enable BGK to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient and the Bank shall otherwise agree, the Recipient shall cause BGK to carry out the Project in accordance with the Implementation Program set forth in Schedule 3 to this Agreement and the Implementation Program set forth in Schedule 2 to the Project Agreement.

Section 3.02. (a) The Recipient shall make the proceeds of the GEF Trust Fund Grant available to BGK, to be administered by BGK of behalf of the Recipient, under a GEF Grant Implementation Agreement to be entered into between the Recipient and BGK and approved by the Bank.

(b) The Recipient shall exercise its rights under the GEF Grant Implementation Agreement in such manner as to protect the interests of the Recipient and the Bank and to accomplish the purposes of the GEF Trust Fund Grant, and, except as the Bank shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the GEF Grant Implementation Agreement or any provision thereof.

Section 3.03. (a) Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant shall be governed by the provisions of Schedule 1 to the Project Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Recipient shall cause BGK to update the Procurement Plan in accordance with guidelines acceptable to the Bank, and to furnish such update to the Bank not later than 12 months after the date of the preceding Procurement Plan, for the Bank's approval.

Section 3.04. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Recipient, through BGK, shall:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Bank, a plan for the continued achievement of the objectives of the Project; and

(b) afford the Bank a reasonable opportunity to exchange views with the Recipient on said plan.

ARTICLE IV

Financial Conditions

Section 4.01. (a) The Recipient shall cause BGK to maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with consistently applied accounting standards acceptable to the Bank, adequate to reflect its operations, resources and expenditures related to the Project.

(b) The Recipient shall cause BGK to:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Bank), including statements in respect of the Partial Credit Guarantee Facility, audited, in accordance with consistently applied auditing standards acceptable to the Bank, 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 (or such other period agreed to by the Bank): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or such other period agreed to by the Bank), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and
- (iii) furnish to the Bank such other information concerning such records, accounts and the audit of such financial statements, and

concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the GEF Trust Fund Grant Account were made on the basis of statements of expenditure, the Recipient shall cause BGK to:

- (i) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Bank has received the audit report for, or covering, the fiscal year in which the last withdrawal from the GEF Trust Fund Account was made;
- (ii) enable the Bank's representatives to examine such records; and
- (iii) ensure that such statements of expenditure are included in any audit that the Bank may have requested pursuant to paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Recipient's progress reporting obligations set out in Schedule 3 to this Agreement, the Recipient shall cause BGK to prepare and furnish to the Bank a financial monitoring report, in form and substance satisfactory to the Bank, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Grant, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned, Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first such FMR shall be furnished to the Bank not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Bank not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. (a) Except as the Bank shall otherwise agree, the Recipient shall cause BGK to maintain a loss rate on non-performing loans of the Participating Banks supported by the Partial Credit Guarantee Facility under Part A of the Project, not exceeding 15% of the cumulative guarantee liability commitment of BGK by December 31, 2004 and thereafter until completion of the Project. "Loss rate on non-performing loans" will be calculated on cumulative basis as percentage of actual amounts paid out for called guarantees adjusted by amounts recovered divided by cumulative guarantee liability, i.e., actually disbursed loan amounts covered with guarantees.

Section 4.04. Except as the Bank shall otherwise agree, the Recipient shall cause BGK to, through an official decision of its Management Board, set a target for the liability-to-reserves ratio of 1.5:1 for the first two calendar years of the Partial Credit Guarantee Facility until a review in the first quarter of the third calendar year. Thereafter, following an evaluation of the performance during the first two calendar years, the Recipient shall cause BGK to adjust such target in a manner satisfactory to the Bank with the objective of achieving a liability-to-reserves ratio of 3:1.

Section 4.05. The Recipient shall cause BGK not to draw down on guarantee reserves for use as operating funds at any time during Project implementation without the prior written approval of the Bank.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional events are specified:

(a) BGK shall have failed to perform any of its obligations under the Project Agreement.

(b) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that BGK will be able to perform its obligations under the Project Agreement.

(c) BGK or POE ESCO shall have failed to perform any of their respective obligations under the POE ESCO GEF Grant Implementation Agreement.

(d) BGK or PEO ESCO shall have failed to perform any of their respective obligations under any Capital Grant Agreement.

(e) The PIP shall have been amended, suspended, abrogated, or waived without the prior concurrence of the Bank.

ARTICLE VI

Effectiveness; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement, within the meaning of Section 12.01 of the General Conditions:

- (a) the GEF Grant Implementation Agreement, satisfactory to the Bank, has been signed by the Recipient and BGK;
- (b) the PIP, satisfactory to the Bank, has been adopted by BGK; and
- (c) BGK has received letters of intent from at least two commercial banks stating that they expect to be able to sign a Guarantee Framework Agreement with BGK within a period of three months from the expected date of effectiveness.

Section 6.02 The following are specified as additional matters, within the meaning of Section 12.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank:

- (a) that the Project Agreement has been duly signed and authorized by BGK and is legally binding upon BGK in accordance with its terms; and
- (b) that the GEF Grant Implementation Agreement has been duly authorized by the Recipient and BGK and is legally binding upon the Recipient and BGK, in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. This Agreement shall continue in effect until the GEF Trust Fund Grant has been fully disbursed and the parties to this Agreement have fulfilled their obligations hereunder.

ARTICLE VII

Representative of the Recipient; Addresses

Section 7.01. The Minister of Economy and Labor of the Recipient is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

Ministry of Economy and Labor
Pl. Trzech Krzyzy 3/5
00-507 Warsaw
Republic of Poland

Facsimile:

(48-22) 628 68 08

For the Bank:

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

Cable address:

Telex:

Facsimile:

INTBAFRAD
Washington, D.C.

248423 (MCI) or
64145 (MCI)

(1-202) 477-6391

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

REPUBLIC OF POLAND

By /s/ Jerzy Hausner

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
as an Implementing Agency of the Global Environment Facility

By /s/ Roger Grawe

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the GEF Trust Fund Grant

1. The table below sets forth the Categories of items to be financed out of the proceeds of the GEF Trust Fund Grant, the allocation of the amounts of the GEF Trust Fund Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the GEF Trust Fund Grant Allocated (Expressed in Dollars)</u>	<u>% of Expenditures to be Financed</u>
(1) Supply and installation of equipment	800,000	36%
(2) Goods	600,000	36%
(3) Works	600,000	36%
(4) Consultants' Services, including auditing services	1,930,000	100% for foreign consulting firms and foreign individual consultants and 83.5% for local consulting firms and local individual consultants, including 100% of eligible social charges
(5) Training	35,000	100%
(6) Project Management		
(a) Management Fee	1,300,000	100%
(b) Goods	35,000	82%
(7) Partial Credit Guarantee Facility under Part A of the Project	<u>5,700,000</u>	
TOTAL	<u>11,000,000</u>	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Recipient for goods supplied from the territory of any country other than that of the Recipient;

(b) the term “local expenditures” means expenditures in the currency of the Recipient; or for goods supplied from the territory of the Recipient;

(c) the term “foreign consulting firm” means a consulting firm which is registered or incorporated in the territory of any country other than that of the Recipient;

(d) the term “foreign individual consultant” means an individual consultant who is not a citizen of the territory of the Recipient;

(e) the term “local consulting firm” means a consulting firm which is registered or incorporated in the territory of the Recipient;

(f) the term “local individual consultant” means an individual consultant who is a citizen of the territory of the Recipient;

(g) the term “eligible social charges” means the employer’s contribution to social and medical charges assessed by the Recipient on employment contracts with citizens of the Recipient;

(h) the term “Management Fee” means the fee to be paid to BGK on a monthly basis pursuant to the annual Project management budget as agreed upon by the Bank; and

(i) the term “training” means expenditures incurred to finance the reasonable cost of transportation, accommodation, per diem and interpretation services and cost of training courses and study tours for BGK staff, Participating Banks’ staff, and energy efficiency businesses under Part C.1 of the Project and municipal beneficiaries under Part C.2 of the Project.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made:

(a) in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding \$100,000, may be made in respect of Categories (4) and (6) set forth in the table in paragraph 1 of this Schedule on account of payments made for expenditures before that date but after April 1, 2004;

(b) in respect of payments under Categories (1), (2) and (3) of the table in paragraph 1 of this Schedule until the Bank has been furnished with evidence satisfactory to the Bank that the POE ESCO GEF Grant Implementation Agreement satisfactory to the Bank has been signed by BGK and POE ESCO and is legally binding upon BGK and POE ESCO in accordance with its terms; and

(c) in respect of payments under Category (7) of the table in paragraph 1 of this Schedule until BGK has in place a database acceptable to the Bank for the management of the Partial Credit Guarantee Facility, including tools for the management of the guarantees issued together with the underlying loan portfolio.

4. The Bank may require withdrawals from the GEF Trust Fund Grant Account to be made on the basis of statements of expenditure for expenditures for: (a) contracts for works, goods and for supply and installation of equipment, costing less than \$200,000 equivalent each; (b) services for consulting firms under contracts costing less than \$100,000 equivalent each, and services for individual consultants under contracts costing less than \$50,000 equivalent each; (c) training; and (d) Management Fee, all under such terms and conditions as the Bank shall specify by notice to the Recipient.

5. The Recipient shall promptly refund, and/or cause BGK to refund, when applicable, to the Bank, the GEF Trust Fund Grant proceeds disbursed by the Bank, and the investment income generated by the respective Guarantee Framework Agreement therefrom, in whole or in part, at the Bank's option, if:

(a) the Bank shall have determined at any time that any payment made from the GEF Trust Fund Grant Account (or from the investment income generated therefrom) was used for any expenditure not consistent with the provisions of this Agreement;

(b) the Bank shall have determined, at any time, that the Recipient or BGK shall have failed to perform any of their respective obligations under the GEF Grant Implementation Agreement;

(c) expenditures from the GEF Trust Fund Grant Account (or from the investment income generated therefrom) were made: (i) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (ii) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations;

(d) expenditures from the GEF Trust Fund Grant Account (or from the investment income generated therefrom) were made under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Recipient, BGK or POE ESCO during the procurement or execution of such contract, without the Recipient, BGK or POE ESCO having taken timely and appropriate action satisfactory to the Bank to remedy the situation; or

(e) the PIP shall have been amended, suspended, abrogated, repealed or waived in a manner which, in the opinion of the Bank would materially and adversely affect the implementation of the Project or the attainment of its objectives.

6. Refunds to the Bank, of GEF Trust Fund Grant proceeds, made pursuant to paragraph 5 of this Schedule shall be credited to the GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the provisions of this Agreement. Except for such portions thereof for which a refund to the Bank is required pursuant to the terms of this Agreement, the Recipient may, after the Closing Date of this Project, keep in perpetuity the GEF Trust Fund Grant proceeds disbursed to it but only for the purposes of: (i) continuing the Partial Credit Guarantee Facility as set forth in this Agreement if the Project objectives under Part A of the Project have been achieved; or (ii) continuing POE ESCO's activities as set forth in Part B of Schedule 2 to this Agreement if the Project objectives under Part B of the Project have been achieved; or (iii) if the Project objectives have not been achieved, using such funds in accordance with a plan acceptable to the Bank pursuant to the provisions of Part A of Schedule 3 to this Agreement, and consistent with the objectives of reducing greenhouse gas emission on the territory of the Recipient.

SCHEDULE 2

Description of the Project

The objective of the Project is to increase public and private sector investments in energy efficiency in buildings in the territory of the Recipient, by: (a) overcoming the risk barriers in the financial markets inhibiting commercial bank participation in energy efficiency project financing; (b) demonstrating the feasibility of packaged investments in higher-cost energy efficiency measures in buildings and increasing acceptance of energy performance contracting mechanisms; and (c) stimulating the demand for energy efficiency services in the buildings sector and increasing awareness and capacity of commercial banks to originate and implement loan transactions for energy efficiency investments.

The Project consists of the following parts, subject to such modifications thereof as the Recipient and the Bank may agree upon from time to time to achieve such objectives:

Part A: Partial Credit Guarantee Facility

Establishment of a Partial Credit Guarantee Facility at BGK to provide Participating Banks partial guarantee of loans made for Energy Efficiency Investments throughout the territory of the Recipient.

Part B: Energy Efficiency Investments

Partial financing, under Capital Grant Agreements through the Capital Grant Facility at BGK, of Energy Efficiency Investments meeting the Eligibility Criteria in the Malopolskie Voivodship of the Recipient under Energy Performance Service Contracts between POE ESCO and eligible Beneficiaries.

Part C: Technical Assistance

1. Provision of: (a) technical assistance to the PMU for: (i) the deployment of the guarantee mechanism and building the capacity of BGK to administer the Partial Credit Guarantee Facility; (ii) provision of training to Participating Banks; (iii) increased awareness and demand for efficiency investments among building owners, including municipalities; and (iv) Project monitoring, evaluation and reporting and dissemination of results; and (b) incremental operating costs for management of Project implementation.

2. Provision of technical assistance to POE ESCO for the development of the performance contracting model in the Malopolskie Voivodship and for building its pipeline of potential investments.

* * *

The Project is expected to be completed by December 31, 2010.

SCHEDULE 3

Implementation Program

Part A. Project Management and Monitoring

1. The Recipient: (a) shall cause BGK to carry out Parts A and C.1 of the Project and through BGK shall cause POE ESCO to carry out Parts B and C.2 of the Project in accordance with the requirements set forth or referred to in this Agreement, the Project Agreement and the PIP; and (b) shall not assign, amend, abrogate or waive the PIP or any provision thereof, without the prior concurrence of the Bank.

2. The Recipient, through BGK, shall maintain the PMU until completion of the Project with staff, resources and terms of reference satisfactory to the Bank, and shall assign to it responsibility for overall Project coordination, including:

(a) preparation of disbursement applications under the Grant;

(b) management of the Special Account referred to in Section 2.02 (b) of this Agreement and the Partial Credit Guarantee Facility;

(c) maintenance of records and accounts related to the Project and arranging for the audit thereof; and

(d) participation in administration of bidding procedures and of contracts under the Project.

3. The Recipient, through BGK, shall prepare and furnish to the Bank by June 30 in each year, for its review and concurrence: (a) an annual work program for the Project for the following calendar year, including procurement and financing plans; and (b) an annual progress report.

4. The Recipient through BGK shall cause Participating Banks and POE ESCO to: (a) follow the guidelines in the Environmental Management Plan for the selection and approval of Energy Efficiency Investments; and (b) include adequate information on the carrying out of such measures in the Financial Monitoring Reports referred to in Section 4.02 of this Agreement.

5. The Recipient shall cause BGK to:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about March 31, 2007, a mid-term report integrating the results of the

monitoring and evaluation activities performed pursuant to paragraph (a) above, on the progress achieved in the carrying out of the Project during the period preceding the date of said report, including the achievement of liability-to-reserves ratio of BGK as set forth in Sections 4.04 of this Agreement and of the Project Agreement, and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, by June 30, 2007, or such later date as the Bank shall request, the report referred to in paragraph (b) above, and thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said reports and the Bank's views on the matter.

Part B. Implementation of Part A of the Project

1. The Recipient, through BGK, shall request the Bank to disburse the proceeds of the GEF Trust Fund Grant, allocated from time to time to Category (7) set forth in the table in paragraph 1 of Schedule 1 to this Agreement to the Guarantee Facility Account, upon submission by BGK of a Guarantee Framework Agreement, satisfactory to the Bank, duly executed with a Participating Bank and providing for guarantee commitments in an aggregate not to exceed the equivalent of \$3,000,000 or such other amount as may be agreed upon by the Bank from time to time (the Guarantee Facility Liability Limit).

2. Without limitation or restriction to the provisions in paragraph 1 of this Part B, the Recipient shall entrust BGK with responsibility for the preparation of withdrawal applications from the GEF Trust Fund Grant Account to the Guarantee Facility Account and for collection of the documents and other evidence to be furnished to the Bank in support of such application.

3. (a) If the Bank shall have determined at any time that any amount outstanding in the Guarantee Facility Account will not be required to cover further guarantee commitments to Participating Banks, the Recipient shall cause BGK to, promptly upon notice from the Bank, refund to the Bank such outstanding amount;

(b) BGK may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Guarantee Facility Account;

(c) Refunds to the Bank made pursuant to paragraphs (a) and (b) of this paragraph shall be credited to the GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement.

4. If, upon exchange of views during the review referred to in paragraph 5 of Part A to this Schedule, the Bank shall have established that BGK has failed to comply with the provisions of Sections 4.04 of this Agreement and the Project Agreement, the Bank may,

with a notice to the Recipient and BGK, terminate disbursements into the Partial Credit Guarantee Facility and reallocate the undisbursed amounts under Category (7) set forth in the table in paragraph 1 of Schedule 1 to this Agreement, to other Parts of the Project, or cancel them, as the case may be.

5. The Recipient shall immediately terminate disbursements into the Partial Credit Guarantee Facility in the event that:

(a) the GEF Grant Implementation Agreement, or any provision thereof, is amended, suspended, abrogated, waived or repealed by the Recipient or BGK, without the prior concurrence of the Bank, and such amendment, suspension, abrogation, waiver or repeal materially and adversely affects the ability of the Recipient or BGK to perform any of its obligations under the GEF Grant Implementation Agreement;

(b) any authority having lawful jurisdiction shall have taken any action for dissolution or disestablishment of BGK, or for the suspension of its operations, and such dissolution, disestablishment or suspension shall materially and adversely affect the ability of BGK to carry out its obligations under the GEF Grant Implementation Agreement;

(c) BGK becomes insolvent;

(d) BGK fails to fulfill its obligations under the GEF Grant Implementation Agreement; or

(e) the charter of BGK is amended, suspended, abrogated, repealed or waived in a manner which, in the opinion of the Bank, would materially and adversely affect the ability of the Recipient to effectively implement its obligations under the GEF Trust Fund Grant Agreement or the GEF Grant Implementation Agreement.

6. The Recipient shall cause BGK:

(a) prior to entering into any Guarantee Framework Agreement, to obtain the Bank's approval of all Guarantee Framework Agreements between BGK and the Participating Banks;

(b) prior to entering into the first two transaction guarantee commitments under any Guarantee Framework Agreement, to obtain the Bank's approval on contractual arrangements for said transaction.

Part C: Implementation of Part B of the Project

1. The Recipient through BGK shall cause POE ESCO to implement Part B of the Project in accordance with the requirements set forth or referred to in this Agreement, the Project Agreement and the PIP. For purposes of carrying out Part B of the Project, BGK shall make available the proceeds of the GEF Trust Fund Grant allocated from time to time to Categories (1), (2), (3), (4) and (5) in the table set forth in paragraph 1 of Schedule 1 to this Agreement, up to an amount equivalent to two million, four hundred forty thousand Dollars (\$2,440,000) (the Capital Grant Facility), to POE ESCO, on a grant basis under Capital Grant Agreements to be entered into between BGK and POE ESCO, in accordance with the requirements set forth or referred to in this Agreement, the Project Agreement and the PIP. BGK and POE ESCO shall enter into the POE ESCO GEF Grant Implementation Agreement, which shall have been agreed upon with the Bank and which shall include, inter alia, provisions whereby POE ESCO shall be required, as part of its responsibility for implementation of Part B of the Project to: (i) maintain the financial records and accounts for Part B of the Project and to make said records and accounts available to BGK and the Recipient; (ii) supervise the implementation of Part B of the Project including supervising the progress of each Energy Efficiency Investment; (iii) carry out the procurement of goods, works and services required for Part B of the Project in accordance with the procedures set forth in Schedule 1 to the Project Agreement; and (iv) prepare and furnish to the Recipient and BGK quarterly reports on the progress of implementation of Part B of the Project.

2. For the purposes of carrying out Part B of the Project, the Recipient through BGK shall cause POE ESCO to provide goods, works and services for approved Energy Efficiency Investments to Eligible Beneficiaries under Energy Performance Service Contracts.

3. (a) The Recipient: (i) shall cause BGK to obtain the Bank's prior approval for: (i) the first three grant applications and Capital Grant Agreements under Part B of the Project; (ii) any grant application requesting a grant of \$400,000 more; and (iii) thereafter, shall cause BGK to submit for prior approval to the Bank grant applications and Capital Grant Agreements as may be required by the Bank from time to time.

(b) If the funds available for Part B of the Project are not used by POE ESCO during the first three calendar years of the implementation of the Project, the remaining funds will be transferred to the Guarantee Facility Account.

4. POE ESCO shall duly perform all its obligations under the POE ESCO GEF Grant Implementation Agreement. Except as the Bank, the Recipient and BGK shall otherwise agree, POE ESCO shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the POE ESCO GEF Grant Implementation Agreement or any provision thereof.

5. (a) POE ESCO shall, at the request of the Bank or BGK, exchange views with the Bank and BGK with regard to progress of Part B of the Project, the performance of its obligations under the POE ESCO GEF Grant Implementation Agreement, and other matters relating to the purposes of the GEF Trust Fund Grant.

(b) POE ESCO shall promptly inform the Bank and BGK of any condition which interferes or threatens to interfere with the progress of Part B of the Project, the accomplishment of the purposes of the GEF Trust Fund Grant, or the performance by POE ESCO of its obligations under the POE ESCO GEF Grant Implementation Agreement.

Part D: Implementation of Part C of the Project

(a) The Recipient shall cause BGK to carry out Part C.1 of the Project in accordance with the provisions of this Agreement, the Project Agreement and the PIP.

(b) The Recipient through BGK shall cause POE ESCO to carry out Part C.2 of the Project in accordance with the provisions of this Agreement, the Project Agreement and the PIP and POE ESCO shall be required as part of its responsibility to: maintain records and accounts and make said records and accounts available to the Recipient and BGK and to procure the services required under Part C.2 of the Project in accordance with the procedures set forth in Schedule 1 of the Project Agreement.

SCHEDULE 4

Special Account

1. For the purposes of this Schedule:
 - (a) the term “eligible Categories” means Categories (1), (2) (3), (4), (5) and (6) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
 - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
 - (c) the term “Authorized Allocation” means an amount equivalent to \$1,100,000 to be withdrawn from the GEF Trust Fund Grant Account and deposited in Dollars into the Special Account pursuant to paragraph 3 (a) of this Schedule.
2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Bank has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Recipient shall cause BGK to furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the Special Account such amount or amounts as the Recipient shall have requested.
 - (b)
 - (i) For replenishment of the Special Account, the Recipient shall cause BGK to furnish to the Bank requests for deposits into the Special Account at such intervals as the Bank shall specify.
 - (ii) Prior to or at the time of each such request, the Recipient shall cause BGK to furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the Special Account such amount as the Recipient shall have requested and as shall have

been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Bank from the GEF Trust Fund Grant Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Recipient or BGK out of the Special Account, the Recipient or BGK shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Recipient directly from the GEF Trust Fund Grant Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Recipient shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Bank shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the GEF Trust Fund Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the GEF Trust Fund Grant allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the GEF Trust Fund Grant Account of the remaining unwithdrawn amount of the GEF Trust Fund Grant allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Recipient. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to

paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Bank, the Recipient shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Account shall be made until the Recipient has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Recipient shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Recipient may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.