

CONFORMED COPY

CREDIT NUMBER 2293 ZR

(SNEL Technical Assistance Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

SOCIETE NATIONALE D'ELECTRICITE

Dated September 9, 1991

CREDIT NUMBER 2293 ZR

PROJECT AGREEMENT

AGREEMENT, dated September 9, 1991, between the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and the SOCIETE NATIONALE D'ELECTRICITE (the Company):

WHEREAS: (A) by the Development Credit Agreement of even date herewith between Republic of Zaire (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to seven million five hundred thousand Special Drawing Rights (SDR 7,500,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that the Company agree to undertake such obligations toward the Association as are set forth in this Agreement;

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

WHEREAS the Company, in consideration of the Association's entering into the Development Credit 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 Development Credit Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) The Company declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, economic, 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 the Project.

(b) The Company shall, for the purposes of the Project, open and maintain in dollars a special deposit account (the Special Account) in a commercial bank on terms and conditions satisfactory to the Association, 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 3 to this Agreement.

(c) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and the Company shall otherwise agree, the Company shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. The Company shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 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.

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

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

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

Section 2.06. Without limiting the generality of Section 2.03 above, the Company shall, under arrangements satisfactory to the Association, ensure that its dams and all electro-mechanical structures thereof are periodically inspected in accordance with sound engineering practices in order to determine whether there are any deficiencies in the condition of such structures or in the quality and adequacy of maintenance or methods of operations of the same which may endanger their safety. To this end, the Company shall submit to the Association by December 31, 1992 the appropriate arrangements referred to above for its review.

ARTICLE III

Management and Operations of the Company

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

Section 3.02. The Company 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 and financial, economic and public utility practices.

Section 3.03. (a) The Company shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

(b) Upon the completion of the revaluation of the fixed assets of the Company, the Company shall promptly revise its insurance coverages to take into account such revaluations.

Section 3.04. The Company shall continue to adhere to an efficient and effective system of accounting based on the recommendations resulting from its 1989 annual audit.

Section 3.05. The Company shall execute the Contrat-Programme referred to in Section 3.04 of the Development Credit Agreement and shall not concur to any amendment, modification or derogation to any of the terms and conditions of said Contrat-Programme without prior consultation with the Association.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Company shall reevaluate its assets and restructure its balance sheet by June 30, 1992 in accordance with appropriate accounting principles acceptable to the Association.

(b) The Company shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(c) The Company shall:

- (i) have its records, accounts (including the Special Account) and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association 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 Association shall have reasonably requested; and

- (iii) furnish to the Association such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Association shall from time to time reasonably request.

(d) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Company shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the completion of the audit for the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (c) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. The Company shall, pursuant to a program of actions satisfactory to the Association, take such steps as shall be necessary, including the improvement of its billing and collections procedures, to reduce the level of its accounts receivables to 2.5 months' of billings (in constant kilowatt/hour value) by December 31, 1992.

Section 4.03. The Company shall not make any capital investment exceeding the equivalent of \$5,000,000 without the prior approval of the Association.

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 Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of the Company thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date 21 years after the date of this Agreement.

- (b) If the Development Credit Agreement terminates in

accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify the Company of this event.

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, radiogram or facsimile 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 Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

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

For the Company:

2831 Avenue de la Justice
B.P. 500
Kinshasa 1
Republic of Zaire
Cable address:

SNEL KIN

Telex:

21347

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 the Company, or by the Company on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by its Managing Director (President-Delegue-General) or such other person or persons as the Company shall designate in writing, and the Company shall furnish to the Association 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 DEVELOPMENT ASSOCIATION

By /s/ Francisco Aguirre-Sacasa
Acting Regional Vice President
Africa

SOCIETE NATIONALE D'ELECTRICITE

By /s/ Tatanene Manata
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods

Part A: International Competitive Bidding

1. Except as provided in Part B of this Schedule, goods 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 1985 (the Guidelines).

2. To the extent practicable, contracts for the purchase of goods shall be grouped into bid packages sufficiently large so as to attract maximum competition.

Part B: Other Procurement Methods

Equipment required in the carrying out of Part A.1 of the Project may be procured on the basis of shopping, as described in paragraph 3.4 of the Guidelines.

Part C: Review by the Association of Procurement Decisions

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

1. (a) With respect to each contract for civil works and to each contract for vehicles and equipment, estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contracts are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of each contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of such 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 each contract, together with the other information required to be furnished to the Association pursuant to said paragraph 3, shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 3 to this Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Association has authorized withdrawals from the Credit Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (d) of this Agreement.

2. The figure of 10% is hereby specified for the purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants and Specialists

In order to assist the Company in carrying out the studies and supervising the works included in the Project, strengthening its management and training its staff, the Company shall employ such consultants, whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association, as shall be agreed between the Company and the Association. Such consultants and specialists shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by The World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 2

Implementation Program

Part A: Dam Control

(a) Description of tasks to be carried out

- Engineering services for dam safety and acquisition of required equipment
- Technical support for dam management and rehabilitation
- Acquisition of draining equipment for Inga
- Acquisition of engineering services for Ruzizi I, Nzilo and Nseke

(b) Implementation timetable

- Issuance of bidding documents by August 1, 1991
- Submission of bids by September 2, 1991
- Analysis of bids to be completed by October 15, 1991
- Award of contracts no later than November 30, 1991
- Control of dam safety for Ruzizi I, Nzilo and Nseke to be completed by September 30, 1993
- Technical support activities for management and rehabilitation of the Inga Dam will be completed by December 31, 1993

Part B: Commercial Management

(a) Description of tasks to be carried out

Strengthening of management procedures relating to:

- financial and accounting systems
- maintenance organization
- supply services (including recruitment of a supplies manager)
- commercial operations management
- audit

(b) Implementation calendar

- issuance of bidding documents by August 1, 1991

- submission of bids by September 2, 1991
- analysis of bids to be completed by October 15, 1991
- award of contracts no later than November 30, 1991
- strengthening of financial and accounting systems to be completed by September 30, 1993
- improvement of maintenance operation to be achieved by April 15, 1993
- improvement of supply services to be achieved by April 30, 1993
- improvement of commercial operations management to be achieved by December 31, 1993
- audit of accounts to be completed by June 30 of each year

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) and (2) 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 and services required for the Project and to be financed out of the proceeds of the Credit 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 of \$300,000 to be withdrawn from the Credit Account and deposited 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 Association 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 Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association 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 Association shall, on behalf of the Borrower, withdraw from the Credit Account and

deposit into the Special Account such amount as the Borrower 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 Association from the Credit 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 Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association 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 Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement; or

(b) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association 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 Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association 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 Association 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; (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association 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 Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

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

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

