

CONFORMED COPY

LOAN NUMBER 4098-0 UA
LOAN NUMBER 4098-1 UA

Donbassenergo Project Agreement
(Electricity Market Development Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

DONBASSENERGO

Dated November 1, 1996

LOAN NUMBER 4098-0 UA
LOAN NUMBER 4098-1 UA

DONBASSENERGO PROJECT AGREEMENT

AGREEMENT, dated November 1, 1996, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and DONBASSENERGO (Donbassenergo).

WHEREAS (A) by the Loan Agreement of even date herewith between Ukraine (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower (a) an amount equal to two hundred and forty-five million and four hundred thousand Dollars (\$245,400,000) for Portion A of the Loan and (b) an amount equal to seventy-one million and six hundred thousand Dollars (\$71,600,000) for Portion B of the Loan;

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

WHEREAS Donbassenergo, 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, the Preamble to this Agreement and the General Conditions (as so defined) have the respective meanings therein set forth and the term "PIU" shall mean the Project Implementation Unit established within Donbassenergo pursuant to the Order of the Ministry of Power and Electrification on August 3, 1996, and referred to in Paragraph 1 of the Schedule to this Agreement.

ARTICLE II

Execution of the Project

Section 2.01. (a) Donbassenergo 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 Parts A(1) and B(1) of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial and engineering practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts A(1) and B(1) of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and Donbassenergo shall otherwise agree, Donbassenergo shall carry out Parts A(1) and B(1) of the Project in accordance with the Implementation Program set forth in the Schedule to this Agreement.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to the Loan Agreement.

Section 2.03. Donbassenergo 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 Donbassenergo Project Agreement and Parts A(1) and B(1) of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section, Donbassenergo shall:

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) after the Closing Date or such later date as may be agreed for this purpose between the Bank and Donbassenergo a plan for the future operation of Parts A(1) and B(1) of the Project;
- (ii) afford the Bank a reasonable opportunity to exchange views with Donbassenergo on said plan; and
- (iii) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Bank's comments thereon.

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

Section 2.05. (a) Donbassenergo shall, at the request of the Bank, exchange views with the Bank with regard to progress of Parts A(1) and B(1) the Project, the performance of its obligations under this Agreement and under the Donbassenergo Subsidiary Loan Agreement and other matters relating to the purposes of the Loan.

(b) Donbassenergo shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Parts A(1) and B(1) of the Project, the accomplishment of the purposes of the

Loan, or the performance by Donbassenergo of its obligations under this Agreement and under the Donbassenergo Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of Donbassenergo

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

Section 3.02. Donbassenergo 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 administrative, financial and engineering practices.

Section 3.03. Donbassenergo 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) Donbassenergo shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) Donbassenergo shall:

- (i) have its records, accounts 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 Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six (6) 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, Donbassenergo shall not incur any debt unless a reasonable forecast of the revenues and expenditures of Donbassenergo shows that the estimated net revenues of Donbassenergo for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times the estimated debt service requirements of Donbassenergo in such year on all debt of Donbassenergo including the debt to be incurred.

(b) For the purpose of this Section:

- (i) The term "debt" means any indebtedness of Donbassenergo 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-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 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 Donbassenergo not earlier than twelve (12) months prior to the incurrence of the debt in question, which both the Bank and Donbassenergo accept as reasonable and as to which the Bank has notified Donbassenergo 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 Donbassenergo.
- (viii) 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. Donbassenergo shall take all necessary action to reduce:

- (a) its accounts payable to an average of not more than 40 days for its fiscal year (FY) 1996, 35 days for FY 1997, 30 days in each fiscal year thereafter; and
- (b) its accounts receivable to an average of not more than 40 days for FY 1996, 35 days for FY 1997, and 30 days in each fiscal year thereafter.

Section 4.04. Donbassenergo shall, from January 1, 1997, maintain inventories of coal and mazut (including reserves for substitution of gas, if necessary) at levels of 30 days, 20 days, 30 days and 40 days of winter consumption for not less than 10 days in the first, second, third and fourth quarters of each calendar year, respectively. For the purposes of this Section, winter consumption shall mean the expected average daily consumption during the fourth quarter of each calendar year.

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 Donbassenergo thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify Donbassenergo 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 (MCI),
64145 (MCI)

For Donbassenergo:

11 Lenina
Gorlivka 338001
Ukraine

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 Donbassenergo may be taken or executed by its Director or such other person or persons as the Director shall designate in writing, and Donbassenergo 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/ Johannes Linn

Regional Vice President
Europe and Central Asia

DONBASSENERGO

By /s/ Yuri Shcherbak

Authorized Representative

SCHEDULE

Implementation Program

1. In order to facilitate the efficient carrying out of Parts A(1) and B(1) of the Project, Donbassenergo shall maintain, with staff and other resources and terms of reference satisfactory to the Bank, a Project Implementation Unit to be responsible for the design and supervision of execution of Parts A(1) and B(1) of the Project. The said Unit shall be headed by a suitably qualified staff member of Donbassenergo who will function as the Project Manager for Parts A(1) and B(1) of the Project.
 2. Donbassenergo shall provide the Borrower with all information required on its part, including all information relating to the carrying out of Parts A(1) and B(1) of the Project and the achievement of the objectives thereof, to enable the Borrower to carry out its obligations pursuant to paragraph 10 of Schedule 5 to the Loan Agreement.
 3. Donbassenergo shall, at all times, comply with the provisions of the EMA and, except as the Bank shall otherwise agree, Donbassenergo shall not assign, amend, abrogate or waive the EMA or any provision thereof.
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