

CONFORMED COPY

CREDIT NUMBER 2284 BEN

(Power Rehabilitation and Extension Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

SOCIETE BENINOISE D'ELECTRICITE ET D'EAU

Dated July 12, 1991

CREDIT NUMBER 2284 BEN

PROJECT AGREEMENT

AGREEMENT, dated July 12, 1991, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and SOCIETE BENINOISE D'ELECTRICITE ET D'EAU (SBEE).

WHEREAS (A) by the Development Credit Agreement of even date herewith between REPUBLIC OF BENIN (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to eleven million three hundred thousand Special Drawing Rights (SDR 11,300,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that SBEE 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 SBEE, the proceeds of the credit provided for under the Development Credit Agreement will be relented to SBEE on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS SBEE, 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, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth and the term "FY" means the fiscal year of SBEE starting on January 1 and ending on December 31 of each year.

ARTICLE II

Execution of the Project

Section 2.01. SBEE 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, engineering and commercial practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 2.02. Except as the Association 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 Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. SBEE 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. SBEE shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, SBEE 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) SBEE 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) Without limitation upon the provisions of paragraph (a) hereto, the Borrower, the Association and SBEE shall, not later than June 30, 1994 jointly undertake a mid-term review of the progress achieved in carrying out the Project.

(c) SBEE 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 SBEE of its obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06. Without limitation upon its obligations under Section 3.01 of this Agreement, SBEE shall, for the purposes of carrying out the Project, establish and maintain a project management unit (the PMU) with competent staff in adequate numbers.

ARTICLE III

Management and Operations of SBEE

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

Section 3.02. SBEE 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 power utility practices.

Section 3.03. SBEE 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.

Section 3.04. SBEE shall comply with the provisions of the performance contract, referred to in Section 5.01 (c) of the Development Credit Agreement and shall not

amend, waive or otherwise modify any material provision thereof without the approval of the Association.

Section 3.05. SBEE shall: (a) by November 30 of each year, consult with the Association regarding its proposed investment program for its following fiscal year; and (b) not make any investment in an amount equivalent to one million dollars (\$1,000,000) or more without the approval of the Association.

Section 3.06. SBEE shall take all reasonable actions to ensure that its customers pay their bills within three months of receipt, including terminating service for any client with arrears overdue by more than 60 days.

Section 3.07. SBEE shall pay each bill received from Communaute Electrique du Benin within three months of receipt, unless SBEE shall have a reasonable basis for contesting such bill and is proceeding with such contest.

Section 3.08. SBEE shall promptly carry out the action plan on the environment agreed upon between SBEE and the Association.

ARTICLE IV

Financial Covenants

Section 4.01. (a) SBEE shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) SBEE 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 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.

Section 4.02. (a) Except as the Association shall otherwise agree, SBEE shall earn an annual return as a percentage of the average current net value of SBEE's fixed assets in operation of at least 4% during FY 1993 and each following FY.

(b) Before December 15 in each of its FYs, SBEE shall, on the basis of forecasts prepared by SBEE and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year, and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that SBEE would not meet the requirements set forth in paragraph (a) for SBEE's FYs covered by such review, SBEE shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

(i) The annual return shall be calculated by dividing SBEE's net operating income for the fiscal year in question by one half of the sum of the current net value of SBEE's fixed assets in operation at the beginning and at the end of that fiscal year.

(ii) The term "net operating income" means total operating revenues less total operating expenses.

(iii) The term "total operating revenues" means revenues from all

sources related to operations.

(iv) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a straight-line basis at a rate of not less than 4% per annum of the average current gross value of SBEE's fixed assets in operation, or other basis acceptable to the Association, but excluding interest and other charges on debt.

(v) The average current gross value of SBEE's fixed assets in operation shall be calculated as one half of the sum of the gross value of SBEE's fixed assets in operation at the beginning and at the end of the fiscal year, as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to the Association.

(vi) The term "current net value of SBEE's fixed assets in operation" means the gross value of SBEE's fixed assets in operation less the amount of accumulated depreciation, as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to 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 SBEE 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 twenty (20) 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 SBEE 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 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 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 SBEE:

SBEE
B.P. 123
Cotonou, Benin

Cable address:

SBEE

Telex:

5213

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 SBEE, or by SBEE on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the Director General or such other person or persons as the Director General shall designate in writing, and SBEE 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/ Edward V.K. Jaycox

Regional Vice President
Africa

SOCIETE BENINOISE D'ELECTRICITE ET D'EAU

By /s/ Candide Ahouansou

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

Except as provided in Part D 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 1985 (the Guidelines).

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 Benin 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: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, SBEE may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the

Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

Items or groups of items for goods estimated to cost the equivalent of \$100,000 or less per contract, up to an aggregate amount equivalent to \$700,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from at least three suppliers from at least three different countries eligible under the Guidelines, in accordance with procedures acceptable to the Association.

Part E: Review by the Association of Procurement Decisions

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

(a) With respect to each contract estimated to cost the equivalent of \$150,000 or more, 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 Association pursuant to said paragraph 2 (d) shall be furnished to the Association 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 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 the Development Credit Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which the Association has authorized withdrawals on the basis of statements of expenditure.

2. The figure of 20% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist SBEE in carrying out the Project, SBEE shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants 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.

