

CONFORMED COPY

LOAN NUMBER 4118 UA

Loan Agreement

(Coal Sector Adjustment Loan)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

Dated December 12, 1996

LOAN NUMBER 4118 UA

LOAN AGREEMENT

AGREEMENT, dated December 12, 1996, between UKRAINE (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank):

WHEREAS the Bank has received a letter dated September 16, 1996 from the Borrower describing a program of actions, objectives and policies designed to achieve structural adjustment of the coal sector in the economy of the Borrower (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Bank in support of the Program during the execution thereof; and

WHEREAS on the basis, inter alia, of the foregoing, the Bank has decided in support of the Program to provide such assistance to the Borrower by making the Loan in two tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this

Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Deposit Account" means the account referred to in Section 2.02 (b) of this Agreement;

(b) "MCI" means the Borrower's Ministry of Coal Industry or any successor thereto;

(c) "MCI Order No. 366" means the Order of MCI on Additional Measures Concerning Restructuring of the Coal Industry, dated July 30, 1996, which divides all coal mines of Ukraine into four categories based on their profitability and viability projections;

(d) "MCI Order No. 459" means the Order of MCI on the Procedures for Budget Fund Allocation for Investment in 1997, dated September 16, 1996, which establishes the criteria and parameters for provision of budget support to mines for Investment (as the said term is defined in the said Order);

(e) "MCI Order No. 455" means the Order of MCI on the Procedures for Determination of State Budget Support To Mines of 2nd and 3rd Categories, dated September 16, 1996, which establishes the criteria and parameters for provision of budget support to mines for production costs;

(f) "Social Assets" means the social support services, including housing, kindergartens, sanatoria and the like owned by the coal mines and used by their employees;

(g) "Social Benefits Laws" means the Borrower's "Law on Population Employment", dated March 1, 1991, and any amendments thereto, the "Law on Labour Protection", dated October 14, 1992, and any amendments thereto, and the "Law on Pension Provision", dated November 5, 1991, and any amendments thereto; and

(h) "UDKR" means the Ukrainska derzhavna kompania z restrukturizatsii pidpriemstv vulhilnoi promislovennosti (Ukruglrestrukturizatsia) (the Ukrainian State Company for Restructuring of Enterprises of the Coal Industry), or any successor thereto, established pursuant to MCI Decree No. 11, dated January 12, 1996, and duly registered by the executive committee of the City Council of the City of Donetsk on March 13, 1996.

## ARTICLE II

### The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to three hundred million Dollars (\$300,000,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c) and (d) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Bank the first request for withdrawal from the Loan Account, and thereafter maintain in its central bank, a deposit account in Dollars on terms and conditions satisfactory to the Bank. All withdrawals from the Loan Account shall be deposited by the Bank into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Loan shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Bank shall have determined at any time that any proceeds of the Loan shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Bank, (i) deposit into the Deposit Account an amount equal to the amount of said payment, or (ii) if the Bank shall so request, refund such amount to the Bank. Amounts refunded to the Bank upon such request shall be credited to the Loan Account for cancellation.

(d) No withdrawals shall be made from the Loan Account after the aggregate of the proceeds of the Loan withdrawn from the Loan Account shall have reached \$150,000,000 unless the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank: (i) with the progress achieved by the Borrower in the carrying out of the Program; and (ii) that the actions described in Schedule 3 to this Agreement have been taken. If, after said exchange of views, the Bank shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within ninety (90) days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Bank, then the Bank may, by notice to the Borrower, cancel the unwithdrawn amount of the Loan or any part thereof.

Section 2.03. The Closing Date shall be December 31, 1997 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent ( $3/4$  of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.05. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

- (i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.
- (ii) "Interest Payment Date" means any date specified in Section 2.06 of this Agreement.
- (iii) "LIBOR Base Rate" means, for each Interest Period, the London Interbank offered rate for six-month deposits in Dollars for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.
- (iv) "LIBOR Total Spread" means, for each Interest Period: (A) one half of one percent ( $1/2$  of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London Interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

(c) The Bank shall notify the Borrower of LIBOR Base Rate and LIBOR Total Spread for each Interest Period, promptly upon the determination thereof.

(d) Whenever, in light of changes in market practice affecting the determination of the interest rates referred to in this Section 2.05, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest rates applicable to the Loan upon not less than six (6) months'

notice to the Borrower of the new basis. The basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.06. Interest and other charges shall be payable semi-annually on June 15 and December 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

### ARTICLE III

#### Particular Covenants

Section 3.01. (a) The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 3 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Bank on any proposed action to be taken after the disbursement of the Loan which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedule 3 to this Agreement.

Section 3.02. Upon the Bank's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(b) furnish to the Bank as soon as available, but in any case not later than six (6) months after the date of the Bank's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(c) furnish to the Bank such other information concerning the Deposit Account and the audit thereof as the Bank shall have reasonably requested.

Section 3.03. In implementing social and environmental mitigation measures associated with the transfer of at least 20 mines to the UDKR, the Borrower shall within sixty (60) days after the Effective Date:

(a) make the statutory payments due to the laid off, retired and disabled workers of the said mines within monetary limits and time periods prescribed by the Borrower's Social Benefits Laws;

(b) complete the distribution of free coal to laid off, retired and disabled workers of the said mines and family members of former mine employees killed in mining accidents in said mines; and

(c) put into effect satisfactory arrangements for continued access of laid off, retired and disabled workers of the said mines to the Social Assets.

Section 3.04. The Borrower shall, by February 28, 1997, (i) evaluate, in a manner satisfactory to the Bank, the social protection and environmental mitigation measures undertaken under the Coal Pilot Project, funded under the Loan Agreement dated July 11, 1996 between the Borrower and the Bank (Loan No. 4016 UA), and (ii) based on the conclusions of the said evaluation, adopt an action plan, satisfactory to the Bank, for social protection and environmental mitigation

measures to be undertaken in connection with mine restructuring and closure under the Program.

#### ARTICLE IV

##### Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

#### ARTICLE V

##### Effectiveness

Section 5.01. 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.

#### ARTICLE VI

##### Representative of the Borrower; Addresses

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance  
12/2 Hrushevsky St.  
Kyiv, Ukraine 252008

Telex:

131450

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:

INTBAFRAD 248423 (MCI)  
Washington, D.C. 64145 (MCI)

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.

UKRAINE

By /s/ Yuri Shcherbak  
Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Basil Kavalsky  
Acting Regional Vice President  
Europe and Central Asia

SCHEDULE 1

Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Loan shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another loan or a credit;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Bank by notice to the Borrower:

Group	Subgroup	Description of Items
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption; and
5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party).

SCHEDULE 2

Amortization Schedule

Date Payment Due	Payment of Principal (expressed in Dollars)*
June 15, 2002	12,500,000
December 15, 2002	12,500,000
June 15, 2003	12,500,000
December 15, 2003	12,500,000
June 15, 2004	12,500,000
December 15, 2004	12,500,000
June 15, 2005	12,500,000
December 15, 2005	12,500,000
June 15, 2006	12,500,000
December 15, 2006	12,500,000
June 15, 2007	12,500,000
December 15, 2007	12,500,000
June 15, 2008	12,500,000
December 15, 2008	12,500,000
June 15, 2009	12,500,000
December 15, 2009	12,500,000
June 15, 2010	12,500,000
December 15, 2010	12,500,000
June 15, 2011	12,500,000
December 15, 2011	12,500,000
June 15, 2012	12,500,000
December 15, 2012	12,500,000
June 15, 2013	12,500,000
December 15, 2013	12,500,000

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\* The figures in this column represent Dollars to be repaid, except as provided in Section 4.04 (d) of the General Conditions.

### SCHEDULE 3

Action Referred to in Section 2.02 (d) of this Agreement

1. Continued maintenance of a macroeconomic framework consistent with the objectives of the Program as determined on the basis of performance criteria acceptable to the Borrower and the Bank.

2. The Borrower has achieved satisfactory progress in implementing social and environmental mitigation measures related to the 40 or more mines which have been transferred to the UDKR as evidenced by:

(a) making statutory payments due to the laid off, retired and disabled workers of the said mines within monetary limits and time periods prescribed by the Borrower's Social Benefits Laws;

(b) distribution of free coal to laid off, retired and disabled workers of the said mines and family members of former mine employees killed in mining accidents in the said mines;

(c) the existence of satisfactory arrangements that ensured continued access of laid off, retired and disabled workers of the said mines to the Social Assets;

(d) implementation, in a manner satisfactory to the Bank, of the action plan for social protection and environmental mitigation measures referred to in Section 3.04 to this Agreement with respect to the said mines; and

(e) satisfactory progress towards completion of physical closure of the said mines.

3. The Borrower and managers of each of the non-leased Category 2 and 3 mines (as defined in the MCI Order No. 366) have signed performance contracts, based on a model contract approved by the Bank, which contracts would provide the financial parameters for the operation of each mine, respectively.

4. The Borrower has achieved satisfactory progress, as determined on

the basis of criteria acceptable to the Borrower and the Bank, in divesting and privatizing non-core activities of the coal industry. For the purposes of this paragraph, "non-core activities" means activities other than coal mining, coal washing and social services and assets, which activities may include machine building, transport (except technological transport), construction and the like.

5. The Borrower has divested the Social Assets of at least 100 mines by means of (i) privatization, or (ii) transfer of the ownership in, and the responsibility for operating, the said assets to local governments with the accompanying transfer from the central government to the respective local governments of budgetary resources allocated to support the operation of the said assets during calendar year 1997.

6. The Borrower has abolished all restrictions on coal exports with the exception of those arising as a result of anti-dumping investigations initiated against coal exports of the Borrower.

7. The Borrower has demonstrated to the satisfaction of the Bank that, starting on November 14, 1996, all budget support provided to mines for Investment (as this term is defined in MCI Order No. 459) and production subsidies has been consistent with MCI Orders Nos. 459 and 455, which establish the conditions and parameters for such support.

8. The Borrower has demonstrated to the satisfaction of the Bank that the aggregate and the composition of the Borrower's expenditures in the coal sector have been consistent with the Borrower's 1997 Budget for Coal Industry, agreed with the Bank.

9. The Borrower has demonstrated to the satisfaction of the Bank that at the time of the review referred to in Section 2.02(d) of this Agreement, the level of payables of mines in Categories 1, 2 and 3 (as defined in the MCI Order No. 366) has not exceeded the level of payables prevailing for those mines on August 1, 1996.

