

CONFORMED COPY

LOAN NUMBER 3865 UA

Loan Agreement

(Hydropower Rehabilitation and System Control Project)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

Dated September 28, 1995

LOAN NUMBER 3865 UA

LOAN AGREEMENT

AGREEMENT, dated September 28, 1995, between UKRAINE (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Bank to assist in the financing of the Project;

(B) the Borrower has contracted grants from other sources of finance in an aggregate principal amount equivalent to about \$13,000,000 to assist in financing the Project on the terms and conditions set forth in the agreements providing therefor;

(C) Part A of the Project will be carried out by OJSC Dniprohydroenergo (DHE), a joint stock company established and operating under the laws of the Borrower, and Part B of the Project will be carried out by the National Dispatch Center (NDC), a state enterprise established and operating under the laws of the Borrower, all with the Borrower's assistance and, as part of such assistance, the Borrower will make available to DHE and NDC the proceeds of the Loan as provided in this Agreement; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the

terms and conditions set forth in this Agreement, in the DHE Project Agreement of even date herewith between the Bank and DHE, and in the NDC Project Agreement of even date herewith between the Bank and NDC;

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" of the Bank, dated January 1, 1985, with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) The last sentence of Section 3.02 is deleted.

(b) In Section 6.02, sub-paragraph (k) is re-lettered as sub-paragraph (l) and a new sub-paragraph (k) is added to read:

"(k) An extraordinary situation shall have arisen under which any further withdrawals under the Loan would be inconsistent with the provisions of Article III, Section 3 of the Bank's Articles of Agreement."

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

(a) "DHE Project Agreement" means the agreement between the Bank and DHE of even date herewith, as the same may be amended from time to time, and such term includes all agreements supplemental to the DHE Project Agreement;

(b) "NDC Project Agreement" means the agreement between the Bank and NDC of even date herewith, as the same may be amended from time to time, and such term includes all agreements supplemental to the NDC Project Agreement;

(c) "DHE Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and DHE pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the DHE Subsidiary Loan Agreement;

(d) "NDC Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and NDC pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the NDC Subsidiary Loan Agreement;

(e) "DHE Operational Plan" means DHE's statement of operational policies and procedures agreed with the Bank;

(f) "NDC Operational Plan" means NDC's statement of operational policies and procedures agreed with the Bank; and

(g) "Special Accounts" means the accounts referred to in Section 2.02 (b) of this Agreement.

#### 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, various currencies that shall have an aggregate value equivalent to the amount of one hundred fourteen million

dollars (\$114,000,000), being the sum of withdrawals of the proceeds of the Loan, with each withdrawal valued by the Bank as of the date of such withdrawal.

Section 2.02. (a) The amount of the Loan may be withdrawn from the Loan 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 the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Loan.

(b) The Borrower may, for the purposes of each of Part A and Part B of the Project, respectively, open and maintain in dollars a separate special deposit account in a commercial bank, acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, each respective Special Account shall be made in accordance with the provisions of Schedule 6 to this Agreement.

(c) On each of the semiannual interest payment dates specified in Section 2.06 of this Agreement, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount required to pay, on such date, interest charges on the Loan accrued and payable on or before the date set forth, and up to the amount allocated, in Schedule 1 to this Agreement.

Section 2.03. The Closing Date shall be December 31, 2000 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 per cent ( $3/4$  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 the Cost of Qualified Borrowings determined in respect of the preceding Semester, plus one-half of one percent ( $1/2$  of 1%). On each of the dates specified in Section 2.06 of this Agreement, the Borrower shall pay interest accrued on the principal amount outstanding during the preceding Interest Period, calculated at the rate applicable during such Interest Period.

(b) As soon as practicable after the end of each Semester, the Bank shall notify the Borrower of the Cost of Qualified Borrowings determined in respect of such Semester.

(c) For the purposes of this Section:

(i) "Interest Period" means a six-month period ending on the date immediately preceding each date specified in Section 2.06 of this Agreement, beginning with the Interest Period in which this Agreement is signed.

(ii) "Cost of Qualified Borrowings" means the cost, as reasonably determined by the Bank and expressed as a percentage per annum, of the outstanding borrowings of the Bank drawn down after June 30, 1982, excluding such borrowings or portions thereof as the Bank has allocated to fund: (A) the Bank's investments; and (B) loans which may be made by the Bank after July 1, 1989 bearing interest rates determined otherwise than as provided in paragraph (a) of this Section.

(iii) "Semester" means the first six months or the second six months of a calendar year.

(d) On such date as the Bank may specify by no less than six months' notice to the Borrower, paragraphs (a), (b) and (c) (iii) of this Section shall be amended to read as follows:

"(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 Quarter equal to the Cost of Qualified Borrowings determined in respect of the preceding Quarter, plus one-half of one percent (1/2 of 1%). On each of the dates specified in Section 2.06 of this Agreement, the Borrower shall pay interest accrued on the principal amount outstanding during the preceding Interest Period, calculated at the rates applicable during such Interest Period."

"(b) As soon as practicable after the end of each Quarter, the Bank shall notify the Borrower of the Cost of Qualified Borrowings determined in respect of such Quarter."

"(c) (iii) 'Quarter' means a three-month period commencing on January 1, April 1, July 1 or October 1 in a calendar year."

Section 2.06. Interest and other charges shall be payable semiannually on February 1 and August 1 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 3 to this Agreement.

### ARTICLE III

#### Execution of the Project

Section 3.01. (a) The Borrower 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 the Loan Agreement, shall cause DHE and NDC to perform in accordance with the provisions of the DHE Project Agreement and the NDC Project Agreement, respectively, all the obligations of DHE and NDC therein set forth, shall take or cause to be taken the actions provided for in the Implementation Program set forth in Schedule 5 to this Agreement, and all other action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable DHE and NDC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall relend a portion of the proceeds of the Loan to DHE under a subsidiary loan agreement to be entered into between the Borrower and DHE, under terms and conditions which shall have been approved by the Bank which shall include those set forth in Schedule 7 to this Agreement.

(c) The Borrower shall relend a portion of the proceeds of the Loan to NDC under a subsidiary loan agreement to be entered into between the Borrower and NDC, under terms and conditions which shall have been approved by the Bank which shall include those set forth in Schedule 7 to this Agreement.

(d) The Borrower shall exercise its rights under the DHE Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise

agree, the Borrower shall not assign, amend, abrogate or waive the DHE Subsidiary Loan Agreement or any provision thereof.

(e) The Borrower shall exercise its rights under the NDC Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the NDC Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Bank shall otherwise agree, procurement of the goods and consultants' services 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 this Agreement.

Section 3.03. The Bank and the Borrower hereby agree that 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: (a) Part A of the Project shall be carried out by DHE pursuant to Section 2.03 of the DHE Project Agreement; and (b) Part B of the Project shall be carried out by NDC pursuant to Section 2.03 of the NDC Project Agreement.

#### ARTICLE IV

##### Financial Covenants

Section 4.01. (a) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained, in accordance with sound accounting practices, records and accounts reflecting such expenditures;
- (ii) retain or cause to be retained, until at least one year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures; and
- (iii) enable the Bank's representatives to examine such records.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section and those for the Special Accounts 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 months after the end of each year, the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested, including a separate opinion by said auditors as to whether the statement of expenditures 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; and

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

## ARTICLE V

### Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional events are specified:

(a) DHE or NDC shall have failed to perform any of its obligations under the DHE Project Agreement or NDC Project Agreement, respectively.

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

(c) The DHE Operational Plan or any legislation applicable to the establishment or operations of DHE shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of DHE to perform any of its obligations under the DHE Project Agreement.

(d) The NDC Operational Plan or any legislation applicable to the establishment or operations of NDC shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of NDC to perform any of its obligations under the NDC Project Agreement.

(e) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of DHE or for the suspension of its operations.

(f) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of NDC or for the suspension of its operations.

(g) (i) Subject to subparagraph (ii) of this paragraph, the right of the Borrower to withdraw the proceeds of any grant made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms thereof.

(ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Bank that: (A) such suspension, cancellation or termination is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of 60 days after notice thereof shall have been given by the Bank to the Borrower; and

(b) any event specified in paragraphs (c) through (f) of Section 5.01 of this Agreement shall occur.

#### ARTICLE VI

##### Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) the DHE Subsidiary Loan Agreement has been executed on behalf of the Borrower and DHE;

(b) the NDC Subsidiary Loan Agreement has been executed on behalf of the Borrower and NDC;

(c) the Project Coordination Unit, referred to in paragraph 1 of Schedule 5 to this Agreement, has been established and its Project Coordinator has been appointed;

(d) the Project Implementation Unit, referred to in paragraph 1 of the Schedule to the DHE Project Agreement, has been established and its manager has been appointed;

(e) the Project Implementation Unit, referred to in paragraph 1 of the Schedule to the NDC Project Agreement, has been established and its manager has been appointed;

(f) the electricity supply contract between DHE and NDC, referred to in Section 4.04 of the DHE Project Agreement and the NDC Project Agreement, respectively, has been entered into on behalf of DHE and NDC;

(g) all amounts outstanding on account of hydropower sales by DHE to NDC have been paid; and

(h) all regional dispatch centers within the Borrower's territory have been transferred under the full authority of NDC.

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 DHE Project Agreement has been duly authorized or ratified by DHE, and is legally binding upon DHE in accordance with its terms;

(b) that the NDC Project Agreement has been duly authorized or ratified by NDC, and is legally binding upon NDC in accordance with its terms;

(c) that the DHE Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and DHE and is legally binding upon the Borrower and DHE in accordance with its terms; and

(d) that the NDC Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and NDC and is legally binding upon the Borrower and NDC 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.

#### ARTICLE VII

##### Representatives of the Borrower; Addresses

Section 7.01. 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 7.02. 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  
Washington, D.C.

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

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/ Roman Shpek

Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Basil G. Kavalsky

Acting Regional Vice President  
Europe and Central Asia

#### SCHEDULE 1

Withdrawal of the Proceeds of the Loan

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

Category	Amount of the Loan Allocated (Expressed in Dollar Equivalent)	% of Expenditures to be Financed
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(1) For Part A of the Project		
(a) Goods	42,400,000	100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 80% of local expenditures for other items procured locally
(b) Consultants' services	900,000	100% of expenditures
(2) For Part B of the Project		
(a) Goods	51,500,000	100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 80% of local expenditures for other items procured locally
(b) Consultants' services	900,000	100% of expenditures
(3) Interest charges on the Loan accrued on or before August 1, 2000	18,300,000	Amounts due pursuant to Section 2.02 (c) of this Agreement
TOTAL	114,000,000 =====	

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 Borrower for goods or services supplied from the territory of any country other than that of the Borrower; and

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure for expenditures for: (a) goods under contracts not exceeding \$300,000 equivalent, (b) consulting firms under contracts not exceeding \$100,000 equivalent; and (c) individual consultants not exceeding \$50,000 equivalent, under such terms and conditions as the Bank shall specify by notice to the Borrower.

SCHEDULE 2

Description of the Project

The objectives of the Project are to improve the efficiency, reliability, safety and environmental performance of hydropower

plants and to upgrade electricity dispatch, system protection and frequency control.

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

Part A: DHE

(1) Carrying out of a program to rehabilitate hydropower plants, through, inter alia, the repair, upgrading or replacement of turbines, generators, switchyards and related equipment and control and monitoring equipment.

(2) Development and application of proper policies and procedures for dam safety monitoring and emergencies, and carrying out of a program to rehabilitate and upgrade the monitoring system of dams and dikes for the reservoirs on the Dnieper River.

(3) Provision of technical assistance and staff training to strengthen institutional capabilities for the carrying out of this Part of the Project and for the development and application of proper policies and procedures for optimization of water use in the reservoirs on the Dnieper River.

Part B: NDC

(1) Carrying out of a program to upgrade the electricity dispatch, frequency control and communications systems through, inter alia, the installation of new and upgrading of existing generating unit governors, equipment for system protection and control of generating units' output, relays for the protection of transmission lines, computing equipment, data acquisition and transmission systems and a dispatch communication system, including therefor of a new SCADA and automatic frequency control systems.

(2) Provision of technical assistance and staff training to strengthen institutional capabilities for the carrying out of this Part of the Project.

\* \* \*

The Project is expected to be completed by June 30, 2000.

SCHEDULE 3

Amortization Schedule

Date Payment Due	Payment of Principal (expressed in dollars)*
On each February 1 and August 1	
beginning August 1, 2000 through August 1, 2011	4,750,000.00
And on February 1, 2012	4,750,000.00

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\* The figures in this column represent dollar equivalents determined as of the respective dates of withdrawal. See General Conditions, Sections 3.04 and 4.03.

Premiums on Prepayment

Pursuant to Section 3.04 (b) of the General Conditions, the premium payable on the principal amount of any maturity of the Loan to be prepaid shall be the percentage specified for the applicable time of prepayment below:

Time of Prepayment	Premium
	The interest rate (expressed as a percentage per annum) applicable to the Loan on the day of prepayment multiplied by:
Not more than three years before maturity	0.18
More than three years but not more than six years before maturity	0.35
More than six years but not more than 11 years before maturity	0.65
More than 11 years but not more than 15 years before maturity	0.88
More than 15 years before maturity	1.00

SCHEDULE 4

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: International Competitive Bidding

Except as provided in Part C hereof, 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 1992 (the Guidelines), and in accordance with the following additional procedures:

(a) When contract award is delayed beyond the original bid validity period, such period may be extended once, subject to and in accordance with the provisions of paragraph 2.59 of the Guidelines, by the minimum amount of time required to complete the evaluation, obtain necessary approvals and clearances and award the contract. The bid validity period may be extended a second time only if the bidding documents or the request for extension shall provide for appropriate adjustment of the bid price to reflect changes in the cost of inputs for the contract over the period of extension. Such an increase in the bid price shall not be taken into account in the bid evaluation. With respect to each contract made subject to the Bank's prior

review in accordance with the provisions of Part D.1 (a) of this Section, the Bank's prior approval will be required for (i) a first extension of the bid validity period if the period of extension exceeds sixty (60) days and (ii) any subsequent extension of the bid validity period.

(b) In the procurement of goods in accordance with this Part A, the Borrower shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, the Borrower shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

#### Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in Ukraine 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: Other Procurement Procedures

1. Goods estimated to cost the equivalent of \$300,000 or less per contract, up to an aggregate amount equivalent to \$1,500,000, 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 Bank.

2. Contracts for goods which the Bank agrees are available from a single source of supply or need to be compatible with installed equipment, estimated to cost the equivalent of \$1,000,000 in the aggregate, may be awarded after direct negotiations with suppliers, in accordance with procedures acceptable to the Bank.

#### Part D: Review by the Bank of Procurement Decisions

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

(a) With respect to each contract for goods: (i) estimated to cost the equivalent of \$300,000 or more; and (ii) to be procured in accordance with Part C(2) hereof, 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 respective Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank 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 respective Special Account, said 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 Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 6 to this Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Loan Account are to be made on the basis of statements of

expenditure.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

## Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded to consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank 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 (the Consultants Guidelines). For complex, time-based assignments, such consultants shall be employed under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, the Borrower shall use other standard forms agreed with the Bank.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultants Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individuals estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Bank review shall not apply to (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Bank, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

## SCHEDULE 5

### Implementation Program

1. In order to ensure overall coordination of Project activities and the provision of policy guidance in respect thereof, the Borrower shall maintain, with staff and other resources and terms of reference satisfactory to the Bank, a Project Coordination Unit headed by a suitably qualified Project Coordinator appointed by the Borrower's Ministry of Power and Electrification.

2. The Borrower shall ensure that NDC shall be permitted to set its tariffs at such levels as to enable it to recover all losses resulting from the failure of its customers to pay for electricity purchases, in accordance with guidelines agreed with the Bank.

3. With the assistance of DHE, pursuant to paragraph 3 of the Schedule to the DHE Project Agreement, and of NDC, pursuant to paragraph 3 of the Schedule to the NDC Project Agreement, the Borrower shall:

(a) maintain or cause to be maintained policies and procedures adequate to ensure the monitoring and evaluation, in accordance with guidelines and on the basis of performance indicators agreed with the Bank, of the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare or cause to be prepared, under terms of reference satisfactory to the Bank, and furnish to the Bank, on

or about June 30, 1997, a report integrating the results of the monitoring and evaluation activities performed pursuant to subparagraph (a) of this paragraph, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project during the period following such date; and

(c) review with the Bank, by September 30, 1997, or such other date as may be agreed between the Borrower and the Bank, the said report and, thereafter, take or cause to be taken all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the recommendations of the said report and the Bank's views on the matter.

## SCHEDULE 6

### Special Accounts

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Category (1) in respect of the Special Account for Part A of the Project and Category (2) in respect of the Special Account for Part B of the Project 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 Loan 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 \$2,000,000 in respect of the Special Account for Part A of the Project and to \$2,000,000 in respect of the Special Account for Part B of the Project, to be withdrawn from the Loan Account and deposited into the Special Accounts pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Bank shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$1,000,000 in respect of the Special Account for Part A of the Project and \$1,000,000 in respect of the Special Account for Part B of the Project until: (i) in respect of the Special Account for Part A of the Project, the aggregate amount of withdrawals from the Loan Account allocated to Category (1) plus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions for Part A of the Project shall be equal to or exceed the equivalent of \$5,000,000; and (ii) in respect of the Special Account for Part B of the Project, the aggregate amount of withdrawals from the Loan Account allocated to Category (2) plus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions for Part B of the Project shall be equal to or exceed the equivalent of \$5,000,000.

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 respective Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the respective 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 Borrower, withdraw from the Loan Account and deposit into the respective Special Account such amount or amounts as the Borrower shall have requested.

- (b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Bank requests for deposits into the respective Special Account at such intervals as the Bank shall specify.
- (ii) Prior to or at the time of each such request, the Borrower shall 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 Borrower, withdraw from the Loan Account and deposit into the respective 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 respective Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Bank from the Loan 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 respective Special Account, the Borrower 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:

(a) the Special Accounts:

- (i) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Borrower directly from the Loan Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement, the
- (ii) if the Borrower 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 Accounts, or
- (iii) if, at any time, the Bank shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account pursuant to the provisions of Section 6.02 of the General Conditions; and

(b) each of the respective Special Accounts, once the total unwithdrawn amount of the Loan allocated to the respective eligible Category for such Account, 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 respective Part of the Project, shall equal the equivalent of twice the amount of the respective Authorized Allocation.

Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan shall follow such procedures as the Bank shall specify by notice to the Borrower. 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 respective Special Account or in the Special Accounts, as the case may be, 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 a respective 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 Borrower shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the respective 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 respective 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 Bank shall have determined at any time that any amount outstanding in either of the Special Accounts will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

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

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

#### SCHEDULE 7

##### Terms of Subsidiary Loan Agreements

1. The Borrower shall relend the proceeds of the Loan allocated from time to time to: (a) Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement to DHE under the DHE Subsidiary Loan Agreement (the DHE Subsidiary Loan); and (b) Category (2) of the said table to NDC under the NDC Subsidiary Loan Agreement (the NDC Subsidiary Loan). Interest payments on each of the DHE Subsidiary Loan and the NDC Subsidiary Loan accrued on or before the date set forth in Category (3) of the said table shall be capitalized and paid out of the proceeds of each such Subsidiary Loan, in accordance with guidelines satisfactory to the Bank.

2. The principal amount of each of the DHE Subsidiary Loan and the NDC Subsidiary Loan shall be determined as the aggregate of: (a) the equivalent, in one or more currencies acceptable to the Bank, of the value (determined as of the date or respective dates of withdrawal from the Loan Account under the respective Category) of the currency or currencies so withdrawn on account of the cost of goods and services for Part A of the Project in respect of the DHE Subsidiary Loan and for Part B of the Project in respect of the NDC Subsidiary Loan; and (b) the amount of interest payments on such Subsidiary Loan capitalized as provided in paragraph 1 hereof.



3. Each of the DHE Subsidiary Loan and the NDC Subsidiary Loan shall be: (a) repaid over a period of 17 years, inclusive of a grace period of five years; (b) charged, on the principal amount thereof not withdrawn from time to time, a commitment fee at a rate equal to the rate paid by the Borrower from time to time under the Loan pursuant to Section 2.04 of this Agreement; and (c) charged, on the principal amount thereof withdrawn and outstanding from time to time, interest at a rate equal to the rate paid by the Borrower from time to time under the Loan pursuant to Section 2.05 of this Agreement, plus a margin equal to 1.5%.

