

CONFORMED COPY

**CREDIT NUMBER 4524 KG
GRANT NUMBER H429 KG**

Financing Agreement

Energy Emergency Assistance Project

between

KYRGYZ REPUBLIC

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 22, 2008



**CREDIT NUMBER 4524 KG
GRANT NUMBER H429 KG**

FINANCING AGREEMENT

AGREEMENT dated December 22, 2008, entered into between KYRGYZ REPUBLIC (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”). The Recipient and the Association hereby agree as follows:

ARTICLE I - GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II - FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant and a credit (collectively, “Financing”) in the following amounts to assist in financing the project described in Schedule 1 to this Agreement (“Project”):
 - (a) an amount equivalent to three million five hundred thousand Special Drawing Rights (SDR 3,500,000) (“Grant”); and
 - (b) an amount equivalent to three million five hundred thousand Special Drawing Rights (SDR 3,500,000) (“Credit”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.

- 2.05. The Payment Dates are May 15 and November 15 in each year.
- 2.06. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.
- 2.07. The Payment Currency is United States Dollars.

ARTICLE III - PROJECT

- 3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall cause the Project to be carried out by the Project Implementing Entity in accordance with the provisions of Article IV of the General Conditions and the Project Agreement.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV - REMEDIES OF THE ASSOCIATION

- 4.01. The Additional Events of Suspension consist of the following:

Project Implementing Entity's Legislation has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Project Implementing Entity to perform any of its obligations under the Project Agreement.
- 4.02. The Additional Events of Acceleration consist of the following, namely, any event specified in Section 4.01 of this Agreement occurs.

ARTICLE V - EFFECTIVENESS; TERMINATION

- 5.01. The Additional Conditions of Effectiveness consist of the following:
 - (a) The Subsidiary Agreement has been executed on behalf of the Recipient and the Project Implementing Entity.
 - (b) The Project Operational Manual, satisfactory to the Association, has been adopted by the Project Implementing Entity.

5.02. The Additional Legal Matter consists of the following:

The Subsidiary Agreement has been duly authorized or ratified by the Recipient and the Project Implementing Entity and is legally binding upon the Recipient and the Project Implementing Entity in accordance with its terms.

5.03. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.

5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE VI - REPRESENTATIVE; ADDRESSES

6.01. The Recipient's Representative is the Minister of Finance.

6.02. The Recipient's Address is:

Ministry of Finance
58 Erkindik Blvd.
Bishkek City, 720040
Kyrgyz Republic

Telex: 245-156 NUR KH Facsimile: (996-312) 661645

6.03. The Association's Address is:

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

Cable: INDEVAS Telex: 248423 (MCI) Facsimile: 1-202-477-6391
Washington, D.C.

AGREED at Bishkek, Kyrgyz Republic, as of the day and year first above written.

KYRGYZ REPUBLIC

By: /s/ Tajikan Kalimbetova

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Dinara Djoldosheva

Authorized Representative

SCHEDULE 1

Project Description

The objective of the Project is to assist the Recipient, in accordance with the Recipient's Energy Emergency Mitigation Action Plan (EEMAP), to increase the Recipient's volume of energy supply, especially, the supply of thermal power in the winter season, within the Kyrgyz Republic and to improve the sustainability of such energy supply.

The Project consists of the following parts:

Part 1: Rehabilitation of the Electricity and Heating Systems

Carrying out the rehabilitation of the electricity and heating systems of the Recipient's Power Plant Company, including the rehabilitation of electrostatic precipitators and the provision of low sulfur fuel oil to the Bishkek and Osh combined heat and power plants as well as the provision of brass pipes and coal handling equipment, such as bulldozers, in support of such rehabilitation.

Part 2: Capacity-Building to Support Project Implementation

Strengthening the institutional capacity of the Recipient's Power Plant Company to carry out project management, monitoring and evaluation, including the capacity to carry out activities pertaining to environmental management and safety, procurement, disbursement and financial management.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements

1. The Recipient shall cause the Project to be implemented by the Project Implementing Entity in accordance with the provisions of the Project Operational Manual. Except as the Association shall otherwise agree, the Recipient shall not, and shall cause the Project Implementing Entity not to, amend or waive any provision of the Project Operational Manual, if, in the opinion of the Association, such amendment or waiver may materially or adversely affect the carrying out of the Project or the achievement of the Project objectives.

2. The Recipient shall at all times ensure that the Project Implementing Entity has adequate functions, staffing and resources satisfactory to the Association.

B. Subsidiary Agreement

1. To facilitate the carrying out of the Project, the Recipient shall make the proceeds of the Financing available to the Project Implementing Entity under a subsidiary agreement between the Recipient and the Project Implementing Entity, under terms and conditions approved by the Association (“Subsidiary Agreement”).

2. The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreement or any of its provisions.

C. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

D. Safeguards

The Recipient shall: (i) take all action, including the preparation and submission of an Environmental Management Plan acceptable to the Association, as well as ensuring the provision of funds, facilities, services, and other resources, necessary or appropriate for the carrying out of the Project; (ii) cause the Project to be carried out by the Project Implementing Entity in accordance with the provisions of the Environmental Management Plan; and (iii) not take or permit to be taken any action which would prevent or interfere with the carrying out of the Project.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

The Recipient shall cause the Project Implementing Entity to monitor and evaluate the progress of the Project and to prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators agreed with the Association. Each Project Report shall cover the period of one (1) calendar quarter, and shall be furnished by the Project Implementing Entity to the Association not later than forty-five (45) days after the end of the period covered by such report.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall cause the Project Implementing Entity to maintain a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.

2. Without limitation on the provisions of Part A of this Section, the Recipient shall cause the Project Implementing Entity to prepare and furnish to the Association as part of the Project Report not later than thirty (30) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.

3. The Recipient shall, within three (3) months after the final disbursement of the Credit or Grant, or within six (6) months after the end of the financial year of the Project Implementing Entity, whichever occurs first, cause the Project Implementing Entity to have the Financial Statements of the Project audited.

Section III. Procurement

A. General

1. **Goods and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.

2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.

3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular

contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding.

2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

Procurement Method	
(a)	National Competitive Bidding , subject to the following provisions:
A.	<u>Registration and Licensing</u>
(a)	Bidding shall not be restricted to pre-registered/licensed firms.
(b)	Where registration or licensing is required, bidders: (i) shall be allowed a reasonable time to complete the registration or licensing process; and (ii) shall not be denied registration/licensing for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.
(c)	Foreign bidders shall not be precluded from bidding. If a registration or licensing process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register or to obtain a license.
B.	<u>Advertising</u>
	Invitations to bid shall be advertised in the Bulletin of State Procurement and in at least one (1) widely circulated national daily newspaper allowing a minimum of thirty (30) days for the preparation and submission of bids.
C.	<u>Pre-qualification</u>
	When pre-qualification shall be required for large or complex works, invitations to pre-qualify for bidding shall be advertised in at least one (1) widely circulated national daily newspaper a minimum of thirty (30) days prior to the deadline for the submission of pre-qualification applications. Minimum experience, technical and financial requirements shall be explicitly stated in the pre-qualification documents.

Procurement Method

D. Participation by Government-owned enterprises

Government-owned enterprises in the Kyrgyz Republic shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

E. Bidding Documents

Procuring entities shall use the appropriate standard bidding documents for the procurement of goods, works or services, acceptable to the Association.

F. Bid Opening and Bid Evaluation

- (a) Bids shall be opened in public, immediately after the deadline for submission of bids.
- (b) Evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents.
- (c) Domestic preference should not be applied.
- (d) Contracts shall be awarded to qualified bidder having submitted the lowest evaluated substantially responsive bid and no negotiation shall take place.

G. Price Adjustment

Civil works contracts of long duration (for example, more than eighteen (18) months) shall contain an appropriate price adjustment clause.

H. Rejection of Bids

All bids shall not be rejected and new bids solicited without the Association's prior concurrence.

I. Rejection of an Individual Bid

Procurement Method	
An individual bid shall be rejected only in the following cases:	
(a)	the bidder is not qualified;
(b)	the bidder does not accept the correction of an arithmetical error in his bid by the Tender Commission of the procuring entity;
(c)	the bidder is not responsive to the requirements of the bidding documents; or
(d)	under the circumstances referred to in Article 6 of the Law on State Procurement.
J. State unit costs shall not be used for bidding and evaluation of bids for civil works contracts.	
(b)	Shopping
(c)	Direct Contracting

C. Particular Methods of Procurement of Consultants' Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.

2. **Other Methods of Procurement of Consultants' Services.** The following table specifies methods of procurement, other than Quality and Cost-based Selection, which may be used for consultants' services. The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method	
(a)	Least Cost Selection
(b)	Selection Based on the Consultants' Qualifications
(c)	Selection of Individual Consultants
(d)	Single-Source Selection

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to (a) repay the Preparation Advance in accordance with Section 2.07 of the General Conditions; and (b) finance 100% (inclusive of Taxes) of Eligible Expenditures.

2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing (“Category”), the allocations of the amounts of the Credit and of the Grant to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR)	Amount of the Grant Allocated (Expressed in SDR)	Percentage of Expenditures to be Financed
(1) Goods and Works	3,500,000	190,000	100%
(2) Consultants’ Services		110,000	100% of local expenditures; and 90% of foreign expenditures
(3) Refund of Preparation Advance		3,200,000	Amount payable pursuant to Section 2.07 of the General Conditions
TOTAL AMOUNT	<u>3,500,000</u>	<u>3,500,000</u>	

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement, except that withdrawals up

to an aggregate amount not to exceed one million three hundred thousand Special Drawing Rights (SDR 1,300,000) equivalent may be made for payments made prior to this date but on or after September 1, 2008, for Eligible Expenditures.

2. The Recipient and the Association intend, to the extent practicable, that the proceeds of the Grant provided for in this Agreement, including those referred to in paragraph B.1 of this Section, be disbursed on account of expenditures in respect of the Project before disbursements of the proceeds of the Credit are made.

3. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Recipient for consultants’ services supplied from the territory of any country other than that of the Recipient; and

(b) the term “local expenditures” means expenditures in the currency of the Recipient for consultants’ services supplied from the territory of the Recipient.

4. The Closing Date is April 30, 2010.

SCHEDULE 3

Repayment Schedule

Date Payment Due	Principal Amount of the Credit repayable (expressed as a percentage)
On each May 15 and November 15: commencing May 15, 2019 to and including November 15, 2028 commencing May 15, 2029 to and including November 15, 2048	1% 2%

APPENDIX

Section I. Definitions

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
3. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
4. “Environmental Management Plan” means the Recipient’s environmental management plan for the Project, furnished to the Association on September, 14, 2008, in accordance with criteria and procedures acceptable to the Association, as such plan may be updated from time to time in agreement with the Association, setting forth the mitigating, monitoring and institutional measures to be taken during the implementation and operation of the Project to offset or reduce adverse environmental, natural habitats and cultural property impacts to levels acceptable to the Association.
5. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006).
6. “Law on State Procurement” means the Recipient’s Law on State Procurement, No. 69, dated May 24, 2004, including any amendments thereto or any succeeding legislation.
7. “Preparation Advance” means the advance referred to in Section 2.07 of the General Conditions, granted by the Association to the Recipient pursuant to the letter agreement signed on behalf of the Association on October, 12, 2008 and on behalf of the Recipient on October, 12, 2008.
8. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October, 2006.
9. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated October, 29, 2008 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

10. “Project Implementing Entity” means the Recipient’s Power Plants Company, or any successor thereto.
11. “Project Implementing Entity’s Legislation” means the Edict of the President of the Kyrgyz Republic, No. 38, dated January, 21, 2000, including any amendments thereto or any succeeding legislation.
12. “Project Operational Manual” means the project operational manual prepared by the Recipient and/or the Project Implementing Entity and submitted to the Association by November, 30, 2008, setting out the principles and procedures governing the implementation of the Project.
13. “Subsidiary Agreement” means the agreement referred to in Section I.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the Project Implementing Entity.

Section II. Modifications to the General Conditions

The modifications to the General Conditions for Credits and Grants of the Association, dated July 1, 2005 (as amended through October 15, 2006) are as follows:

1. Section 2.07 is modified to read as follows:

“Section 2.07. Refinancing Preparation Advance

If the Financing Agreement provides for the repayment out of the proceeds of the Financing of an advance made by the Association or the Bank (“Preparation Advance”), the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Financing Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Association shall pay the amount so withdrawn to itself or the Bank, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.”

2. Paragraph (i) of Section 6.02 is modified to read as follows:

“Section 6.02. Suspension by the Association

... (1) *Ineligibility.* The Association or the Bank has declared the Project Implementing Entity ineligible to receive proceeds of any financing made by the Association or the Bank or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Association or the Bank, as a result of a

determination by the Association or the Bank that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Association or the Bank.”

3. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:

The term “Project Preparation Advance” is modified to read “Preparation Advance” and its definition is modified to read as follows:

“‘Preparation Advance’ means the advance referred to in the Financing Agreement and repayable in accordance with Section 2.07.”