Project Agreement

(Additional Financing for the Hydropower Rehabilitation Project)

between

INTERNATIONAL BANK
FOR
RECONSTRUCTION AND DEVELOPMENT

and

UKRHYDROENERGO

Dated February 3, 2010
PROJECT AGREEMENT

Agreement dated February 3, 2010, entered into between the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ("Bank") and UKRHYDROENERGO ("Project Implementing Entity") ("Project Agreement") in connection with the Loan Agreement ("Loan Agreement") of same date between the UKRAINE ("Borrower") and the Bank. The Bank and the Project Implementing Entity hereby agree as follows:

ARTICLE I - GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to the Loan 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 Loan Agreement or the General Conditions.

ARTICLE II - PROJECT

2.01. The Project Implementing Entity declares its commitment to the objectives of the Project. To this end, the Project Implementing Entity shall carry out Parts A, B and C of the Project in accordance with the provisions of Article V of the General Conditions, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, and except as the Bank and the Project Implementing Entity shall otherwise agree, the Project Implementing Entity shall carry out the Project in accordance with the provisions of the Schedule to this Agreement.

ARTICLE III - REPRESENTATIVE; ADDRESSES

3.01. The Project Implementing Entity’s Representative is the Chairman of its Board.

3.02. The Bank’s Address is:

International Bank for Reconstruction
and Development
1818 H Street, NW
Washington, DC 20433
United States of America
3.03. The Project Implementing Entity’s Address is:

07300 Vyshhorod
Kyiv Region
Ukraine

Facsimile:
(380-4496) 2-20-07

AGREED at Kyiv, Ukraine, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Martin Raiser
Authorized Representative

UKRHYDROENERGO

By /s/ Semen Potashnik
Authorized Representative
SCHEDULE

Execution of the Project

Section I. Implementation Arrangements

A. Institutional Arrangements

Project Implementation Unit

The Project Implementing Entity shall maintain, within its structure and throughout Project implementation, the Project Implementation Unit (the PIU) with financial and human resources adequate to enable it to carry out with due diligence and efficiency its management responsibilities for the technical aspects of implementation of Parts A, B and C of the Project, including the preparation of bidding documents, the carrying out of procurement and selection and employment of consultants, the engagement and supervision of contractors, and payment and disbursement operations. To that end, the PIU shall be headed by the Chairman of the Board of the Project Implementing Entity, assisted by the Head of the Procurement Unit of the Project Implementing Entity, the Head of the Financial Management Unit of Project Implementing Entity, and the Project management consultant referred to in Section 6.01 (b) of the Agreement of 2005. At the working level, the PIU shall consist of staff from the Project Implementing Entity whose regular responsibilities include the implementation of investment projects or technical assistance projects.

B. Anti-Corruption

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

C. Safeguards

1. Environmental Action Plan

The Project Implementing Entity shall take all measures necessary to carry out the measures identified under the Environmental Action Plan at all times in a timely manner, ensuring that adequate information on the implementation of said measures is suitably included in the Project progress reports to be prepared pursuant to the provisions of Section II of this Schedule.
Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Project Implementing Entity shall monitor and evaluate the progress of Parts A, B and C of the Project and prepare Project Reports for Parts A, B and C of the Project in accordance with the provisions of Section 5.08 (b) of the General Conditions and on the basis of the UHE Monitoring and Evaluation Indicators. Each such Project Report shall cover the period of one calendar semester, and shall be furnished to the Borrower not later two weeks after the end of the period covered by such report for incorporation and forwarding by the Borrower to the Bank of the overall Project Report.

2. The Project Implementing Entity shall provide to the Borrower not later than September 30, 2012, for incorporation in the report referred to in Section 5.08 (c) of the General Conditions all such information as the Borrower or the Bank shall reasonably request for the purposes of that Section.

B. Financial Management, Financial Reports and Audits

1. The Project Implementing Entity shall maintain a financial management system and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Bank, both in a manner adequate to reflect the operations and financial condition of the Project Implementing Entity, including the operations, resources and expenditures related to Parts A, B and C of the Project.

2. The Project Implementing Entity shall have its financial statements referred to above audited by independent auditors acceptable to the Bank, in accordance with consistently applied auditing standards acceptable to the Bank. Each audit of these financial statements shall cover the period of one fiscal year of the Project Implementing Entity. The audited financial statements for each period shall be furnished to the Borrower and the Bank not later than six (6) months after the end of the period.

Section III. Financial Covenants

1. (a) Except as the Bank shall otherwise agree, the Project Implementing Entity shall not incur any debt unless a reasonable forecast of the revenues and expenditures of the Project Implementing Entity shows that the estimated net revenues of Project Implementing Entity for each Fiscal Year during the term of the debt to be incurred shall be at least 1.5 times the estimated debt service requirements of the Project Implementing Entity in such year on all debt of the Project Implementing Entity including the debt to be incurred.

(b) For the purposes of this Section:
(i) The term “debt” means any indebtedness of Project Implementing Entity maturing by its terms more than one year after the date on which it is originally incurred.

(ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(iii) The term “net revenues” means the difference between:

(A) the sum of revenues from all sources related to operations and net non-operating income; and

(B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

(iv) The term “net non-operating income” means the difference between:

(A) revenues from all sources other than those related to operations; and

(B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.

(v) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.

(vi) The term “reasonable forecast” means a forecast prepared by the Project Implementing Entity not earlier than twelve (12) months prior to the incurrence of the debt in question, which both the Bank and the Project Implementing Entity accept as reasonable and as to which the Bank has notified the Project Implementing Entity of its acceptability, provided that no event has occurred
since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of the Project Implementing Entity.

(vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

2. (a) Except as the Bank shall otherwise agree, the Project Implementing Entity shall maintain a ratio of current assets to current liabilities of not less than 1.2.

(b) Before March 31 in each of its Fiscal Years, the Project Implementing Entity shall, on the basis of forecasts prepared by the Project Implementing Entity and satisfactory to the Bank, 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 Bank the results of such review upon its completion.

(c) If any such review shows that the Project Implementing Entity would not meet the requirements set forth in paragraph (a) for the Project Implementing Entity’s fiscal years covered by such review, the Project Implementing Entity shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its tariffs in order to meet such requirements.

(d) For the purposes of this Section:

(i) The term “current assets” means cash, all assets which could in the ordinary course of business be converted into cash within twelve (12) months, including account receivable, marketable securities and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.

(ii) The term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve (12) months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
(iii) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.

(iv) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

**Section IV. Procurement**

All goods and services (other than consultants’ services) required for Part A of the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Section III of Schedule 2 to the Loan Agreement.