Project Agreement

(Urgent Electricity Rehabilitation Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ETABLISSEMENT PUBLIC DE PRODUCTION, DE TRANSPORT, ET DE DISTRIBUTION D'ÉLECTRICITÉ, D'EAU, ET DE GAZ

Dated February 23, 2005
AGREEMENT dated February 23, 2005, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and ETABLISSEMENT PUBLIC DE PRODUCTION, DE TRANSPORT, ET DE DISTRIBUTION D’ELECTRICITE, D’EAU, ET DE GAZ (ELECTROGAZ).

WHEREAS (A) by the Development Credit Agreement of even date herewith between REPUBLIC OF RWANDA (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to sixteen million seven hundred thousand Special Drawing Rights (SDR 16,700,000), on the terms and conditions set forth in the Development Credit Agreement, but only on the condition that ELECTROGAZ agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and ELECTROGAZ, the proceeds of the credit provided for under the Development Credit Agreement will be made available to ELECTROGAZ on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS ELECTROGAZ, in consideration of the Association’s entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement, and in the General Conditions (as so defined) have the respective meanings therein set forth.
ARTICLE II

Execution of the Project

Section 2.01. (a) ELECTROGAZ declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out Parts A, B.1-2, and C.1 of the Project with due diligence and efficiency and in conformity with appropriate financial, administrative, energy, engineering, public utility, environmental, and social practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services, and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and ELECTROGAZ shall otherwise agree, ELECTROGAZ shall carry out Parts A, B.1-2, and C.1 of the Project in accordance with the Implementation Program set forth in Schedule 1 to this Agreement.

Section 2.02. Without limitation upon the provisions of paragraph (a) of Section 2.01 of this Agreement, and except as ELECTROGAZ and the Association shall otherwise agree, ELECTROGAZ shall:

(a) no later than one (1) month after the Effective Date, submit to the Association a plan, in form and substance satisfactory to the Association, setting out details of the actions to be taken by ELECTROGAZ for purposes of upgrading of skills of its Finance Department staff; and

(b) no later than December 31, 2006, install integrated financial management software, in form and substance satisfactory to the Association, and permitting access to pertinent financial information with minimum delay and a reliability rate consistent with industry practice.

Section 2.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works, and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to the Development Credit Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) ELECTROGAZ shall update the Procurement Plan in respect of Parts A, B.1-2, and C.1 of the Project in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than 12 months after the date of the preceding Procurement Plan, for the Association’s approval.
Section 2.03. (a) ELECTROGAZ shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07, and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance, and land acquisition, respectively) in respect of the Project Agreement and Parts A, B.1-2, and C.1 of the Project.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, ELECTROGAZ shall:

(i) prepare, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Association and ELECTROGAZ, a plan for the future operation of Parts A, B.1-2, and C.1 of the Project; and

(ii) afford the Association a reasonable opportunity to exchange views with ELECTROGAZ on said plan.

Section 2.04. ELECTROGAZ shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, ELECTROGAZ shall not take or concur in any action which would have the effect of amending, abrogating, assigning, or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) ELECTROGAZ shall, at the request of the Association, exchange views with the Association with regard to the progress of Parts A, B.1-2, and C.1 of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) ELECTROGAZ shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of Parts A, B.1-2, and C.1 of the Project, the accomplishment of the purposes of the Credit, or the performance by ELECTROGAZ of its obligations under this Agreement, the Subsidiary Loan Agreement, the PIM, and the EA, including the ESMF and the RPF.

(c) Without prejudice to the generality of the foregoing, ELECTROGAZ shall participate fully in the review referred to in Part D.3 of Schedule 4 to the Development Credit Agreement and in any other review of the Project to be carried out by the Borrower and the Association and, to this end, shall: (i) furnish to the Borrower and the Association such reports on the progress and status of the Project, and of such scope and detail as the Borrower or the Association shall reasonably request, as may be required for that purpose; and (ii) following each such review, act promptly and diligently in order to take, or assist the Borrower in taking, any corrective action deemed necessary.
to remedy any shortcoming noted in Project implementation, or to implement, or assist the Borrower in implementing, such other measures as may have been agreed upon between the parties in furtherance of the objectives of the Project.

ARTICLE III

Management and Operations of ELECTROGAZ

Section 3.01. ELECTROGAZ shall carry on its operations and conduct its affairs in accordance with sound financial, administrative, energy, engineering, public utility, environmental, and social practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. ELECTROGAZ shall at all times operate and maintain its plant, machinery, equipment, and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound financial, administrative, energy, engineering, public utility, environmental, and social practices.

Section 3.03. ELECTROGAZ shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) ELECTROGAZ shall maintain a financial management system, including records and accounts, and prepare financial statements, in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect its operations and financial condition and to register separately the operations, resources, and expenditures related to the Project.

(b) ELECTROGAZ shall:

(i) have its financial statements (balance sheets, statements of income and expenses, statements of sources and uses of funds, and related statements) for each Fiscal Year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
(ii) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year (or such other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and

(iii) furnish to the Association such other information concerning such records and accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon ELECTROGAZ’s reporting obligations set out in Section 2.05 of, and Part D of Schedule 1 to, this Agreement, ELECTROGAZ shall prepare and furnish to the Association an FMR, in form and substance satisfactory to the Association, which:

(i) sets forth sources and uses of funds for Parts A, B.1-2, and C.1 of the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;

(ii) describes physical progress in implementation of Parts A, B.1-2, and C.1 of the Project, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and

(iii) sets forth the status of procurement under Parts A, B.1-2, and C.1 of the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover the period not covered by the previous FMR until the end of such calendar quarter.

Section 4.03. ELECTROGAZ shall, no later than one (1) month after the Effective Date:
(a) submit to the Association, in form and substance satisfactory to the Association, its audited accounts for Fiscal Year 2003 and the auditors’ opinion on such accounts;

(b) submit to the Association, in form and substance satisfactory to the Association, a plan setting out details of the remedial actions to be taken by ELECTROGAZ to address issues raised in the auditors’ opinion, and shall implement such plan such that, effective Fiscal Year 2006, its audited accounts cease to be qualified; and

(c) carry out an inventory, and subsequently a valuation, of its stocks, and reflect the results of such valuation in its accounts effective Fiscal Year 2005.

Section 4.04. (a) Except as the Association shall otherwise agree, ELECTROGAZ shall produce:

(i) for each of Fiscal Years 2005 and 2006, total revenues equivalent to not less than the sum of its total operating expenses;

(ii) for Fiscal Year 2007, total revenues equivalent to not less than the sum of its (A) total operating expenses; and (B) the amount by which debt service requirements exceed the provision for depreciation; and

(iii) for each of Fiscal Years commencing Fiscal Year 2008, total revenues equivalent to not less than the sum of its (A) total operating expenses; (B) the amount by which debt service requirements exceed the provision for depreciation; and (C) 25% of its capital expenditures for such Fiscal Year.

(b) No later than two (2) weeks prior to the beginning of each calendar quarter, ELECTROGAZ and the Borrower shall jointly submit to the Association, in form and substance satisfactory to the Association, a reasonable forecast of total operating revenues and expenses during such quarter, including in respect of any changes in fuel and purchased power costs, and details of any necessary tariff revision, in each case separately for electricity and water, and shall implement such revision in form and substance satisfactory to the Association and no later than the beginning of the quarter, all with a specific view to meeting the targets set out in paragraph (a) of this Section.

(c) Before November 15 in each Fiscal Year, ELECTROGAZ and the Borrower shall, on the basis of the forecasts referred to in paragraph (b) above, review whether ELECTROGAZ would meet the requirements set forth in paragraph (a) above in
respect of such year and the next following Fiscal Year and shall furnish to the
Association the results of such review upon its completion.

(d) If any such review shows that ELECTROGAZ would not meet the
requirements set forth in paragraph (a) for the Fiscal Year(s) covered by such review,
ELECTROGAZ and the Borrower shall promptly take all necessary measures (including,
without limitation, adjustments of the structure or levels of its tariffs), in form and
substance satisfactory to the Association, in order to meet such requirements.

(e) For the purposes of this Section:

(i) The term “total revenues” means the sum of total operating
revenues and net non-operating income;

(ii) The term “total operating revenues” means revenues from all
sources related to operations;

(iii) 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);

(iv) The term “total operating expenses” means all expenses related
to operations, including administration, adequate maintenance,
taxes, and payments in lieu of taxes;

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

(vi) The term “capital expenditures” means the aggregate amount
used to acquire or upgrade physical assets such as property,
industrial buildings, or equipment; and

(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 Association.
Section 4.06. ELECTROGAZ shall not:

(a) undertake any investment project or program unless it has secured all of the funding required for implementation of such project or program; and

(b) incur debt if, as a result of such debt, ELECTROGAZ’s debt-equity ratio shall be less than 60:40 and its debt service coverage ratio shall be greater than 1.5.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of ELECTROGAZ there under shall terminate on the earlier of the following three dates:

(i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or

(ii) the date forty (40) years after the date of this Agreement; or

(iii) the date on which the Subsidiary Loan Agreement shall terminate in accordance with its terms.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify ELECTROGAZ of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly
given or made when it shall be delivered by hand or by mail, telex, or facsimile to the party to which it is required or permitted to be given or made at such party’s address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Association:

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

Cable address: Telex: Facsimile:
INDEVAS 248423 (MCI) or (202) 477 6391
Washington, D.C. 64145 (MCI)

For ELECTROGAZ:

Avenue Lac Ihema
P. O. Box 537
Kigali, Rwanda

Facsimile: (250) 57 38 02

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of ELECTROGAZ, or by ELECTROGAZ on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by ELECTROGAZ or such other person or persons as ELECTROGAZ shall designate in writing, and ELECTROGAZ shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ John Page

Authorized Representative

ELECTROGAZ

By /s/ Zac Nsenga

Authorized Representative
SCHEDULE 1

Implementation Program

A. Project Oversight and Implementation Arrangements

1. ELECTROGAZ shall implement Parts A, B.1-2, and C.1 of the Project.

2. ELECTROGAZ shall maintain, throughout Project implementation, a PCU in form and substance and with resources and functions satisfactory to the Association, and with staff, including a Project Coordinator, financial management specialist, and procurement specialist, all with qualifications, experience, and terms of reference satisfactory to the Association.

3. ELECTROGAZ shall report to the Steering Committee with regard to Project progress, including in respect of compliance on the part of ELECTROGAZ with this Agreement.

4. Except as the Association shall otherwise agree, ELECTROGAZ shall: (a) apply the criteria, policies, procedures, and arrangements set out in the PIM; and (b) not amend or waive, or permit to be amended or waived, the PIM or any provision thereto, in a manner which, in the opinion of the Association, may materially or adversely affect Project implementation.

B. Subsidiary Loan Agreement

The Subsidiary Loan Agreement shall include, but without being limited to, provisions to the following effect:

(a) The Borrower shall provide the proceeds of the Credit to ELECTROGAZ on terms and conditions satisfactory to the Association and including a repayment period of 25 years, including a 5-year grace period, and an interest rate of 2% per annum.

(b) ELECTROGAZ shall perform all of its obligations under the Project Agreement.

(c) ELECTROGAZ shall perform all of its obligations under the plan agreed under Section 3.02 (a) of the Development Credit Agreement between the Borrower, the Democratic Republic of Congo, and the Republic of Burundi for purposes of the financial restructuring of SINELAC.
(d) Procurement of the goods, works, and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to the Development Credit Agreement, as said provisions may be further elaborated in the Procurement Plan.

(e) ELECTROGAZ shall ensure that Parts A, B.1-2, and C.1 of the Project are implemented in accordance with the provisions of the EA, including the ESMF and RPF, and, except as the Association shall otherwise agree, ELECTROGAZ shall not amend or waive, or permit to be amended or waived, any provision of the aforementioned if such amendment or waiver may, in the opinion of the Association, materially or adversely affect Project implementation, and, to this end, ELECTROGAZ shall recruit an environmental and social advisor, with qualifications, experience, and terms of reference satisfactory to the Association.

C. Safeguards

ELECTROGAZ shall ensure that Parts A, B.1-2, and C.1 of the Project are implemented in accordance with the provisions of the EA, including the ESMF and RPF, and, except as the Association shall otherwise agree, the Borrower shall not amend or waive, or permit to be amended or waived, any provision of the aforementioned if such amendment or waiver may, in the opinion of the Association, materially or adversely affect Project implementation.

D. Project Monitoring and Evaluation

Annual Work Plans and Budgets

1. ELECTROGAZ shall furnish to the Association as soon as available, but in any case not later than October 1 of each year, the Annual Work Plan and budget in respect of Parts A, B.1-2, and C.1 of the Project for each subsequent Project Year, of such scope and in such detail as the Association shall have reasonably requested, except for the Annual Work Plan and budget in respect of Parts A, B.1-2, and C.1 of the Project for Project Year 1, which shall be furnished no later than thirty (30) days after the Effective Date.

Annual Reviews

2. ELECTROGAZ shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 2 to this Agreement, the carrying out of Parts A, B.1-2, and C.1 of the Project and the achievement of the objectives thereof;
(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about June 1, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of Parts A, B.1-2, and C.1 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 such Parts of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by September 1, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of Parts A, B.1-2, and C.1 of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association’s views on the matter.
SCHEDULE 2

Performance Indicators

ELECTROGAZ shall implement Parts A, B.1-2, and C.1 of the Project in accordance with the performance indicators set forth below:

1. Part A of Project

   Available domestic electricity generation capacity has increased by at least 7 MW as compared to that in Fiscal Year 2004.

2. Part C of Project

   Bidding/transaction documents for a domestic hydro generation station of at least 5 MW have been prepared.