

EXECUTION COPY

(Operation Number 41200)

LOAN AGREEMENT

between

**COMMUNAL ENTERPRISE "DNIPROPETROVSKA MUNICIPALNA
ENERGOSERVISNA KOMPANYA "DNIPROPETROVSKOI MIS'KOI RADY**

and

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

Dated 13 December 2013

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LOAN AGREEMENT

This **LOAN AGREEMENT** (this "**Agreement**") dated 13 December 2013 is entered into by and between:

- (1) **COMMUNAL ENTERPRISE "DNIPROPETROVSKA MUNICIPALNA ENERGOSERVISNA KOMPANYA" DNIPROPETROVSKOI MIS'KOI RADY**, a communal enterprise duly organised and existing under the laws of Ukraine, with EDRPOU code 34734627 and its registered office at 75 Karla Marksa Avenue, Dnipropetrovs'k, 49000, Ukraine, represented by its Director, Zonov Eduard Leonidovich, acting on the basis of the Borrower's Charter and the resolution of the Dnipropetrovsk City Council No. 15/43 dated 27 November 2013 (the "**Borrower**"); and
- (2) the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation formed by treaty, having its legal address at: One Exchange Square, London, EC2A 2JN, UK represented by its duly authorised representative Mark Magaletsky, acting on the basis of the certificate, issued by the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT** on 6 December 2013 (the "**EBRD**").

ARTICLE I - DEFINITIONS

Section 1.01. Definitions

Wherever used in this Agreement (including the Exhibits and any Schedules), unless the context otherwise requires, the following terms have the following meanings:

- | | |
|------------------------|---|
| "Affiliate" | means, with respect to any person, any other person, directly or indirectly, controlling, controlled by, or under common control with, such person. |
| "Article 17 Agreement" | means the agreement to be entered into between the Borrower and the local financial body of the City, which sets out amongst other things the amount of cash consideration for the guarantee provided under the Guarantee, in accordance with the requirements of Article 17 of the Budget Code, which agreement shall be in form and substance satisfactory to EBRD. |
| "Auditors" | means such firm of independent accountants as the Borrower may from time to time appoint as its auditors in accordance with Section 5.05. |
| "Authorisation" | means any consent, registration, filing, agreement, notarisation, certificate, license, approval, permit, authority or exemption from, by or with any |

Governmental Authority, whether given or withheld by express action or deemed given or withheld by failure to act within any specified time period and all corporate, creditors' and shareholders' approvals or consents.

"Borrower's Account" means the following bank account details of the Borrower for the purposes of the Loan, unless provided otherwise to EBRD in writing:

Borrower's name in Cyrillic – Комунальне підприємство "Дніпропетровська муніципальна енергосервісна компанія" Дніпропетровської міської ради;

Borrower's account number – 26006101362977;

Borrower's Bank – OTP Bank;

SWIFT Code: OTPVUAUK;

Borrower's Bank Address – JSC OTP Bank, 43 Zhylianska Str., Kyiv, 01033;

Intermediary Bank – Deutsche Bank AG;

SWIFT: DEUTDEFF;

Correspondent account – 100 947 4974 0000.

"Budget" means each annual budget of the City adopted in accordance with the requirements of the Budget Code by the Guarantor.

"Budget Code" means the Budget Code of Ukraine, dated 08 July 2010, No. 2456-VI, as amended.

"Budget Performance Report" means a report relating to the performance of the Budget for the immediately preceding Financial Year prepared and published by the Guarantor pursuant to the Budget Code or any other applicable legislation.

"Business Day" means a day on which commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in London, England and which is a TARGET Day.

"Cash Flows" has the meaning ascribed to it in Section 5.11(a)(1).

"Charter" means, in respect of any company, corporation, partnership, enterprise or other entity, its charter, founding

act, articles of incorporation and bylaws, memorandum and articles of association, statutes or similar instrument.

"City"	means the territorial community of the city of Dnipropetrovs'k or, when the context requires, its administrative subdivisions or other relevant bodies or agencies.
"City Council"	means a body of local self-governance that represents the territorial community of the City and is a legal entity under the laws of Ukraine which is at the date of this Agreement "Dnipropetrovsk City Council".
"Coercive Practice"	means the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Collusive Practice"	means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Commitment Period"	means, unless otherwise agreed in writing between the Borrower and EBRD, the period commencing on the Effective Date of this Agreement and terminating on the earlier of the date 36 months from the Effective Date of this Agreement and the date the obligation of EBRD to make Disbursements hereunder terminates in accordance with the terms of this Agreement.
"Contractual Obligation"	means any provision of any security issued by the Borrower or of any agreement, instrument or other undertaking to which the Borrower is a party or by which the Borrower or any of its assets is bound.
"Corrupt Practice"	means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Country of Operation"	means Ukraine.
"Current Assets"	has the meaning ascribed to it in Section 5.11(b)(1).
"Current Liabilities"	has the meaning ascribed to it in Section 5.11(b)(2).
"Current Ratio"	has the meaning ascribed to it in Section 5.11(b).

"Debt"	<p>means, with respect to any person, all obligations of such person, whether incurred as principal or surety and whether present, future, actual or contingent, for the payment or repayment of money, including:</p> <ul style="list-style-type: none">(a) any amounts payable by such person under leases or similar arrangements over their respective periods;(b) any credit to such person from a supplier of goods or under any instalment purchase or other similar arrangement; and(c) any liabilities and obligations of third parties to the extent that they are guaranteed by such person or such person has otherwise assumed or became liable for the payment of such liabilities or obligations or to the extent that they are secured by any Encumbrance upon property owned by such person whether or not such person has assumed or became liable for the payment of such liabilities or obligations.
"Debt Service"	has the meaning ascribed to it in Section 5.11(a)(4).
"Debt Service Coverage Ratio"	has the meaning ascribed to it in Section 5.11(a).
"Debt Service Reserve Account"	means an account opened by the Borrower at a bank acceptable to EBRD and on which the Borrower shall at all times maintain thereon such amounts as may be required pursuant to Section 5.17(b) until all amounts due to EBRD under any Financing Agreement have been paid in full, all in a manner acceptable to EBRD.
"Default"	means any Event of Default or any event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become an Event of Default.
"Default Interest Determination Date"	means the date two Business Days prior to the first day of the relevant Default Interest Period (or, at EBRD's option, the first day of such Default Interest Period).
"Default Interest Period"	means, with respect to any amount overdue under this Agreement, a period commencing on the day on which such payment becomes due or, as the case may be, on the last day of the previous Default Interest Period with

respect to such overdue amount, and ending on a Business Day selected by EBRD.

"Designated Performance Requirements"	means Performance Requirements 1 through 8 and 10 (or, as the context may require, any one of such Performance Requirements) of the Performance Requirements dated May 2008 and related to EBRD's Environmental and Social Policy dated May 2008.
"Disbursement"	means the disbursement of any portion of the Loan from time to time pursuant to Section 3.02 or, as the context may require, the principal amount thereof from time to time outstanding.
"Draft Budget"	means the last draft of the Budget submitted to the Guarantor for approval in accordance with the Budget Code or any other applicable legislation.
"ESP Fund"	has the meaning ascribed to it in the definition of "Grant".
"EBRD Anti-Corruption Guidelines"	means EBRD's Definitions and Guidelines for Private Sector Operations (Fraud and Corruption) attached hereto as Schedule 1.
"EBRD Project"	means any activity or project which EBRD has financed or committed to finance.
"EBRD Procurement Policies and Rules"	means the procurement rules for public sector operations under the Procurement Policies and Rules for the EBRD Projects, as amended from time to time.
"Effective Date"	means the date on which EBRD confirms in writing to the Borrower that it has received (or has waived its requirement to receive) each of the documents and other evidence listed in Section 8.13(a), in each case in form and substance satisfactory to EBRD.
"Encumbrance"	means any mortgage, pledge, charge, privilege, priority, hypothecation, encumbrance, assignment, lien, attachment, set-off or other security interest of any kind or any other agreement or arrangement having the effect of conferring security upon or with respect to, or any segregation of or other preferential arrangement with respect to, any present or future assets, revenues or rights, including any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy.

"EnPC"	means any and all energy performance contract(s) in relation to the Project to be entered into between the Borrower and ESCO(s) substantially in the form of the EnPC Template, which contract(s) shall be satisfactory to EBRD.
"EnPC Template"	means a template of the energy performance agreement between an ESCO and the Borrower (or any other entity under control of the City), whereby an ESCO (i) undertakes to perform certain works and provide certain services to the Borrower (or any other entity under control of the City), for the purpose of reducing energy consumption and achieving energy savings in the buildings owned by the City (or any entity under control of the City), and (ii) guarantees such energy savings to the Borrower (or any other entity under control of the City), which template and any amendments thereto shall be satisfactory to EBRD.
"Environmental and Social Action Plan"	means the plan of environmental and social mitigation and improvement measures dated 22 August 2013 prepared by the Borrower, as such plan may be amended from time to time with the prior written consent of EBRD in accordance with Section 5.03(c).
"Environmental and Social Law"	<p>means any applicable law or regulation which relates to:</p> <ul style="list-style-type: none">(a) pollution or protection of the environment, including related laws or regulations relating to public access to information and participation in decision-making;(b) labour and employment conditions;(c) occupational health and safety;(d) public health, safety and security;(e) indigenous peoples;(f) cultural heritage; or(g) resettlement or economic displacement of persons.
"Environmental and Social Matter"	means any matter that is the subject of any Environmental and Social Law, any Designated Performance Requirement or the Environmental and Social Action Plan.

"ESCO"	means any energy service company acceptable to EBRD, which is a provider of services under an EnPC.
"Euro", "EUR" or "€"	means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty on European Union and the Treaty of Amsterdam.
"Event of Default"	means any one of the events or occurrences specified in Section 7.01.
"Financial Debt"	<p>means, with respect to any person, any Debt of such person for or in respect of:</p> <ul style="list-style-type: none">(a) moneys borrowed or otherwise arising out of any credit facility or financial accommodation;(b) the deferred purchase price of assets or services (other than trade payables arising in the ordinary course of business);(c) any amount raised by acceptance under any acceptance credit facility or any documentary credit;(d) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument or security;(e) the amount of any liability in respect of any lease or hire purchase contract which would in accordance with IFRS, be treated as a finance or capital lease;(f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);(g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of borrowing;(h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);(i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Financial Statements" means the financial statements (including balance sheet, income statement, statement of changes in equity, cash flow statement and notes, comprising a summary of significant accounting policies and other explanatory notes) of the Borrower prepared (i) in respect of quarterly financial statements in accordance with Generally Accepted Accounting Principles and (ii) in respect of annual financial statements in accordance with IFRS.

"Financial Year" means the period commencing each year on 1 January and ending on the following 31 December, or such other period as the Borrower may, with EBRD's consent, from time to time designate as the accounting year of the Borrower.

"Financing Agreements" means:

- (a) this Agreement,
- (b) the Guarantee,
- (c) the Letter of Information,
- (d) the Grant Agreement,
- (e) the Guarantee Related Agreements,
- (f) the Disbursement applications referred to in Section 3.02,
- (g) any other amendments or waivers in connection with such agreements and documents;
- (h) any other document or agreement designated by the Borrower and EBRD as a Financing Agreement; and
- (i) any other agreements entered into between the Borrower or any other party and EBRD and notices, certificates and applications issued by the Borrower or any other party to EBRD in each case in connection with this Agreement or the transactions contemplated by this Agreement.

"Financing Plan" means the plan for financing the Project as set forth in Section 2.01(c).

"Fitch Ratings"	means Fitch Ratings Ltd, a part of Fitch Group, and any successors thereto.
"Fraudulent Practice"	means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Free Cash Flow"	has the meaning ascribed to it in Section 5.11(a)(3).
"Generally Accepted Accounting Principles"	means accounting principles generally accepted in Ukraine and consistently applied.
"Governmental Authority"	means the government of any country, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing.
"Grant"	means the co-financing grant in the amount of up to EUR 2,500,000 (two million five hundred thousand Euro) to be made available by EBRD from the resources of the Eastern Europe Energy Efficiency and Environment Partnership Fund (the " E5P Fund ") subject to the terms and conditions of the Grant Agreement.
"Grant Agreement"	means the agreement to be entered into between EBRD, the Borrower and the City Council, setting forth the terms and conditions under which the Grant shall be provided, which agreement shall be in form and substance satisfactory to EBRD.
"Guarantee"	means the deed of guarantee, indemnity and project support by the Guarantor in favour of EBRD, whereby the Guarantor guarantees all obligations of the Borrower under this Agreement, which deed shall be in form and substance satisfactory to EBRD.
"Guarantee Related Agreements"	means: (a) the Article 17 Agreement; and (b) the Security Agreement(s).

- "Guarantor" means the City Council.
- "IFRS" means International Financial Reporting Standards issued or adopted by the International Accounting Standards Board and consistently applied.
- "Interbank Rate" means:
- (a) for the first Interest Period of each Disbursement, the offered rate per annum for deposits in the Loan Currency which appears on the Reference Page as of 11:00 a.m., Brussels time, on the relevant Interest Determination Date for the period which equals the duration of such Interest Period (or if no such rate appears on the Reference Page for a period equal to the duration of such Interest Period but rates ("**Reference Rates**") do appear on the Reference Page both for a period that is shorter than and for a period that is longer than the duration of such Interest Period, the Interbank Rate shall be the rate (rounded upward, if necessary, to four decimal places) that would be applicable for a period equal to the duration of such Interest Period as determined through the use of straight-line interpolation by reference to the Reference Rate that appears on the Reference Page for the period that is the next shorter in length than the duration of such Interest Period and the Reference Rate that appears on the Reference Page for the period that is the next longer in length than the duration of such Interest Period); and
 - (b) for each subsequent Interest Period, the offered rate per annum for deposits in the Loan Currency which appears on the Reference Page as of 11:00 a.m., Brussels time, on the relevant Interest Determination Date for the period which is closest to the duration of such Interest Period (or, if two periods are equally close to the duration of such Interest Period, the average of the two relevant rates);

provided that if, for any reason, the Interbank Rate cannot be determined at such time by reference to the Reference Page, the Interbank Rate for such Interest Period shall be the rate per annum which EBRD determines to be the arithmetic mean (rounded upward, if necessary, to four decimal places) of the offered rates per annum for deposits in the Loan Currency in an amount comparable to the portion of the Loan scheduled to be outstanding during such Interest Period for a period equal to such Interest

Period which are quoted to leading banks in the Euro-zone interbank market as advised to EBRD by at least two major banks active in the Euro-zone interbank market selected by EBRD.

"Interest
Determination Date"

means, for any Interest Period, the date two Business Days prior to the first day of such Interest Period.

"Interest Payment Date"

means any day which is 15 September or 15 March in any year; provided, however, that, if any Interest Payment Date would otherwise fall on a day which is not a Business Day, such Interest Payment Date shall be changed to the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.

"Interest Period"

means, for any Disbursement, the period commencing on the date of such Disbursement and ending on the next Interest Payment Date and each period of six months thereafter commencing on an Interest Payment Date and ending on the next Interest Payment Date; provided that, if such Disbursement is made less than 15 Business Days prior to the next Interest Payment Date, the first Interest Period for such Disbursement shall commence on the date of such Disbursement and end on the Interest Payment Date following the next Interest Payment Date.

"Legal Reforms
Programme"

means the programme to be adopted by a Governmental Authority of Ukraine designed to identify and implement measures required to ensure an adequate regulatory environment for energy efficiency investments (including investments in relation to public buildings) on the basis of energy performance contracts, which programme shall be satisfactory to EBRD.

"Letter of Information"

means the letter of information dated 5 December 2013 from the Borrower to EBRD containing certain representations by the Borrower regarding, among other things, all material facts concerning the use of the Loan proceeds, the organisation, status, operations, affiliations, liabilities and assets of the Borrower and other matters incidental to the transactions contemplated by this Agreement, and any amendment or supplement to such letter which is accepted by EBRD.

"License(s)"

means the licenses listed in the Letter of Information.

"Loan"	means the maximum principal amount of the loan provided for in Section 3.01 or, as the context may require, the principal amount thereof from time to time outstanding.
"Loan Currency"	means the currency in which the Loan is denominated as set forth in Section 3.01.
"Long-term Debt"	means, as of any date with respect to any person, any Financial Debt of such person all or part of which, or the final payment of which, is due more than one year after such date.
"Margin"	means 5.25% per annum, subject to the Margin Adjustment.
"Margin Adjustment"	has the meaning ascribed to it in Section 3.18.
"Market Disruption Event"	means: <ul style="list-style-type: none">(a) on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, the Reference Page is not available and none or only one of the major banks active in the Euro-zone interbank market supplies a rate to EBRD to determine the Interbank Rate for the Loan Currency for the relevant Interest Period or the default interest rate for the Loan Currency for the relevant Default Interest Period, as the case may be; or(b) before close of business in London on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, (1) EBRD determines that the cost to EBRD or (2) EBRD receives notification from one or more Participants whose aggregate participations in the Loan exceed 35% of the Loan that the cost to such Participant(s), as the case may be, of obtaining matching deposits in the Euro-zone interbank market would be in excess of the Interbank Rate.
"Material Adverse Effect"	means a material adverse effect on: <ul style="list-style-type: none">(a) the ability of the Borrower or the Guarantor to perform or comply with any of its obligations under any Financing Agreement;

- (b) the legality, validity, enforceability and binding nature of any Financing Agreement or Project Agreement or the legal rights, remedies and priorities of EBRD under any of the Financing Agreements;
- (c) the Borrower's ability to implement or operate the Project substantially in the manner contemplated by the Financing Agreements and the Project Agreements; or
- (d) the Borrower's business, operations, financial condition or prospects.

"Moody's"	means Moody's Investor Service and any successor thereto.
"NBU"	means the National Bank of Ukraine.
"NBU Registration Certificate"	means the document confirming the registration of this Agreement with the NBU.
"Operating Activities"	has the meaning ascribed to it in Section 5.11(a)(2).
"Participant"	means a person from whom EBRD receives a formal commitment to acquire a Participation through the execution of, or the accession to, a participation agreement with EBRD.
"Participation"	means a participation in the Loan or, as the context may require, in a Disbursement.
"Permitted Encumbrances"	means the Encumbrances referred to in Section 6.05.(1) to (3).
"PIU Consultant"	means the consultants to be employed by the Borrower to assist in carrying out the Project and selected in accordance with Section 5.07(3).
"Potential Event of Default"	means any event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become an Event of Default.
"Pre-Financing Agreement"	means a pre-financing agreement dated 30 March 2012 between the Borrower, the City and EBRD.
"Programme"	means the multi-annual energy efficiency programme to be developed and implemented by the Borrower in

accordance with the Programme Contract, which programme shall be satisfactory to EBRD.

"Programme Contract"

means any and all decisions of the City (whether administrative or contractual in nature) pursuant to which the City authorises and mandates the Borrower to develop and implement the Programme and grants to the Borrower certain rights with regard to the Project, including inter alia (a) rights to conduct tenders with regard to selection of projects and award of EnPCs; (b) rights to enter into EnPCs; (c) rights of access to all assets being subject to the Programme Contract (including the City's and assets of the utilities controlled by the City) for implementation of works and services and with regard to energy efficiency investments and measurement and verification (MV) of the energy savings upon EnPC sub-project completion; and (d) rights to receive from the City, or entities under control of the City revenues that from energy cost savings that have been agreed by the Borrower and an ESCO and implemented under EnPC, which decision(s) shall be satisfactory to EBRD.

"Prohibited Practice"

means any Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

"Project"

means financing of EnPCs for energy efficiency investments in public buildings, as further described in the Project Implementation Plan.

"Project Agreements"

means:

- (a) the Guarantee Related Agreements,
- (b) the Borrower's Charter,
- (c) the Licenses,
- (d) the Project Implementation Plan,
- (e) the decision of the City to initiate the Programme.
- (f) the Programme Contract, and
- (g) EnPCs.

"Project Implementation Plan"

means the detailed implementation plan for the Project, to be prepared by the Borrower and delivered to EBRD containing detailed technical plans and specifications, a financing plan, an estimated construction schedule and budget and operating plans and procedures, and financial

projections and forecasts in respect of the Borrower's activities and the Project, which plan and any amendments thereto shall be in form and substance satisfactory to EBRD.

"PIU" or "Project Implementation Unit"

means a project implementation unit to be established within the Borrower, such unit to be dedicated to the implementation of the Project, as more fully detailed in Section 5.16.

"Rating Agency"

means S&P, Moody's, Fitch Ratings or any other international rating agency acceptable to EBRD.

"Reference Page"

means the display of Euro-zone interbank offered rates for deposits in the Loan Currency designated as page EURIBOR01 on Reuters services (or such other page as may replace page EURIBOR01 on Reuters services for the purpose of displaying Euro-zone interbank offered rates for deposits in the Loan Currency).

"Security Agreement(s) "

means any security agreement securing the Guarantor's claims against the Borrower in connection with the Guarantee, between the Borrower or any third party acceptable to the Guarantor, which agreement shall be in form and substance satisfactory to EBRD.

"Subsidiary"

means, with respect to any entity, any other entity over 50% of whose capital is owned, directly or indirectly, by such entity or which is otherwise effectively controlled by such entity.

"S&P"

means Standard & Poor's, a division of McGraw-Hill Companies Inc., and any successors thereto.

"TARGET Day"

means any day on which the Trans-European Automated Real-time Gross Settlement Payment System (TARGET) is open for the settlement of payments in Euro.

"Tax" or "Taxes"

means any tax, royalty, stamp or other duty, assessment, levy, charge, value added tax, or impost of any nature whatsoever (including any related penalty or interest) imposed under any law.

"UAH" or "Hryvnia"

means the lawful currency of the state of Ukraine, as adopted in accordance with the laws of Ukraine.

Section 1.02. Interpretation

- (a) In this Agreement, unless the context otherwise requires, words denoting the singular include the plural and vice versa.
- (b) In this Agreement, a reference to a specified Article, Section, Schedule or Exhibit shall be construed as a reference to that specified Article or Section of, or Schedule or Exhibit to, this Agreement.
- (c) In this Agreement, a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, novation, restatement or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended from time to time.
- (d) In this Agreement, the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
- (e) In this Agreement, "**control**" (including, with correlative meanings, the terms "**controlled by**" and "**under common control with**"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting shares, by contract or otherwise.
- (f) In this Agreement, a Default is "**outstanding or continuing**" until it has been remedied or waived by EBRD in writing.
- (g) In this Agreement, a reference to a document being in the "**Agreed Form**" means that the form of such document has been agreed by the parties hereto and that a copy thereof has been initialled for the purpose of identification by EBRD and the Borrower.
- (h) In this Agreement, any reference to "**law**" means any law (including any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction.
- (i) In this Agreement, any reference to a "**provision of law**" is a reference to that provision as from time to time amended or re-enacted.
- (j) In this Agreement, a reference to a "**person**" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "person" include its successors in title, permitted transferees and permitted assigns.
- (k) In this Agreement, "**Euro-zone**" is a reference to the region comprised of the member states of the European Union that adopt the single currency in accordance

with the Treaty Establishing the European Community, as amended by the Treaty on European Union and the Treaty of Amsterdam.

- (l) In this Agreement, any words following "**including**" or "**include**" shall be deemed to be illustrative and not exhaustive.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations Regarding the Project

The Borrower represents and warrants as follows:

(a) **Project Description.**

- (1) The Project conforms in all material respects with the detailed description thereof contained in the Letter of Information (subject to any modifications to which EBRD may agree in writing).
- (2) The information contained in the Letter of Information is true, complete and correct in all material respects and the Letter of Information contains no untrue or misleading statement or otherwise does not omit to include any material fact necessary to make the statements therein true and accurate.
- (3) To the extent that any information contained in the Letter of Information relates to financial forecasts or projections of future events, such forecasts and projections have been prepared in good faith, giving due and careful consideration to all relevant factors and based on assumptions that were reasonable at the time that such forecasts and projections were prepared, and there has been nothing since the date such forecasts and projections were prepared that would make them unreasonable.

- (b) **Estimated Project Costs.** As of the date of this Agreement, the total estimated cost of the Project is approximately EUR 13,629,000, as follows:

Item	Estimated Investment (in EUR '000)
Capital expenditures	12,500.00
Technical Cooperation (Consultancy)	1,129.00
Total Project Cost	13,629.00

* Capital expenditures financed from the Loan include VAT and local taxes.

- (c) **Financing Plan.** The anticipated sources of financing the Project are as follows:

Source of Financing	Amount (in EUR '000)
EBRD (Long-term Debt)	10,000.00
Grant from the E5P Fund (Grant financing)	2,500.00
TC Grants	1,129.00
Total Financing	13,629.00

Section 2.02. Representations Regarding the Borrower

The Borrower represents and warrants as follows:

- (a) **Incorporation.** The Borrower is a communal enterprise, fully owned by the City represented by the Guarantor, duly organised, validly existing, and registered, to the extent required in accordance with applicable law, with all relevant registration bodies in any jurisdiction in which it carries on business and operates assets; the Borrower implements the investment programmes (projects) in the City, aimed at the development of communal infrastructure and/or resource-saving technologies, as provided for in Article 17 of the Budget Code.
- (b) **Subsidiaries.** The Borrower has no Subsidiaries or other interest in any other legal entity.
- (c) **Share Capital.** The Borrower has an authorised capital of UAH 810,000.00 (eight hundred and ten thousand Hryvnias), that has been fully paid in compliance with the applicable law. No person has any right (other than its owner) to share in the profits of the Borrower.
- (d) **Powers.** The Borrower has full power:
 - (i) to operate the properties which it operates or will operate for the purposes of the Project, in accordance with the applicable law; and
 - (ii) to carry out the businesses which it carries out or will carry out for the purposes of the Project.
- (e) **Directors and Officers.** As of the date of this Agreement, the Director of the Borrower is Zonov Eduard Leonidovych and the Chief Accountant of the Borrower is Kulakova Yevgeniya Vasylivna.
- (f) **Financial Statements.** The balance sheet of the Borrower as at 31 December 2012 and the related income statement, statement of changes in equity, cash flow statement and notes, comprising a summary of significant accounting policies and

other explanatory notes, of the Borrower for the Financial Year ending on that date, prepared by the management of the Borrower, and the Financial Statements for the Financial Year ending on 31 December 2012 certified by the Auditors, present fairly a true and fair view of the financial position, financial performance and cash flows of the Borrower as of the date of such balance sheet and for the period covered by such income statement, statement of changes in equity and cash flow statement and were prepared in accordance with Generally Accepted Accounting Principles. The Borrower had, as of the date of such balance sheet, no material contingent obligations, liabilities for Taxes or unusual forward or long term commitments not disclosed by, or reserved against in, such balance sheet or the notes thereto. Since the date of such balance sheet, the Borrower has not suffered any Material Adverse Effect, incurred any substantial or unusual loss or liability or undertaken or agreed to undertake any substantial or unusual obligation except under the Financing Agreements and Project Agreements.

(g) **Title to Assets.**

- (i) The City owns and has good and marketable title to all of its assets, including those which are necessary for the implementation of the Project, it being understood that all of the property operated by the Borrower is held as "communal property" and is allotted to the Borrower under a right of "complete commercial use" (*право повного господарського відання*) (i.e., the Guarantor representing the City controls how the Borrower operates and preserves the property and, accordingly, disposal of the property without the Guarantor's consent is limited).
- (ii) The assets referred to in the above paragraph (i) are free from any restrictions or covenants which might have a Material Adverse Effect, and are not subject to any Encumbrance, except for the Permitted Encumbrances.
- (iii) The Borrower is not bound by any Contractual Obligation or law, whether conditional or unconditional, pursuant to which any Encumbrance on its assets may be created, except for Permitted Encumbrances.

(h) **Material Contracts.** As of the date of this Agreement, the Borrower is not a party to, or committed to enter into, any material agreement, other than those disclosed in the Letter of Information.

(i) **Compliance with Law.** The Borrower is not in violation of any law applicable to it and presently in effect. To the best of the Borrower's knowledge, no law has been proposed or is expected which may have a Material Adverse Effect. All tax returns and reports of the Borrower required by law to be filed have been duly filed and all Taxes upon the Borrower, its properties and its income, which are due and payable, have been paid, other than those currently payable without penalty or interest, except as disclosed to EBRD in the Letter of Information. The Borrower is in compliance with all applicable laws concerning money laundering. Neither the Borrower nor any officers, directors, authorised employees, Affiliates, agents or representatives of the Borrower has committed or engaged in, with

respect to the Project, or any transactions contemplated by this Agreement, any Prohibited Practice.

- (j) **No Default.** The Borrower is not in default under any agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound.
- (k) **Environmental and Social Compliance.** The Borrower and its businesses, operations, assets, equipment, property, leaseholds and other facilities are, in all material respects, in compliance with the provisions of all Environmental and Social Laws. The Borrower has been issued all required Authorisations relating to, and, except for matters identified in such environmental and social audit has received no complaint, order, directive, claim, citation or notice from any Governmental Authority or other person with respect to any Environmental and Social Matter.
- (l) **Litigation.** The Borrower is not engaged in, or, to the best of its knowledge, threatened by, any litigation, arbitration or administrative proceeding, the outcome of which might have a Material Adverse Effect.
- (m) **Solvency.** The Borrower is able to meet all its payment and other obligations as they become due, whether at maturity or otherwise. The Borrower has not incurred, and does not intend to incur, or believe that it will incur, Debt beyond its ability to repay such Debt as it becomes due, whether at maturity or otherwise.
- (n) **No Material Adverse Effect.** Nothing has occurred and exists which may have a Material Adverse Effect.

Section 2.03. Representations Regarding the Agreements

The Borrower represents and warrants as follows:

- (a) **Corporate Power.** The Borrower has the corporate power to enter into, and perform its obligations under, the Financing Agreements and Project Agreements to which it is or will be a party and has taken all necessary action to authorise the entry into, and delivery of, the Financing Agreements and Project Agreements to which it is a party and the transactions contemplated by the Financing Agreements and Project Agreements. The Borrower has the corporate power to borrow all moneys under this Agreement. No limitation on the powers of the Borrower to borrow will be exceeded as a result of any borrowings pursuant to this Agreement.
- (b) **Due Authorisation; Enforceability; No Conflict.** The Financing Agreements and Project Agreements to which the Borrower is a party have been duly authorised by the Borrower. The Financing Agreements and the Project Agreements to which the Borrower will be a party will be duly authorised by the Borrower. This Agreement has been duly executed by the Borrower and this Agreement constitutes, and the other Financing Agreements and Project Agreements to which the Borrower is a party, when executed and delivered, will constitute, valid and legally binding obligations of the Borrower, enforceable in

accordance with their respective terms. The making of the Financing Agreements and Project Agreements and the compliance with the terms thereof will not:

- (1) result in a violation of the Borrower's Charter, the License(s) or any provision contained in any law applicable to the Borrower;
- (2) conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any Encumbrance under, any agreement or instrument to which the Borrower is a party or by which the Borrower or any of its assets is bound; and/or
- (3) constitute a default or an event which, with the giving of notice, the passage of time or the making of any determination (or any combination thereof), would constitute a default under any such agreement or instrument.

(c) **Governmental Authorisations.** No Authorisations from any Governmental Authority are required for:

- (1) the due execution, delivery or performance by the Borrower and the Guarantor of any Financing Agreement, or the validity or enforceability thereof, or for the carrying out of the Project or the carrying out of the business of the Borrower as it is carried on or is contemplated to be carried on, except for:
 - (a) the approval of this Agreement and the Guarantee by the Guarantor;
 - (b) the approval of the Guarantee by the Ministry of Finance of Ukraine and its approval by the Cabinet of Ministers of Ukraine;
 - (c) the registration of this Agreement with NBU;
 - (d) the registration of this Agreement and the Guarantee with the Ministry of Finance of Ukraine (the Register of Local Borrowings and Local Guarantees) in accordance with Article 74 of the Budget Code; and
 - (e) the Licenses;

all of which, save for the Authorisations referred to in paragraphs (b), (c) and (d) above, have been obtained by the Borrower prior to the date of this Agreement; and

- (2) the due execution and delivery or performance by the Borrower of any Project Agreement, or the validity or enforceability thereof, except for those Authorisations (other than the Licenses) which are not necessary at the time this representation is made (or repeated) and which are of a routine or minor nature and are customarily granted in due course after timely application, or which need only be obtained as the Project progresses or after construction is completed and in respect of which the Borrower is not aware of any reason for it being unable to obtain in due course such Authorisations.

- (d) **Pari Passu Ranking.** The Borrower's payment obligations under the Financing Agreements rank at least *pari passu* with the claims of all of its other creditors, except for claims mandatorily preferred by the laws applicable to companies generally.
- (e) **Project Agreements.** Each Project Agreement to which the Borrower is a party is, and each Project Agreement to which the Borrower will be a party will, when executed, be in full force and effect without modification from the form referred to in the definition of that Project Agreement in Section 1.01 (*Definitions*). There has occurred no breach, and no event which with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would constitute a breach, of any of the Project Agreements.
- (f) **Taxes.** There is no stamp tax or other Tax or charge of Ukraine or any political subdivision or taxing authority thereof or of any taxing authority, federation or association of which Ukraine may be a member to be imposed on or by virtue of the execution, delivery or performance of this Agreement or any other Financing Agreement or necessary to ensure the legality, validity, enforceability or admissibility in evidence thereof in Ukraine (other than any charges which have been duly paid by the Borrower or, if so required by Ukrainian legislation or the relevant Financing Agreement, will be paid by the Borrower at the time of entering into such Financing Agreement or from time to time).

Section 2.04. Acknowledgement and Repetition

- (a) The Borrower acknowledges that it has made the representations and warranties contained in Sections 2.01, 2.02 and 2.03 with the intention of inducing EBRD to enter into this Agreement and that EBRD has entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties. The Borrower warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgement of a prospective lender regarding lending to the Borrower.
- (b) Any representation or warranty given hereunder which specifies that such representation and warranty is provided hereunder "as of the date of this Agreement" shall only be given on the date of this Agreement and shall be considered to be repeated on the Effective Date and shall not be deemed to be repeated hereafter (i.e. the date of this Agreement) in connection with any Disbursement made pursuant to this Agreement. In respect of all other representations and warranties provided in this Article II, such representations and warranties shall be deemed to be repeated on submission of each Disbursement request and on each Disbursement date by reference to the facts and circumstances then existing.

ARTICLE III - LOAN

Section 3.01. Amount and Currency

On and subject to the terms and conditions of this Agreement, EBRD agrees to lend to the Borrower an amount not to exceed EUR 10,000,000 (ten million Euro).

The Borrower shall apply all amounts borrowed by it under this Agreement towards the financing of the Project.

Section 3.02. Disbursements

- (a) Subject to Section 3.03 and Article IV, the Loan shall be disbursed by EBRD from time to time on any Business Day during the Commitment Period in one or more Disbursements upon request of the Borrower. The Borrower may request a Disbursement by submitting to EBRD an original application for such Disbursement, in the form of Exhibit A and in substance satisfactory to EBRD, at least ten Business Days prior to the proposed date of such Disbursement. Such application shall, unless EBRD otherwise agrees, be irrevocable and binding on the Borrower.
- (b) Disbursements (other than a Disbursement of the entire undisbursed amount of the Loan) shall be made in amounts of not less than EUR 300,000 (three hundred thousand Euro), except for the last Disbursement.

Section 3.03. Suspension and Cancellation

- (a) From time to time, EBRD may, by notice to the Borrower, suspend or cancel the right of the Borrower to all or any portion of any further Disbursements:
 - (1) if the first Disbursement has not been made by the date which is 12 months from the Effective Date of this Agreement or such other date as may be agreed by the parties hereto;
 - (2) if an Event of Default or a Potential Event of Default has occurred and is continuing;
 - (3) if the Board of Governors of EBRD has decided in accordance with Article 8, paragraph 3, of the Agreement Establishing the European Bank for Reconstruction and Development that access by the Country of Operation to EBRD resources should be suspended or otherwise modified; or
 - (4) if a Market Disruption Event has occurred and is continuing.

Upon the issuance of such notice by EBRD, the right of the Borrower to further Disbursements shall be suspended or cancelled as indicated in the notice. The exercise by EBRD of the right of suspension shall not preclude EBRD from exercising its right of cancellation as provided in this Section 3.03, either for the

same or another reason, and shall not limit any other rights of EBRD under the Financing Agreements.

- (b) The Borrower shall have the right at any time, on not less than 10 days' prior notice to EBRD, to cancel in whole or in part any undisbursed portion of the Loan; provided that:
 - (1) the Borrower shall pay to EBRD at the same time all accrued commitment charges on the portion of the Loan to be cancelled and all other amounts due and payable hereunder;
 - (2) EBRD is satisfied that adequate financing will remain available to the Borrower following such cancellation to enable the Borrower to complete the Project in accordance with the Project Implementation Plan;
 - (3) in the case of a partial cancellation of the undisbursed portion of the Loan, such cancellation shall be in an amount of not less than EUR 2,000,000 (two million Euro); and
 - (4) the Borrower shall pay to EBRD on the date of cancellation a cancellation fee of 2% of the principal amount of the Loan to be cancelled.
- (c) Any such notice of cancellation by the Borrower shall be irrevocable and binding on the Borrower. On termination of the Commitment Period, the Borrower shall be deemed to have cancelled any then undisbursed portion of the Loan and shall not be obliged on such date to pay the cancellation fee specified above. Amounts of the Loan which are cancelled by the Borrower may not be reinstated.

Section 3.04. Charges, Commissions and Fees

- (a) The Borrower shall pay to EBRD during the Commitment Period a commitment charge at the rate of 0.5% per annum on so much of the Loan as has not, from time to time, been disbursed to the Borrower or cancelled from the date which is 30 days after the Effective Date of this Agreement. The commitment charge shall be calculated on the basis of the actual number of days elapsed in the relevant period and a 360-day year and shall be due and payable in arrears on each Interest Payment Date (even though no interest may be payable on such date).
- (b) The Borrower shall pay to EBRD a front-end commission which is equal to 1.2% of the Loan. Such front-end commission shall be due and payable no later than the third Business Day prior to the first Disbursement or the thirtieth Business Day after the Effective Date of this Agreement, whichever is earlier.
- (c) The charges, commissions and fees referred to in this Section 3.04 are non-refundable and are exclusive of any Tax which might be chargeable in connection with such charges, commissions or fees. If any such Tax becomes chargeable, the Borrower shall pay such Tax to EBRD at the same time that the relevant charge, commission or fee becomes due and payable.

Section 3.05. Interest

- (a) Except as provided in Section 3.06, the Borrower shall pay interest on the principal amount of each Disbursement from time to time outstanding during each Interest Period for such Disbursement at a rate equal to the sum of the Margin and, subject to Section 3.07, the Interbank Rate for such Interest Period.
- (b) Interest shall:
 - (1) accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period;
 - (2) be calculated on the basis of the actual number of days elapsed and a 360-day year; and
 - (3) be due and payable on the Interest Payment Date which is the last day of the relevant Interest Period.
- (c) Except as otherwise provided in Section 3.07, on each Interest Determination Date, EBRD shall determine the interest rates applicable during the relevant Interest Period and promptly give notice thereof to the Borrower. Each determination by EBRD of the interest rate applicable to any portion of the Loan shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.

Section 3.06. Default Interest

- (a) If the Borrower fails to pay when due any amount payable by it under this Agreement, the overdue amount shall bear interest at a rate equal to the sum of:
 - (1) 2.0% per annum;
 - (2) the applicable Margin; and
 - (3) the interest rate per annum offered in the Euro-zone interbank market on the Default Interest Determination Date for a deposit in the Loan Currency of an amount comparable to the overdue amount for a period equal to the relevant Default Interest Period or, if a Market Disruption Event has occurred, the rate which expresses as a percentage rate per annum the cost to EBRD and each Participant of funding its respective portion of the Loan from whatever source EBRD or such Participant(s) may reasonably select (or at the option of EBRD and such Participant(s), the relevant Interbank Rate, if available).
- (b) Default interest shall:
 - (1) accrue from day to day from the due date to the date of actual payment, after as well as before judgement, if any;

- (2) be calculated on the basis of the actual number of days elapsed and a 360-day year;
 - (3) be compounded at the end of each Default Interest Period; and
 - (4) be due and payable forthwith upon demand.
- (c) Each determination by EBRD of the interest rates applicable to overdue amounts and of Default Interest Periods shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.

Section 3.07. Market Disruption

- (a) If a Market Disruption Event occurs, EBRD shall promptly notify the Borrower. If EBRD notifies the Borrower of the occurrence of a Market Disruption Event, interest shall accrue on the Loan at a rate equal to the sum of:
- (1) the Margin; and
 - (2) the rate which expresses as a percentage rate per annum the cost to EBRD and each Participant of funding its respective portion of the Loan from whatever source EBRD or such Participant(s) may reasonably select (or, at the option of EBRD and such Participant(s), the relevant Interbank Rate, if available), as notified by EBRD to the Borrower as soon as practicable and in any event before interest is due to be paid in respect of the relevant Interest Period.
- until EBRD has given notice to the Borrower that the Market Disruption Event has ceased to exist.
- (b) If a Market Disruption Event has occurred, EBRD shall have the right, in its discretion, to change the duration of any relevant Interest Period by sending to the Borrower a written notice thereof. Any such change to an Interest Period shall take effect on the date specified by EBRD in such notice.
- (c) Notwithstanding Section 3.07(a), if a Market Disruption Event occurs and EBRD or the Borrower so requires, within five Business Days of the notification by EBRD pursuant to Section 3.07(a) above, EBRD and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest applicable to the Loan. Any alternative basis so agreed shall take effect in accordance with its terms and replace the interest rate then in effect pursuant to Section 3.07(a) above. If agreement cannot be reached, the Borrower may prepay the Loan on the next Interest Payment Date in accordance with Section 3.09, but without any prepayment fee.

Section 3.08. Repayment

- (a) The Borrower shall repay the Loan in 14 (fourteen) equal (or as nearly equal as possible) semi-annual instalments on the Interest Payment Dates starting on the Interest Payment Date on or immediately following the date falling 36 months (thirty six) from the Effective Date of this Agreement, provided that if any Disbursement is made after one or more of such repayment dates, such Disbursement shall be allocated by EBRD for repayment on each of the remaining repayment dates described above in amounts which are pro rata to the amounts of the respective remaining instalments of the Loan on each such repayment date (with EBRD adjusting those allocations as necessary so as to achieve whole numbers in each case).
- (b) The dates for payment of principal of the Loan are intended to coincide with Interest Payment Dates. If any Interest Payment Date is affected by the proviso to the definition of "Interest Payment Date," then the corresponding date for payment of principal shall be changed to coincide with such Interest Payment Date. Amounts of the Loan repaid may not be re-borrowed.

Section 3.09. Prepayment

- (a) The Borrower shall have the right at any time on not less than 15 days' prior notice to EBRD, to prepay on any Interest Payment Date all or any part of the principal amount of the Loan then outstanding; provided that:
 - (1) the Borrower shall pay to EBRD at the same time all accrued interest and other amounts payable on the principal amount of the Loan to be prepaid and all other amounts due and payable hereunder;
 - (2) in the case of a partial prepayment, such prepayment shall be in an amount of not less than EUR 2,000,000 (two million Euro) and shall be applied to prepay the outstanding repayment instalments of the Loan in inverse order of maturity; and
 - (3) the Borrower shall pay to EBRD on the date of prepayment (i) a prepayment fee equal to 2% of the principal amount of the Loan to be prepaid, if the prepayment occurs at any time on or before the date falling 48 months after the Effective Date of this Agreement, or (ii) a prepayment fee equal to 1.5% of the principal amount of the Loan, if the prepayment occurs at any time after the date falling 48 months after the Effective Date of this Agreement and on or before the date falling 96 months after the Effective Date of this Agreement, or (iii) a prepayment fee equal to 0.5% of the principal amount of the Loan, if the prepayment occurs at any time after the date falling 96 months after the Effective Date of this Agreement.
- (b) Any such notice of prepayment by the Borrower shall be irrevocable and binding on the Borrower and, upon delivery of such notice, the Borrower shall be obligated to prepay the Loan in accordance with the terms thereof. Amounts of the Loan prepaid by the Borrower may not be re-borrowed.

Section 3.10. Payments

- (a) All payments of principal, interest, charges, commissions, fees, expenses and any other amounts due to EBRD under this Agreement shall be made, without set-off or counterclaim, in the Loan Currency (or, in the case of costs and expenses of EBRD, in the currency in which such costs and expenses were incurred), for value on the due date, to such account as EBRD may from time to time designate by notice to the Borrower.
- (b) The sums to be disbursed by EBRD to the Borrower hereunder shall be payable in the Loan Currency for value, unless otherwise agreed by the Borrower and EBRD, on the value date requested by the Borrower in its Disbursement application and to such correspondent account in one of the member states of the European Union in which the Euro is a lawful currency as the Borrower may designate in its Disbursement application (with instructions to transfer such sums, at the Borrower's risk and expense, to such account as the Borrower may designate in its Disbursement application being, as of the date of this Agreement, the Borrower's Account as defined in this Agreement).
- (c) If the due date for any payment under this Agreement would otherwise fall on a day which is not a Business Day, then such payment shall instead be due on the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.
- (d) EBRD shall have the right, to the fullest extent permitted by law, to set off any amount owed by EBRD to the Borrower, whether or not matured, against any amount then due and payable by the Borrower under any Financing Agreement, whether or not EBRD has demanded payment by the Borrower of such amount and regardless of the currency or place of payment of either such amount. EBRD shall have the right, to the fullest extent permitted by law, to deduct from the proceeds of any Disbursement any charges, commissions, fees, expenses and other amounts then due and payable by the Borrower to EBRD under any Financing Agreement.

Section 3.11. Insufficient Payments

- (a) If EBRD at any time receives less than the full amount then due and payable to it under this Agreement, EBRD shall have the right to allocate and apply the amount received in any way or manner and for such purpose or purposes under this Agreement as EBRD in its sole discretion determines, notwithstanding any instruction that the Borrower may give to the contrary.
- (b) The Borrower shall indemnify EBRD against any losses resulting from a payment being received, or a claim being filed or an order or judgement being given, hereunder in a currency or place other than the currency and place specified in Section 3.10(a). The Borrower shall pay such additional amount as is necessary to enable EBRD to receive, after conversion to such currency at a market rate and

transfer to such place, the full amount due to EBRD hereunder in the currency and at the place specified in Section 3.10(a).

Section 3.12. Taxes

- (a) The Borrower shall pay or cause to be paid, or reimburse EBRD on demand for, all present and future Taxes, now or at any time hereafter levied or imposed by any Governmental Authority of any jurisdiction out of which or through which payments hereunder are made, on or in connection with the payment of any amounts due to EBRD under this Agreement.
- (b) All payments of principal, interest and other amounts due to EBRD under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; provided, however, that, in the event that the Borrower is prevented by operation of law or otherwise from making such payments free and clear of such deductions or withholdings, the principal, interest or other amount (as the case may be) due under this Agreement shall be increased to such amount as may be necessary to remit to EBRD the full amount it would have received had such payment been made without such deductions or withholdings.
- (c) The provisions of Sections 3.12(a) and 3.12(b) shall not apply to Taxes, to the extent that such Taxes arise as a direct consequence of a Participation having been acquired by a Participant whose principal office is located in the Country of Operation or by the permanent office or establishment in the Country of Operation of a Participant.

Section 3.13. Unwinding Costs

- (a) If, for any reason (including an acceleration pursuant to Section 7.02), any portion of the Loan becomes due and payable on a date other than the last day of an Interest Period, the Borrower shall pay to EBRD on demand the amount, if any, by which:
 - (1) the interest which would have accrued on such portion of the Loan from the date on which such portion of the Loan has become due and payable to the last day of the then current Interest Period at a rate equal to the Interbank Rate for such Interest Period exceeds
 - (2) the interest which EBRD would be able to obtain if it were to place an amount equal to such portion of the Loan on deposit with a leading bank in the Euro-zone interbank market for the period commencing on the date on which such portion of the Loan has become due and payable and ending on the last day of the then current Interest Period.
- (b) If any overdue amount is paid on a date other than the last day of a Default Interest Period, the Borrower shall pay to EBRD on demand the amount, if any, by which:

- (1) the interest which would have accrued on such overdue amount from the date of receipt of such overdue amount to the last day of the then current Default Interest Period at a rate equal to the rate specified in Section 3.06(a)(3) for such Default Interest Period

exceeds

- (2) the interest which EBRD would be able to obtain if it were to place an amount equal to such overdue amount on deposit with a leading bank in the Euro-zone interbank market for the period commencing on the Business Day immediately following the date of receipt of such overdue amount and ending on the last day of the then current Default Interest Period.
- (c) The Borrower shall forthwith upon notice from EBRD reimburse EBRD for any costs, expenses and losses incurred by EBRD or any Participant, and not otherwise recovered by EBRD under Sections 3.13(a) and 3.13(b), as a result of the occurrence of an Event of Default, a change in the duration of any relevant Interest Period pursuant to Section 3.07(b), a change in the basis for determining the rate of interest pursuant to Section 3.07(c), prepayment of any portion of the Loan on a date other than the last day of an Interest Period, failure by the Borrower to pay any amount when due hereunder, failure by the Borrower to borrow in accordance with a Disbursement application submitted pursuant to Section 3.02 or failure by the Borrower to make any prepayment in accordance with a notice of prepayment delivered pursuant to Section 3.09.
- (d) A certificate of EBRD as to any amount payable under this Section 3.13 shall be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of EBRD to contain manifest error.

Section 3.14. Increased Costs

The Borrower shall, from time to time on demand of EBRD, reimburse EBRD for any net incremental costs to EBRD of making or maintaining, or committing to make, the Loan or to any Participant of acquiring or maintaining its Participation which result from the introduction of, or any change in, any applicable law or any applicable guideline or policy (whether or not having the force of law), or any change in the interpretation or application thereof by any Governmental Authority charged with the administration thereof, subsequent to the date of this Agreement. A certificate of EBRD or such Participant as to the amount of such net incremental costs shall be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of EBRD to contain manifest error. Notwithstanding the foregoing, the Borrower shall not be obligated to reimburse EBRD for any such net incremental costs which are a direct consequence of a Participation having been acquired by a Participant whose principal office is located in the Country of Operation or by the permanent office or establishment of a Participant in the Country of Operation.

Section 3.15. Illegality

Notwithstanding anything in this Agreement, if it is or becomes unlawful in any jurisdiction for EBRD to make, maintain or fund the Loan or perform any of its obligations under this Agreement to maintain or fund its Participation, then:

- (1) upon request by EBRD, the Borrower shall, on the next Interest Payment Date or such earlier date as EBRD may specify, prepay that portion of the principal amount of the Loan which EBRD notifies to the Borrower as being affected by such change, together with all accrued interest and other amounts payable thereon; and
- (2) upon notice from EBRD, any portion of the Loan which EBRD notifies to the Borrower as being affected by such change and which has not theretofore been disbursed shall be cancelled immediately.

Section 3.16. Mitigation

- (a) If, in respect of EBRD or a Participant, circumstances arise which would, or with the giving of notice would, result in:

- (1) any Taxes, duties and fees or other charges becoming payable under Section 3.12, or
- (2) any increased cost becoming payable under Section 3.14, or
- (3) any prepayment or cancellation under Section 3.15,

then EBRD will take (and request a Participant to take) such reasonable steps as may be practicable to mitigate the effects of such circumstances provided always that EBRD will be under no obligation to take (or request that such Participant take) such reasonable steps if such action would be materially adverse to the interests of EBRD or that Participant.

- (b) Section 3.16(a) above, does not in any way limit the obligations of the Borrower or any other party to any Financing Agreement.

Section 3.17. Loan Account

EBRD shall open and maintain on its books an account in the Borrower's name showing the Disbursements and repayments thereof and the computation and payment of interest, charges, commissions, fees and other amounts due and sums paid hereunder. Such account shall be final, conclusive and binding on the Borrower as to the amount at any time due from the Borrower hereunder, absent manifest error.

Section 3.18. Margin

- (a) The Margin may be decreased or increased in the manner described in this Section 3.18(a) (the "**Margin Adjustment**"), if the City is assigned a credit rating by a Rating Agency and the financial performance of the City and the Borrower is satisfactory to EBRD. The following table lists the Margin applicable to the Loan after the City is assigned the corresponding rating and all other conditions have been satisfied:

S&P	Moody's	Fitch Ratings	Margin (% per annum)
B-	B3	B-	5.25
B	B2	B	5.00
B+	B1	B+	4.75
BB-	Ba3	BB-	4.5
BB	Ba2	BB	4.25
BB+	Ba1	BB+	4.00
BBB-	Baa3	BBB-	3.75

In the event the ratings assigned by the Rating Agencies differ, the higher rating shall be applied.

- (b) Not later than sixty (60) days before the Interest Payment Date from which a downward Margin Adjustment shall become effective, the Borrower shall request in writing such downward Margin Adjustment and certify to EBRD that each of the following conditions precedent have been met: (A) no Event of Default or Potential Event of Default has occurred and is continuing, (B) the Debt Service Coverage Ratio is not less than 1.2:1; and (C) the Current Ratio is not less than 1.1:1.
- (c) EBRD shall notify the Borrower in writing not later than seven days before the Interest Period from which the Margin Adjustment shall become effective (x) whether it is satisfied that all of the conditions precedent in Section 3.18(b) have been satisfied, (y) whether it is satisfied with the implementation of the Project, which shall be a condition precedent to the Margin Adjustment in addition to conditions precedent set forth in Section 3.18(b), (z) whether it is satisfied that the Guarantor has been in full compliance with its obligations under Section 6.01(i) of the Guarantee, which shall be a condition precedent to the Margin Adjustment in addition to conditions precedent set forth in Section 3.18(b), and (xx) the Margin applicable to the next Interest Period. The Borrower shall provide to EBRD any evidence, document or opinions required by EBRD with regard to the foregoing conditions.
- (d) The Margin shall be increased on the first Interest Payment Date immediately succeeding any downgrade in the credit rating of the City in the manner described in Section 3.18(a). EBRD shall notify the Borrower in writing not later than seven days before the Interest Period from which the Margin Adjustment shall become effective the Margin applicable to the next Interest Period.
- (e) Notwithstanding the provisions of paragraphs (a), (b), (c) and (d) above, the Margin shall not be lower than 3.75% under any circumstances and at any time.

- (f) If, at any time, a credit rating is not assigned to the City by a Rating Agency or if all the credit ratings assigned to the City are withdrawn by the Rating Agencies, the Margin shall be 5.25% per annum.

ARTICLE IV - CONDITIONS PRECEDENT

Section 4.01. First Disbursement of the Loan

The obligation of EBRD to make the first Disbursement shall be subject to the prior fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the following conditions precedent:

- (a) **Financing Agreements.** EBRD shall have received duly executed originals of the following agreements:
- (1) this Agreement;
 - (2) the Guarantee; and
 - (3) the Grant Agreement.
- (b) **Guarantee Related Agreements.** EBRD shall have received duly certified copies of the following agreements:
- (1) the Article 17 Agreement; and
 - (2) the Security Agreement(s) or a resolution of the City waiving the requirements to obtain security for obligations of the Borrower under the Guarantee in accordance with Article 17 of the Budget Code.
- (c) **Project Agreements.** EBRD shall have received certified copies of the following agreements:
- (1) the Licenses;
 - (2) the Project Implementation Plan; and
 - (3) the Programme Contract.
- (d) **Charters.** EBRD shall have received certified copies of the Charter (and, if relevant, certificates of registration and good standing) of the Borrower and the Guarantor (if available) and, at the request of EBRD, any other parties to the Financing Agreements and Project Agreements, each as amended to date.
- (e) **Corporate Authorisations and Other Related Documents.** EBRD shall have received certified copies of:

- (1) all corporate (including, if required, shareholder) Authorisations necessary for the due execution, delivery and performance of the Financing Agreements and Project Agreements, and any other documents in implementation thereof, by the Borrower, the Guarantor, and, at the request of EBRD, any other parties thereto and for the transactions contemplated thereby, including the authorisations of the persons signing the Financing Agreements and Project Agreements to sign such documents and to bind the respective parties thereby; and
 - (2) the evidence that resolutions (including their drafts) of the Guarantor approving terms and conditions of this Agreement and the Guarantee were published in accordance with requirement of Ukrainian law.
- (f) **Specimen Signatures.** EBRD shall have received:
- (1) a certificate of incumbency and authority of the Borrower substantially in the form of Exhibit B; and
 - (2) a certificate of an appropriate officer of the Guarantor, and, at the request of EBRD, any other party to the Financing Agreements and Project Agreements certifying the specimen signature of each person authorised to sign, on behalf of such party, the Financing Agreements and Project Agreements to be entered into and performed by such party.
- (g) **Governmental and Other Authorisations.** EBRD shall have received certified copies of all Authorisations, including: (i) the application of the Borrower for the registration of this Agreement with the NBU, (ii) the NBU Registration Certificate, (iii) the approval of the Guarantee by the Ministry of Finance of Ukraine and its approval by the Cabinet of Ministers of Ukraine, (iv) the document evidencing registration of this Agreement and the Guarantee with the Ministry of Finance of Ukraine (the Register of Local Borrowings and Local Guarantees) in accordance with Article 74 of the Budget Code, (v) creditors' consents, necessary for the execution, delivery and performance of the Financing Agreements and Project Agreements by the Borrower, the Guarantor, and, at the request of EBRD, any other parties thereto and for the transactions contemplated thereby, as well as all other Authorisations for:
- (1) the borrowing by the Borrower under this Agreement;
 - (2) the carrying out of the Project and the Financing Plan;
 - (3) the remittance to EBRD of all monies payable in respect of the Financing Agreements; and
 - (4) the carrying on of the business of the Borrower as it is presently carried on and is contemplated to be carried on,

other than any Authorisation of a routine or minor nature which is not necessary for the implementation of the Project at the time of the proposed Disbursement or which may only be obtained as the Project progresses or after construction is

completed and in each case which is customarily granted in due course after timely application, and in respect of which the Borrower is not aware of any reason for it being unable to obtain in due course such Authorisation.

- (h) **Insurance.** EBRD shall have received an original insurance certificate from the Borrower's insurer or insurance broker showing that all insurance policies and endorsements required pursuant to Section 5.04 are in full force and effect and certified copies of such insurance policies and endorsements.
- (i) **Auditors Letter.** EBRD shall have received a copy of a letter to the Auditors from the Borrower substantially in the form of Exhibit C.
- (j) **Process Agent Appointments.** EBRD shall have received written confirmation from the agents for service of process appointed by the Borrower and the Guarantor pursuant to the Financing Agreements of their acceptances of such appointments.
- (k) **Borrower's Account.** EBRD shall have received a duly certified true copy of the bank account agreement to be entered into between a bank and the Borrower with respect to the opening of the Borrower's Account, as well as such other documents as EBRD may request with respect to the opening of such Borrower's Account.
- (l) **Project Implementation Unit.** EBRD shall have received evidence satisfactory to it that the Project Implementation Unit is set up and has adequate staffing and resources.
- (m) **Compliance with Financial Covenants.** The Borrower shall have provided EBRD with evidence satisfactory to EBRD that the Borrower is in compliance with the financial ratios referred to in Section 5.11 hereof for the most recent reporting period.
- (n) **Budget and Budget Performance Report.** EBRD shall have received certified copies of the Budget for 2014 and the Budget Performance Report for 2013.
- (o) **Legal Opinions.** EBRD shall have received the following legal opinions regarding such matters incident to the transactions contemplated by the Financing Agreements and Project Agreements as EBRD reasonably requests:
 - (1) the opinion of the in-house counsel to the Borrower, in form and substance satisfactory to EBRD;
 - (2) the opinion of the in-house counsel to the Guarantor, in form and substance satisfactory to EBRD; and
 - (3) the opinion of Chadbourne & Parke LLP, special Ukrainian counsel to EBRD.
- (p) **Legal Reforms Programme.** EBRD shall have received evidence satisfactory to it that the appropriate Governmental Authority of Ukraine has established a Legal Reforms Programme designed to identify and implement measures required to

ensure an adequate regulatory environment for energy efficiency investments in the public sector in Ukraine.

- (q) **Regulatory Framework.** EBRD shall have received evidence satisfactory to it that the municipal authorities and, if required under applicable regulations, appropriate Governmental Authority of Ukraine, within their respective competence, have approved: (1) a pipeline of individual sub-projects based on the Legal Reforms Programme and with respect to the Project to be financed with the proceeds of the EBRD's Loan; (2) templates for energy performance contracting, including the EnPC Template, forms of energy performance contracting agreements prepared in accordance with best practice and applicable laws; (3) tender documentation for energy performance contracting procurement procedures and award criteria (to the extent that local approval is needed); and (4) any other measures to be implemented by the City Council required for the implementation of the Project.

Section 4.02. All Disbursements

The obligation of EBRD to make any Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the conditions that, on the date of the Borrower's application for such Disbursement and on the date of such Disbursement:

- (a) **Continuing Validity of Documents.** All agreements, documents and instruments delivered to EBRD pursuant to Section 4.01, shall be in full force and effect and unconditional (except for this Agreement having become unconditional, if that is a condition of any such agreement, document or instrument).
- (b) **Representations and Warranties.** The representations and warranties made or confirmed by the Borrower and the Guarantor in the Financing Agreements and the Project Agreements shall be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates.
- (c) **No Default.** No Default or a Potential Event of Default shall have occurred and be continuing or shall, in the reasonable opinion of EBRD, be imminent and the Borrower shall not, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including this Agreement) or by which the Borrower is bound or any law applicable to the Borrower.
- (d) **No Material Adverse Effect.** Nothing shall have occurred which, in the reasonable opinion of EBRD, might have a Material Adverse Effect.
- (e) **EnPCs and Use of Proceeds.** The proceeds of such Disbursement shall be needed by the Borrower for the purposes of the Project and EBRD shall have received certified copies of EnPCs corresponding to the amount of the requested Disbursement at least 10 Business Days prior to the value date of the

Disbursement and such evidence as to the proposed utilisation of the proceeds of such Disbursement and the utilisation of the proceeds of any prior Disbursement as EBRD reasonably requests.

- (f) **Fees and Expenses.** EBRD shall have received payment of all amounts due and owing to it under the Financing Agreements, including all fees and expenses described in Section 3.04 and Section 5.13.
- (g) **Disbursement Application.** EBRD shall have received an original of the Borrower's timely application for such Disbursement substantially in the form of Exhibit A.
- (h) **Energy Savings Verification.** In respect of all Disbursements other than the first Disbursement, EBRD shall have received a report from a consultant acceptable to EBRD confirming that it has verified the energy savings achieved as a result of implementing the energy efficiency investments under the EnPCs relating to such Disbursements.
- (i) **Documentary Evidence of Payments.** If requested, EBRD shall have received documentary evidence satisfactory to EBRD, including, without limitation, contracts, invoices and receipts) of all payments out of the Borrower's Account made since the previous Disbursement or since the last time when such documentary evidence was provided by the Borrower to EBRD.
- (j) **Guarantor's Budget.** EBRD shall have received evidence that each of the Budgets makes provision for the payment of all amounts that will or may, during the relevant Financial Year, become due and payable under this Agreement and each other Financing Agreement and Project Agreement.
- (k) **Eligibility of Contractor.** No eligibility or origin restrictions have been applied by the Borrower in awarding the specific contract which is to be financed from the relevant Disbursement and such contract has not been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
- (l) **Contractors' Invoices.** EBRD shall have received certified copies of the contractors' invoice(s) in respect of which the Disbursement is requested.
- (m) **Financial Statements.** The Borrower shall have delivered to EBRD its annual Financial Statements audited pursuant to IFRS.
- (n) **Other.** EBRD shall have received such other documents and legal opinions as EBRD may reasonably request.

Section 4.03. *Pari Passu* Disbursement

Notwithstanding anything in this Agreement to the contrary, the obligation of EBRD to make any Disbursement shall also be subject to the condition that the

aggregate amount of the Grant requested for disbursement and/or disbursed by the E5P Fund to the Borrower shall not at any time exceed 50% of aggregate amount disbursed under this Agreement.

ARTICLE V - AFFIRMATIVE COVENANTS

Unless EBRD otherwise agrees in writing:

Section 5.01. Project Implementation

The Borrower shall carry out the Project in accordance with the Project Implementation Plan furnished by the Borrower to EBRD (subject to any modifications to which EBRD may agree in writing) and cause the financing specified in the Financing Plan to be applied exclusively to the Project.

Section 5.02. Maintenance and Continuity of Business

The Borrower shall maintain its corporate existence in compliance with all applicable laws. The Borrower shall conduct its business with due diligence and efficiency, in accordance with sound engineering, financial and business practices and in compliance with all applicable laws, including all money laundering laws.

Section 5.03. Environmental and Social Compliance

- (a) The Borrower shall, and shall cause any contractor to, carry out the Borrower's business and operations in accordance with the Designated Performance Requirements.
- (b) Without limiting the foregoing, the Borrower shall diligently implement and adhere to the Environmental and Social Action Plan.
- (c) The Borrower and EBRD may from time to time agree to amend the Environmental and Social Action Plan in response to changes in the circumstances of the Project, the Borrower or the Borrower's business and operations, unforeseen events and the results of monitoring. Without limiting the generality of the foregoing,
 - (1) if there is any adverse environmental or social impact or issue that was not foreseen by or contemplated in the Environmental and Social Action Plan either entirely or as to its severity,
 - (2) if any impact mitigation measure set out in the Environmental and Social Action Plan is not sufficient to eliminate or reduce any environmental or social impact to the level contemplated by the relevant Designated

Performance Requirements within the time frame set out in the Environmental and Social Action Plan, or

- (3) if any material non-compliance with the Environmental and Social Action Plan or with any Environmental and Social Law has been identified by an inspection from any regulatory or enforcement authority or by any audit conducted by an independent party, or during project monitoring,

the Borrower shall, as soon as reasonably practicable and subject to the consent of EBRD, develop and incorporate into the Environmental and Social Action Plan such additional or revised mitigation measures as may be necessary to achieve compliance with the Designated Performance Requirements, in each case in a manner satisfactory to EBRD.

Section 5.04. Insurance

- (a) The Borrower shall maintain all necessary insurance for its operational activity and assets in compliance with imperative norms of applicable legislation of Ukraine (to the extent these exist from time to time) and in a manner and with insurers reasonably satisfactory to EBRD.
- (b) The Borrower shall cause any contractors supplying goods, works and services in relation to the Project to procure and maintain: (i) insurance coverage that is customary for similar contractors operating in the same sectors; and (ii) insurance coverage that is required in accordance with Ukrainian law.

Section 5.05. Accounting

- (a) The Borrower shall promptly and diligently install, and thereafter maintain, an accounting and cost control system and management information system satisfactory to EBRD.
- (b) The Borrower shall maintain books of account and other records adequate to present a true and fair view of the financial position, financial performance and cash flows of the Borrower and the results of its operations (including the progress of the Project) in conformity with the Generally Accepted Accounting Principles.
- (c) The Borrower shall maintain as auditors of the Borrower a firm of independent accountants acceptable to EBRD.
- (d) The Borrower shall authorise, by a letter substantially in the form of Exhibit C, the Auditors to communicate directly with EBRD at any time regarding the Borrower's accounts and operations.

Section 5.06. Continuing Governmental and Other Authorisations

The Borrower shall obtain and maintain in force (or, where appropriate, renew) all Authorisations required for the purposes described in Sections 4.01(c) and 4.01(g) including the Licenses. The Borrower shall perform and observe all the conditions and restrictions contained in, or imposed on the Borrower by, such Authorisations and the Licenses.

Section 5.07. Procurement

Except as EBRD shall otherwise agree, the Borrower shall ensure that all goods, works and services (including but not limited to the EnPCs) required for the Project and to be financed out of the proceeds of the Loan and the Grant are procured in compliance with the EBRD Procurement Policies and Rules and the following shall apply:

- (1) goods, works and services (other than consultants' services which are included within Section 5.07(3)), shall be procured through open tendering;
- (2) for the purpose of sub-section (1) of this section, the procedures for open tendering are set out in Chapter 3 of the EBRD Procurement Policies and Rules;
- (3) consultants to be employed by the Borrower to assist in carrying out the Project shall be selected in accordance with the procedures set out in Chapter 5 of the EBRD Procurement Policies and Rules; and
- (4) all contracts shall be subject to prior review by EBRD in accordance with the review procedures set out in the EBRD Procurement Policies and Rules.

Section 5.08. Compliance with Other Obligations

The Borrower shall comply with all material agreements to which it is a party or by which it or any of its properties or assets is bound.

Section 5.09. Taxes

- (a) The Borrower shall pay when due all of its Taxes, including any Taxes against any of its properties, other than Taxes which are being contested in good faith and by proper proceedings and as to which adequate reserves have been set aside for the payment thereof. The Borrower shall make timely filings of all Tax returns and governmental reports required to be filed or submitted under any applicable law.
- (b) The Borrower shall pay all Taxes payable on, or in connection with, the execution, issue, delivery, registration or notarisation of any Financing Agreement, any Project Agreement or any other document related to this Agreement. Upon notice from EBRD, the Borrower shall pay to EBRD, or reimburse EBRD for, an amount equal to any such Taxes levied on or paid by EBRD.

Section 5.10. Financing Agreements and Project Agreements

The Borrower shall maintain all Financing Agreements and Project Agreements to which the Borrower is a party in full force and effect without modification and perform its obligations under, and not commit any breach of or default under, any such Financing Agreement and Project Agreement.

Section 5.11. Financial Ratios

- (a) **Debt Service Coverage Ratio.** Starting from the third anniversary of the Effective Date of this Agreement, the Borrower shall, at all times, maintain a ratio of Free Cash Flow to Debt Service (the "**Debt Service Coverage Ratio**") , calculated on a rolling twelve (12) months basis, of not less than one point two to one (1.2:1).

For the purpose of this Section 5.11(a)

- (1) "**Cash Flows**" means inflows and outflows of Cash and Cash Equivalents, where "Cash" means cash on hand and demand deposits and "Cash Equivalents" means short-term, highly liquid investments that are readily convertible to known amounts of Cash and which are subject to an insignificant risk of changes in value.
- (2) "**Operating Activities**" means the principal revenue-producing activities of the Borrower and other activities that are not Investing Activities or Financing Activities, where "Investing Activities" means the acquisition and disposal of long-term assets and other investments not included in Cash Equivalents as defined above and "Financing Activities" means activities that result in changes in the size and composition of the equity capital and borrowings of the Borrower.
- (3) "**Free Cash Flow**" means the Cash Flows arising from the Operating Activities for the 12 months preceding the date of calculation plus the interest paid during such period minus the Cash Flows which are applied during that period to acquiring long-term assets.
- (4) "**Debt Service**" means the sum of the net principal repayment and the interest payment due in respect of any Financial Debt for the 12 months preceding the date of calculation.

- (b) **Current Ratio.** Starting from the third anniversary of the Effective Date of this Agreement, the Borrower shall, at all times, maintain a ratio of Current Assets to Current Liabilities (the "**Current Ratio**") of not less than one point one to one (1.1:1).

For the purposes of this Section 5.11(b):

- (1) "**Current Assets**" means assets that:

- (A) are expected to be realised in, or are held for sale or consumption in, the normal course of the Borrower's operating cycle; or
- (B) are held primarily for trading purposes or for the short-term and expected to be realised within twelve months of the calculation date; or
- (C) are cash or cash equivalent assets which are not restricted in their use.

(2) **"Current Liabilities"** means liabilities that:

- (A) are expected to be settled in the normal course of the Borrower's operations cycle; or
 - (B) are due to be settled within twelve months of the calculation date.
- (c) The calculations of the *Debt Service Coverage Ratio* and the *Current Ratio* shall be performed by the Auditor (according to the annual financial reporting) or by the Borrower (according to quarterly financial reporting) with the support of the PIU Consultant.
- (d) The Borrower shall ensure that the financed capital expenditure generates sufficient energy cost savings (positive cash flow) for the repayment of the Loan to EBRD.

Section 5.12. Further Documents

The Borrower shall execute all such other documents and instruments and do all such other acts and things as EBRD may determine are necessary or desirable to give effect to the provisions of the Financing Agreements and the Project Agreements and to cause the Financing Agreements and the Project Agreements to be duly registered, notarised and stamped in any applicable jurisdiction. The Borrower hereby irrevocably appoints and constitutes EBRD as the Borrower's true and lawful attorney with right of substitution (in the name of the Borrower or otherwise) to execute such documents and instruments and to do such acts and things in the name of and on behalf of the Borrower in order to carry out the provisions hereof.

Section 5.13. Costs and Expenses

- (a) The Borrower shall, whether or not any Disbursement is made, pay to EBRD, within 30 days of EBRD's invoice to the Borrower, or as EBRD may direct in accordance with the Pre-Financing Agreement (but, in any event, on or prior to the first Disbursement in the case of costs and expenses incurred and invoiced to the Borrower prior to the date of the first Disbursement), all out-of-pocket costs and expenses (including the fees and expenses of outside counsel to EBRD and all

other financial, accounting, engineering, environmental and social, insurance and other consulting fees and expenses) incurred by EBRD in connection with:

- (1) the assessment, preparation, negotiation and arrangement of the Loan by EBRD;
 - (2) the preparation, review, negotiation, execution and, where appropriate, registration and notarisation of the Financing Agreements, the Project Agreements and any other documents related thereto;
 - (3) the giving of any legal opinions hereunder; and
 - (4) the administration and monitoring of the Financing Agreements, including visits by EBRD's environmental and social staff.
- (b) The Borrower shall pay to EBRD or as EBRD may direct, on demand, all fees, costs and expenses (including, legal fees and expenses) incurred by EBRD:
- (1) in the determination of whether there has occurred a Default;
 - (2) in respect of the preservation or enforcement of any of its rights under any Financing Agreement and the collection of any amount owing to EBRD; and
 - (3) in connection with the assessment, preparation, review, negotiation, execution and, where appropriate, registration and notarisation of any amendment to or waiver of any Financing Agreement, any Project Agreement or any other document related thereto.

Section 5.14. Provision of Information and Reporting Requirements

- (a) As soon as available but, in any event, within 60 days after the end of each quarter of each Financial Year, the Borrower shall provide to EBRD:
- (1) the Financial Statements for such quarter in a form satisfactory to EBRD (delivered in hard copy or pdf format) and, if requested by EBRD, certified by an officer of the Borrower;
 - (2) a management discussion and analysis of results for such quarter, including a report on any factors materially and adversely affecting or which might materially and adversely affect the Borrower's business, operations or financial condition or a statement that there are no such factors;
 - (3) a progress report, in form and substance acceptable to EBRD, including:
 - (A) any factors materially affecting or which might materially affect the Borrower's financial condition or its ability to repay the Loan or a statement that there are no such factors;

- (B) a statement certified by the Borrower's Chief Accountant indicating the status of the Borrower's compliance with the financial covenants contained in Section 5.11 (Financial Ratios), detailing any non-compliance; and
 - (C) the implementation and progress of the Project, including, for each contract awarded by the Borrower in respect of the Project, the identity and nationality of the contractor and the value and date of the contract and information related to changes and claims during the execution of such contract, including information on changes in the terms of the contract and changes affecting costs and completion time.
- (b) As soon as available but, in any event, no later than 20 December of each year, the Draft Budget for the following Financial Year.
 - (c) As soon as available but, in any event, no later than 31 January of each calendar year or within 15 (fifteen) days from its adoption, whichever is earlier, the Budget for the relevant Financial Year.
 - (d) As soon as available but, in any event, no later than 30 April of each year, the relevant Budget Performance Report.
 - (e) As soon as available but, in any event, within 180 days after the end of each Financial Year, the Borrower shall furnish to EBRD:
 - (1) audited Financial Statements for such Financial Year, together with a report of the Auditors thereon prepared in accordance with IFRS, all in a form satisfactory to EBRD (delivered in hard copy or pdf format);
 - (2) the letter from the Auditors to the management of the Borrower, if prepared, commenting on, among other matters, the adequacy of the Borrower's financial control procedures, accounting systems and other management systems together with a copy of any other communication sent by the Auditors to the Borrower or to its management in relation to the Borrower's financial, accounting and other systems, management and accounts; and
 - (3) a statement on compliance with the financial ratios specified in Section 5.11 and the Auditors letter providing the details of calculation of such ratios and a statement of the cash collection rate for such Financial Year.
 - (f) As soon as available but, in any event, within 180 days after the end of each Financial Year, the Borrower shall furnish to EBRD a report, in form and substance satisfactory to EBRD, on Environmental and Social Matters arising in relation to the Borrower or the Project during such Financial Year, including:
 - (1) information on compliance by the Borrower with the environmental, health and safety and social standards mentioned in Section 5.03, including the status of any Authorisation required for the Project, the results of any inspection carried out by any regulatory authority, any violation of

applicable laws, regulations or standards and any remedial action or fine relating to such violation;

- (2) information on how the Borrower has monitored the compliance with the Designated Performance Requirements and the Environmental and Social Action Plan by any contractor engaged for the Project and a summary of any material non-compliance by such contractor with the Designated Performance Requirements and the Environmental and Social Action Plan and of any measures taken to remedy such non-compliance;
 - (3) a summary of any material notice, report and other communication on Environmental and Social Matters submitted by the Borrower to any regulatory authority;
 - (4) information on the health and safety record of the Project, including the rate of accidents and any initiatives in relation to health and safety matters which have been implemented or planned by the Borrower;
 - (5) information on implementation of the stakeholder engagement plan required by Designated Performance Requirement 10, including a summary of any grievances received and how such grievances were resolved;
 - (6) a summary of any change in laws relating to Environmental and Social Matters which may have a Material Adverse Effect] on the Project; and
 - (7) copies of any information on Environmental and Social Matters periodically submitted by the Borrower to its shareholders or the general public.
- (g) Prior to the first Disbursement and, thereafter, within 30 days after the effective date of any new or renewed insurance policy, the Borrower shall furnish to EBRD an original certificate from the Borrower's insurer or insurance broker, indicating the properties insured, amounts and risks covered, names of the loss payees, beneficiaries and assignees, name of the insurer and any special features of the new or renewed insurance policy, together with a certified copy of such insurance policy. Not less than ten (10) days prior to the expiry date of any insurance policy (or, for insurance with multiple renewal dates, not less than ten (10) days prior to the expiry date of the policy on the principal asset), the Borrower shall furnish to EBRD a certificate of renewal from the insurer, insurance broker or agent confirming the renewal of that policy and the renewal period, the premium, the amounts insured for each asset or item and any changes in terms or conditions from the policy's issue date or last renewal.
- (h) The Borrower shall promptly notify EBRD of:
- (1) any proposed change in the nature or scope of the Project (including the location of raw materials, technology or processes used in, or the schedule for, the Project) or the business or operations of the Borrower;
 - (2) any claim made by the Borrower under any insurance policy; and

- (3) any event or condition (including any pending or threatened litigation, arbitration or administrative proceeding and any damage to or destruction of Project facilities) which might have a Material Adverse Effect.
- (i) Immediately upon the occurrence of any Event of Default or Potential Event of Default, the Borrower shall give EBRD notice thereof by facsimile transmission specifying the nature of such Event of Default or Potential Event of Default and any steps the Borrower is taking to remedy the same.
- (j) Immediately upon the occurrence of any incident or accident relating to the Borrower or the Project which has or is likely to have a significant adverse effect on the environment, or on public or occupational health or safety, the Borrower shall inform EBRD and promptly thereafter give EBRD notice thereof specifying the nature of such incident or accident and any steps the Borrower is taking to remedy the same. Without limiting the generality of the foregoing,
 - (1) an incident or accident relates to the Project if it occurs on any site used for the Project or, if it is caused by facilities, equipment, vehicles or vessels used for or relating to the Project (whether or not being used on any site of the Project and whether or not being used by authorised or unauthorised persons);
 - (2) an incident or accident is considered to have a significant adverse effect on the environment or on public or occupational health or safety if:
 - (A) any applicable law requires notification of such incident or accident to any Governmental Authority,
 - (B) such incident or accident involves fatality of any person (whether or not such person is employed by the Borrower),
 - (C) more than one person (whether or not such persons are employed by the Borrower) has received serious injury requiring hospitalisation, or
 - (D) such incident or accident has become, or is likely to become, public knowledge whether through media coverage or otherwise.
- (k) The Borrower shall promptly notify EBRD of any significant protest or petition by workers or members of the public directed at or relating to the Project and/or the Borrower's business and operations which might have a Material Adverse Effect or which has become, or is likely to become, public knowledge through media coverage or otherwise. Within ten days following any such notification, the Borrower shall submit a report satisfactory to EBRD specifying the outcome of the Borrower's investigation into such protest or petition, and any steps taken, or proposed to be taken, by the Borrower to resolve the issues raised in the protest or petition.
- (l) The Borrower shall furnish promptly to EBRD two copies of all notices, reports and other communications of the Borrower to its shareholders and the minutes of all shareholders' meetings. Without limiting the foregoing, the Borrower shall, on

or before the date that it gives official notice to its shareholders of any shareholders' meeting, furnish EBRD, by facsimile transmission, with notice of such meeting and the agenda thereof.

- (m) The Borrower shall promptly notify EBRD if the Borrower obtains any information regarding a violation of Section 2.02(i) or Section 6.14 or if any international financial institution has imposed any sanction on the Borrower or the Guarantor for any Prohibited Practice. If EBRD notifies the Borrower of its concern that there has been a violation of such Section 2.02(i) or such Section 6.14, the Borrower shall cooperate in good faith with EBRD and its representatives in determining whether such a violation has occurred and shall respond promptly and in reasonable detail to any such notice from EBRD and shall furnish documentary support for such response upon EBRD's request.
- (n) The Borrower shall furnish promptly to EBRD such other information as EBRD may from time to time reasonably request (including in order to facilitate EBRD's evaluation of the Project). The Borrower shall permit representatives of EBRD (including any consultants engaged by EBRD) to visit the Project or any of the other premises where the business of the Borrower is conducted or where the Project is being carried out and to have access to the books of account and records of the Borrower.

Section 5.15. Support to external consultants

The Borrower shall assist any consultants funded by EBRD and contracted to assist the Borrower with the implementation of the Project in the performance of their tasks, including by making available to them working space and access to telecommunication free of charge.

Section 5.16. Project Implementation Unit

In order to coordinate, manage, monitor and evaluate all aspects of the Project implementation, including the procurement of goods, works and services for the Project (in full compliance with the provisions of Section 5.07), the Borrower shall, unless otherwise agreed with EBRD, establish and at all times maintain during the execution of the Project a Project Implementation Unit with adequate resources and properly staffed, with relevant expertise in project management and international tendering procedures, satisfactory to EBRD, all under terms of reference and in a manner acceptable to EBRD.

Section 5.17. Debt Service Reserve Account

- (a) No later than a date falling six (6) month prior to the date of the first repayment date of the Loan, the Borrower shall open a Debt Service Reserve Account and shall at all times maintain thereon such amounts as may be required pursuant to Section 5.17(b) until all amounts due to EBRD under any Financing Agreement have been paid in full, all in a manner acceptable to EBRD.

(b) Starting from the date falling six months before the first repayment of the principal on the Loan and until all amounts due to EBRD under any Financing Agreement have been paid in full, the Borrower shall deposit into the Debt Service Reserve Account, on a monthly basis, an amount in the Loan Currency equal to one sixth (1/6) of the amount due on the next Interest Payment Date (including interest, fees and principal repayment) so that at least one (1) calendar month before the next Interest Payment Date the amount of funds deposited in Debt Service Reserve Account is sufficient to cover all amounts due and payable on such Interest Payment Date.

ARTICLE VI - NEGATIVE COVENANTS

Unless EBRD otherwise agrees in writing:

Section 6.01. Dividends

Except as expressly provided herein, the Borrower shall not declare or pay any dividend, or make any distribution on its charter capital, or purchase, redeem or otherwise acquire any part of the charter capital of the Borrower or any option over the same.

Section 6.02. Capital Expenditures

The Borrower shall not incur expenditures or commitments for expenditures for fixed and other non-current assets (other than expenditures required for carrying out the Project or for maintenance, repairs or replacements essential to the operation of the Borrower).

Section 6.03. Leases

The Borrower shall not enter into any agreement or arrangement to acquire by lease the use of any property or equipment of any kind, except for those agreements or arrangements which will not exceed 5% of the Borrower's annual total revenues as set out in its Financial Statements for the immediately preceding Financial Year.

Section 6.04. Financial Debt

- (a) The Borrower shall not incur, assume or permit to exist any Financial Debt except for that which is existing prior to the date of this Agreement and which is detailed in the Financing Plan.
- (b) The Borrower shall not enter into any agreement or arrangement to guarantee or, in any way or under any condition, to become obligated for all or any part of any financial or other obligation of another person.

Section 6.05. Encumbrances

The Borrower shall not (except in favour of EBRD) create or permit to exist any Encumbrance on any property, revenues or other assets, present or future, of the Borrower, other than:

- (1) the Encumbrances disclosed to EBRD in the Information Letter;
- (2) any Tax or other non-consensual Encumbrance arising by operation of law or other statutory Encumbrance arising in the ordinary course of business, provided that such Encumbrance (other than an Encumbrance for a sum which is not yet delinquent) is discharged within 30 days after the date it is created or, if the validity or amount of such Encumbrance or the sum secured by such Encumbrance is being contested in good faith and by proper proceedings and adequate reserves have been set aside for the payment of such sum, within 30 days after final adjudication; and
- (3) the Security Agreement(s).

Section 6.06. Derivative Transactions

The Borrower shall not enter into any interest rate or currency swap, interest rate cap or collar, forward rate agreement or other interest rate, currency or commodity hedge or similar derivative transaction.

Section 6.07. Arm's Length Transactions

The Borrower shall not enter into any transaction with any person except in the ordinary course of business, on ordinary commercial terms and on the basis of arm's-length arrangements, or enter into any transaction whereby the Borrower would pay more than the ordinary commercial price for any purchase or would receive less than the full ex-works commercial price (subject to normal trade discounts) for its products or services.

Section 6.08. Profit-sharing and Management Arrangements

- (a) The Borrower shall not enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other person.
- (b) The Borrower shall not enter into any management contract or similar arrangement whereby its business or operations are managed by any other person.

Section 6.09. Investments

The Borrower shall not form or have any Subsidiary, or make or permit to exist loans or advances to, or deposits (other than deposits in the ordinary course of business

with reputable banks) with, other persons or investments in any person or enterprise; provided, however, that the Borrower shall be at liberty to invest in short-term investment grade marketable securities solely to give temporary employment to the Borrower's idle resources

Section 6.10. Project Agreements

The Borrower shall not terminate, amend or grant any waiver in respect of any provision of any Project Agreement to which it is a party or consent to any assignment of any Project Agreement by any other party thereto.

Section 6.11. Changes in Business, Capital and Charter

- (a) The Borrower shall not make changes, or permit changes to be made, to the nature of its present business or operations or change the nature or scope of the Project.
- (b) The Borrower shall not initiate, undertake or permit, within the scope of its authority, the making of any changes, or permit changes to be made, to its capital except in accordance with the Financing Plan and for the additional capital contributions by the City as and when required.
- (c) The Borrower shall not initiate, undertake or permit, within the scope of its authority, the making of any changes, or permit changes to be made, to its Charter in any manner which would be inconsistent with the provisions of any Financing Agreement (including changes in capital), unless it is required by the mandatory provisions of the applicable laws or regulations..

Section 6.12. Prepayment of Long-term Debt

The Borrower shall not (whether voluntarily or involuntarily) make any prepayment, repurchase or early redemption of any Long-term Debt or make any repayment of any Long-term Debt pursuant to any provision of any agreement or note which provides directly or indirectly for acceleration of repayment in time or amount, unless in any such case, if EBRD so requires, the Borrower contemporaneously makes a proportionate prepayment of the principal amount of the Loan then outstanding, in accordance with the provisions of Section 3.09 (except that there shall be no minimum amount or notice period for such prepayment).

Section 6.13. Sale of Assets; Merger

- (a) The Borrower shall not sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (whether in a single transaction or in a series of transactions, related or otherwise).
- (b) The Borrower shall not initiate, undertake or permit within the scope of its authority any merger, consolidation or other form of corporate reorganisation.

Section 6.14. Fraud and Corruption

The Borrower shall not, and shall not authorise or permit any of its officers, directors, authorised employees, Affiliates, agents or representatives to, engage in with respect to the Project or any transactions contemplated by this Agreement any Prohibited Practice.

Section 6.15. Eligibility of Contractor

The Borrower shall not apply for a Disbursement where eligibility or origin restrictions have been applied by the Borrower in awarding the specific contract which is to be financed from such Disbursement or such contract has been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.

Section 6.16. Guarantees to Third Parties

The Borrower shall refrain, not issue or permit the issuance of any guarantees for the obligations of any third parties.

Section 6.17. Use of Proceeds

The Borrower shall not use the Loan proceeds for any purpose other than the Project.

ARTICLE VII - EVENTS OF DEFAULT

Section 7.01. Events of Default

Each of the following events and occurrences shall constitute an Event of Default under this Agreement:

- (a) **Payments.** The Borrower fails to pay when due any principal of, or interest on, the Loan as required by this Agreement, except where both of the following conditions apply:
 - (1) the failure to pay is due to an administrative error of an account bank, other than an error caused by the negligence or wilful misconduct of the Borrower; and
 - (2) within three Business Days after the due date full payment of the same is made in accordance with this Agreement.
- (b) **Covenants.** The Borrower, the Guarantor or any other party (other than EBRD) fails to perform in a timely manner any of its obligations under any Financing

Agreement or any other agreement between the Borrower (and/or the Guarantor) and EBRD, the failure to perform such obligation is not referred to elsewhere in this Section 7.01 and, if capable of remedy, such failure to perform has continued for a period of 30 days after notice thereof has been given to the Borrower by EBRD.

- (c) **Project Agreements.** Any party (other than EBRD) fails to perform in a timely manner any of its obligations under any Project Agreement, the failure to perform such obligation is not referred to elsewhere in this Section 7.01 and, if capable of remedy, such failure to perform has continued for a period of 30 days after notice thereof has been given to the Borrower by EBRD.
- (d) **Representations.** Any representation or warranty made or confirmed by the Borrower or the Guarantor in any Financing Agreement or Project Agreement was false or misleading in any material respect when made or repeated.
- (e) **Nationalisation.** Any Governmental Authority condemns, seizes or otherwise expropriates all or any substantial part of the property or other assets of the Borrower or of its share capital, or assumes custody or control of such property or other assets or of the business or operations of the Borrower or of its share capital, or discontinues the right of the Borrower to use the property or other assets on the basis of “complete commercial use” (*право повного господарського відання*) or takes any action for the dissolution or disestablishment of the Borrower or any action that would prevent the Borrower or its officers from carrying on its business or operations or a substantial part thereof.
- (f) **Bankruptcy.** A decree or order by a court is entered against the Borrower or the Guarantor adjudging the Borrower or the Guarantor bankrupt or insolvent or ordering the winding up or liquidation of its affairs; or a petition is filed seeking reorganisation, administration, arrangement, adjustment, composition or liquidation of or in respect of the Borrower or the Guarantor under any applicable law; or a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official is appointed over or in respect of the Borrower or the Guarantor or any substantial part of its property or assets; or the Borrower or the Guarantor institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files a petition or answer or consent seeking reorganisation, administration, relief or liquidation under any applicable law, or consents to the filing of any such petition or to the appointment of a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official of the Borrower or the Guarantor or of any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or any other event occurs which under any applicable law would have an effect analogous to any of the events listed in this paragraph.
- (g) **Financial Debt.** Any Financial Debt of the Borrower (other than the Loan) or the Guarantor is not paid when due; or a default of any nature occurs under any agreement pursuant to which there is outstanding any such Financial Debt and

such default continues beyond any applicable period of grace; or any such Financial Debt becomes prematurely due and payable or is placed on demand.

- (h) **Change of Control.** The occurrence of:
 - (1) a change of control of the Borrower or any change in the direct or indirect legal or beneficial ownership of the Borrower or the City ceases at any time to own directly or indirectly the charter capital of the Borrower, in each case without the prior written consent of EBRD; or
 - (2) a moratorium (whether exclusive or general) of any Governmental Authority in connection with any or all of the assets or authorised charter capital of the Borrower, or any Governmental Authority attempts to influence or does influence business or activity of the Borrower in connection with the Project or its commercial activities generally.
- (i) **Ineligibility for EBRD Financing.** EBRD shall have determined in accordance with EBRD's Enforcement Policies and Procedures that the Borrower or an Affiliate of the Borrower has engaged in a Prohibited Practice in relation to an EBRD Project and the Borrower shall be included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
- (j) **Authorisation.** Any Authorisation now or hereafter required for the execution, delivery or performance by any party (other than EBRD) of any Financing Agreement or Project Document to carry out the Project is modified, revoked, withdrawn or withheld or ceases to remain in full force and effect and such modification, revocation, withdrawal or withholding has or is likely to have a Material Adverse Effect.
- (k) **Assets.** Any distress, attachment, execution or other legal process is levied or enforced against any assets of the Borrower or the City which in the opinion of EBRD might have a Material Adverse Effect.
- (l) **Guarantor's Financial Performance.** A decree, resolution, order or determination by any competent Governmental Authority is entered against the Guarantor and/or any or the Guarantor's officials assessing it as having serious financial problems or being in breach of the applicable budget legislation, including mandatory financial ratios applicable to budget deficit, maximum limits for the Guarantor's debt and expenditures for servicing of that debt or being unable to service or pay its debt as provided for in the Budget Code.
- (m) **Project.** The Borrower or the Guarantor discontinues the Project or any part thereof or otherwise carries out the Project or any part thereof in a manner inconsistent with the Financing Agreements, the Project Agreements, any approval given by EBRD or any other agreements contemplated thereby.
- (n) **Inclusion of the Guarantee Obligations in the Draft Budget.** As at 15 December of any financial year of the Guarantor, the guarantee obligations of the Guarantor under the Guarantee in respect of the next succeeding Financial Year of

the Guarantor have not been duly reflected in the Draft Budget for the next succeeding Financial Year.

- (o) **Inclusion of the Guarantee Obligations in the Budget.** As at 31 December of any Financial Year of the Guarantor, the obligations of the Guarantor under the Guarantee in respect of the next succeeding Financial Year of the Guarantor have not been duly reflected in the Budget.
- (p) **Ceasing to Carry on Activity.** The Borrower ceases to carry on its business.
- (q) **Repudiation.** Any Financing Agreement or Project Agreement or any other agreement required in connection with the Project or the Project Implementation Plan is repudiated, terminated, rescinded or cancelled for any reason or is or becomes void, voidable or unenforceable, or is claimed to be so by any party thereto (other than EBRD).
- (r) **Amendments Without Consent of EBRD.** Any Project Agreement or the Project Implementation Plan is amended or modified without the prior written consent of EBRD.
- (s) **Material Adverse Effect.** Any circumstance or event occurs which, in the reasonable opinion of EBRD, has, or is likely to have, a Material Adverse Effect.

Section 7.02. Consequences of Default

If an Event of Default occurs and is continuing, then EBRD may at its option, by notice to the Borrower, declare all or any portion of the principal of, and accrued interest on, the Loan (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become (anything in this Agreement to the contrary notwithstanding), either:

- (1) due and payable on demand; or
- (2) immediately due and payable without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower.

ARTICLE VIII - MISCELLANEOUS

Section 8.01. Term of Agreement

This Agreement shall continue in force until the date that the obligation of EBRD to make Disbursements hereunder has terminated in accordance with the terms hereof or, if later, until all moneys payable hereunder have been fully paid in accordance with the provisions hereof; provided that the indemnities and warranties of the Borrower and the provisions of Sections 3.10(a), 3.10(d), 8.04, 8.05, 8.08, 8.09, 8.10 and 8.11 shall survive repayment of the Loan and termination of this Agreement.

Section 8.02. Entire Agreement; Amendment and Waiver

This Agreement and the documents referred to herein constitute the entire obligation of the parties hereto with respect to the subject matter hereof and shall supersede any prior expressions of intent or understandings with respect to this transaction. Any amendment to, waiver by EBRD of any of the terms or conditions of, or consent given by EBRD under, this Agreement (including this Section 8.02) shall be in writing, signed by EBRD and, in the case of an amendment, by the Borrower. The parties to this Agreement may by agreement rescind or vary this Agreement without the consent of any person that is not a party to this Agreement. In the event that EBRD waives a condition to any Disbursement, the Borrower shall, by receiving the proceeds of such Disbursement, be deemed to have agreed to all of the terms and conditions of such waiver.

Section 8.03. Notices

(a) Any notice, application or other communication to be given or made under this Agreement to EBRD or to the Borrower shall be in writing. Except as otherwise provided in this Agreement, such notice, application or other communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or facsimile transmission to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.

(b) For the Borrower:

Communal Enterprise "Dnipropetrovska Municipalna Energoservisna Kompanya"
Dnipropetrovskoi Mis'koi Rady
75 Karla Marksa Avenue,
Dnipropetrovs'k, 49000,
Ukraine

Attention: Director

Fax: +38 056 778 63 17

(c) For EBRD:

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Unit

Fax: +44 20 7338 6100

- (d) This Section 8.03 does not apply to the service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution. For the purpose of this Section, "in writing" shall not include e-mails.

Section 8.04. Language of Communications

All documents to be furnished or communications to be given or made under this Agreement shall be in the English language or, if in another language, shall be accompanied by a translation into English certified by the Borrower, which translation shall be the governing version between the Borrower and EBRD, provided that, until otherwise notified by EBRD, the documents to be furnished to EBRD pursuant to Sections 5.14(a)(1) and (2); 5.14(b), (c) and (d) may be furnished in the official language of the Country of Operation.

Section 8.05. Financial Calculations

All financial calculations to be made under, or for the purposes of, this Agreement shall be made in accordance with the Generally Accepted Accounting Principles for the quarterly Financial Statements and in accordance with IFRS for the annual Financial Statements and, except as otherwise required to conform to the provisions of this Agreement, shall be made using the then most recently issued quarterly Financial Statements which the Borrower is required to furnish to EBRD from time to time under Section 5.14(a); provided, however, that:

- (1) if the relevant quarterly Financial Statements should be in respect of the last quarter of a Financial Year then, at EBRD's option, such calculations may instead be made from the audited Financial Statements for the relevant Financial Year; and
- (2) if there should occur any material adverse change in the financial condition of the Borrower after the end of the period covered by the relevant Financial Statements, then such material adverse change shall also be taken into account in calculating the relevant figures.

Section 8.06. Rights, Remedies and Waivers

- (a) The rights and remedies of EBRD in relation to any misrepresentations or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of EBRD into the affairs of the Borrower, by the execution or the performance of this Agreement or by any other act or thing which may be done by or on behalf of EBRD in connection with this Agreement and which might, apart from this Section, prejudice such rights or remedies.
- (b) No course of dealing or waiver by EBRD in connection with any condition of Disbursement under this Agreement shall impair any right, power or remedy of EBRD with respect to any other condition of Disbursement or be construed to be a waiver thereof.

- (c) No action of EBRD in respect of any Disbursement shall affect or impair any right, power or remedy of EBRD in respect of any other Disbursement. Without limiting the foregoing, the right of EBRD to require compliance with any condition under this Agreement which may be waived by EBRD in respect of any Disbursement is, unless otherwise notified to the Borrower by EBRD, expressly preserved for the purposes of any subsequent Disbursement.
- (d) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to EBRD upon any default under this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No action of EBRD in respect of any such default, or acquiescence by it therein, shall affect or impair any right, power or remedy of EBRD in respect of any other default.
- (e) The rights and remedies provided in this Agreement and the other Financing Agreements are cumulative and not exclusive of any other rights or remedies, whether provided by applicable law or otherwise.

Section 8.07. Indemnification

- (a) The Borrower assumes full liability for, and agrees to and shall indemnify and hold harmless EBRD and its officers, directors, employees, agents and servants against and from, any and all liabilities, obligations, losses, damages (compensatory, punitive or otherwise), penalties, claims, actions, Taxes, suits, costs and expenses (including reasonable legal counsel's fees and expenses and costs of investigation) of whatsoever kind and nature, including, without prejudice to the generality of the foregoing, those arising in contract or tort (including negligence) or by strict liability or otherwise, which are imposed on, incurred by or asserted against EBRD or any of its officers, directors, employees, agents or servants (whether or not also indemnified by any other person under any other document) and which in any way relate to or arise out of, whether directly or indirectly:
 - (1) any of the transactions contemplated by any Financing Agreement or Project Agreement or the execution, delivery or performance thereof;
 - (2) the operation or maintenance of the Borrower's facilities or the ownership, control or possession thereof by the Borrower; or
 - (3) the exercise by EBRD of any of its rights and remedies under any of the Financing Agreements.

provided that EBRD shall not have any right to be indemnified hereunder for its own gross negligence or wilful misconduct.

- (b) The Borrower acknowledges that EBRD is entering into this Agreement, and has acted, solely as a lender, and not as an advisor, to the Borrower. The Borrower

represents and warrants that, in entering into the Financing Agreements, it has engaged, and relied upon advice given to it by, its own legal, financial and other professional advisors and it has not relied on and will not hereafter rely on any advice given to it by EBRD.

Section 8.08. Governing Law

This Agreement shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law.

Section 8.09. Arbitration and Jurisdiction

- (a) Any dispute, controversy or claim arising out of or relating to (1) this Agreement, (2) the breach, termination or invalidity hereof or (3) any non-contractual obligations arising out of or in connection with this Agreement, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England. The arbitral tribunal shall not be authorised to grant, and the Borrower agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against EBRD, any provisions of the UNCITRAL Arbitration Rules notwithstanding. The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by EBRD (but no other party) insofar as such dispute arises out of any Financing Agreement, but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings. In any arbitral proceeding, the certificate of EBRD as to any amount due to EBRD under any Financing Agreement shall be *prima facie* evidence of such amount.
- (b) Notwithstanding Section 8.09(a), this Agreement and the other Financing Agreements, and any rights of EBRD arising out of or relating to this Agreement or any other Financing Agreement, may, at the option of EBRD, be enforced by EBRD in the courts of Ukraine or in any other courts having jurisdiction. For the benefit of EBRD, the Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim arising out of or relating to this Agreement or any other Financing Agreement, or the breach, termination or invalidity hereof or thereof. The Borrower hereby irrevocably designates, appoints and empowers Law Debenture Corporate Services Limited at its registered office (being, on the date hereof, at Fifth Floor, 100 Wood Street, London, EC2V 7EX, England) to act as its authorised agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of any Financing Agreement. Failure by a process agent to notify the

Borrower of the process will not invalidate the proceedings concerned. The Borrower hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein. The Borrower covenants and agrees that, so long as it has any obligations under this Agreement, it shall maintain a duly appointed agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of any Financing Agreement and shall keep EBRD advised of the identity and location of such agent. Nothing herein shall affect the right of EBRD to commence legal actions or proceedings against the Borrower in any manner authorised by the laws of any relevant jurisdiction. The commencement by EBRD of legal actions or proceedings in one or more jurisdictions shall not preclude EBRD from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. The Borrower irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal action or proceeding and any claim it may now or hereafter have that any such legal action or proceeding has been brought in an inconvenient forum.

Section 8.10. Privileges and Immunities of EBRD

Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Section 8.09(a) and accordingly, and without prejudice to its other privileges and immunities (including the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 8.09(a).

Section 8.11. Waiver of Sovereign Immunity

The Borrower represents and warrants that this Agreement and the incurring by the Borrower of the Loan are commercial rather than public or governmental acts and that, except as otherwise established by the mandatory requirements of Ukrainian legislation, the Borrower is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or in any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement. To the extent that the Borrower or any of its assets has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgement, other attachment or execution of judgement on the grounds of sovereignty or otherwise, the Borrower hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Agreement.

Section 8.12. Successors and Assigns; Third Party Rights

- (a) This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of EBRD.
- (b) EBRD may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Agreement and the other Financing Agreements (including by the grant of Participations or otherwise) without the consent of the Borrower. EBRD will inform the Borrower of the fact of such assignment, transfer, novation or disposal in due course.
- (c) Except as provided in Section 8.12(a) or 8.12(b), none of the terms of this Agreement are intended to be enforceable by any third party who is not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

Section 8.13. Effectiveness

- (a) *Conditions to effectiveness.* The effectiveness of this Agreement is conditional upon (1) the execution by all the parties thereto of the Guarantee, which shall be in form and substance satisfactory to EBRD and fully effective in accordance with its respective terms; and (2) receipt by EBRD of copies of all budgetary and other laws and normative acts, licenses, authorizations, approvals, consent, filings and registrations necessary or appropriate (in the sole and absolute opinion of EBRD) for the due execution, delivery, performance, validity and enforceability of the Guarantee.
- (b) *Termination for failure to become effective.* Unless EBRD otherwise agrees in writing, this Agreement shall terminate and cease to exist if the aforementioned conditions to effectiveness shall not have been fulfilled (in the sole and absolute opinion of EBRD) within 180 days from the date of this Agreement.

Section 8.14. Disclosure

EBRD may disclose such documents, information and records regarding the Borrower and this transaction (including copies of any Financing Agreements and Project Agreements) as EBRD deems appropriate in connection with any dispute involving the Borrower or any other party to a Financing Agreement, for the purpose of preserving or enforcing any of EBRD's rights under any Financing Agreement or collecting any amount owing to EBRD or in connection with any proposed Participation or any other proposed sale, transfer, assignment, novation or other disposal contemplated by Section 8.12.

Section 8.15. Counterparts

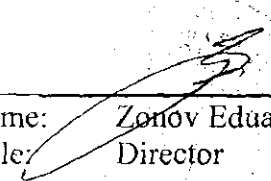
This Agreement may be executed in any number of counterparts and by each party on separate counterparts. Each counterpart in an original, but all counterparts shall together constitute one and the same instrument.

Section 8.16. Language of this Agreement

The parties shall execute both an English language version and a Ukrainian language version of this Agreement. In case of any discrepancy between the two versions, the English language version shall prevail.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

**COMMUNAL ENTERPRISE "DNIPROPETROVSKA MUNICIPALNA
ENERGOSERVISNA KOMPANYA" DNIPROPETROVSKOI MIS'KOI RADY**

By: 
Name: Zonov Eduard Leonidovich
Title: Director

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

By: 
Name: Mark Magaletsky
Title: Senior Banker



SCHEDULE 1 - DEFINITIONS AND GUIDELINES FOR PRIVATE SECTOR OPERATIONS (FRAUD AND CORRUPTION)

The purpose of these Guidelines is to clarify the meaning of the terms "Corrupt Practices", "Fraudulent Practices", "Coercive Practices," and "Collusive Practices" in the context of the EBRD's non-sovereign operations in favour of private sector projects.

1. CORRUPT PRACTICES

"Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party. In implementing this definition, the EBRD will be guided by the following principles:

- (a) The conduct in question must involve the use of *improper means* (such as bribery or kickbacks) by someone to induce another person to act or to refrain from acting in the exercise of his duties, in order to obtain or retain business, or to obtain an undue advantage. Antitrust, securities and other violations of law that are not of this nature fall outside of the definition of Corrupt Practices but may still be scrutinised under alternative procedures.
- (b) It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payer's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.
- (c) In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute Corrupt Practices unless the action violates applicable law.
- (d) Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
- (e) The EBRD does not condone facilitation payments whether they are criminalised or not. Such payments, which are illegal in most countries, are dealt with in accordance with relevant local laws and international conventions.

2. FRAUDULENT PRACTICES

"Fraudulent Practice" means any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial

benefit or to avoid an obligation. In implementing this definition, the EBRD will be guided by the following principles:

- (a) An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice".
- (b) Fraudulent Practices are intended to cover actions or omissions that are directed to or against the EBRD. The expression also covers Fraudulent Practices directed to or against an EBRD member country in connection with the award or implementation of a government contract or concession in a project financed by the EBRD. Frauds on, or other illegal behaviour directed against, other third parties are not condoned. Such behaviour may represent an impediment to doing business with EBRD.

3. COERCIVE PRACTICES

"Coercive Practice" means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party to influence improperly the actions of a party. In implementing this definition, the EBRD will be guided by the following principles:

- (a) Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
- (b) Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation in such implementation.

4. COLLUSIVE PRACTICES

"Collusive Practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party. In implementing this definition, the EBRD will be guided by the principle that Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

5. GENERAL

In implementing the foregoing definitions, the EBRD will be guided by the principle that a person should not be liable for actions taken by unrelated third parties unless that person has participated in the prohibited act in question.

SCHEDULE 2 – PROJECT DESCRIPTION

1. The purpose of the Project is to assist the Borrower in financing the EnPCs in order to ensure the implementation of energy efficiency systems into public buildings in Ukraine.
2. The Project consists of the Parts set out below, subject to such modifications thereof as the EBRD and the Borrower may agree upon from time to time.
3. The Project is expected to be completed by the end of the Commitment Period.

Part A – Capital Investments

EnPC: energy efficiency investments in public buildings

Part B – Technical Cooperation (Consultancy)

- Project implementation support
- EnPC: creating an enabling legal framework for ESCO energy efficiency projects in Ukraine

Exhibit A - Form of Disbursement Application

[To Be Typed on Letterhead of the Borrower]

[Date]

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Unit

Subject: Operation No. 41200

Disbursement Application No. _____¹

Dear Sir/Madam:

1. Please refer to the loan agreement dated 13 December 2013 (the "Loan Agreement") between Communal Enterprise "Dnipropetrovska Municipalna Energoservisna Kompanya" Dnipropetrovskoi Mis'koi Rady (the "Borrower") and European Bank for Reconstruction and Development ("EBRD").
2. Expressions defined in the Loan Agreement shall bear the same meanings herein.
3. We attach to this application for Disbursement a completed Contract Summary Sheet indicating the specific contracts which are to be financed from the Disbursement requested herein (together with a detailed breakdown of the aggregate amounts of all past Disbursements against such contracts). We confirm that the [goods, works and services]¹ covered by this Disbursement application have been or are being purchased in accordance with the terms of the Loan Agreement.
4. We hereby request the following Disbursement in accordance with the provisions of the Loan Agreement:

Currency required:

[insert Loan Currency]

Amount (in figures and words):

Value Date:

[As soon as possible, on a date selected by EBRD in its discretion, but not later than]² _____³

¹ Each application must be numbered in series.

² If the disbursement is required for a specific value date, this bracketed language may be deleted.

³ This date must not be earlier than 10 Business Days after the disbursement application is delivered to EBRD.

Payment Instructions (Borrower's Banking Details):

Borrower's Account Name: _____
Borrower's Account Number (IBAN number)⁴: _____
Borrower's Bank Name: _____
Borrower's Bank Address: _____

Borrower's Bank Correspondent Details:

Correspondent's Name:⁵ _____
Correspondent's Address: _____

Borrower's Bank's Account Name: _____
Borrower's Bank's Account Number (IBAN number)⁶: _____
Reference: _____

5. We hereby represent and warrant that:
- (a) all agreements, documents and instruments delivered to EBRD pursuant to Section 4.01 and 4.02 of the Loan Agreement are in full force and effect and unconditional (except for the Loan Agreement having become unconditional, if that is a condition of any such agreement);
 - (b) the representations and warranties made by the Borrower and the Guarantor in the Financing Agreements and Project Agreements and deemed repeated on the date hereof thereunder are true on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the date hereof;
 - (c) no Default has occurred and is continuing or is imminent;
 - (d) the Borrower will not, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including the Loan Agreement) or by which the Borrower is bound or any law applicable to the Borrower;
 - (e) nothing has occurred which might have a Material Adverse Effect;

⁴ All non-USD payments should include the full IBAN number (International Bank Account Number).

⁵ Name of bank in [____].

⁶ All non-USD payments should include the full IBAN number (International Bank Account Number).

- (f) the proceeds of such Disbursement are needed by the Borrower for the purposes of the Project;
 - (g) the information regarding the application of all previous Disbursements and the current Disbursement against all contracts described in the Contract Summary Sheet is accurate and all contracts referred to therein are in full force and effect;
 - (h) the Borrower has provided to EBRD true and complete copies of the EnPCs as required pursuant to Section 5.10(b) of the Loan Agreement;
 - (i) the Borrower has provided to EBRD certified copies of the contractor's invoice(s) in respect of which the Disbursement is requested; and
 - (j) no eligibility or origin restrictions have been applied by the Borrower in awarding the specific contract which is to be financed from the current Disbursement and such contract has not been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
6. The representations and warranties made in paragraph 5 above will continue to be true on and as of the date of such Disbursement with the same effect as though such representations and warranties had been made on and as of the date of such Disbursement. If any such representation or warranty is no longer true on or prior to or as of the date of such Disbursement, we shall immediately notify EBRD and shall, upon demand by EBRD, repay any amount which has been or is disbursed by EBRD in respect of such Disbursement.
7. The Borrower will retain all invoices from all contractors in respect of all payments to be made by it under this Disbursement and such invoices shall be made available to EBRD if EBRD so requests and the Borrower will provide access to EBRD staff for a review of such invoices.

Yours faithfully,

**COMMUNAL ENTERPRISE "DNIPROPETROVSKA MUNICIPALNA
ENERGOSERVISNA KOMPANYA" DNIPROPETROVSKOI MIS'KOI RADY**

By: _____
Authorised Representative⁷

Attachments:

- Certified copy[ies] of the contractor's invoice[s]

⁷ As named in the Certificate of Incumbency and Authority

Attachment 1 to Exhibit A - Form of Contract summary sheet

European Bank For Reconstruction and Development

Date

Contract Summary Sheet

Operation Name: [●]

DTM ID: 41200

Disbursement Application Number [●]

Schedule A

Planned Payments to be made from this disbursement

First contract name/number				
Name of Contractor				
Currency of Contract				
Amount of Contract:				
Date of Contract				
Invoice number	Invoice amount (in currency of contract)	Invoice Date	Exchange Rate /	Amount of disbursement (in loan currency)
<i>Extend list as required</i>				
Subtotal				0

1/ contract currency/loan currency at date payment

Second contract name/number				
Name of Contractor				
Currency of Contract				
Amount of Contract:				
Date of Contract				
Invoice number	Invoice amount (in currency of contract)	Invoice Date	Exchange Rate 1/	Amount of disbursement (in loan currency)
<i>Extend list as required</i>				

Subtotal				0
-----------------	--	--	--	---

Repeat as required for each contract

Grand total this disbursement		0
----------------------------------	--	---

1/contract currency/loan currency at date payment

Attachment 2 to Exhibit A - Schedule B Summary of payments made from previous disbursements

Name/Number of Contract	Disbursement number	Amount paid to date (currency of contract)	Date of disbursement	Exchange rate /	Amount paid to date (loan currency)
First Contract					
	1				
	2				
	3				
	Etc				
Subtotal					
Second Contract					
	2				
	3				
	4				
	Etc				
Subtotal					
Third Contract					
<i>Repeat as required</i>					
Total					0

Exhibit B - Form of Certificate of Incumbency and Authority

[To Be Typed on Letterhead of the Borrower]

[Date]

European Bank for Reconstruction and Development
 One Exchange Square
 London EC2A 2JN
 United Kingdom

Attention: Operation Administration Unit

Subject: Operation No. 41200
 Certificate of Incumbency and Authority⁸

Dear Sir/Madam:

With reference to the loan agreement dated 13 December 2013 (the "Loan Agreement") between Communal Enterprise "Dnipropetrovska Municipalna Energoservisna Kompanya" Dnipropetrovskoi Mis'koi Rady (the "Borrower") and European Bank for Reconstruction and Development ("EBRD"), I, the undersigned [President]/[Chairman of the Board of Directors]/[Director] of the Borrower, duly authorised by its Board of Directors, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the Borrower that they or any of them no longer continue to be) authorised, on behalf of the Borrower, individually:

- (1) to sign the Loan Agreement, any Disbursement applications, certifications, letters or other documents to be provided under the Loan Agreement and any other agreements to which EBRD and the Borrower may be party in connection therewith; and
- (2) to take any other action required or permitted to be taken by the Borrower under the Loan Agreement or any other agreement to which EBRD and the Borrower may be party in connection therewith:

NAME	OFFICE	SPECIMEN SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

⁸ Designation may be changed by the Borrower at any time by providing a new Certificate of Incumbency and Authority to EBRD.

I further certify that disbursements under the Loan Agreement should be made to the following account (or such other account as the Borrower may from time to time designate by notice to EBRD):

Payment Instructions (Borrower's Banking Details):

Borrower's Account Name: _____

Borrower's Account Number (IBAN number)⁹: _____

Borrower's Bank Name: _____

Borrower's Bank Address: _____

Borrower's Bank Correspondent Details:

Correspondent's Name:¹⁰ _____

Correspondent's Address: _____

Borrower's Bank's Account Name: _____

Borrower's Bank's Account Number

(IBAN number)¹¹: _____

Reference: _____

IN WITNESS WHEREOF, I have signed my name on the date first above written.

Yours faithfully,

**COMMUNAL ENTERPRISE "DNIPROPETROVSKA MUNICIPALNA
ENERGOSERVISNA KOMPANYA" DNIPROPETROVSKOI MIS'KOI RADY**

By: _____

Name:

Title: [President]/[Chairman of the Board of Directors]/[Director]

⁹ All non-USD payments should include the full IBAN number (International Bank Account Number).

¹⁰ Name of bank in [____].

¹¹ All non-USD payments should include the full IBAN number (International Bank Account Number).

Exhibit C - Form of Letter to Auditors

[To Be Typed on Letterhead of the Borrower]

[Date]

[Name of Auditors]

[Address]

Dear Sir/Madam:

We hereby authorise and request you to give to European Bank for Reconstruction and Development ("EBRD") all such information as it may reasonably request with regard to the Financial Statements, both audited and unaudited, which we have agreed to furnish to EBRD under the terms of the loan agreement dated 13 December 2013 (the "Loan Agreement") between ourselves and EBRD. For your information, we enclose a copy of the Loan Agreement.

We authorise you to send our audited accounts to EBRD to enable us to satisfy the reporting requirements set forth in Section 5.14 of the Loan Agreement. When submitting such audited accounts to EBRD, you are also requested to send, at the same time, a copy of your full report on such accounts in a form acceptable to EBRD.

For our records, please ensure that you send to us a copy of every letter which you receive from EBRD immediately upon receipt and a copy of each reply made by you immediately upon the issue thereof.

Yours faithfully,

**COMMUNAL ENTERPRISE "DNIPROPETROVSKA MUNICIPALNA
ENERGOSERVISNA KOMPANYA" DNIPROPETROVSKOI MIS'KOI RADY**

By: _____
Authorised Representative

Enclosure: Loan Agreement

cc: European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Attention: Operation Administration Unit
Subject: Operation No. 41200
