

**EXECUTION COPY**

(Operation Number 41200)

**GRANT AGREEMENT**

**BETWEEN**

**COMMUNAL ENTERPRISE**

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

**AND**

**DNIPROPETROVSK CITY COUNCIL**

**AND**

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

in respect of an investment grant  
from the Eastern Europe Energy Efficiency and Environment Partnership (E5P)  
Fund for Energy Efficiency Investments in Public Buildings financed through  
Energy Service Companies (ESCOs)

Dated 13 December 2013

## TABLE OF CONTENTS

<b>ARTICLE I - DEFINITIONS.....</b>	<b>2</b>
Section 1.01 Definitions .....	2
Section 1.02 Interpretation.....	4
<b>ARTICLE II - REPRESENTATIONS AND WARRANTIES .....</b>	<b>5</b>
Section 2.01 Representations of the Recipient.....	5
Section 2.02 Representations of the City Council .....	5
Section 2.03 Acknowledgment and Repetition .....	6
<b>ARTICLE III - GRANT FINANCING.....</b>	<b>7</b>
Section 3.01 Amount, currency and purpose.....	7
Section 3.02 Disbursements.....	7
Section 3.03 Suspension and cancellation .....	7
Section 3.04 Payments .....	9
Section 3.05 Taxes .....	9
<b>ARTICLE IV - CONDITIONS PRECEDENT .....</b>	<b>9</b>
Section 4.01 First Disbursement of the Grant Financing .....	9
Section 4.02 All Disbursements of the Grant Financing.....	10
<b>ARTICLE V - OBLIGATIONS OF THE RECIPIENT.....</b>	<b>12</b>
Section 5.01 Use of the Grant Financing.....	12
Section 5.02 Compliance with the Loan Agreement .....	12
Section 5.03 Environmental and social compliance .....	12
Section 5.04 Insurance .....	12
Section 5.05 Accounting.....	13
Section 5.06 Continuing Governmental and Other Authorisations .....	13
Section 5.07 Project Implementation Plan.....	13
Section 5.08 Furnishing of information .....	13
Section 5.09 Procurement.....	15
Section 5.10 Fraud and Corruption .....	15
Section 5.11 Eligibility of Contractor.....	15
Section 5.12 Visibility .....	15
Section 5.13 Contracts .....	15
Section 5.14 Amendment to the Loan Agreement.....	16
Section 5.15 Additional Documents and Power of Attorney .....	16
Section 5.16 Project Support and Other Undertakings from the City Council .....	16
<b>ARTICLE VI - TRIGGERING EVENTS .....</b>	<b>17</b>
Section 6.01 Triggering Events .....	17
Section 6.02 Consequences of Triggering Event .....	17
<b>ARTICLE VII - MISCELLANEOUS.....</b>	<b>18</b>
Section 7.01 Term of this Agreement .....	18
Section 7.02 Entire Agreement; Amendment and Waiver .....	18
Section 7.03 Notices.....	18
Section 7.04 English Language .....	19
Section 7.05 Rights, Remedies and Waivers .....	20
Section 7.06 Indemnification.....	20

<b>Section 7.07</b>	<b>Governing law .....</b>	<b>21</b>
<b>Section 7.08</b>	<b>Arbitration and Jurisdiction .....</b>	<b>21</b>
<b>Section 7.09</b>	<b>Privileges and Immunities of the Bank.....</b>	<b>22</b>
<b>Section 7.10</b>	<b>Waiver of sovereign immunity .....</b>	<b>23</b>
<b>Section 7.11</b>	<b>Successors and Assigns; Third Party Rights.....</b>	<b>23</b>
<b>Section 7.12</b>	<b>Effectiveness.....</b>	<b>23</b>
<b>Section 7.13</b>	<b>Disclosure .....</b>	<b>23</b>
<b>Section 7.14</b>	<b>Counterparts.....</b>	<b>24</b>
 <b>SCHEDULE 1 - THE GRANT FINANCED ITEMS .....</b>		<b>26</b>
 <b>EXHIBIT 1 - FORM OF DISBURSEMENT REQUEST.....</b>		<b>E1-1</b>
 <b>EXHIBIT 2 - FORM OF CONTRACT SUMMARY SHEET .....</b>		<b>E2-1</b>
 <b>EXHIBIT 3 - FORM OF CERTIFICATE OF INCUMBENCY AND AUTHORITY .....</b>		<b>E3-1</b>

**GRANT AGREEMENT** (the “**Agreement**”) dated 13 December 2013 between **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 Leonidovych, acting on the basis of the Recipient's charter and the resolution of the Dnipropetrovsk City Council No. 15/43 dated 27 November 2013 (the “**Recipient**”), the **DNIPROPETROVSK CITY COUNCIL**, a body of local self-governance that represents the territorial community of the City of Dnipropetrovsk, a legal entity organised and existing under the laws of Ukraine, with its registered office at 75 Karla Marksa Avenue, Dnipropetrovsk, 49000, Ukraine (the “**City Council**”), represented by Kulichenko Ivan Ivanovych, the Mayor of the City of Dnipropetrovsk, acting on the basis of Article 42 of the Law of Ukraine No. 280/97-BP “On Local Self-Governance”, dated 21 May 1997 as amended, and resolution of Dnipropetrovsk City Council No. 15/43 dated 27 November 2013, and the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation established pursuant to an international multilateral treaty, having its legal address at One Exchange Square, London, EC2A 2JN, UK (the “**Bank**” or “**EBRD**”), represented by its duly authorised representative Mark Magaletsky, acting on the basis of authority confirmed in the certificate dated 6 December 2013 issued by the Bank.

**WHEREAS:**

- (A) EBRD is an international financial institution established under international law pursuant to the Agreement Establishing the European Bank for Reconstruction and Development (the “**Agreement Establishing the Bank**”) dated 29 May 1990.
- (B) On 13 December 2013, the Bank entered into a loan agreement with the Recipient in its capacity as Borrower, pursuant to which the Bank as lender agreed to make a loan of up to EUR 10,000,000 (ten million Euro), subject to the terms and conditions set forth in the loan agreement as may be amended from time to time (the “**Loan Agreement**”) for the financing of part of the Project, (as described in the Loan Agreement).
- (C) Pursuant to Article 20.1 (viii) of the Agreement Establishing the Bank, the Bank has established the Eastern Europe Energy Efficiency and Environment Partnership Fund (the “**E5P Fund**”) which is managed and administered in accordance with the Rules of the E5P Fund dated 10 November 2010, as may be amended from time to time (the “**Rules of the E5P Fund**”).
- (D) The Bank has agreed to act as Implementing Agency (as defined in Section 1.01 (*Definitions*) of this Agreement) with respect to the financing provided by the E5P Fund for the Project.
- (E) In accordance with the terms and conditions of the Rules of the E5P Fund, on 6 December 2012, the Assembly of Contributors of the E5P Fund (as defined in Section 1.01 (*Definitions*) of this Agreement) approved the extension of a non-refundable investment grant to the Recipient in an amount not to exceed EUR

2,500,000 (two million five hundred thousand Euro) from the ESP Fund, subject to and on the terms and conditions set forth in this Agreement, to finance the procurement of certain goods, works and related services in relation to the Project.

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

## **ARTICLE I - DEFINITIONS**

### **Section 1.01 Definitions**

Words and expressions capitalised in this Agreement (including the Appendices and the Recitals) but not herein defined shall have the same meaning ascribed thereto in the Loan Agreement when used in this Agreement.

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

- “Agreement Establishing the Bank”** has the meaning ascribed to it in Recital A.
- “Assembly of Contributors”** means the governing body of the ESP Fund.
- “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.
- “City Council”** has the meaning given to it in the parties’ section at the beginning of this Agreement.
- “Contract(s)”** means each and all the contracts to be entered into between the Recipient and any Contractor(s), in form and substance satisfactory to the Bank, in connection with the procurement of goods, works and services for the Project, including the Grant Financed Items, and to be financed in whole or in part with the Grant Financing.
- “Contractor(s)”** means each and all the contractors and suppliers of good standing and repute to be engaged by the Recipient in connection with the procurement of goods, works and services for the Project, including the Grant Financed Items, with each such contractor and supplier to be selected in accordance with Section 5.09 (*Procurement*) of this Agreement.

<b>“Contributor(s)”</b>	means any member of the Bank and/or public entity which has contributed funds to the E5P Fund.
<b>“Currency”</b>	means the lawful currency of a country which is legal tender for the payment of public and private debts in that country.
<b>“Disbursement”</b>	means the disbursement of any portion of the Grant Financing from time to time pursuant to Section 3.02 ( <i>Disbursements</i> ) of this Agreement.
<b>“Effective Date”</b>	has the meaning ascribed to it in Section 7.12 of this Agreement.
<b>“E5P Fund”</b>	has the meaning ascribed to it in Recital C.
<b>“Grant Financed Items”</b>	means the goods, works and services to be supplied and performed under EnPCs as per Schedule 1 ( <i>Grant Financed Items</i> ) to this Agreement which are necessary for the Project and eligible to be financed, in whole or in part, from the Grant Financing.
<b>“Grant Financing”</b>	has the meaning ascribed to it under Section 3.01(a) ( <i>Amount, Currency and Purpose</i> ) of this Agreement.
<b>“Implementing Agency”</b>	means an implementing agency for any project supported by the E5P Fund as designed in accordance with the Rules of the E5P Fund.
<b>“Loan Agreement”</b>	has the meaning ascribed to it in Recital B.
<b>“Loan Financing”</b>	means financing made or to be made available by the Bank to the Recipient in its capacity as Borrower under the Loan Agreement.
<b>“Material Adverse Effect”</b>	means a material adverse effect on: <ul style="list-style-type: none"> <li>(a) the ability of the Recipient or the City Council to perform or comply with any of its obligations under this Agreement;</li> <li>(b) the legality, validity, enforceability and binding nature of this Agreement or any Contract(s) or the legal rights and remedies of the Bank under this Agreement;</li> <li>(c) the Recipient’s ability to implement or operate the Project substantially in the manner contemplated by this Agreement; or</li> </ul>

(d) the Recipient's business, operations, financial condition or future commercial activity.

**"Project"** means the project as described in Schedule 2 of the Loan Agreement.

**"Recipient"** has the meaning given to it in the parties' section at the beginning of this Agreement.

**"Rules of the ESP Fund"** has the meaning ascribed to it in Recital C.

**"Triggering Event"** means any one of the events or occurrences specified in Section 6.01 (*Triggering Events*) of this Agreement.

## **Section 1.02 Interpretation**

In this Agreement:

- (a) unless the context otherwise requires, words denoting the singular include the plural and vice versa;
- (b) 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) a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, novation, replacement, 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) the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Agreement;
- (e) a Triggering Event is outstanding or continuing until it has been remedied or waived by the Bank in writing;
- (f) 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;
- (g) any reference to a provision of law, is a reference to that provision as from time to time amended or re-enacted;
- (h) 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; and

- (i) "including" and "include" shall be deemed to be followed by "without limitation" where not so followed.

## **ARTICLE II - REPRESENTATIONS AND WARRANTIES**

### **Section 2.01 Representations of the Recipient**

- (a) All the representations and warranties made by the Recipient in its capacity as Borrower under Sections 2.01 (*Representations regarding the Project*), 2.02 (*Representations regarding the Borrower*) and 2.03 (*Representations regarding the Agreements*) of the Loan Agreement are repeated by the Recipient as if set out herein in full mutatis mutandis, including without prejudice to the generality thereof as if references to the "Borrower" were read as references to the "Recipient".
- (b) The Recipient further warrants and represents that:
  - (i) This Agreement constitutes the valid and legally binding obligations of the Recipient, enforceable in accordance with its respective terms;
  - (ii) Neither the Recipient nor any officers, directors, authorised employees, Affiliates, agents, representatives or the Contractors of the Recipient has committed or engaged in, with respect to the Project, or any transactions contemplated by this Agreement, any Prohibited Practice; and
  - (iii) The procurement of each Grant Financed Item is exempt from Taxes in accordance with any applicable law and, in any case, no part of the Grant Financing, shall be used to pay any Taxes.

### **Section 2.02 Representations of the City Council**

The City Council hereby represents and warrants to EBRD as follows:

- (a) the City Council is a self-governing authority, which represents the territorial community of the City of Dnipropetrovsk, Ukraine, duly organised and validly existing under the laws of Ukraine;
- (b) the City Council has the power to enter into and perform this Agreement and any other agreement and instrument contemplated hereby. The City Council owns and has a good title to all its assets which are necessary for the implementation of the Project. Such assets are free from any restrictions or covenants which might have a Material Adverse Effect;



- (c) this Agreement has been duly authorised by all competent bodies of the City Council. This Agreement has been duly executed by the City Council and constitutes its valid and legally binding obligations, enforceable in accordance with its terms. The making of this Agreement and the compliance with the terms of this Agreement:
  - (i) will not result in a violation of any applicable laws or any constituent act or any provision of applicable laws;
  - (ii) will not conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any lien under, any agreement or instrument to which the City Council is a party or by which the City Council or any of its assets are bound; and
  - (iii) will not constitute a Default or a Potential Event of Default under any such agreement or instrument;
- (d) all consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Agreement and the transactions contemplated hereby have been obtained and are in full force and effect;
- (e) the territorial community of the City of Dnipropetrovsk, represented by the City Council, is the sole owner of the Recipient; and
- (f) the City Council 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.

### **Section 2.03 Acknowledgment and Repetition**

- (a) Each of the Recipient and the City Council acknowledges that it has made the representations and warranties contained or referred to in Section 2.01 (Representations of the Recipient), Section 2.02 (Representations of the City Council) respectively and Section 7.10 (Waiver of Sovereign Immunity) of this Agreement with the intention of inducing the Bank to enter into this Agreement and provide the Grant Financing and that the Bank has entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties. Each of the Recipient and the City Council warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading.
- (b) Representations and warranties provided in this Article II (*Representations and Warranties*) shall be deemed to be repeated on the Effective Date, the date of submission of each Disbursement request and on each Disbursement date.

## ARTICLE III - GRANT FINANCING

### Section 3.01 Amount, currency and purpose

- (a) Subject to and in accordance with this Agreement, the Bank agrees to provide to the Recipient, a grant from the ESP Fund in the amount not to exceed EUR 2,500,000 (two million five hundred thousand Euro) (the “**Grant Financing**”) solely for the purposes of financing the Grant Financed Items to be procured in accordance with Section 5.09 (*Procurement*) of this Agreement.
- (b) Subject to Section 6.02 (*Consequences of Triggering Event*) of this Agreement, the Grant Financing is non-refundable.
- (c) It is expressly acknowledged and agreed that the Bank will not be obliged to make any Disbursement or any other payment under and/or pursuant to this Agreement, except to the extent that an amount in respect of, and equal to, such Disbursement or such payment is available in the ESP Fund for such purpose.

### Section 3.02 Disbursements

- (a) Subject to Section 3.03 (*Suspension and Cancellation*), and Article IV (*Conditions Precedent*) and paragraphs (b)-(d) below of this Section, the Grant Financing shall be disbursed by the Bank from time to time on any Business Day, in one or more Disbursements upon the request of the Recipient. The Recipient may request a Disbursement by submitting to the Bank an original request for such Disbursement, in the form of Exhibit 1 (*Form of Disbursement Request*) and in substance satisfactory to the Bank, at least ten (10) Business Days prior to the proposed date of such Disbursement. Such request shall, unless the Bank otherwise agrees, be irrevocable and binding on the Recipient.
- (b) Except as the Bank otherwise agrees, no Disbursement shall be made after the expiration of the Commitment Period.
- (c) Disbursements (other than a Disbursement of the entire undisbursed amount of the Grant Financing as the case may be) shall be made in amounts of not less than EUR 300,000 (three hundred thousand) other than the last Disbursement.
- (d) Notwithstanding anything in this Agreement to the contrary, the obligation of EBRD to make any Disbursement under this Agreement shall also be subject to the condition that the aggregate amount requested for disbursement and/or disbursed to the Recipient under this Agreement shall not at any time exceed 50% of aggregate amount disbursed under the Loan Agreement.

### Section 3.03 Suspension and cancellation

- (a) If any of the following events shall have occurred and be continuing, the Bank may, by notice to the Recipient, suspend or cancel the right of the Recipient to all or any portion of any further Disbursements under this Agreement:

- (i) if the first Disbursement has not been made by the date referred to in, or otherwise agreed pursuant to, Section 3.03(a)(i) (*Suspension and Cancellation*) of the Loan Agreement;
  - (ii) if the Bank has suspended disbursements or cancelled all or any part of the Loan Financing, or if the Bank has the right to suspend disbursements or cancel all or any part of the Loan Financing, pursuant to Section 3.03 (*Suspension and Cancellation*) of the Loan Agreement;
  - (iii) if the Recipient in its capacity as Borrower cancels all or any part of the Loan Financing, pursuant to Section 3.03 (*Suspension and Cancellation*) of the Loan Agreement;
  - (iv) if a Triggering Event has occurred and is continuing;
  - (v) if the E5P Fund has terminated pursuant to the Rules of the E5P Fund, or notice of termination has been given in accordance with the Rules of the E5P Fund;
  - (vi) if the Assembly of Contributors has decided to terminate this Agreement pursuant to the Rules of the E5P Fund;
  - (vii) if alternative funding proves to have been acquired for the financing of the Project, thus giving rise to double-financing (either in whole or in part); or
  - (viii) if it is or has become unlawful in any jurisdiction for the Bank to make, maintain or fund the Grant Financing or perform any of its obligations under this Agreement.
- (b) Upon the issuance of such notice by the Bank, the right of the Recipient to further Disbursements shall be suspended or cancelled as indicated in the notice. The exercise by the Bank of the right of suspension shall not preclude the Bank from exercising its right of cancellation as provided in this Section 3.03 (*Suspension and Cancellation*), either for the same or another reason, and shall not limit any other rights of the Bank under any of this Agreement, the Loan Agreement and any other Financing Agreement.
- (c) The Recipient shall have the right at any time, on not less than thirty (30) days' prior notice to the Bank, to cancel in whole or in part any undisbursed portion of the Grant Financing provided that the Bank is satisfied that adequate financing will remain available to the Recipient following such cancellation to enable the Recipient to complete the Project in accordance with the Project Implementation Plan. Any such notice of cancellation by the Recipient shall be irrevocable and binding on the Recipient. Amounts of the Grant Financing which are cancelled by the Recipient may not be reinstated.

### **Section 3.04      Payments**

- (a) The sums to be disbursed by the Bank to the Recipient under this Agreement shall be payable in Euro for value, unless otherwise agreed by the Recipient and the Bank, on the value date requested by the Recipient in its Disbursement request.
- (b) Unless otherwise agreed in writing by the Bank, the sums to be disbursed by the Bank under this Agreement shall be paid directly to the account of the relevant Contractor as the Recipient designates in its Disbursement request.
- (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.
- (d) Any amounts that may become due to the Bank under this Agreement shall be paid, without set-off or counterclaim in Euro, for value on the due date, to such account in London, England or one of the member states of the European Union in which Euro is the lawful currency or such other place as the Bank may from time to time designate by notice to the Recipient.

### **Section 3.05      Taxes**

- (a) The Recipient and the City Council shall be jointly responsible for the payment, when due, of all Taxes levied on the Recipient and payable on, or in connection with, the execution, issue, delivery, registration or notarisation of this Agreement or any other document related to this Agreement.
- (b) No part of the proceeds of the Grant Financing shall be used, directly or indirectly, for the payment of any Taxes, be they direct or indirect, in the territory of Ukraine or elsewhere.

## **ARTICLE IV - CONDITIONS PRECEDENT**

### **Section 4.01      First Disbursement of the Grant Financing**

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

- (a) the Bank shall have received two duly executed originals of this Agreement;
- (b) all conditions precedent to first disbursement of the Loan Financing under Section 4.01 (*First Disbursement*) of the Loan Agreement have been fulfilled, in form and substance satisfactory to the Bank;

- (c) the Bank shall have received a certificate of incumbency and authority of the Recipient substantially in the form of Exhibit 3 (*Form of Certificate of Incumbency and Authority*);
- (d) the Bank shall have received certified copies of all corporate (including, if required, shareholder) Authorisations necessary for the due execution, delivery and performance of this Agreement by the Recipient, including the authorisations of the persons signing this Agreement to sign and to bind the Recipient thereby;
- (e) the Bank shall have received certified copies of all Authorisations necessary for the execution, delivery and performance of this Agreement by the Recipient;
- (f) the Bank shall have received an original insurance certificate from the Recipient's insurer or insurance broker showing that all insurance policies and endorsements required pursuant to Section 5.04 (*Insurance*) are in full force and effect and certified copies of such insurance policies and endorsements;
- (g) the Bank shall have received evidence that the Auditors have been authorised to communicate directly with the Bank in respect of information requested by and furnished to the Bank under the terms of this Agreement;
- (h) the Bank shall have received written confirmation from the agents for service of process appointed by the Recipient and the City Council for service under this Agreement of their acceptances of such appointments;
- (i) the Bank shall have received the following legal opinions:
  - (a) the opinion of the Head Counsel of the Recipient's in-house legal department; and
  - (b) the opinion of the legal department of the City Council;

in form and substance satisfactory to the Bank, regarding this Agreement and showing, *inter alia*, that this Agreement has been duly authorised or ratified by, executed and delivered on behalf of each of the Recipient and the City Council respectively, and constitutes a valid and legally binding obligation of the Recipient and the City Council respectively, enforceable in accordance with its terms; and
- (j) the Bank shall have received certified copies of the (i) application of the Recipient for the registration of this Agreement with the NBU and (ii) The NBU Registration Certificate.

#### **Section 4.02 All Disbursements of the Grant Financing**

The obligation of the Bank to make any Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to the Bank, or at the sole discretion of the Bank the waiver, whether in whole or part and whether subject to conditions or

unconditional, of the conditions that, on the date of the Recipient's application for such Disbursement and on the date of such Disbursement:

- (a) the Loan Agreement shall be in full force and effect and the Recipient shall be in compliance with all of its obligations in its capacity as Borrower under the Loan Agreement;
- (b) all conditions precedent to disbursement of the Loan Financing under Section 4.02 (*All Disbursements*) of the Loan Agreement have been fulfilled, in form and substance satisfactory to the Bank;
- (c) all agreements, documents and instruments delivered to the Bank pursuant to Section 4.01 (*First Disbursement of the Grant Financing*) of this Agreement shall be in full force and effect and unconditional (except, on the first Disbursement only, for this Agreement having become unconditional, if that is a condition of any such agreement);
- (d) the representations and warranties made or confirmed by each the Recipient and the City Council in this Agreement 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;
- (e) no Triggering Event shall have occurred and be continuing under this Agreement and neither the Recipient nor the City Council shall, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Recipient or the City Council is a party (including this Agreement) or by which the Recipient or the City Council is bound or any law applicable to the Recipient or the City Council;
- (f) nothing shall have occurred which, in the reasonable opinion of the Bank, might have a Material Adverse Effect;
- (g) the Recipient must demonstrably need the Disbursement proceeds for bona fide purposes of the Project and the Bank shall have received both (i) such evidence as to the proposed utilisation of the proceeds of a relevant Disbursement and (ii) such evidence of the utilisation of the proceeds of any prior Disbursement(s) as the Bank may reasonably request;
- (h) the Bank shall have received an original of the Recipient's timely request for such Disbursement, in compliance with the requirements set out in Section 3.02 (Disbursements) of this Agreement and substantially in the form of Exhibit 1 (*Form of Disbursement Request*);
- (i) the aggregate amount requested for Disbursement and/or disbursed to the Recipient under this Agreement shall not at any time exceed 50% of aggregate amount disbursed under the Loan Agreement;
- (j) 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;

- (k) the Bank shall have received certified copies of the Contractor's invoice(s) in respect of which the Disbursement is requested;
- (l) the Bank shall have received certified copies of the duly executed originals of the relevant Contract(s) up to ten (10) days prior to the value date of the Disbursement;
- (m) the Bank shall have received such other documents and legal opinions as the Bank may have reasonably requested; and
- (n) no eligibility or origin restrictions have been applied by the Recipient 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.

## **ARTICLE V - OBLIGATIONS OF THE RECIPIENT**

Unless the Bank agrees otherwise in writing:

### **Section 5.01      Use of the Grant Financing**

The Recipient shall at all times, and from time to time, use the Grant Financing strictly and solely for the purposes contemplated in this Agreement.

### **Section 5.02      Compliance with the Loan Agreement**

The Recipient shall at all times, and from time to time, comply with all of its obligations in its capacity as Borrower under the Loan Agreement.

### **Section 5.03      Environmental and social compliance**

Except as the Bank otherwise agrees, the Recipient shall ensure that the part of the Project financed with the Grant Financing is carried out in accordance with Section 5.03 (*Environmental and Social Compliance*) of the Loan Agreement.

### **Section 5.04      Insurance**

The Recipient shall ensure that the Grant Financed Items are adequately insured at all times against hazards incidental to the acquisition, transportation and delivery thereof to the place of use or installation, and where applicable against hazards during the construction period.

#### **Section 5.05      Accounting**

- (a) The Recipient shall maintain separate books of account and other records in respect of the Grant Financing, in accordance with accounting standards acceptable to the Bank and consistently applied.
- (b) The Recipient shall ensure that the authorisation given to the Auditors pursuant to Section 5.05(d) (*Accounting*) of the Loan Agreement to communicate directly with the Bank extends to information requested by the Bank under the terms of this Agreement and in connection with the use of the Grant Financing.

#### **Section 5.06      Continuing Governmental and Other Authorisations**

The Recipient shall obtain and maintain in force (or, where appropriate, renew) all Authorisations required for the purposes described in Sections 4.01(d), 4.01(e) and 4.01(j) of this Agreement. The Recipient shall perform and observe all the conditions and restrictions contained in, or imposed on the Recipient by, such Authorisations.

#### **Section 5.07      Project Implementation Plan**

The Recipient shall ensure that the Project Implementation Plan submitted to and approved by the Bank pursuant to the Loan Agreement includes the Grant Financed Items and the Contract(s).

#### **Section 5.08      Furnishing of information**

- (a) The Recipient acknowledges that in receiving information pursuant to the Loan Agreement in its capacity as lender, the Bank may use and rely on any such information in its capacity as provider of the Grant Financing under this Agreement
- (b) The Recipient shall ensure that information furnished to the Bank in compliance with the Recipient's obligations, in its capacity as Borrower, pursuant to Section 5.14 (*Furnishing of Information and Reporting requirements*) of the Loan Agreement includes:
  - (i) detailed information concerning the Contracts, the Contractors, the Grant Financing and its use as well as the Grant Financed Items, in form and substance satisfactory to the Bank;
  - (ii) sufficient information to enable tracking the Grant Financing distinct from the Loan Financing; and
  - (iii) such other information regarding *inter alia* the Recipient, the Project and transactions contemplated in this Agreement as the Bank may from time to time reasonably request.



- (c) As soon as available but in any event, within thirty (30) days after completion of the last Contract, the Recipient shall furnish to the Bank (if requested by the Bank, certified by an authorised officer of the Recipient) a final report in form and substance satisfactory to the Bank with regard to the use of the Grant Financing, which will specify in detail all Contracts, all Contractors, the Grant Financed Items and the delivery and erection schedules, and comparison against original forecasts.
- (d) As soon as available but in any event, within thirty (30) days after the Project is completed, the Recipient shall furnish to the Bank (if requested by the Bank, certified by an authorised officer of the Recipient) a final report in form and substance satisfactory to the Bank with regard to the Project, identifying the use of the Grant Financing.
- (e) Upon completion of the Grant Financed Items in accordance with the Project Implementation Plan, the Recipient shall furnish to the Bank a report, in form and scope satisfactory to the Bank, each year and for three (3) years, in respect of the energy consumption of the buildings where the energy efficiency investments have been made compared against the energy consumption of buildings of similar construction type, age and size equipped with meters only.
- (f) Upon the Bank's request, the Recipient shall promptly furnish to the Bank satisfactory evidence that the Grant Financed Items are adequately insured.
- (g) Immediately upon the occurrence of any Triggering Event, the Recipient shall give the Bank notice thereof by facsimile transmission specifying the nature of such Triggering Event and any steps the Recipient is taking to remedy the same.
- (h) The Recipient shall promptly notify the Bank if the Recipient obtains any information regarding a violation of Section 2.01(b) (*Representation of the Recipient*) or Section 5.10 (*Fraud and Corruption*) of this Agreement. If the Bank notifies the Recipient of its concern that there has been a violation of such Section 2.01(b) or such Section 5.10 of this Agreement, the Recipient shall cooperate in good faith with the Bank and its representative in determining whether such a violation has occurred and shall respond promptly and in reasonable detail to any such notice from the Bank and shall furnish documentary support for such response upon the Bank's request.
- (i) The Recipient shall permit representatives of the Bank, including, *inter alia*, any consultants engaged by the Bank at all times to inspect the Project and any other offices and facilities of the Recipient, to access the Recipient's premises and books of account and records, and to examine any and all goods, works, and services financed out of the proceeds of the Grant Financing.
- (j) The Recipient shall retain at least 10 (ten) years following completion of the project all records (contracts, orders, invoices, bills, receipts and other documents) evidencing expenditures covered by the Grant Financing.
- (k) The Recipient shall furnish promptly to the Bank such other information as the Bank may from time to time reasonably request and shall facilitate any

evaluation missions relating to the performance of the project and/or (including on the spot) checks which the Contributors to the ESP may request.

#### **Section 5.09 Procurement**

The provisions of Section 5.07 (*Procurement*) of the Loan Agreement shall apply as if set out herein in full *mutatis mutandis*, including without prejudice to the generality thereof, as if:

- (i) references to the “Borrower” were read as references to the “Recipient”;
- (ii) references to the “proceeds of the Loan” were read as references to the “proceeds of the Grant Financing”; and
- (iii) references to “the date of this Agreement” were read as references to “the date of the Grant Agreement”.

#### **Section 5.10 Fraud and Corruption**

The Recipient 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, the Grant Financing or any transactions contemplated by this Agreement, any Prohibited Practice.

#### **Section 5.11 Eligibility of Contractor**

The Recipient shall not apply for a Disbursement where eligibility or origin restrictions have been applied by the recipient 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 5.12 Visibility**

The Recipient shall take appropriate measures to ensure that appropriate visibility is given in relevant publications, communications, as well as media, the fact that the Project has received funding from *inter alia* the ESP Fund.

#### **Section 5.13 Contracts**

- (a) The Recipient shall provide the Bank with certified copies of all executed originals of the Contracts not later than ten (10) days from the date thereof.

- (b) The Recipient shall ensure that all Contracts include provisions satisfactory to the Bank requiring any Contractor and its contractors not to engage in any Prohibited Practice.

#### **Section 5.14      Amendment to the Loan Agreement**

The Recipient shall obtain the approval of the Bank, in its capacity as provider of the Grant Financing pursuant to this Agreement, before agreeing to any amendment to the Loan Agreement pursuant to its Section 8.02 (*Entire Agreement; Amendment and Waiver*).

#### **Section 5.15      Additional Documents and Power of Attorney**

The Recipient and the City Council shall execute all such other documents and instruments and do all such other acts and things as the Bank may determine are necessary or desirable to give effect to the provisions of this Agreement and to cause this Agreement to be duly registered, notarised and stamped in any applicable jurisdiction. The Recipient and the City Council respectively hereby irrevocably appoint and constitute the Bank as the Recipient's and the City Council's true and lawful attorney with right of substitution (in the name of the Recipient or otherwise) to execute such documents and instruments and to do such acts and things in the name of and on behalf of the Recipient in order to carry out the provisions hereof.

#### **Section 5.16      Project Support and Other Undertakings from the City Council**

The City Council hereby irrevocably and unconditionally undertakes:

- (a) to take any and all necessary or advisable legislative, regulatory, budgetary or other actions to ensure that the Recipient complies with its obligations under this Agreement and implements the Project in accordance with the Project Implementation Plan;
- (b) to refrain from taking any action which, in the opinion of the EBRD, might have an adverse effect on the ability of the Recipient to meet its obligations under this Agreement;
- (c) where any obligation of the Recipient under this Agreement requires the approval of the City Council, to grant such approval within the timeframes set out in the applicable laws, but as soon as practical so as to enable the Recipient to proceed with implementation of the Project uninterrupted and without delays; and
- (d) promptly furnish to EBRD such information as EBRD may from time to time reasonably request.

## ARTICLE VI - TRIGGERING EVENTS

### Section 6.01 Triggering Events

Each of the following events and occurrences shall constitute a Triggering Event under this Agreement:

- (a) The Recipient has failed or fails to perform any of its obligations under this Agreement (including, *inter alia*, due to the failure of the City Council to comply with its obligations under this Agreement) or any of its obligations in its capacity as Borrower under the Loan Agreement, and, if capable of remedy, such failure to perform has continued for a period of thirty (30) days after notice thereof has been given by the Bank.
- (b) Any representation or warranty made, confirmed or repeated by each of the Recipient and the City Council in this Agreement was false or misleading.
- (c) Any Event of Default under the Loan Agreement has occurred or is continuing and the Bank has declared all or any portion of the Loan Financing to be due and payable pursuant to Section 7.02 (*Consequence of Default*) of the Loan Agreement.
- (d) The Loan Agreement ceases to be in full force and effect or is terminated.
- (e) The Recipient in its capacity as Borrower has cancelled in whole or in part any undisbursed portion of the Loan Financing pursuant to Section 3.03(b) (*Suspension and Cancellation*) of the Loan Agreement.
- (f) Any circumstance or event occurs which, in the reasonable opinion of the Bank is likely to have a Material Adverse Effect.
- (g) The Bank shall have determined in accordance with EBRD's Enforcement Policies and Procedures that the Recipient or a Contractor has engaged in a Prohibited Practice in competing for, or in executing, a Contract and the Bank shall have declared the Recipient ineligible, either indefinitely or for a stated period of time, to be awarded an EBRD-financed contract.

### Section 6.02 Consequences of Triggering Event

If a Triggering Event occurs and is continuing, the Bank may, at its option, by notice to the Recipient or, if the Recipient fails to pay within 60 days of EBRD's notice or refuses to do so, to the City Council, demand that the Recipient or the City Council respectively refunds all or any portion of the Grant Financing (and pays any other amounts accrued or payable under this Agreement) and the same shall thereupon become (anything in this Agreement to the contrary notwithstanding), either:

- (i) due and payable on demand; or

- (ii) 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 Recipient.

## **ARTICLE VII - MISCELLANEOUS**

### **Section 7.01      Term of this Agreement**

- (a) This Agreement shall continue in force until the Recipient has performed all of its obligations in accordance with the provisions hereof, unless earlier terminated in accordance with its terms; provided that the indemnities and warranties of the Recipient and the provisions of Section 7.07 (*Governing Law*), Section 7.08 (*Arbitration and Jurisdiction*), Section 7.09 (*Privileges and Immunities of the Bank*) and Section 7.10 (*Waiver of Sovereign Immunity*) shall survive the termination of this Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, if at any time the Bank has determined in accordance with EBRD's Enforcement Policies and Procedures that the Recipient or a Contractor has engaged in a Prohibited Practice in competing for, or executing a Contract, the Bank shall be entitled, at its option, by notice to the Recipient, or if the Recipient fails to pay within 60 days of EBRD's notice or refuses to do so, to the City Council demand that the Recipient or the City Council respectively refunds all or any portion of the Grant Financing and the same shall thereupon become due and payable on demand. This Section 7.01(b) shall survive the termination of this Agreement.

### **Section 7.02      Entire Agreement; Amendment and Waiver**

This Agreement and the documents referred to herein constitute the entire obligation of the parties hereto with respect of the subject matter hereof and shall supersede any prior expressions of intent or understandings (oral or written, express or implied) with respect to this transaction. Any amendment to, waiver by the Bank of any of the terms or conditions of, or consent given by the Bank under, this Agreement (including this Section 7.02) shall be in writing, signed by the Bank and, in the case of an amendment, also by the Recipient and the City Council. In the event that the Bank waives a condition to any Disbursement, the Recipient shall, by receiving the proceeds of such Disbursement, be deemed to have agreed to all the terms and conditions of such waiver.

### **Section 7.03      Notices**

Any notice, application or other communication to be given or made under this Agreement to the Bank, to the Recipient or the City Council 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.

**For the Recipient:**

**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

**For the City Council:**

**DNIPROPETROVSK CITY COUNCIL**

75 Karla Marksa Avenue,  
Dnipropetrovs'k, 49000,  
Ukraine

Attention: Mayor of the City of Dnipropetrovsk  
Fax: +38 056 745 5501

**For the Bank:**

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

Attention: Operation Administration Unit  
Fax: +44 20 7338 6100

**Section 7.04 English Language**

- (a) This Agreement has been prepared and executed in both the English and Ukrainian languages provided that, in the event of any discrepancy between the English and Ukrainian versions of this Agreement, or any dispute regarding the interpretation of any provision in the English or Ukrainian versions of this Agreement, the English version shall prevail and questions of interpretation shall be addressed solely in the English language.
- (b) 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 Recipient or the City Council as applicable, which English translation shall be the governing version between the Bank and the Recipient or the City Council respectively.

## **Section 7.05      Rights, Remedies and Waivers**

- (a) The rights and remedies of the Bank in relation to any misrepresentation or breach of warranty on the part of the Recipient or the City Council shall not be prejudiced by any investigation by or on behalf of the Bank into the affairs of the Recipient, by the execution or performance of this Agreement or by any other act or thing which may be done by or on behalf of the Bank in connection with this Agreement and which might, apart from this Section 7.05, prejudice such rights or remedies.
- (b) No course of dealing or waiver by the Bank in connection with any condition of Disbursement under this Agreement shall impair any right, power or remedy of the Bank with respect to any other condition of Disbursement or be construed to be a waiver thereof.
- (c) No action of the Bank in respect of any Disbursement shall affect or impair any right, power, or remedy of the Bank in respect of any other Disbursement. Without limiting the foregoing, the right of the Bank to require compliance with any condition under this Agreement which may be waived by the Bank in respect of any Disbursement is, unless otherwise notified to the Recipient by the Bank, 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 the Bank upon any Triggering Event under this Agreement or any default under 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 the Bank in respect of any such Triggering Event, default, or acquiescence by it therein, shall affect or impair any right, power or remedy of the Bank in respect of any other Triggering Event or 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 7.06      Indemnification**

- (a) The Recipient and the City Council, on a joint and several basis, assume full liability for, and agree to and shall indemnify and hold harmless the Bank 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 the Bank or any of its officers, directors, employees, agents and servants (whether or not

they may be indemnified by any other person under any other document) and which in any way relate to or arise out of, whether directly or indirectly:

- (i) any of the transactions contemplated by this Agreement or the execution, delivery or performance thereof;
- (ii) the operation or maintenance of the Recipient's facilities or the rights of control or possession thereof by the Recipient; or
- (iii) the exercise by the Bank of any of its rights and remedies under this Agreement;

provided that the Bank (or its officers, directors, employees, agents and servants) shall not have any right to be indemnified hereunder for its own gross negligence or wilful misconduct.

- (b) Each of the Recipient and the City Council acknowledges that the Bank has not acted as an adviser to the Recipient or the City Council in entering into this Agreement. Each of the Recipient and the City Council represents and warrants that, in entering into this Agreement, 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 the Bank.

#### **Section 7.07      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 7.08      Arbitration and Jurisdiction**

- (a) Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof, 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 the LCIA (London Court of International Arbitration). The seat and the 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 take or provide, and each of the Recipient and the City Council agrees that it shall not seek from any judicial authority, any interim measures of protection or pre-award relief against the Bank, any provisions of UNCITRAL Arbitration Rules notwithstanding. The arbitral tribunal shall have the authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by the Bank (but no other party) insofar as such dispute arises out this Agreement, the Loan Agreement or any other Financing Agreement, but, subject to the foregoing, no other parties or disputes shall be



included in, or consolidated with, the arbitral proceedings. In any arbitral proceedings, the certificate of the Bank as to any amount due to the Bank under this Agreement, the Loan Agreement or any other Financing Agreement shall be prima facie evidence of such amount.

- (b) Notwithstanding Section 7.08(a) above, this Agreement and the other Financing Agreements, and any rights of the Bank arising out or relating to this Agreement or any other Financing Agreement, may, at the option of the Bank, be enforced by the Bank in the courts of Ukraine or in any other courts having jurisdiction. For the benefit of the Bank, each of the Recipient and the City Council hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim (including in relation to any non-contractual obligations) arising out of or relating to this Agreement or any other Financing Agreement, or the breach, termination or invalidity hereof or thereof. Each of the Recipient and the City Council hereby irrevocably designates, appoints and empowers Law Debenture Corporate Service 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 the Bank in respect of this Agreement. Each of the Recipient and the City Council 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. Each of the Recipient and the City Council 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 the Bank in respect of this Agreement and shall keep the Bank advised of the identity and location of such agent. Failure by a process agent to notify the Recipient or the City Council of any process will not invalidate the relevant proceedings. Nothing herein shall affect the right of the Bank to commence legal actions or proceedings against the Recipient or the City Council in any manner authorised by the laws of any relevant jurisdiction. The commencement by the Bank of legal actions or proceedings in one or more jurisdictions shall not preclude the Bank from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. Each of the Recipient and the City Council 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 7.09      Privileges and Immunities of the Bank**

Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, the Bank has made an express submission to arbitration under Section 7.08(a) (*Arbitration and Jurisdiction*) of this Agreement and accordingly, and without prejudice to its other

privileges and immunities (including, without limitation, 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 7.08(a) (*Arbitration and Jurisdiction*) of this Agreement.

#### **Section 7.10      Waiver of sovereign immunity**

Each of the Recipient and the City Council represents and warrants that this Agreement and the receipt by the Recipient of the Grant Financing are not public or governmental acts and that each the Recipient and the City Council 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 each of the Recipient and the City Council or any of its assets has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgment, other attachment or execution of judgment on the grounds of sovereignty or otherwise, each of the Recipient and the City Council hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Agreement.

#### **Section 7.11      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 neither the Recipient nor the City Council may assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Bank.
- (b) The Bank may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Agreement (of which the Bank shall notify the Recipient and the City Council in writing).
- (c) Except as provided in the above paragraphs (a) and (b), none of the terms of this Agreement are intended to be enforceable by any third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded and shall not apply.

#### **Section 7.12      Effectiveness**

This Agreement shall become effective on the effective date of the Loan Agreement.

#### **Section 7.13      Disclosure**

- (a) The Bank may disclose such documents, information and records regarding the Recipient and the City Council and this transaction (including copies of this

Agreement and any other agreements contemplated hereby) as the Bank deems appropriate for any purposes in connection with any dispute involving the Recipient or the City Council, for the purpose of preserving or enforcing any of the Bank's rights under this Agreement or any other agreement contemplated hereby or collecting any amount owing to the Bank or any other proposed sale, transfer, assignment, novation or other disposal contemplated by Section 7.11 (*Successors and Assigns; Third Party Rights*) of this Agreement.

- (b) The Bank may disclose such documents, information and records (including a copy of this Agreement) furnished by the Recipient or by the City Council under the terms of this Agreement and by the Recipient in its capacity as Borrower under the terms of the Loan Agreement as the Bank deems appropriate.

#### **Section 7.14      Counterparts**

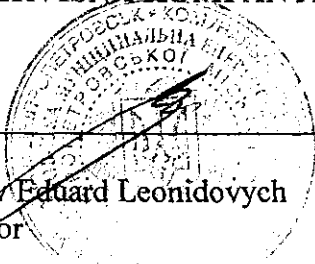
This Agreement may be executed in several counterparts in English and Ukrainian (in the event of any discrepancy between the English and Ukrainian texts, the English version shall prevail), each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

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



**DNIPROPETROVSK CITY COUNCIL**

By: \_\_\_\_\_

Name: Kulichenko Ivan Ivanovich  
Title: Mayor of the City of Dnipropetrovsk



**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

By: \_\_\_\_\_

Name: Mark Magafetsky  
Title: Senior Banker



**ESP FUND**

By: \_\_\_\_\_

Name: Anders Lund  
Title: ESP Manager

## **SCHEDULE 1 - THE GRANT FINANCED ITEMS**

1	Energy efficiency investments in public buildings under EnPCs	EUR 2,500,000.00
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## EXHIBIT 1 - FORM OF DISBURSEMENT REQUEST

[To Be Typed on Letterhead of the Recipient]

[Date]

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

Attention Operation Administration Unit

Subject: Operation No. 41200 (Grant Component)  
Disbursement request No. \_\_\_\_\_<sup>1</sup>

Dear Sir/Madam,

1. Please refer to the grant agreement dated 13 December 2013 (the "Grant Agreement") between Communal Enterprise "Dnipropetrovska Municipalna Energoservisna Kompanya" Dnipropetrovskoi Mis'koi Rady (the "Recipient"), the Dnipropetrovsk City Council (the "City Council") and the European Bank for Reconstruction and Development (the "Bank").
2. Capitalised words and expressions defined or referred to in the Grant Agreement shall bear the same meanings herein.
3. We attach to this request 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 amount of all past Disbursements against such Contracts). We confirm that the [goods, works and related services]<sup>2</sup> covered by this Disbursement request have been or are being purchased in accordance with the terms of the Grant Agreement.
4. We hereby request the following Disbursement in accordance with the provisions of the Grant Agreement:

Currency required:	[Currency of the Grant Financing]
Amount (in figures and words):	

<sup>1</sup> Each application must be numbered in series.

<sup>2</sup> Delete as appropriate

	_____
Value date:	[As soon as possible, on a date selected by the Bank in its discretion, but not later than] <sup>3</sup>
	_____ 4

**Payment Instructions (Contractor's Banking Details):**

Contractor's Account Name: \_\_\_\_\_

Contractor's Account Number: \_\_\_\_\_

(in case of a EUR payment: Account number in IBAN format)

Contractor's Bank Name: \_\_\_\_\_

Contractor's Bank Address: \_\_\_\_\_

Contractor's Bank Swift BIC: \_\_\_\_\_

\_\_\_\_\_

Contractor's Bank's Correspondent Details:

Correspondent's Name:<sup>5</sup> \_\_\_\_\_

Correspondent's Address: \_\_\_\_\_

Correspondent's Swift BIC: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor's Bank's Account Name: \_\_\_\_\_

Contractor's Bank's Account Number: \_\_\_\_\_

Reference: \_\_\_\_\_

<sup>3</sup> If the disbursement is required for a specific value date, this bracketed language may be deleted.

<sup>4</sup> This date must not be earlier than 10 Business Days after the date the Disbursement request is delivered to the Bank.

<sup>5</sup> Name of bank in Euro-zone jurisdiction.

5. For the purposes of Section 4.02 (All Disbursements) of the Grant Agreement, we hereby represent and warrant that:
- (a) the Loan Agreement is in full force and effect and the Recipient is in compliance with all of its obligations in its capacity as Borrower under the Loan Agreement;
  - (b) all conditions precedent to disbursement of the Loan Financing under Section 4.02 (*All Disbursements*) of the Loan Agreement have been fulfilled;
  - (c) all agreements, documents and instruments delivered to the Bank pursuant to Section 4.01 (*First Disbursement of the Grant Financing*) of this Agreement are in full force and effect and unconditional (except, on the first Disbursement only, for this Agreement having become unconditional, if that is a condition of any such agreement);
  - (d) the representations and warranties made or confirmed by each the Recipient and the City Council in this Agreement 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;
  - (e) no Triggering Event has occurred and is continuing;
  - (f) neither the Recipient nor the City Council will, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Recipient or the City Council is a party (including this Agreement) or by which the Recipient or the City Council is bound or any law applicable to the Recipient or the City Council;
  - (g) nothing has occurred which might have a Material Adverse Effect;
  - (h) the proceeds of such Disbursement are needed for bona fide purposes of the Project;
  - (i) the aggregate amount requested for Disbursement and/or disbursed to the Recipient under this Agreement does not exceed 50% of aggregate amount disbursed under the Loan Agreement;
  - (j) 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;



(k) the Borrower has provided to the Bank true and complete copies of the Contracts referred to in Section 4.02 of this Agreement;

(l) the Borrower has provided to the Bank true and complete copies of the contractor's invoice(s) in respect of which the Disbursement is requested; and

(m) no eligibility or origin restrictions have been applied by the Recipient 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.

6. The representations and warranties made in paragraph 5 above will continue to be true and accurate 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 and accurate on or prior to or as of the date of such Disbursement, we shall immediately notify the Bank and shall, upon demand by the Bank, repay any amount which has been or is disbursed by the Bank in respect of such Disbursement.

Yours faithfully,

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

By: \_\_\_\_\_

Authorised Representative<sup>6</sup>

*Attachments:*

Certified copy[ies] of the Contractor's invoice[s]

[Copy of the concurrent Drawdown application under the Loan Agreement]

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<sup>6</sup> As named in the Certificate of Incumbency and Authority.

## EXHIBIT 2 - FORM OF CONTRACT SUMMARY SHEET

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Recipient Name : Operation No:  
41200

**Request No:**

**Date:**

**Summary Sheet**  
**No :**

**Disbursement** (ref.no./ name/ %)  
**Grant Financed**  
**Item:**

Item No	Description of Item	Contract No. and Date	Name and Address of Contractor	Brief Description of Goods , Works or Services	Currency and Total Amount of Contract	Currency & Amount of Eligible Expenditure	Amount of Financing in currency of expenditure

Signature

TOTAL (per currency)

### EXHIBIT 3 - FORM OF CERTIFICATE OF INCUMBENCY AND AUTHORITY

[To Be Typed on Letterhead of the Recipient]

[Date]

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

Attention: Operation Administration Unit

Subject: Operation No. 41200 (Grant Component)  
Certificate of Incumbency and Authority<sup>7</sup>

Dear Sir/Madam,

With reference to the grant agreement dated 13 December 2013 (the "Grant Agreement") Communal Enterprise "Dnipropetrovska Municipalna Energoservisna Kompanya" Dnipropetrovskoi Mis'koi Rady (the "Recipient"), the Dnipropetrovsk City Council (the "City Council") and the European Bank for Reconstruction and Development (the "Bank"), I, the undersigned [Director] of the Recipient, hereby certify that the following are the names, offices and true specimen signatures of certain persons, each one of whom is and will continue to be (until the Bank has received actual written notice from the Recipient that they or any of them no longer continue to be) authorised, on behalf of the Recipient, individually:

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

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<sup>7</sup> Designation may be changed by the Recipient at any time by providing a new Certificate of Incumbency and Authority to the Bank.

**NAME  
SIGNATURE**

**OFFICE**

**SPECIMEN**

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**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: