Project Agreement

(Energy Efficiency Project)

between

BULGARIA ENERGY EFFICIENCY FUND

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

acting as an Implementing Agency of the Global Environment Facility

Dated April 11, 2005
AGREEMENT, dated April 11, 2005, between the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting as an implementing agency of the Global Environment Facility (GEF) in respect of grant funds provided to the GEF Trust Fund by certain members of the Bank as participants of the GEF and the Bulgaria Energy Efficiency Fund (BEEF).

WHEREAS (A) by the GEF Trust Fund Grant Agreement of even date herewith between Bulgaria (the Recipient) and the Bank, the Bank has agreed to make available to the Recipient an amount in various currencies equivalent to ten million Dollars ($10,000,000), on the terms and conditions set forth in the GEF Trust Fund Grant Agreement, provided that BEEF agrees to undertake such obligations as are set forth in this Agreement;

(B) by a Subsidiary Grant Agreement to be entered into between the Recipient and BEEF, the proceeds of the grant provided for under the GEF Trust Fund Grant Agreement will be made available to BEEF on the terms and conditions set forth in said Subsidiary Grant Agreement; and

(C) WHEREAS BEEF, in consideration of the Bank’s entering into the GEF Trust Fund Grant Agreement with the Recipient, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

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

Execution of the Project

Section 2.01. (a) BEEF declares its commitment to the objectives of the Project as set forth in Schedule 2 to the GEF Trust Fund Grant Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate technical and environmental standards, with due regard to the reduction of greenhouse gases through promoting energy efficiency pursuant to the provision of the United Nations Framework Convention on Climate Change, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as BEEF and the Bank shall otherwise agree, BEEF shall carry out the Project in accordance with the Implementation Program set forth in Schedule 1 to this Agreement and the Operations Manual.

Section 2.02. (a) Except as the Bank shall otherwise agree, procurement of goods and consultants’ services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant shall be governed by the provisions of Schedule 2 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) BEEF shall update the Procurement Plan in accordance with guidelines acceptable to the Bank and furnish such update to the Bank not later than twelve (12) months after the date of the preceding Procurement Plan, for the Bank’s approval.

Section 2.03. BEEF shall carry out or cause to be carried out, the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project.

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

Section 2.05. (a) BEEF shall, at the request of the Bank, exchange views with the Bank and the Recipient with regard to progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Grant Agreement, and other matters relating to the purposes of the grant.
(b) BEEF shall promptly inform the Bank and the Recipient of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the GEF Trust Fund Grant, or the performance by BEEF of its obligations under this Agreement and/or under the Subsidiary Grant Agreement.

Section 2.06. No later than six (6) months after the Effective Date, BEEF shall hire independent auditors referred to in Section 4.01 (b) (i) of this Agreement, under terms and conditions satisfactory to the Bank.

ARTICLE III

Management and Operations of BEEF

Section 3.01. BEEF shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and environmental practices with qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. BEEF shall consult with the Bank prior to making any appointment to its Management Board.

ARTICLE IV

Financial Covenants

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

(b) BEEF shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses by Project component and disbursement category and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Bank, consistently applied, by independent auditors acceptable to the Bank;
(ii) furnish to the Bank and the Recipient as soon as available, but in any case not later than six (6) months after the end of each such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited; and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

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

Section 4.02. (a) Without limitation upon BEEF’s progress reporting obligations in this Agreement, BEEF shall prepare and furnish to the Bank a Financial Monitoring Report in form and substance satisfactory to the Bank, which:

(i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Grant, and explains variances between the actual and planned uses of such funds;

(ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and

(iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first Financial Monitoring Report shall be furnished to the Bank not later than forty-five (45) days after the end of the first calendar semester after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar semester; thereafter, each Financial Monitoring Report shall be furnished to the Bank not later than forty-five (45) days after each subsequent calendar semester, and shall cover such calendar semester.

Section 4.03. (a) Except as the Bank shall otherwise agree, BEEF shall achieve financial self-sufficiency by 2010.

(b) For the purposes of this Section:

(i) the term “financial self-sufficiency” means total operating revenues fully covering total operating expenses;
(ii) the term “total operating expenses” means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and the Fund Manager’s fees; and

(iii) the term “total operating revenues” means revenues from all sources related to operations.
ARTICLE V

Effective Date; Termination

Section 5.01. This Agreement shall come into force and effect on the date upon which the GEF Trust Fund Grant Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Bank and of BEEF thereunder shall terminate on the earlier of the following two dates:

(i) the date on which the GEF Trust Fund Grant Agreement shall terminate in accordance with its terms, or

(ii) the date five years after the date of this Agreement.

(b) If the Grant Agreement terminates in accordance with its terms before that date specified in paragraph (a) (ii) of this Section, the Bank shall promptly notify BEEF of this event.

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

ARTICLE VI

Miscellaneous Provisions

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

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address: INTBAFRAD
Telex: 248423 (MCI) or 64145 (MCI)
Facsimile: (202) 477-6391

For Bulgaria Energy Efficiency Fund:

5 Veslets Street
1040 Sofia
Republic of Bulgaria

Facsimile: 359-2-980-6855

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of BEEF may be taken or executed by the Executive Director of BEEF or such other person or persons as the Chairman of the Management Board shall designate in writing, and BEEF shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.
Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Sofia, Republic of Bulgaria, as of the day and year first above written.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT as an Implementing Agency of the Global Environment Facility

By /s/ Oscar de Bruyn Kops Authorized Representative

BULGARIA ENERGY EFFICIENCY FUND

By /s/ Lyulin Radulov Authorized Representative
SCHEDULE 1

Implementation Program

Section I. Overall

1. BEEF shall:

   (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the carrying out of the Project and the achievement of the objectives thereof;

   (b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about July 31, 2007, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) above, on the progress achieved in the carrying out of the Project during the period preceding the date of said report, and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date;

   (c) review with the Bank, by September 30, 2007, or such later date as the Bank shall request, the report referred to in paragraph (b) above, and thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said reports and the Bank’s views on the matter; and

   (d) review, and agree with the Recipient and the Bank, not later than September 30, 2009, on the long-term plans for the future operation of BEEF, including the use of the GEF Trust Fund Grant proceeds held at the time of BEEF’s closure.

2. BEEF shall maintain a Fund Manager, on terms and conditions satisfactory to the Bank, whereby the Fund Manager shall be responsible for:

   (a) identification and appraisal of Sub-projects eligible for Sub-loan financing and Partial Credit Guarantees under the GEF Trust Fund Grant and overall management of investments, including monitoring of performance by Beneficiaries;

   (b) reviewing proposed Sub-projects to ensure that they meet the terms and conditions set forth in the Operations Manual; and

   (c) submitting eligible Sub-projects to BEEF’s Management Board for approval.
3. **BEEF shall:**

   (a) by no later than October 31 of each year, commencing on October 31, 2005, until completion of the Project, furnish to the Bank for its approval, a draft annual budget of BEEF and adopt the agreed budget prior to December 31 of that respective year;

   (b) not later than December 31 of each year during Project execution, commencing on December 31, 2005, furnish to the Bank and the Recipient the Fund Manager’s annual business plan and incorporate the Bank’s recommendations prior to submitting it to its Management Board for approval; and

   (c) review with the Bank all proposals considered by BEEF for Sub-loan financing and Partial Credit Guarantees and receive the approval of the Bank prior to its entering into any financing agreement during its first year of operation.

**Section II. Implementation of Part A of the Project**

1. **BEEF shall establish a Guarantee Account for the Partial Credit Guarantee Facility in a Commercial Bank and in a manner satisfactory to the Bank.**

2. **BEEF shall manage and use the proceeds of the Guarantee Account in a manner consistent with the purposes and objectives of the GEF Trust Fund Grant Agreement and in accordance with the provisions of the Operations Manual, including using the proceeds of the Guarantee Account exclusively for making payments in connection with calls on guarantees provided to the Commercial Banks issued pursuant to the respective Guarantee Agreement.**

3. **BEEF shall act prudently and reasonably in exercising its management obligations in respect of the Guarantee Account, including prudently investing the proceeds of the Guarantee Account, in a manner satisfactory to the Bank and shall deposit income deriving from subrogation recoveries directly into said Guarantee Account.**

4. **BEEF shall refund to the Bank any withdrawals or payments from the Guarantee Account, including any investment income generated therefrom, at the option of the Bank, if:**

   (a) the Bank shall have determined at any time that any payment made from the GEF Trust Fund Grant Account (or from the investment income generated therefrom) was used for any expenditure not consistent with the provisions of this Agreement;

   (b) the Bank shall have determined, at any time, that the Recipient or BEEF shall have failed to perform any of their respective obligations under the Subsidiary Grant Agreement;
(c) expenditures from the GEF Trust Fund Grant Account (or from the investment income generated therefrom) were made: (i) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (ii) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations;

(d) expenditures from the GEF Trust Fund Grant Account (or from the investment income generated therefrom) were made under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Recipient or BEEF during the procurement or execution of such contract, without the Recipient or BEEF having taken timely and appropriate action satisfactory to the Bank to remedy the situation; or

(e) the Operations Manual has been amended, suspended, abrogated, repealed or waived in a manner which, in the opinion of the Bank, would materially and adversely affect the implementation of the Project or the attainment of its objectives.

5. BEEF shall carry out the following with respect to expenditures funded with withdrawals from the Guarantee Account:

(a) maintain records and accounts reflecting such expenditures;

(b) retain for at least one year after the Project Closing Date, all records evidencing such expenditures;

(c) enable the Recipient and the Bank to examine such records; and

(d) ensure that the audit reports contain a separate opinion by the auditors as to whether the records and accounts submitted for the relevant audit, together with the procedures and controls involved in their preparation, can be relied upon to support the related withdrawals.

6. After the Bank has received evidence satisfactory to it that the Guarantee Account has been duly opened, the amount from the GEF Trust Fund Grant Account allocated to Category (2) in the table set forth in paragraph 1 of Schedule 1 to the GEF Trust Fund Grant Agreement shall be deposited into the Guarantee Account.

7. BEEF shall execute Guarantee Agreements, in form and substance acceptable to the Bank, with Commercial Banks for individual guarantee commitments not to exceed the equivalent of $500,000 or such other amount as may be agreed upon by the Bank from time to time (the Guarantee Liability Limit).
8. BEEF shall, during its first year of operation, obtain prior to entering into a Guarantee Agreement the Bank’s approval thereof.

9. (a) If the Bank shall have determined at any time that any amount outstanding in the Guarantee Account will not be required to cover further guarantee commitments to Commercial Banks, BEEF shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount and request a reallocation of such amount.

   (b) BEEF may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Guarantee Account.

   (c) Refunds to the Bank made pursuant to paragraphs (a) and (b) of this paragraph shall be credited to the GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement.

10. BEEF shall make withdrawals from the Guarantee Account only for payments made in accordance with a call on a guarantee issued to a Commercial Bank in accordance with a Guarantee Agreement, as a result of a default on a loan by a Beneficiary, for which the provider of said loan is unable to secure satisfaction of said loan in accordance with the relevant Guarantee Agreement.

11. BEEF shall:

   (a) within thirty (30) days of a guarantee call payment, provide to the Recipient and the Bank, a written report indicating the reasons for the default, its recovery plan, and its assessment of the probability of recovery of the amounts in default; and thereafter implement the recovery plan as so approved by BEEF’s Management Board and, if any amounts are determined by BEEF to be irrecoverable, obtain the approval of the Recipient and the Bank to write off such amounts; and

   (b) remit payment into the Guarantee Account if a guarantee call payment is deemed by the Recipient or by the Bank to be unwarranted, for the amount of said payment.

Section III. Implementation of Part B of the Project

1. For the purposes of carrying out Part B of the Project, BEEF shall:

   (a) after approval by the Management Board of eligible Sub-projects, enter into an agreement (the Sub-loan Agreement) with a Beneficiary, in accordance with the terms and conditions set forth in the Operations Manual;
(b) exercise its rights and comply with its obligations under any Sub-loan Agreement, in such manner as to protect the interests of the Recipient and the Bank and to accomplish the purposes of the Sub-loan, and except as the Bank and the Recipient shall otherwise agree, not assign, amend, abrogate, waive or fail to enforce any Sub-loan Agreement or provision thereof; and

(c) enter into commercial co-financing agreements acceptable to the Bank, with foreign and local banks, multilateral agencies and private foreign capital, provided, however, that during its first year of operation, BEEF shall obtain the prior approval of the Bank before entering into any such agreement.
SCHEDULE 2

Procurement

Section I. General

A. All goods, works and services (other than consultants’ services) shall be procured in accordance with the provisions of Section I of the “Guidelines for Procurement under IBRD Loans and IDA Credits” dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants’ services shall be procured in accordance with Sections I and IV of the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Bank of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants’ Services)

A. International Competitive Bidding

Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Recipient. To the extent practicable, contracts for goods, works, and supply and installation shall be grouped in bid packages estimated to cost $250,000 equivalent or more.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than $3,000,000 equivalent per contract and works estimated to cost less than $3,000,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding.

2. Commercial Practices. Goods and works, including supply and installation, for Sub-projects under Part A of the Project and those estimated to cost less than $1,000,000
equivalent per contract under Part B of the Project, may be procured in accordance with commercial practices acceptable to the Bank, as set forth in the Operations Manual.

Section III.  Particular Methods of Procurement of Consultants’ Services

A.  Quality- and Cost-based Selection.  Except as otherwise provided in Part B of this Section, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.

B.  Other Procedures

1.  Least-cost Selection.  Services for assignments which the Bank agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2.  Selection Based on Consultant Qualifications.  Services estimated to cost less than $100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

3.  Individual Consultants.  Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines.

Section IV.  Review by the Bank of Procurement Decisions

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