

FOREIGN ASSISTANCE

Economic Cooperation Loan Guarantee

**Agreement Between the
UNITED STATES OF AMERICA
and UKRAINE**

Signed at Washington April 14, 2014

with

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

UKRAINE

**Foreign Assistance: Economic Cooperation
Loan Guarantee**

*Agreement signed at Washington April 14, 2014;
Entered into force May 13, 2014.
With annexes.*

LOAN GUARANTEE AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
UKRAINE

This Agreement (“Agreement”) is between the United States of America (the “United States”) and Ukraine (“Ukraine” or the “Borrower”) (together the “Parties”).

ARTICLE I. Purpose

Section 1.01. Purpose. The United States, acting through the United States Agency for International Development (“USAID”), plans to provide guarantees (“Loan Guarantees” or “Guarantees”) for certain payment obligations with regard to new debt that Ukraine is expected to incur. This guarantee assistance program intends to reinforce Ukraine’s economic reform program, as supported by the International Monetary Fund, USAID, and other members of the international community, support Ukraine’s continued access to the capital markets, and provide external financing to Ukraine at affordable rates. The purpose of this Agreement is to set forth the rights and obligations of the Parties with respect to the guarantee assistance program described herein.

ARTICLE II. The Guarantee

Section 2.01. Guarantee Obligations. Subject to the terms herein, USAID shall issue guarantees with respect to the payment obligations of the Borrower for Eligible Notes (as defined in Section 2.02 below). The Guarantees will guarantee one hundred percent (100%) of the Borrower’s

repayment of principal under Eligible Notes in an amount not to exceed an aggregate principal amount of one billion United States Dollars (U.S. \$1,000,000,000) together with interest due thereon, for a period up to five (5) years from the date of issuance.

The Guarantees shall be issued in accordance with the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014. The Guarantees constitute, as a matter of domestic U.S. law, obligations of the United States of America, and the full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations. The standard terms and conditions of the Guarantees issued hereunder shall be mutually agreed upon and published by the United States Government in Title 22, Chapter II, of the United States Code of Federal Regulations for the benefit of the holders from time to time of Eligible Notes as defined in Section 2.02 (“Noteholders”).

Section 2.02. Eligible Notes and Terms. “Eligible Notes” are United States Dollar-denominated notes or bonds issued by the Borrower: (a) for the purposes of the guarantee assistance program described in Section 1.01 of this Agreement; (b) purchased by “Eligible Underwriters,” as defined in Section 2.03; and (c) under such terms and conditions, documents and agreements as are in form and substance mutually agreed upon by USAID, the Eligible Underwriters and the Borrower, including, without limitation, offering circulars, note purchase or underwriting agreements, global notes and a fiscal agency agreement (such agreements in their final definitive form being referred to herein as the “Debt Agreements”).

For purposes of subsection (c) above, USAID shall confirm its agreement as to the form and substance of the Debt Agreements prior to the commencement of marketing of the Eligible Notes (notwithstanding that certain pricing and other terms in the Debt Agreements will only be completed at or immediately prior to the Closing Date).

Except as otherwise agreed in writing, Eligible Notes shall have a term or maturity of five (5) years with interest paid on a regular basis and principal paid at maturity.

Section 2.03. Eligible Underwriters. Except as otherwise agreed in writing, “Eligible Underwriters” are those institutions selected by Ukraine that: (a) purchase Eligible Notes directly from the Borrower with a view toward distribution to investors; (b) maintain a principal place of business in the

United States and are subject to regulation under the laws of the United States (including registration as a broker-dealer under the Securities Exchange Act of 1934, as amended, and membership in the Financial Industry Regulatory Authority); and (c) are financially capable of serving as an underwriter for the issuance of Eligible Notes. The costs for the services of Eligible Underwriters shall be paid by the Borrower and may be paid from the proceeds of the Eligible Notes made available at the Closing Date.

Section 2.04. Installments. Except as otherwise agreed in writing, Eligible Notes, and the Guarantees related thereto, shall be issued in one (1) installment.

Section 2.05. Final Date for Borrowing. The Guarantees shall be issued at the same time as the issuance of the Eligible Notes (the "Closing Date") and shall be evidenced on the reverse side of the global notes evidencing the Eligible Notes. Unless otherwise agreed by the Parties in writing, the final date for the Closing Date (and for the issuance of a Guarantee under this Agreement) shall be thirty (30) days after the entry into force of this Agreement as set out in Section 7.01, and the final date to request the issuance of Guarantees under this Agreement shall be ten (10) days before the Closing Date.

ARTICLE III. Fiscal Agent

Section 3.01. Fiscal Agent. The fiscal agent for the Borrower shall be selected by Ukraine and approved by USAID and shall perform its duties pursuant to the terms of a fiscal agency agreement that is agreed to by the Borrower, the fiscal agent and USAID. The costs for such services shall be paid by the Borrower and may be paid from the proceeds of the Eligible Notes made available at the Closing Date.

ARTICLE IV. Conditions Precedent

Section 4.01. Borrower's Conditions Precedent.

- (a) Procedural Requirements and Documentation. Except as otherwise agreed by USAID in writing, no later than the date of commencement of marketing of the Eligible Notes, the Borrower shall deliver, in form and substance satisfactory to USAID, the following:
 - (i) the final form of a legal opinion from the Head of the Legal Department of the Ministry of Finance of Ukraine attesting

- to the validity and enforceability of the Debt Agreements and related agreements, if any, and stating that such agreements have been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Borrower;
- (ii) the final form of all documents required by the terms of the Debt Agreements and any related agreements to satisfy the conditions precedent therein;
 - (iii) the duly completed and signed Certificate and Request for Issuance of Guarantees in the form of Annex I;
 - (iv) a statement of the name of the person holding the office specified in Section 6.06 and of any additional representatives, together with a specimen signature of each person so designated; and
 - (v) such other documents and representations as USAID may reasonably request with respect to the transactions contemplated by this Agreement.
- (b) Additional Conditions. Additional conditions precedent to the issuance of any Guarantees are attached as Annex II. The United States shall determine prior to the commencement of marketing of the Eligible Notes whether the conditions have been satisfied consistent with Annex II.

Section 4.02. United States's Conditions Precedent. Except as otherwise agreed by Ukraine in writing, on or prior to the issuance of the Guarantees on the Closing Date, USAID shall deliver, in form and substance satisfactory to the Borrower and/or the Eligible Underwriters, such documents, certificates and opinions as may be reasonably required by the Debt Agreements.

Section 4.03. Satisfaction of Conditions Precedent and Notification. The issuance of the Guarantees shall be subject to the satisfaction of the conditions precedent consistent with the terms set forth in Sections 4.01 and 4.02 above, and, prior to the issuance of any Guarantees, USAID shall provide the Borrower with written notification that the issuance of the Guarantees can proceed.

ARTICLE V. Special Covenants

Section 5.01. Reimbursement and Subrogation. The Borrower agrees that if USAID makes any payment on the Borrower's behalf to or for the benefit of the Noteholders pursuant to the Guarantees, whether or not the Noteholders have applied to USAID for such payment and whether or not an event of default has occurred under the terms of a Debt Agreement, the Borrower shall promptly reimburse USAID for such payment. USAID shall promptly inform the Borrower of any such payment. In the event of such a payment pursuant to the Guarantees, USAID shall, by operation of this Agreement and any existing applicable common law rights, become subrogated to all the rights of the Noteholders against the Borrower relating to such payment.

Section 5.02. Late Payment Charge. In the event of a late payment of amounts due USAID by way of reimbursement for amounts USAID has paid on behalf of the Borrower, a late payment charge shall accrue on all such amounts. This late payment charge shall accrue to USAID under the same terms and conditions as late payment charges due the Noteholders, as such charges, if any, are prescribed in the Eligible Notes. For the avoidance of doubt, this late payment charge shall accrue on all amounts paid by USAID under the Guarantees, including any amounts in respect of late payment charges required under the Eligible Notes and the Guarantees.

Section 5.03. Use of Proceeds. The Borrower shall not use the proceeds from the issuance of Eligible Notes for military or paramilitary purposes; provided that nothing herein shall prevent the Borrower from commingling the proceeds from the issuance of Eligible Notes with other sources of government revenue to finance general budgetary expenditures.

ARTICLE VI. General Provisions

Section 6.01. Consultation. The Parties shall cooperate to ensure that the purpose of this Agreement will be accomplished. With respect to matters relating to the selection of Eligible Underwriters and the fiscal agent referred to in Section 3.01, the issuance of Eligible Notes, the Debt Agreements and related matters, the Parties shall consult through their representatives identified in Section 6.06.

Section 6.02. Reports, Books and Records, Audit and Review. The Borrower shall, so long as the Eligible Notes shall be outstanding, or any claim under the Guarantees is outstanding, and for a period of three (3) years thereafter:

- (a) furnish to the United States Government such information and reports relating to the Eligible Notes, the Debt Agreements, the Guarantees and this Agreement as may be reasonably requested;
- (b) maintain, in accordance with generally accepted accounting principles and practices consistently applied by the government of Ukraine, books and records relating to the Eligible Notes, the Debt Agreements, and this Agreement. Such books and records shall be reviewed by the Accounting Chamber of Ukraine to the extent provided in the applicable laws of Ukraine; and
- (c) afford authorized representatives of the United States Government the opportunity at all reasonable times to review such books, records and other documents described in this section.

Section 6.03. Other Payments. The Borrower affirms that no payments or other benefits have been received and agrees that none shall be received by any official of the Borrower in connection with the procurement of goods or services financed under the Eligible Notes except fees, taxes or similar payments legally required in the territory of the Borrower.

Section 6.04. Remedies. If the United States determines: (i) that the terms of this Agreement have been breached by Ukraine; (ii) that the conditions precedent for issuing Guarantees set forth in Section 4.01 of this Agreement or any annex hereto are not satisfied in accordance with their terms; or (iii) that there has been, after the date of signing hereof, a cessation of, or undemocratic transition from, the constitutional central government of Ukraine as it exists on the date of signing hereof (which for the avoidance of doubt shall not include any changes to the composition of the central government occasioned by the death, resignation, suspension or exclusion from office of any minister or ministers or other employee or employees of the government which are consistent with the continued functioning of the existing central government of Ukraine), the United States may suspend or terminate the issuance of Guarantees not yet issued after providing notice to the Borrower, taking into account the Parties' preference for resolving any issues through diplomatic efforts. The issuance of any Guarantee by USAID, the payment by USAID to the Noteholders of any amounts pursuant to any Guarantee, the delay or failure of USAID to make any claim for payment, or the delay or failure of USAID to give its written approval to any acceleration of debt by the Noteholders (if such a right of acceleration is provided for in the Eligible Notes) shall not operate as

a waiver by USAID of any rights accruing to USAID under this Agreement, the Debt Agreements or any Guarantee.

Section 6.05. Implementation Letters. USAID may from time to time issue implementation letters further describing applicable procedures concerning its implementation of this Agreement, or recording the agreement of the Parties on details of implementation of this Agreement (the "Implementation Letters"). For the avoidance of doubt, no such Implementation Letters shall affect the rights and obligations of the Parties hereunder without their express written consent.

Section 6.06. Representatives.

(a) For purposes relevant to the implementation of the technical and financial aspects of this Agreement, the Borrower shall be represented by the individual holding or acting in the office of the Deputy Minister of Finance of Ukraine of the Ministry of Finance of Ukraine, and the United States Government shall be represented by the individual holding or acting in the office of Director, Office of Development Credit, USAID.

(b) Each Party, by written notice, may designate additional representatives. Either Party may accept as authorized any instrument signed by such representatives of the other Party in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 6.07. Communications. Any notice, request, document or other communication submitted by either Party to the other Party under this Agreement shall be in writing or by telegram or cable, shall refer to the Ukraine/USAID Loan Guarantee number found on the agreed final form of Annex I, and shall be deemed duly given or sent when delivered to such Party at the following addresses:

To the Borrower:

Ministry of Finance – Ukraine
Attention: Vitalii Vasyliovych Lisovenko
Deputy Minister of Finance of Ukraine
12/2 Grushevskogo Vul.
Kyiv, Ukraine 01008

To the United States Government:

United States Agency for International Development
Office of Development Credit, Room 2.10
1300 Pennsylvania Avenue
Washington, D.C. 20523-0214

with a copy to:

United States Agency for International Development
4 Igor Sikorsky Street
Kyiv, Ukraine 04112

All communications shall be in English, unless the Parties otherwise agree in writing.

Section 6.08. Taxation and Duties. This Agreement, the Eligible Notes and the proceeds therefrom shall be free from any taxation or fees in Ukraine.

Section 6.09. Annexes. The Annexes to this Agreement constitute an integral part of this Agreement.

ARTICLE VII. Entry into Force

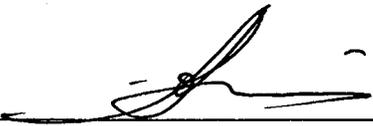
Section 7.01. Entry Into Force. This Agreement shall enter into force on the date of the later notification in an exchange of written notifications in which the Parties notify each other that their respective domestic legal requirements for entry into force of the Agreement have been fulfilled.

DONE at Washington, this 14th day of April, 2014, in duplicate, in the English language. A Ukrainian language text shall be prepared which shall be considered equally authentic upon written confirmation between the Parties of its conformity with the English language text.

FOR THE UNITED STATES OF
AMERICA:

FOR UKRAINE:

By: 
Mark Feierstein
Associate Administrator,
USAID

By: 
H.E. Oleksandr Shlapak
Minister of Finance of Ukraine

ANNEX I
TO THE
LOAN GUARANTEE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND UKRAINE

Ukraine/USAID Loan Guarantee No. _____

CERTIFICATE AND REQUEST FOR ISSUANCE OF LOAN GUARANTEES

Ukraine (the "Borrower"), pursuant to the Loan Guarantee Agreement dated as of _____, 2014, between the Borrower and the United States of America (the "Agreement") hereby requests the issuance of Loan Guarantees (as defined in the Agreement) covering the principal amount of U.S. [\$1,000,000,000] and related interest thereon. The estimated date for the issuance of Eligible Notes (as defined in the Agreement) benefitting from the Loan Guarantees is _____. In connection with this request, the Borrower hereby certifies that it is in full compliance with the terms of the Agreement.

Ukraine

BY: _____

TITLE: _____

DATE: _____

ANNEX II
TO THE
LOAN GUARANTEE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND UKRAINE

Whereas this Loan Guarantee Agreement is intended by the Parties to support economic reform that will help revitalize economic activity and broaden economic opportunities for Ukrainian citizens; and

Recognizing that Loan Guarantees issued under this Agreement would have the greatest effect if they are part of a broader reform initiative coordinated by the Government of Ukraine (“Ukraine”);

The following economic reform conditions address expected reforms under an International Monetary Fund program in the areas of macroeconomic stability, the social safety net, energy subsidy reform, and anti-corruption, as well as mitigation of the impact of those reforms on the poorest Ukrainian households. Unless otherwise agreed by USAID in writing, these conditions shall be satisfied prior to the commencement of marketing of the Eligible Notes.

1. Ukraine shall have signed a Letter of Intent and Memorandum of Economic and Financial Policies with respect to the Stand-By Arrangement (SBA) with the International Monetary Fund agreeing to implement policies to restore macroeconomic stability and put the country on a path of sound governance and sustainable growth while protecting the vulnerable in society and shall provide to USAID written verification of Ukraine’s intention and commitment to comply with the SBA once signed.
2. Ukraine shall provide USAID with evidence that it has taken steps to expand Ukraine’s housing and utility safety net system to help ensure that vulnerable households are insulated from the costs of needed economic adjustment. Ukraine shall affirm in writing to USAID that the Loan Guarantees will contribute to social spending and to the insulation of

vulnerable Ukrainians from the impact of necessary economic adjustments.

3. Ukraine shall provide USAID with evidence that it has publicly announced a schedule of tariff prices in the energy sector through 2017 and that it has also announced plans to enhance its social safety net to protect vulnerable Ukrainians.
4. Ukraine shall provide to USAID evidence that it has adopted a new version of the Law of Ukraine on State Procurement to strengthen governance and checks and balances, including reducing exemptions from regular competitive procedures.