

EIB – Corporate Use

FI N° 86.980

Serapis N° 2016-0819

PROJECT "UKRAINE URBAN ROAD SAFETY"

Finance Contract

between

UKRAINE

and the

EUROPEAN INVESTMENT BANK

Brussels, 9 July 2018





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THIS CONTRACT IS MADE BETWEEN:

UKRAINE

(the "Borrower")

of the first part, and

THE EUROPEAN INVESTMENT BANK
having its seat at 98-100 Blvd Konrad
Adenauer, L-2950 Luxembourg,
represented by Mr Vazil Hudák, the
Vice-President,

(the "Bank")

of the second part, and collectively the "Parties"

WHEREAS:

- (1) In accordance with (i) Decision No. 466/2014/EU, published in the Official Journal of the European Union No L 135 of 8 May 2014, the European Parliament and the Council of the European Union decided to grant a guarantee to the Bank against losses under financing operations supporting investment projects outside the European Union (the "Decision") and (ii) the agreement entered into between the European Union, represented by the European Commission, and the Bank implementing such decision, in the event of non-payment, the European Union, by a guarantee, covers certain payments not received by the Bank and due to the Bank in relation to the Bank's financing operations entered into with, *inter alia*, the Borrower (the "EU Guarantee"). As of the date of this Contract, Ukraine is an Eligible Country (as defined below).
- (2) Ukraine is a state party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.
- (3) On 14 June 2005 the Borrower and the Bank signed a framework agreement which was ratified by the Parliament of Ukraine on 7 February 2006 in the Law of Ukraine 3392 "On Ratification of the Framework Agreement between Ukraine and the European Investment Bank" and which governs the Bank's activities in the territory of Ukraine (the "Framework Agreement", as may be amended, superseded or replaced from time to time). The Framework Agreement became effective on 8 April 2006 and continues to be in full force and effect throughout the term of this Contract (as defined below). By signing this Contract, the Borrower acknowledges that the loan financing to be provided hereunder falls within the scope of the Framework Agreement. The Borrower confirms the Bank's preferred creditor status as an international financial institution as stipulated in article 7 of the Framework Agreement.
- (4) The Borrower has stated that it is undertaking operations (each a "Sub-Project", and together the "Project" or the "Sub-Projects") to finance infrastructure investments and IT solutions related to public transport and urban road safety in cities in Ukraine, as more particularly described in the technical description set out in Schedule A (the "Technical Description"). The beneficiaries of the Project are appropriate city communities in Ukraine and the Sub-Projects will be implemented by city councils or municipal enterprises (each a "Final Beneficiary" and together the "Final Beneficiaries"). The total amount of financing of the Bank under the Loan to any of the Sub-Projects shall not exceed EUR 50,000,000.
- (5) The total cost of the Project, as preliminarily estimated by the Bank, is EUR 177,000,000 (one hundred seventy-seven million Euros). The Borrower has stated that it intends to finance the Project in an amount of EUR 75,000,000 (seventy-five million euros) from the proceeds of a loan from the Bank and the balance in an amount of EUR 102,000,000 (one hundred and two million euros) from loans to be provided by the European Bank for Reconstruction and Development (the "EBRD") and other funding resources, in each case without recourse to the Bank.
- (6) In order to finance the Project, the Borrower has requested from the Bank a credit of EUR 75,000,000 (seventy-five million Euros) to be made available from the Bank's own resources and pursuant to the Bank's 2014 - 2020 external lending mandate in accordance with the Decision (the "Mandate").
- (7) The Borrower and the EBRD have entered into, or will enter into, a loan agreement (the "EBRD Loan Agreement") pursuant to which the EBRD will provide a loan for the purposes of financing the Project (the "EBRD Loan").
- (8) The Borrower, acting through the Ministry of Finance of Ukraine (the "Ministry of Finance"), in conjunction with the Ministry of Infrastructure of Ukraine (the "Ministry of Infrastructure"), and in conjunction with the Agent (as defined below), shall make the Credit (as defined below) available to each Final Beneficiary pursuant to a loan fund transfer agreement (a "Loan Fund Transfer Agreement") to be entered into between, among others, the Ministry of Finance, the Ministry of Infrastructure (in conjunction with the Agent, if applicable) and the relevant Final Beneficiary and, if applicable, the relevant city council.
- (9) The Borrower, acting through the Ministry of Infrastructure, will have general supervision of and responsibility for the implementation of the Project, including the establishment of a programme management and support unit (the "PMSU") within the Ministry of Infrastructure, and shall ensure the establishment of project implementation units (each a "PIU") within each Final Beneficiary.

- (10) The Bank considering that the financing of the Project falls within the scope of its functions and is consistent with the objectives of the Mandate, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrower's request to provide it a credit in an amount of EUR 75,000,000 (seventy-five million Euros) under this finance contract (the "Contract").
- (11) The Borrower has confirmed that its payment obligations to the Bank do not fall within the scope of the debt operation undertaken or being undertaken by the Borrower pursuant to the terms and conditions of the Extended Fund Facility approved by the Executive Board of the International Monetary Fund for the Borrower on 11 March 2015 (the "Debt Operation").
- (12) On 4 May 2016, the Bank received a letter from the Ministry of Finance (the "MoF Letter") concerning external debt obligations of Ukraine included in the Debt Operation as approved by Resolution No. 318-p of the Cabinet of Ministers of Ukraine dated 4 April 2015 and confirming that such debt obligations do not include obligations owed to the Bank. The Borrower confirms that the statements in the MoF Letter continue to be true and correct in all respects by reference to the laws and regulations of Ukraine regulating the Debt Operation or any similar debt restructuring applicable from time to time, and that no laws and regulations of Ukraine regulating the implementation of the Debt Operation or any similar debt restructuring affect, or shall affect, any debt obligations owed by the Borrower to the Bank.
- (13) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank's loan operations must be consistent with relevant policies of the European Union.
- (14) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances. The Bank has therefore established its transparency policy, the purpose of which is to enhance the accountability of the EIB Group towards its stakeholders and the citizens of the European Union in general.
- (15) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data.
- (16) By entering into this Contract, each Party acknowledges that the Bank is bound to comply with the Sanction Lists (as defined below) and that the Bank cannot, therefore, make funds available, directly or indirectly, to or for the benefit of a Sanctioned Person (as defined below).

NOW THEREFORE it is hereby agreed as follows:

INTERPRETATION AND DEFINITIONS

(a) Interpretation

In this Contract:

- (i) references to Articles, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract;
- (ii) references to any law means, save as if explicitly stipulated otherwise, the law of the Borrower and are references to that law as amended or re-enacted;
- (iii) references to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated;
- (iv) references to a "person" includes any Individual, firm, company, corporation or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
- (v) unless the context otherwise requires, words denoting the singular include the plural and *vice versa* and references to one gender include the other genders.

(b) Definitions

In this Contract:

"Acceptance Deadline" for a notice means:

- (a) 16h00 Luxembourg time on the day of delivery, if the notice is delivered by 14h00 Luxembourg time on a Business Day; or
- (b) 11h00 Luxembourg time on the next following day which is a Business Day, if the notice is delivered after 14h00 Luxembourg time on any such day or is delivered on a day which is not a Business Day.

"Accepted Tranche" means a Tranche in respect of a Disbursement Offer which has been duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline.

"Agent" means Joint Stock Company "The State Import-Export Bank of Ukraine" (JSC "Ukreximbank"), or any other Ukrainian bank proposed by the Borrower and agreed to in writing by the Bank, which shall perform its agency financial management functions relating to this Contract in accordance with the terms of an agency agreement to be entered into between the Ministry of Finance, the Ministry of Infrastructure and the agent.

"Allocation" means applying the proceeds of the Loan to the financing of eligible Sub-Projects.

"Allocation Procedure" means the procedure set up in Article 1.10.

"Allocation Request" is the request submitted to the Bank pursuant Article 1.10A.

"Authorisation" means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, notarisisation or registration.

"Business Day" means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.

"Change-of-Law Event" has the meaning given to it in Article 4.03A(3).

"Contract" has the meaning given to it in Recital (9).

"Credit" has the meaning given to it in Article 1.01.

"Date of Effectiveness" has the meaning given to it in Article 12.04.

"Debt Operation" has the meaning given to it in Recital (11).

"Decision" has the meaning given to it in Recital (1).

"Deferment Indemnity" means an indemnity calculated on the amount of disbursement deferred or suspended at the percentage rate (if higher than zero) by which:

- (a) the interest rate that would have been applicable to such amount had it been disbursed to the Borrower on the Scheduled Disbursement Date; exceeds
- (b) the Relevant Interbank Rate (one month rate) less 0.125% (12.5 basis points) unless this value is less than zero, in which case it will be set at zero.

Such indemnity shall accrue from the Scheduled Disbursement Date to the Disbursement Date or, as the case may be, until the date of cancellation of the Accepted Tranche in accordance with this Contract.

"Disbursement Acceptance" means a copy of the Disbursement Offer duly countersigned by the Borrower.

"Disbursement Acceptance Deadline" means the date and time of expiry of a Disbursement Offer as specified therein.

"Disbursement Date" means the date on which actual disbursement of a Tranche is made by the Bank.

"Disbursement Offer" means a letter substantially in the form set out in Schedule C.1.

"Disruption Event" means:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Contract; and/or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either the Bank or the Borrower, preventing that party:
 - (i) from performing its payment obligations under this Contract; or
 - (ii) from communicating with other parties,

and which disruption (in either such case as per (a) or (b) above) is not caused by, and is beyond the control of, the party whose operations are disrupted.

"EBRD" has the meaning given in Recital (5).

"EBRD Loan" has the meaning given in Recital (7).

"EBRD Loan Agreement" has the meaning given in Recital (7).

"EIA" has the meaning given to it in Article 1.10A(ii).

"EIB Environmental and Social Handbook" means the manual published by the Bank from time to time on its website.

"EIB Statement of Environmental and Social Principles and Standards" means the statement published on the Bank's website that outlines the standards that the Bank requires of the projects that it finances and the responsibilities of the various parties.

"Eligible Country" means any country specified in Annex III to the Decision, as may be amended from time to time by the Commission in accordance with Articles 4(2) and 18 of the Decision, or any other country in respect of which the European Parliament and the Council have adopted a decision pursuant to Article 4(1) of the Decision.

"Environment" means the following, in so far as they affect human health and social well-being:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes, without limitation, occupational and community health and safety.

"Environmental and Social Impact Assessment Study" means a study as an outcome of the environmental and social impact assessment identifying and assessing the potential environmental and social impacts associated with a Sub-Project and recommending measures to avoid, minimise and/or remedy any impacts. This study is subject to public consultation with direct and indirect project stakeholders.

"Environmental and Social Standards" means:

- (a) Environmental Law and Social Law applicable to the Sub-Projects, the Borrower or any Final Beneficiary;
- (b) the EIB Statement of Environmental and Social Principles and Standards;
- (c) the environmental and social standards set out in the EIB Environmental and Social Handbook; and
- (d) the Environmental and Social Impact Assessment Studies.

"Environmental or Social Approval" means any permit, licence, authorisation, consent or other approval required by any Environmental Law or any Social Law in connection with the construction or operation of a Sub-Project.

"Environmental or Social Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law or any Social Law.

"Environmental Law" means:

- (a) EU laws to the extent implemented in the laws of Ukraine or as specified by the Bank before the date of signing of this Contract;
- (b) Ukrainian laws and regulations; and
- (c) applicable international treaties,

of which a principal objective is the preservation, protection or improvement of the Environment.

"EU Guarantee" has the meaning given to it in Recital (1).

"EURIBOR" has the meaning given to it in Schedule B.

"EUR" and **"euro"** mean the lawful currency of the Member States of the European Union which adopt or have adopted it as their currency in accordance with the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union or their succeeding treaties.

"Event of Default" means any of the circumstances, events or occurrences specified in Article 10.01.

"External Debt Instrument" has the meaning given to it in Article 7.01

"Final Availability Date" means the date falling 48 months after the Date of Effectiveness or any other later date agreed between the parties in writing provided that the EU Guarantee continues to apply to each Tranche disbursed or to be disbursed.

"Final Beneficiary" and **"Final Beneficiaries"** has the meaning given to it in Recital (4).

"Financing of Terrorism" means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the EU Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

"Fixed Rate" means an annual interest rate determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in the currency of the Tranche and bearing equivalent terms for the repayment of capital and the payment of interest.

"Fixed Rate Tranche" means a Tranche on which Fixed Rate is applied.

"Floating Rate" means a fixed-spread floating interest rate, that is to say an annual interest rate determined by the Bank for each successive Floating Rate Reference Period equal to the Relevant Interbank Rate plus the Spread.

"Floating Rate Reference Period" means each period from one Payment Date to the next relevant Payment Date; the first Floating Rate Reference Period shall commence on the date of disbursement of the Tranche.

"Floating Rate Tranche" means a Tranche on which Floating Rate is applied.

"Framework Agreement" has the meaning given to it in Recital (3).

"Guide to Procurement" means the Guide to Procurement published on EIB's website that informs the promoters of projects financed in whole or in part by the Bank of the arrangements to be made for procuring works, goods and services required for a Sub-Project.

"ILO" means the International Labour Organisation.

"ILO Standards" means any treaty, convention or covenant of the ILO signed and ratified by or otherwise applicable and binding on Ukraine, and the Core Labour Standards (as defined in the ILO Declaration on Fundamental Principles and Rights at Work).

"Indemnifiable Prepayment Event" means a Prepayment Event other than those specified in Articles 4.03A(2), 4.03A(4)(a) or 4.03A(4)(c).

"Loan" means the aggregate amount of Tranches disbursed from time to time by the Bank under this Contract.

"Loan Fund Transfer Agreement" has the meaning given to it in Recital (8).

"Mandate" has the meaning given to it in Recital (6).



"Market Disruption Event" means any of the following circumstances:

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank's access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche; and
- (c) in relation to a Tranche in respect of which interest is or would be payable at Floating Rate:
 - (i) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of the applicable Relevant Interbank Rate; or
 - (ii) the Bank determines that adequate and fair means do not exist for ascertaining the applicable Relevant Interbank Rate for the relevant currency of such Tranche or it is not possible to determine the Relevant Interbank Rate in accordance with the definition contained in Schedule B.

"Material Adverse Change" means, any event or change of condition, which, in the opinion of the Bank materially impairs:

- (a) the ability of the Borrower to perform its financial or other obligations under this Contract; or
- (b) the condition (financial or otherwise) or prospects of the Borrower.

"Maturity Date" means the last repayment date of a Tranche specified pursuant to Article 4.01A(b)(iv).

"Ministry of Finance" has the meaning given to it in Recital (8).

"Ministry of Infrastructure" has the meaning given to it in Recital (8).

"MoF Letter" has the meaning given to it in Recital (12).

"Money Laundering" means:

- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; or
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

"Payment Date" means each 20 May and 20 November until and including the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means:

- (a) for a Fixed Rate Tranche, the following Relevant Business Day, without adjustment to the interest due under Article 3.01; and

- (b) for a Floating Rate Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with corresponding adjustment to the interest due under Article 3.01.

"PIU" has the meaning given to it in Recital (9).

"PMSU" has the meaning given to it in Recital (9).

"PPM" means the programme procedures manual referred to in Article 1.04A(f), as may be amended with the prior written agreement of the Bank.

"Prepayment Amount" means the amount of a Tranche to be prepaid by the Borrower in accordance with Article 4.02A.

"Prepayment Date" means the date, which shall be a Payment Date, on which the Borrower proposes to effect prepayment of a Prepayment Amount.

"Prepayment Event" means any of the events described in Article 4.03A.

"Prepayment Indemnity" means in respect of any principal amount to be prepaid or cancelled, the amount communicated by the Bank to the Borrower as the present value (as of the Prepayment Date) of the excess, if any, of:

- (a) the interest that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Maturity Date, if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

The said present value shall be calculated at a discount rate equal to the Redeployment Rate, applied as of each relevant Payment Date.

"Prepayment Notice" means a written notice from the Bank to the Borrower in accordance with Article 4.02C.

"Prepayment Request" means a written request from the Borrower to the Bank to prepay all or part of the Loan, in accordance with Article 4.02A.

"Project" has the meaning given to it in Recital (4).

"Prohibited Conduct" means any Financing of Terrorism, Money Laundering or Prohibited Practice.

"Prohibited Practice" means any:

- (a) **Coercive Practice**, meaning the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- (b) **Collusive Practice**, meaning an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (c) **Corrupt Practice**, meaning the offering, giving, receiving or soliciting, directly or indirectly, of anything of value by a party to influence improperly the actions of another party;
- (d) **Fraudulent Practice**, meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation; or

- (e) **Obstructive Practice**, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with the Loan or the Project, (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intending to materially impede the exercise of the contractual rights of audit or access to information.

"Qualifying Expenditure" means expenditure (including costs of design and supervision, if relevant and always net of taxes and duties payable by the Final Beneficiaries) incurred by the Final Beneficiaries pursuant to contracts for works, goods and services in respect of items eligible under the Technical Description for financing under the Credit, such contract(s) executed on terms satisfactory to the Bank, having regard to the edition of its Guide to Procurement as available to the public on its website.

"Redeployment Rate" means the Fixed Rate in effect on the day of the indemnity calculation for fixed-rate loans denominated in the same currency and which shall have the same terms for the payment of interest and the same repayment profile to the Maturity Date as the Tranche in respect of which a prepayment is proposed or requested to be made. For those cases where the period is shorter than 48 months the most closely corresponding money market rate equivalent will be used, that is the Relevant Interbank Rate minus 0.125% (12.5 basis points) for periods of up to 12 (twelve) months. For periods falling between 12 and 48 months as the case may be, the bid point on the swap rates as published by Reuters for the related currency and observed by the Bank at the time of calculation will apply.

"Relevant Business Day" means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007 (TARGET2) is open for the settlement of payments in EUR.

"Relevant Interbank Rate" means EURIBOR.

"Sanctioned Persons" means any individual or entity listed in one or more Sanction Lists.

"Sanction Lists" means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, including but not limited to those as made available on the official EU websites http://ec.europa.eu/external_relations/cfsp/sanctions/consol-list_en.htm and http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf, as amended and supplemented from time to time or on any successor page; or
- (b) any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to Article 41 of the UN Charter including but not limited to those as made available on the official UN website <http://www.un.org/Docs/sc/committees/INTRO.htm>, as amended and supplemented from time to time or on any successor page.

"Scheduled Disbursement Date" means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.02B.

"Security" means any mortgage, pledge, lien, charge, assignment, hypothecation, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Social Law" means each of:

- (a) any law or other regulation applicable in Ukraine relating to Social Matters;
- (b) any ILO Standards; and

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- (c) any United Nations treaty, convention or covenant on human rights signed and ratified by or otherwise applicable and binding on Ukraine.

"Social Matters" means all, or any of, the following:

- (a) labour and employment conditions;
- (b) occupational health and safety;
- (c) protection and empowerment of rights and interests of indigenous peoples, ethnic minorities and vulnerable groups;
- (d) cultural heritage (tangible and intangible);
- (e) public health, safety and security;
- (f) involuntary physical resettlement and/or economic displacement and loss of livelihood of persons; and
- (g) public participation and stakeholder engagement.

"Spread" means the fixed spread to the Relevant Interbank Rate (being either plus or minus) determined by the Bank and notified to the Borrower in the relevant Disbursement Offer.

"Steering Committee" has the meaning given to it in Article 1.04A(e).

"Sub-Project" and **"Sub-Projects"** has the meaning given to it in Recital (4).

"Technical Description" has the meaning given to it in Recital (4).

"Tranche" means each disbursement made or to be made under this Contract. In case no Disbursement Acceptance has been received, Tranche shall mean a Tranche as offered under Article 1.02B.

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ARTICLE 1
Credit and Disbursements

1.01 Amount of Credit

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount of EUR 75,000,000 (seventy-five million euros) for the financing of the Project (the "Credit").

1.02 Disbursement procedure

1.02A Tranches

The Bank shall disburse the Credit in up to 15 Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall not be less than EUR 5 million (five million euros).

The Bank shall not send the Borrower more than one Disbursement Offer per calendar month or more than six Disbursement Offers per calendar year. There shall not be more than one disbursement of a Tranche per calendar month under this Finance Contract.

1.02B Disbursement Offer

Upon request by the Borrower, provided that no event mentioned in Article 1.06B has occurred and is continuing, the Bank shall send to the Borrower a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by the Borrower of a Disbursement Offer is 10 (ten) days before the Final Availability Date. The Disbursement Offer shall specify:

- (a) the amount of the Tranche;
- (b) the Scheduled Disbursement Date, which shall be a Relevant Business Day, falling at least 10 (ten) days after the date of the Disbursement Offer and on or before the Final Availability Date;
- (c) the interest rate basis of the Tranche, being:
 - (i) a Fixed Rate Tranche; or
 - (ii) a Floating Rate Tranche,in each case pursuant to the relevant provisions of Article 3.01;
- (d) the interest payment periodicity for the Tranche, in accordance with the provisions of Article 3.01;
- (e) the first Payment Date for the Tranche;
- (f) the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.01;
- (g) the first and last repayment dates of principal for the Tranche;
- (h) for a Fixed Rate Tranche, the Fixed Rate and for a Floating Rate Tranche the Spread applicable until the Maturity Date; and
- (i) the Disbursement Acceptance Deadline.

1.02C Disbursement Acceptance

The Borrower may accept a Disbursement Offer by delivering a Disbursement Acceptance to the Bank no later than the Disbursement Acceptance Deadline. The Disbursement Acceptance shall be accompanied:

- (a) by the IBAN code and SWIFT BIC of the bank account to which disbursement of the Tranche should be made in accordance with Article 1.02D; and
- (b) by evidence of the authority of the person or persons authorised to sign the Disbursement Acceptance and the specimen signature of such person or persons or a declaration by the Borrower that no change has occurred in relation to the authority of the person or persons authorised to sign Disbursement Acceptances under this Contract.

If a Disbursement Offer is duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline, the Bank shall make the Accepted Tranche available to the Borrower in accordance with the relevant Disbursement Offer and subject to the terms and conditions of this Contract.

The Borrower shall be deemed to have refused any Disbursement Offer which has not been duly accepted in accordance with its terms on or before the Disbursement Acceptance Deadline.

1.02D Disbursement Account

Disbursement shall be made to an account in EUR (the "EUR Collection Account") of the Borrower opened and maintained with Joint Stock Company "The State Import-Export Bank of Ukraine" (JSC "Ukreximbank"), Public Joint Stock Company "State Savings Bank of Ukraine" (JSC "Oschadbank"), or any other bank which the Bank confirms in writing, from time to time, is acceptable to it and which the Borrower has notified to the Bank in writing not later than 10 (ten) days before the Scheduled Disbursement Date (with IBAN code).

To implement the Project, the Borrower may open accounts in any currency (together with the EUR Collection Account, the "Collection Accounts") as the Borrower shall notify the Bank in writing. Each Collection Account shall be an account of the Borrower created for the purposes of this Project and separated from any other assets of the Borrower. Funds available in the EUR Collection Account may be transferred to any Collection Account.

The Borrower acknowledges that payments to the EUR Collection Account shall constitute disbursements under this Contract.

Only one EUR Collection Account may be specified for each Tranche.

The Borrower shall ensure that no Ukrainian legislation or regulation (including any regulations of the National Bank of Ukraine) on currency restrictions, licensing or convertibility shall apply to the proceeds of the Loan, including without limitation any payments from any Collection Accounts to contractors duly appointed for the purposes of implementing the Project or any Sub-Project.

1.03 Currency of disbursement

The Bank shall disburse each Tranche in EUR.

1.04 Conditions of disbursement

1.04A First Tranche

The disbursement of the first Tranche under Article 1.02 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:

- (a) a legal opinion issued by the Ministry of Justice of the Borrower in the English language on the due execution of this Contract by the Borrower and the validity, enforceability and binding nature of this Contract. Such opinion shall be in form and substance acceptable to the Bank and shall be supported by the relevant documents evidencing the Borrower's authority to enter into this Contract, a confirmation that ratification of this Contract by the Parliament of Ukraine is necessary for the Contract to have effect under the laws of Ukraine as well as evidence of due ratification of this Contract in accordance with the applicable laws of Ukraine, and a confirmation on the legal, valid, binding and enforceable nature of the Framework Agreement under Ukrainian law;
- (b) evidence that no consent under any exchange control laws and regulations applicable in Ukraine is necessary to permit the Borrower to receive disbursements as provided in this Contract, to repay the disbursed Tranches in accordance with the terms of this Contract and to pay interest and all other amounts due hereunder, including the opening and maintenance of the accounts to which the Borrower directs the Bank to disburse the Credit;
- (c) evidence confirming that the rights of the Parties under the Contract are not affected by the implementation of the Debt Operation and that the statements made by the Borrower in the MoF Letter continue to be true and correct in all respects by reference to the applicable laws and regulations of Ukraine regulating the Debt Operation;
- (d) evidence that the PMSU:

- (i) is fully functional within the Ministry of Infrastructure to the satisfaction of the Bank, with sufficient human resources with adequate skills, terms of reference, authority and technical support to assume responsibility for allocation requests, monitoring, implementation and progress reporting on the Project; and
- (ii) has assumed responsibility for the allocation requests, monitoring, implementation and progress reporting relating to funding under this Contract;
- (e) evidence that a steering committee (the "**Steering Committee**") has been duly established on terms satisfactory to the Bank, with sufficient human resources with adequate skills, terms of reference and authority, including, among other things:
 - (i) having competences:
 - (A) to make strategic recommendations;
 - (B) to endorse Sub-Project proposals by the PMSU; and
 - (C) to facilitate and review the functioning of the PMSU and the progress of works under the Project; and
 - (ii) comprising representatives of, *inter alia*, the Ministry of Infrastructure, the Ministry of Finance and/or others as agreed by the Parties;
- (f) evidence that:
 - (i) the Steering Committee has reviewed and endorsed a programme procedures manual (the "**PPM**") in form and substance satisfactory to the Bank, setting out, among other things:
 - (A) the eligibility criteria of Sub-Projects for financing under this Contract;
 - (B) the description of technical support eligible for financing under this Contract; and
 - (C) the role and competencies of the Steering Committee, the PMSU and the PIUs; and
 - (ii) the PPM has been approved by the Ministry of Infrastructure;
- (g) evidence confirming that the PIUs have been established by all the Final Beneficiaries, with the staff and terms of reference acceptable and satisfactory to the Bank;
- (h) evidence confirming that a Loan Fund Transfer Agreement is in full force and effect;
- (i) evidence that appropriate technical support in accordance with the terms of reference and personnel satisfactory to and as approved by the Bank supporting the PMSU and Final Beneficiaries implementing the Sub-Projects is in place or will be acquired from grants or other committed funding sources.

1.04B All Tranches

The disbursement of each Tranche under Article 1.02, including the first, is subject to the following conditions:

- (a) that the Bank has received in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date for the proposed Tranche, the following documents or evidence:
 - (i) evidence demonstrating that the borrowing of the total amount of all Tranches disbursed during the current fiscal year, including the Tranche the disbursement of which is requested, has been approved in the budget of the Borrower for the current fiscal year;
 - (ii) evidence demonstrating that, following disbursement of the relevant Tranche, the amount of the Loan will not exceed the aggregate Qualifying Expenditure incurred or forecast to be allocated in respect of the Project within six months of the relevant Disbursement Offer;
 - (iii) a certificate from the Borrower in the form of Schedule C.2;

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- (iv) evidence of the authority of the person or persons authorised to sign Disbursement Acceptances and the authenticated specimen signature of such person or persons;
 - (v) evidence that all Authorisations necessary to proceed with the implementation of each Sub-Project being financed by the Tranche sought in the Disbursement Offer have been received and that, to the satisfaction of the Bank, all necessary authority and powers to operate each Sub-Project being financed and all necessary Authorisations in connection with the Contract, have been received;
 - (vi) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the validity and enforceability of the same;
 - (vii) evidence of the payment of any fees or charges which have become due and payable by the Borrower under this Contract;
 - (viii) confirmation that the PIUs and the PMSU are in place on terms of reference acceptable and satisfactory to the Bank;
 - (ix) evidence that the proceeds of such Tranche are needed to meet the funding requirements in accordance with the most recent disbursement schedule and procurement plan delivered by the Borrower to the Bank pursuant to Article 6.05(d)(vi); and
 - (x) evidence satisfactory to the Bank in line with the requirements described in the PPM, including compliance with the EIB Guide to Procurement.
- (b) the Bank being satisfied by the Scheduled Disbursement Date for the proposed Tranche that:
- (i) all facts and information contained in the Recitals continue to be true, correct and applicable;
 - (ii) the representations and warranties which are repeated pursuant to Article 6.08 are correct in all respects;
 - (iii) the EU Guarantee is valid, binding and enforceable and that no events or circumstances have occurred which could, in the reasonable opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the EU Guarantee, its applicability to any Tranche under this Contract or the Bank's right to make a demand thereunder;
 - (iv) Ukraine continues to be an Eligible Country;
 - (v) the Framework Agreement is valid, binding and enforceable and that no events or circumstances have occurred which could, in the reasonable opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the Framework Agreement in the territory of the Borrower where the Sub-Projects are being carried out; and
 - (vi) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
 - (A) an Event of Default, or
 - (B) a Prepayment Event,
 has occurred and is continuing unremedied or unwaived or would result from the proposed Tranche.

1.05 Deferment of disbursement

1.05A Grounds for deferment

Upon the written request of the Borrower, the Bank shall defer the disbursement of any Accepted Tranche in whole or in part to a date specified by the Borrower being a date falling not later than 6 (six) months from its Scheduled Disbursement Date and not later than 60 (sixty) days prior to the first repayment date of the Tranche indicated in the Disbursement Offer. In such case, the Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

Any request for deferment shall have effect in respect of a Tranche only if it is made at least 7 (seven) Business Days before its Scheduled Disbursement Date.

If for an Accepted Tranche any of the conditions referred to in Article 1.04 is not fulfilled as at the specified date and at the Scheduled Disbursement Date (or the date expected for disbursement in case of a previous deferment), disbursement will be deferred to a date agreed between the Bank and the Borrower failing not earlier than 7 (seven) Business Days following the fulfilment of all conditions of disbursement (without prejudice to the right of the Bank to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.06B). In such case, the Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

1.05B Cancellation of a disbursement deferred by 6 (six) months

The Bank may, by notice in writing to the Borrower, cancel a disbursement which has been deferred under Article 1.05A by more than 6 (six) months in aggregate. The cancelled amount shall remain available for disbursement under Article 1.02.

1.06 Cancellation and suspension

1.06A Borrower's right to cancel

The Borrower may at any time by notice in writing to the Bank cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect in respect of an Accepted Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice.

1.06B Bank's right to suspend and cancel

- (a) The Bank may, by notice in writing to the Borrower, suspend and/or cancel the undisbursed portion of the Credit in whole or in part at any time and with immediate effect:
 - (i) upon the occurrence of a Prepayment Event or an Event of Default or an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event or an Event of Default; or
 - (ii) if Ukraine is no longer an Eligible Country.
- (b) The Bank may also suspend the portion of the Credit in respect of which it has not received a Disbursement Acceptance with immediate effect in the case that a Market Disruption Event occurs.
- (c) Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

1.06C Indemnity for suspension and cancellation of a Tranche

1.06C(1) SUSPENSION

If the Bank suspends an Accepted Tranche, whether upon an Indemnifiable Prepayment Event or an Event of Default, the Borrower shall pay to the Bank the Deferment Indemnity calculated on the amount of disbursement suspended.

1.06C(2) CANCELLATION

If pursuant to Article 1.06A, the Borrower cancels:

- (a) a Fixed Rate Tranche which is an Accepted Tranche, it shall indemnify the Bank under Article 4.02B; and
- (b) a Floating Rate Tranche which is an Accepted Tranche or any part of the Credit other than an Accepted Tranche, no indemnity is payable.

If the Bank cancels:

- (i) a Fixed Rate Tranche which is an Accepted Tranche upon an Indemnifiable Prepayment Event or pursuant to Article 1.05B, the Borrower shall pay to the Bank the Prepayment Indemnity; or
- (ii) an Accepted Tranche upon an Event of Default, the Borrower shall indemnify the Bank under Article 10.03.

Save in these cases, no indemnity is payable upon cancellation of a Tranche by the Bank.

The indemnity shall be calculated as if the cancelled amount had been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.

1.07 Cancellation after expiry of the Credit

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, the part of the Credit in respect of which no Disbursement Acceptance has been made in accordance with Article 1.02C shall be automatically cancelled, without any notice being served by the Bank to the Borrower and without liability arising on the part of either Party.

1.08 Appraisal Fee

The Borrower shall pay to the Bank an appraisal fee in the amount of EUR 50 000 (fifty thousand euros). The appraisal fee shall be due and payable on the date which is the earlier of:

- (i) the date of the first Tranche (in which case the Bank may, and the Borrower hereby authorises the Bank to do so, retain an amount equivalent to unpaid appraisal fee from the first Tranche and such amount retained by the Bank out of the first Tranche in payment of the appraisal fee shall be deemed as having been disbursed by the Bank); and
- (ii) the Final Availability Date (or the date when the Loan is suspended or cancelled pursuant to Article 1.06B, if earlier).

1.09 Sums due under Article 1

Sums due under Articles 1.05 and 1.06 shall be payable in EUR. They shall be payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

1.10 Allocation

1.10A Allocation Request

At any time prior to the date falling 4 (four) years from the Date of Effectiveness the Borrower may submit to the Bank a request for allocation (the "Allocation Request").

The Loan shall only be allocated to Sub-Projects identified as eligible for financing in the Technical Description. In order for a Sub-Project to qualify for financing hereunder, the Borrower must comply with the allocation procedure (the "Allocation Procedure") under this Article 1.10, and with allocation undertakings under this Article 1.10A.

The Loan shall be allocated to Sub-Projects which:

- (a) have been approved by the Steering Committee;
- (b) meet the standards, eligibility requirements and selection criteria defined in the PPM; and
- (c) are agreed with the Bank in accordance with the principles of the EIB review procedure set down in the Technical Description and loan allocation procedures (Schedules A.1 and A.2 of the Contract),

provided that the Bank is satisfied that there is sufficient information available on such Sub-Projects.

The Borrower shall provide together with each Allocation Request the following documents or evidence in form and substance satisfactory to the Bank:

- (i) evidence that each Final Beneficiary undertaking a Sub-Project included in that Allocation Request has established a PIU to manage the implementation and monitoring of such Sub-Project with staff, terms of reference, authority and technical support satisfactory to the Bank;

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- (ii) for each Sub-Project requiring an environmental impact assessment ("EIA") under Ukrainian or any applicable EU legislation, evidence that the EIA has been finalised and approved by the relevant competent authorities;
 - (iii) for each Sub-Project with potential or likely impact on a site of nature conservation importance that is protected under national legislation or international agreements, documentary evidence in the Bank's standard forms and satisfactory to the Bank of the opinion of the competent authority for nature conservation that no part of the proposed Sub-Project will have a significant negative impact on the site on which the Sub-Project will be carried out;
 - (iv) evidence that a corresponding 50% balance to finance the remaining part of the project cost, on a cumulative basis, has been made available in respect of the Sub-Projects included or proposed to be included in the Project; and
 - (v) evidence that the Credit allocated and/or proposed to be allocated under this Contract will not exceed 50% of the total cost of the Project.

The Borrower shall provide the Bank with any additional information regarding the Sub-Projects as the Bank, at its own discretion, may request.

1.10B Allocation Letter

The Bank shall have full discretion whether or not to approve the Allocation Request so submitted following such examination of the Sub-Projects as it deems necessary and shall, in the event of confirmation/approval, issue a letter of allocation, informing the Borrower of its confirmation/approval of the Sub-Projects submitted and of the amount in EUR allocated to such Sub-Project. In the event the Bank does not approve a submitted Allocation Request, the Bank shall inform the Borrower thereof.

The Bank may by notice to the Borrower amend the Allocation Procedure to bring it into line with the Bank's policies or reflect the results of the review of the implementation capacity and performance. In such case, the Bank shall inform the Borrower thereof and the Borrower shall promptly adapt its internal allocation procedures accordingly.

1.11 Reallocation Procedure

1.11A Reallocation at the request of the Borrower

The Borrower may by request in writing to the Bank, which shall include reasons thereof and which shall be received by the Bank no later than the date falling four (4) years from the Date of Effectiveness, propose to reallocate in accordance with Article 1.10 any part of the Loan which has been allocated but not spent by the Borrower on a Sub-Project, or not made available in full, directly or indirectly, by the Borrower to the relevant Final Beneficiaries. The period for the submission of a re-allocation proposal may be extended with the written agreement of the Parties by a maximum of twelve months.

The Bank may, in its discretion, accept the Borrower's proposal for reallocation and reallocate any portion of the Loan in accordance with the provisions of Article 1.10.

If the reallocation is not possible or possible only in part, the Borrower shall prepay immediately to the Bank the part of the Loan which has been disbursed by the Bank subject to the original Allocation in accordance with Article 4.03A(6).

1.11B Reallocation at the request of the Bank

Upon the Bank's written request, the Borrower shall propose to reallocate any part of the Loan which has been allocated, in accordance with the procedures described in Article 1.10, in relation to a Sub-Project if such Sub-Project, in the opinion of the Bank, is ineligible for financing by the Bank under the Bank's Statute, policies or guidelines or under Article 309 of the Treaty on the Functioning of the European Union or if the Sub-Project no longer complies with the requirements of the Finance Contract. If within the timeframe provided for in the Bank's written request the Borrower fails to replace such Sub-Project, the Borrower shall repay all or part of the Loan in accordance with Article 4.03A(6).

ARTICLE 2

The Loan

2.01 Amount of Loan

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under this Contract, as confirmed by the Bank pursuant to Article 2.03.

2.02 Currency of repayment, interest and other charges

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrower in EUR.

Any other payment shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

2.03 Confirmation by the Bank

Within 10 (ten) days after disbursement of each Tranche, the Bank shall deliver to the Borrower the amortisation table referred to in Article 4.01, if appropriate, showing the Disbursement Date, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

ARTICLE 3

Interest

3.01 Rate of interest

3.01A Fixed Rate Tranches

The Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate semi-annually in arrears on the relevant Payment Dates as specified in the Disbursement Offer, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 30 (thirty) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.01(a).

3.01B Floating Rate Tranches

The Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate semi-annually in arrears on the relevant Payment Dates, as specified in the Disbursement Offer commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 30 (thirty) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

The Bank shall notify the Floating Rate to the Borrower within 10 (ten) days following the commencement of each Floating Rate Reference Period.

If pursuant to Articles 1.05 and 1.06 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date the Relevant Interbank Rate applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.01(b). If the Floating Rate for any Floating Rate Reference Period is below zero, it will be set at zero.

3.02 Interest on overdue sums

Without prejudice to Article 10 and by way of exception to Article 3.01, if the Borrower fails to pay any amount payable by it under this Contract on its due date, interest shall accrue on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to:

- (a) for overdue sums related to Floating Rate Tranches, the applicable Floating Rate plus 2% (200 basis points);
- (b) for overdue sums related to Fixed Rate Tranches, the higher of (i) the applicable Fixed Rate plus 2% (200 basis points) and (ii) the Relevant Interbank Rate plus 2% (200 basis points); and
- (c) for overdue sums other than under (a) or (b) above, the Relevant Interbank Rate plus 2% (200 basis points)

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the Relevant Interbank Rate in relation to this Article 3.02, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

If the overdue sum is in a currency other than the currency of the Loan, the following rate *per annum* shall apply, namely the relevant interbank rate that is generally retained by the Bank for transactions in that currency plus 2% (200 basis points), calculated in accordance with the market practice for such rate.

3.03 Market Disruption Event

If at any time (i) from the receipt by the Bank of a Disbursement Acceptance in respect of a Tranche, and (ii) until the date falling thirty (30) calendar days prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause applies. In such case the rate of interest applicable to such Accepted Tranche until the Maturity Date shall be the rate (expressed as a percentage rate *per annum*) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank. The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.02B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.

In each case the Spread or Fixed Rate previously notified by the Bank in the Disbursement Offer shall no longer be applicable.

ARTICLE 4

Repayment

4.01 Normal repayment

4.01A Repayment by instalments

- (a) The Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Offer in accordance with the terms of the amortisation table delivered pursuant to Article 2.03.
- (b) Each amortisation table shall be drawn up on the basis that:
 - (i) In the case of a Fixed Rate Tranche, repayment shall be made semi-annually by equal instalments of principal or constant instalments of principal and interest;
 - (ii) in the case of a Floating Rate Tranche, repayment shall be made by equal semi-annual instalments of principal;
 - (iii) the first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 days from the Scheduled Disbursement Date and not later than the first Payment Date immediately following the 4th (fourth) anniversary of the Scheduled Disbursement Date of the Tranche; and
 - (iv) the last repayment date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 20 (twenty) years from the Scheduled Disbursement Date.

4.02 Voluntary prepayment

4.02A Prepayment option

Subject to Articles 4.02B, 4.02C and 4.04, the Borrower may prepay all or part of any Tranche, together with accrued interest and indemnities if any, upon giving a Prepayment Request with at least 1 (one) month's prior notice specifying:

- (a) the Prepayment Amount,
- (b) the Prepayment Date,
- (c) if applicable, the choice of application method of the Prepayment Amount in line with Article 5.05C(i); and
- (d) the contract number ("FI nr") mentioned on the cover page of this Contract.

Subject to Article 4.02C the Prepayment Request shall be binding and irrevocable.

4.02B Prepayment indemnity

4.02B(1) FIXED RATE TRANCHE

If the Borrower prepays a Fixed Rate Tranche, the Borrower shall pay to the Bank on the Prepayment Date the Prepayment Indemnity in respect of the Fixed Rate Tranche which is being prepaid.

4.02B(2) FLOATING RATE TRANCHE

The Borrower may prepay a Floating Rate Tranche without indemnity on any relevant Payment Date.

4.02C Prepayment mechanics

Upon presentation by the Borrower to the Bank of a Prepayment Request, the Bank shall issue a Prepayment Notice to the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date. The Prepayment Notice shall specify the Prepayment Amount, the accrued interest due thereon, the Prepayment Indemnity payable under Article 4.02B or, as the case may be, that no indemnity is due, the method of application of the Prepayment Amount and the Acceptance Deadline.

If the Borrower accepts the Prepayment Notice no later than by the Acceptance Deadline, it shall effect the prepayment. In any other case, the Borrower may not effect the prepayment.

The Borrower shall accompany the prepayment with the payment of accrued interest and indemnity, if any, due on the Prepayment Amount, as specified in the Prepayment Notice.

4.03 Compulsory prepayment

4.03A Prepayment Events

4.03A(1) PROJECT COST REDUCTION

If the total cost of the Project falls below the figure stated in Recital (5) so that the amount of the Credit exceeds 50% (fifty per cent.) of such total cost, the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan up to the amount by which the Credit exceeds 50% (fifty per cent.) of the total cost of the Project. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

4.03A(2) PARI PASSU TO NON-EIB FINANCING

If the Borrower voluntarily prepays (for the avoidance of doubt, prepayment shall include a repurchase or cancellation where applicable) a part or the whole of any Non-EIB Financing and such prepayment is not made out of the proceeds of a loan or other indebtedness having a term at least equal to the unexpired term of the Non-EIB Financing prepaid the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan. The proportion of the Loan that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article, "Non-EIB Financing" includes any loan (save for the Loan and any other direct loans from the Bank to the Borrower), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower for a term of more than five years.

4.03A(3) CHANGE OF LAW

The Borrower shall promptly inform the Bank if a Change-of-Law Event has occurred or is likely to occur. In such case, or if the Bank has reasonable cause to believe that a Change-of-Law Event has occurred or is about to occur, the Bank may request that the Borrower consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank's request. If, after the lapse of 30 (thirty) days from the date of such request for consultation the Bank is of the opinion that the effects of the Change-of-Law Event cannot be mitigated to its satisfaction, the Bank may by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article "Change-of-Law Event" means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation) that occurs after the date this Contract is signed and which, in the reasonable opinion of the Bank, would materially impair the Borrower's ability to perform its obligations under this Contract or any security provided in respect of this Contract or any security provided in connection with this Contract.

4.03A(4) ILLEGALITY

If:

- (a) it becomes unlawful in any applicable jurisdiction for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan;
- (b) the Framework Agreement is or is likely to be:
 - (i) terminated by Ukraine or not binding on Ukraine in any respect;
 - (ii) not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms;
 - (iii) breached, in that Ukraine ceases to fulfil any obligation assumed by it in the Framework Agreement; or
 - (iv) inapplicable to any Sub-Project or the rights of the Bank under the Framework Agreement and/or this Contract are not able to be enforced in respect of a Sub-Project;
- (c) in relation to the EU Guarantee:
 - (i) it is no longer valid or in full force and effect;
 - (ii) the conditions for cover thereunder are not fulfilled;
 - (iii) it does not apply to any Tranche disbursed or to be disbursed under this Contract; or
 - (iv) it is not effective in accordance with its terms or is alleged to be ineffective in accordance with its terms

the Bank may by notice to the Borrower, immediately (i) suspend or cancel the undisbursed portion of the Credit and/or (ii) demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract on the date indicated by the Bank in its notice to the Borrower.

4.03A(5) NON-PERFORMANCE BY FINAL BENEFICIARY

If the Bank determines that a Final Beneficiary has failed to comply with any obligation imposed upon it as a requirement for any part of the Loan being made available to that Final Beneficiary, the Bank may give notice thereof to the Borrower and the Borrower shall, at its option:

- (i) reallocate the relevant portion of the Loan to another Sub-Project approved by the Bank in accordance with Article 1.10; or
 - (ii) prepay the amount made available to the relevant Final Beneficiary,
- in each case within a period of 30 (thirty) days following the giving of that notice by the Bank.

4.03A(6) FAILURE TO REALLOCATE

The Borrower shall immediately prepay the Loan (or, as applicable, a part of the Loan) which has not been reallocated in accordance with Article 1.11, together with accrued interest and all other amounts accrued and outstanding under this Contract.

4.03B Prepayment mechanics

Any sum demanded by the Bank pursuant to Article 4.03A, together with any interest or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.03C and Article 4.04, shall be paid on the date indicated by the Bank in its notice of demand.

4.03C Prepayment indemnity

In the case of an indemnifiable Prepayment Event, the indemnity, if any, shall be determined in accordance with Article 4.02B.

4.04 General

A repaid or prepaid amount may not be reborrowed. This Article 4 shall not prejudice Article 10.

If the Borrower prepays a Tranche on a date other than a relevant Payment Date, the Borrower shall indemnify the Bank in such amount as the Bank shall certify is required to compensate it for receipt of funds otherwise than on a relevant Payment Date.

ARTICLE 5

Payments

5.01 Day count convention

Any amount due by way of interest, indemnity or fee from the Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on the following respective conventions:

- (a) in respect of interest and indemnities due under a Fixed Rate Tranche, a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days;
- (b) in respect of interest and indemnities due under a Floating Rate Tranche, a year of 360 (three hundred and sixty) days and the number of days elapsed;
- (c) in respect of fees, a year of 360 (three hundred and sixty) days and the number of days elapsed.

5.02 Time and place of payment

Unless otherwise specified in this Contract or in the Bank's demand, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand.

Each sum payable by the Borrower under this Contract shall be paid to the relevant account notified by the Bank to the Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.

The Borrower shall indicate in each payment made hereunder the contract number ("FI nr") found on the cover page of this Contract.

A sum due from the Borrower shall be deemed paid when the Bank receives it.

Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank.

5.03 No set-off by the Borrower

All payments to be made by the Borrower under this Contract shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

5.04 Disruption to Payment Systems

If either the Bank determines (in its discretion) that a Disruption Event has occurred or the Bank is notified by the Borrower that a Disruption Event has occurred:

- (a) the Bank may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Contract as the Bank may deem necessary in the circumstances;
- (b) the Bank shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.04.

5.05 Application of sums received

(a) General

Sums received from the Borrower shall only discharge its payment obligations if received in accordance with the terms of this Contract.

(b) Partial payments

If the Bank receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Contract, the Bank shall apply that payment:

- (i) first, in or towards payment *pro rata* of any unpaid fees, costs, indemnities and expenses due under this Contract;
- (ii) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;
- (iii) thirdly, in or towards payment of any principal due but unpaid under this Contract; and
- (iv) fourthly, in or towards payment of any other sum due but unpaid under this Contract.

(c) Allocation of sums related to Tranches

(i) In case of:

- (A) a partial voluntary prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied *pro rata* to each outstanding instalment, or, at the request of the Borrower, in inverse order of maturity; and
- (B) a partial compulsory prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.

(ii) Sums received by the Bank following a demand under Article 10.01 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.

(iii) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Borrower on their application, the Bank may apply these between Tranches at its discretion.

ARTICLE 6

Borrower undertakings and representations

The undertakings in this Article 6 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

A. PROJECT UNDERTAKINGS

6.01 Use of Loan

The Borrower shall use all amounts borrowed by it under this Contract exclusively for the execution of the Project through the financing of Sub-Projects which are subject of Allocation Requests approved by the Bank and, subject to the Bank's prior written consent, for technical support required by the Steering Committee, the PMSU and/or the PIUs and is necessary for the implementation of the Project. The Borrower shall make the proceeds of the disbursed Tranches available to the Final Beneficiaries pursuant to a Loan Fund Transfer Agreement and, if required under this Contract, in each case on terms and conditions acceptable to the Bank, and exercise its rights under such Loan Fund Transfer Agreement in such a manner as to protect the interests of the Borrower and the Bank, to comply with the provisions of this Contract and to accomplish the purposes for which the Credit was made.

6.02 Completion of Project

The Borrower shall carry out the Project, and procure that each Final Beneficiary carries out the relevant Sub-Project, in accordance with the Technical Description and the PPM. The Borrower shall complete the Project by the final date specified in the Technical Description.

6.03 Increased cost of Project

If the total cost of the Project exceeds the estimated figure set out in Recital (5), the Borrower shall obtain the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

6.04 Procurement procedure

The Borrower:

- (a) shall procure that each Final Beneficiary will purchase equipment, secure services and order works for each Sub-Project by acceptable procurement procedures complying, to the Bank's satisfaction, with its policy and standards as described in its Guide to Procurement and as set out in the PPM;
- (b) shall procure that each Final Beneficiary shall:
 - (i) permit independent observers to visit its premises during all stages of tendering; and
 - (ii) grant the right of the Bank in connection with the tendering of each Sub-Project:
 - (A) to review the evaluation reports prior to their approval by the relevant evaluation committees; and
 - (B) to prescribe the venue of the tender evaluations and the manner of the receipt and storage of the bids; and
- (c) shall procure that each Final Beneficiary will ensure that all contracts under a Sub-Project to be procured after the date of this Contract (in accordance with the procurement policies and standards, under (a) above) provide for:
 - (i) the requirement that the relevant contractor promptly informs the Bank and the Borrower of a genuine allegation, complaint or information with regard to Prohibited Conducts related to the Sub-Project or with regard to any facts or circumstances listed under Article 6.07 (c) (iii) related to the Sub-Project;
 - (ii) the requirement that the relevant contractor keeps books and records of all financial transactions and expenditures in connection with the Sub-Project; and

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- (iii) the Bank's right, in relation to an alleged Prohibited Conduct or in relation to an alleged breach of obligations in connection with Article 6.07 (c) (iii), to review the books and records of the relevant contractor in relation to the Sub-Project and to take copies of documents to the extent permitted by law.

6.05 Continuing Project undertakings

(a) General

The Borrower shall procure that each Final Beneficiary will:

- (i) **Maintenance:** maintain, repair, overhaul and renew all property forming part of the relevant Sub-Project as required to keep it in good working order;
- (ii) **Project assets:** unless the Bank has given its prior written consent, retain title to and possession of all or substantially all the assets comprising the relevant Sub-Project or, as appropriate, replace and renew such assets and maintain the relevant Sub-Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the relevant Sub-Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
- (iii) **Insurance:** insure all works and property forming part of the relevant Sub-Project in accordance with Ukrainian industry practice for similar works of public interest; and
- (iv) **Rights and Permits:** maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the relevant Sub-Project.

(b) Environment and Social Standards

The Borrower shall procure that each Final Beneficiary shall:

- (i) implement and operate the relevant Sub-Project in compliance with Environmental and Social Standards, and procure that the contracts entered into between that Final Beneficiary and contractors for the relevant Sub-Project will contain provisions that require such contractors to comply with ILO Standards as well as with occupational health and safety standards;
- (ii) ensure that contractors engaged in Sub-Projects observe the provisions mentioned in Article 6.05(b)(i) above;
- (iii) obtain, maintain and comply with requisite Environmental or Social Approvals for each Sub-Project;
- (iv) not use the Bank's funding for Sub-Projects that require an Environmental and Social Impact Assessment Study according to national or EU legislation without/prior to such study being finalised and approved by the competent authority; and
- (v) not use the Bank's funding for a Sub-Project that have a potential to affect a site of nature conservation importance that is protected under national legislation or international agreements, until the time the competent authority confirms that the component does not have a significant negative impact on the site.

(c) EU law

The Borrower shall procure that each Final Beneficiary shall, execute and operate the relevant Sub-Project in accordance with the standards of EU law to the extent implemented by the laws of Ukraine or specified by the Bank in this Contract.

(d) the PIUs:

The Borrower shall ensure that the PIUs have sufficient and suitably qualified staff and are maintained in terms of reference acceptable and satisfactory to the Bank at all times until the completion of the Project.

(e) **Other undertakings**

The Borrower shall:

- (i) procure that there is no double financing of the same components of Sub-Projects with other funds made available by the Bank, whether under the Finance Contract or otherwise, or by other donors. For the avoidance of doubt, this undertaking shall not:
 - (A) prohibit any co-financing of Sub-Projects by other donors or funding by the Borrower of other components of a Sub-Project; or
 - (B) apply to the blending of grants from donors with funds from the Bank of which the Bank has been notified and which have been justified to the satisfaction of the Bank;
- (ii) procure that the Bank is promptly notified of the suspension or cancellation of the implementation of any Sub-Project (including if any loan or Investment Grant made available to the relevant Final Beneficiary for the purposes of financing that Sub-Project is suspended, cancelled, terminated or required to be repaid ahead of its maturity);
- (iii) confirm to the Bank that each Final Beneficiary has complied with all applicable policies and guidelines of the Bank, including (without limitation) the Environmental and Social Standards, the Bank's Guide to Procurement and the PPM;
- (iv) ensure that no Sub-Project:
 - (A) is carried out in an area in Ukraine which is experiencing active conflict;
 - (B) causes new active conflict to occur in Ukraine;
 - (C) prolongs any existing active conflict in Ukraine; or
 - (D) is carried out in an area which is not under the control of the Ukrainian Government;
- (v) procure that each Final Beneficiary implements and maintains an adequate management system for each Sub-Project satisfying the requirements set out therefore in the PPM, which guarantees that the goals of relevant Sub-Project(s) are fully achieved including (without limitation) that the quality of construction works is in full compliance with best practice construction standards and that the progress of construction works is recorded in the construction site record books;
- (vi) provide to the Bank:
 - (a) prior to the disbursement of the first Tranche, an initial disbursement schedule and an initial procurement plan; and
 - (b) thereafter on a semi-annual basis, the updated disbursement schedule and the updated procurement plan,in each case prepared on the basis of the Allocation Requests approved or confirmed by the Bank in accordance with this Contract and any associated funding requirements;
- (vii) suspend the authorisation of any Sub-Project and the payment of any part of a Tranche to a Final Beneficiary which, or whose management, is being investigated by a relevant authority for any Prohibited Conduct;
- (viii) ensure that its payment obligations under this Contract do not fall within the scope of the Debt Operation;
- (ix) submit to the Bank for its review and approval each Loan Fund Transfer Agreement proposed to be entered into by the Borrower prior to the Borrower executing such Loan Fund Transfer Agreement.



B. GENERAL UNDERTAKINGS

6.06 Compliance with laws

The Borrower shall, and shall procure that each Final Beneficiary will, comply in all respects with all laws and regulations to which it or a Sub-Project is subject where failure to do so results, or is reasonably likely to result, in a Material Adverse Change.

6.07 Integrity

(a) Prohibited Conduct:

- (i) The Borrower shall not (and shall ensure that no Final Beneficiary shall) engage in (and neither the Borrower nor any Final Beneficiary shall authorise or permit any person acting on its behalf to engage in) any Prohibited Conduct in connection with the Project, any tendering procedure for the Project, or any transaction contemplated by the Contract.
- (ii) The Borrower undertakes (and shall procure that each Final Beneficiary shall undertake) to take such action as the Bank shall request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct.
- (iii) The Borrower undertakes (and shall procure that each Final Beneficiary shall undertake) to ensure that contracts financed by the Loan include the necessary provisions to enable the Borrower to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project.

(b) Sanctions:

The Borrower shall not (and shall ensure that no Final Beneficiary shall):

- (i) enter into a business relationship with any Sanctioned Person, or
- (ii) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;

(c) Management:

The Borrower undertakes (and shall procure that each Final Beneficiary shall undertake) to take within a reasonable timeframe appropriate measures in respect of any duly authorised agents or representatives of the Borrower or any Final Beneficiary (as applicable) having direct decision and control powers in relation to the Loan or to the Project who:

- (i) becomes a Sanctioned Person;
- (ii) is the subject of a court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties, or
- (iii) is or becomes a family member or a person known to be a close associate to any beneficial owner of any relevant contractor under any Sub-Project,

in order to ensure that such person is suspended, dismissed or in any case excluded from any of the Borrower or Final Beneficiary's activities (as applicable) in relation to the Loan and to the Project. For the purposes of this Article 6.07, each of "family member", "person known to be a close associate" and "beneficial owner" has the meaning given to it by the corresponding definitions under the EU Directive No. 2015/849 of the European Parliament and of the Council of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "EU Fourth Money Laundering Directive"), subject to the definitions in the EU Fourth Money Laundering Directive having a general application and not being limited to politically exposed person.

6.08 General Representations and Warranties

The Borrower represents and warrants to the Bank that:

- (a) it has the power to execute, deliver and perform its obligations under this Contract and all necessary actions have been taken to authorise the execution, delivery and performance of the same by it;
- (b) this Contract constitutes its legally valid, binding and enforceable obligations;
- (c) the execution and delivery of, the performance of its obligations under and compliance with

the provisions of this Contract do not and will not:

- (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject or any restrictions on the incurring of indebtedness to which the Borrower is subject;
- (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
- (iii) contravene or conflict with any provision of its constitutional laws;
- (d) there has been no Material Adverse Change since 12 December 2017;
- (e) no event or circumstance which constitutes an Event of Default has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it any unsatisfied judgement or award;
- (g) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (h) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (i) it is in compliance with Article 6.05(b) and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental or Social Claim has been commenced or is threatened against it;
- (j) it is not (and will not, after the disbursement of the Loan, be) in breach of any restrictions applicable to it, on the incurring of financial indebtedness;
- (k) the Project falls within the scope of the Framework Agreement;
- (l) it is in compliance with all undertakings under this Article 6;
- (m) to the best of its knowledge, no funds invested in the Project by the Borrower or a Final Beneficiary (as applicable) are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism;
- (n) neither the Borrower nor any other person acting on its behalf or under its control has committed or will commit:
 - (i) any Prohibited Conduct in connection with the Project or any transaction contemplated by the Contract; or
 - (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;
- (o) its payment obligations under this Contract do not fall within the scope of the Debt Operation;
- (p) the Project (including without limitation, the negotiation, award and performance of contracts financed or to be financed by the Loan) has not involved or given rise to any Prohibited Conduct; and
- (q) the Project does not and will not aim at production of certain types of goods or undertaking of certain types of economic activity, as specified in the Law of Ukraine "On State Aid to Undertakings" (in Ukrainian: Закон України Про державну допомогу суб'єктам господарювання), dated 1 July 2014 (the "State Aid Law"), and, as such, the Project does not fall within the scope of the State Aid Law.

The representations and warranties set out above shall survive the execution of this Contract and are, with the exception of the representation set out in paragraph (d) above, deemed repeated on each Disbursement Acceptance, Disbursement Date and on each Payment Date.

6.09 Due Diligence

The Borrower shall, within a reasonable period of time, deliver to the Bank any such information or further document concerning due diligence matters of or for the Borrower as the Bank may reasonably require.

ARTICLE 7
Security

The undertakings in this Article 7 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

7.01 Pari passu ranking

The Borrower shall ensure that its payment obligations under this Contract rank, and will rank, not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its External Debt Instruments.

In particular, if the Bank makes a demand under Article 10.01 or if an event or potential event of default under any unsecured and unsubordinated External Debt Instrument of the Borrower or of any of its agencies has occurred and is continuing, the Borrower shall not make (or authorize) any payment in respect of any other such External Debt Instrument (whether regularly scheduled or otherwise) without simultaneously paying, or setting aside in a designated account for payment on the next Payment Date a sum equal to, the same proportion of the debt outstanding under this Contract as the proportion that the payment under such External Debt Instrument bears to the total debt outstanding under that Instrument. For this purpose, any payment of an External Debt Instrument that is made out of the proceeds of the issue of another instrument, to which substantially the same persons as hold claims under the External Debt Instrument have subscribed, shall be disregarded.

In this Contract, "External Debt Instrument" means (a) an instrument, including any receipt or statement of account, evidencing or constituting an obligation to repay a loan, deposit, advance or similar extension of credit (including without limitation any extension of credit under a refinancing or rescheduling agreement), (b) an obligation evidenced by a bond, debenture or similar written evidence of indebtedness or (c) a guarantee granted by the Borrower for an obligation of a third party; provided in each case that such obligation is: (i) governed by a system of law other than the law of the Borrower; or (ii) payable in a currency other than the currency of the Borrower's country; or (iii) payable to a person incorporated, domiciled, resident or with its head office or principal place of business outside the Borrower's country.

7.02 Additional Security

Should the Borrower grant to a third party any security for the performance of any External Debt Instrument or any preference or priority in respect thereof, the Borrower shall, if so required by the Bank, provide to the Bank equivalent security for the performance of its obligations under this Contract or grant to the Bank equivalent preference or priority.

7.03 Clauses by inclusion

If the Borrower concludes with any other medium or long term financial creditor a financing agreement that includes a loss-of-rating clause, financial covenants or other provisions regarding its financial ratios, a cross default clause and/or a *pari passu* clause not provided for in this Contract or is more favourable to the relevant financial creditor than equivalent provision(s) of this Contract, the Borrower shall promptly so inform the Bank and shall, at the request of the Bank, forthwith execute an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

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ARTICLE 8
Information and Visits

8.01 Information concerning the Project and Final Beneficiaries

The Borrower shall:

- (a) deliver to the Bank:
- (i) the information in content and in form, and at the times, specified in Schedule A.3 or otherwise as agreed from time to time by the parties to this Contract; and
 - (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time;
- provided always that if such information or document is not delivered to the Bank on time, and the Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Borrower's expense and the Borrower shall provide such persons with all assistance necessary for the purpose;
- (b) submit for the approval of the Bank without delay and in the English language any material change to the Project or any Sub-Project, also taking into account the disclosures made to the Bank in connection with the Project and/or the relevant Sub-Project prior to the signing of this Contract, in respect of, *inter alia*, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project and/or the relevant Sub-Project;
- (c) promptly inform the Bank of:
- (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower or any Final Beneficiary or any Environmental or Social Claim that is to its knowledge commenced, pending or threatened against it or any Final Beneficiary with regard to environmental, social or other matters affecting the Project or any Sub-Project;
 - (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project or any Sub-Project;
 - (iii) a genuine allegation or complaint with regard to any Prohibited Conduct related to the Loan, the Project or any Sub-Project;
 - (iv) any non-compliance by it or any Final Beneficiary with any applicable Environmental Law or Social Law;
 - (v) any suspension, revocation or modification of any Environmental or Social Approval;
 - (vi) any measure taken by a Final Beneficiary pursuant to Article 6.07 (*Integrity*) of this Contract; and
 - (vii) any fact or event which results in a Final Beneficiary's duly authorised agents or representatives having direct decision and control powers in relation to the relevant Sub-Project being or becoming a Sanctioned Person,
- and set out the action to be taken with respect to such matters;
- (d) deliver to the Bank, in form and substance satisfactory to the Bank:
- (i) semi-annual progress reports with respect to the implementation of the Project in the form specified in Schedule A.3; and
 - (ii) a completion report with respect to the completion of the Project in the form and within the timeframe specified in Schedule A.3;
- (e) provide to the Bank, if so requested, for each Sub-Project:
- (i) an insurance certificate showing fulfilment of the requirements of Article 6.05(a)(iii); and

- (ii) annually, a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums,
- (f) store and keep updated (and, with respect to each Sub-Project, procure that the relevant Final Beneficiary shall store and keep updated) documents relevant to the Project or the relevant Sub-Project (including environmental studies related to the EIA) and provide them to the Bank promptly on the Bank's request;
- (g) notify the Bank of the suspension of payments by a Final Beneficiary or of any judicial or administrative proceedings commenced against a Final Beneficiary, in each case within five days of such event occurring; and
- (h) notify the Bank promptly of any audit reports in relation to the Project or any Sub-Project carried out by the Government of Ukraine or independent state authorities.

8.02 Information concerning the Borrower

The Borrower shall:

- (a) deliver to the Bank:
 - (i) the audited Project accounts and auditor's reports in the English language or with English translation within 6 (six) months from the end of each fiscal year; and
 - (ii) from time to time, such information on its general financial situation as the Bank may reasonably require;
- (b) ensure that it maintains procedures and records adequate to fully reflect the operations relating to the financing, execution and operation of the Project; and
- (c) inform the Bank immediately of:
 - (i) any material alteration to any laws, statutes, by-laws, memoranda and articles of association with a bearing on the Project after the date of this Contract;
 - (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
 - (iii) any event or decision that constitutes or may result in a Prepayment Event;
 - (iv) any intention on its part to grant any security over any of its assets in favour of a third party;
 - (v) any event or decision that constitutes or may result in the events described in Article 7.03 (*Clauses by inclusion*);
 - (vi) any intention on its part, or on the part of any Final Beneficiary, to relinquish ownership of any material component of the Project or any Sub-Project;
 - (vii) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract, or any obligation of a Final Beneficiary under the relevant Loan Fund Transfer Agreement;
 - (viii) any Event of Default having occurred or being threatened or anticipated;
 - (ix) any fact or event which results in any investigations concerning the integrity of the members of any Final Beneficiary's management or administrative body;
 - (x) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief (or to the best knowledge and belief of such Final Beneficiary that informs the Borrower to that effect), is current, imminent or pending against the Borrower or any Final Beneficiary, or its controlling entities or members of its management or administrative bodies in connection with Prohibited Conduct related to the Loan, the Project or any Sub-Project;
 - (xi) any measure taken by the Borrower pursuant to Article 6.07 of this Contract;
 - (xii) any fact or event which results in any of its duly authorised agents or representatives having direct decision and control powers in relation to the Loan, the Project or any Sub-Project being or becoming a Sanctioned Person;

- (xiii) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change; and
- (xiv) the due ratification of this Contract by the Parliament of Ukraine in accordance with the laws of Ukraine.

8.03 Visits, Rights of Access and Investigation

- (a) The Borrower shall, and shall procure in each Loan Fund Transfer Agreement that each Final Beneficiary shall, permit persons designated by the Bank who may be accompanied by representatives of the European Court of Auditors, the European Commission and the European Anti-Fraud Office to:
- (i) visit the sites, installations and works comprising the Project and to conduct such checks as they may wish for purposes connected with this Contract and the financing of the Project,
 - (ii) interview representatives of the Borrower and the relevant Final Beneficiary, and not obstruct contacts with any other person involved in or affected by the Project; and
 - (iii) review the Borrower's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.
- (b) The Borrower shall, and shall procure that in each Loan Fund Transfer Agreement each Final Beneficiary undertakes to, facilitate investigations by the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.
- (c) The Borrower acknowledges that the Bank may be obliged to communicate information relating to the Borrower and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law.

8.04 Language

Documents, evidence, notices and communications provided or made by the Borrower pursuant to this Contract shall be provided in the English language unless the original language of the document is not English, in which case the document shall be provided to the Bank in its original language together with a certified English translation thereof.

ARTICLE 9

Charges and expenses

9.01 Taxes, duties and fees

The Borrower shall pay any tax, levy, impost, duty or other charge or withholding of a similar nature (including any interest payable in connection with any failure to pay or any delay in paying any of the same), including any stamp duty and registration fees, arising out of the execution or implementation of this Contract or any related document and in the creation, perfection, registration or enforcement of any security for the Loan to the extent applicable.

The Borrower shall pay all principal, interest, indemnities and other amounts due under this Contract gross without deduction of any national or local impositions whatsoever; provided that, if the Borrower is obliged to make any such deduction, it will gross up the payment to the Bank so that after deduction, the net amount received by the Bank is equivalent to the sum due.

9.02 Other charges

The Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation, enforcement and termination of this Contract or any related document, any amendment, supplement or waiver in respect of this Contract or any related document, and in the amendment, creation, management, enforcement and realisation of any security for the Loan.

9.03 Increased costs, indemnity and set-off

- (a) The Borrower shall pay to the Bank any sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation or application of) any law or regulation or compliance with any law or regulation made after the date of this Contract, in accordance with or as a result of which:
- (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or
 - (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.

The Bank shall provide documentary evidence for any such increased costs where it is reasonably practicable to do so.

- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- (c) To the extent permitted under each applicable legal system, the Bank may set off any matured obligation due from the Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation. The Bank shall notify the Borrower of its intention to exercise its rights under this Article and of any set-off effected by it under this Article, in each case if it practicable to do so.

ARTICLE 10

Events of Default

10.01 Right to demand repayment

The Borrower shall repay all or part of the Loan (as requested by the Bank) forthwith, together with accrued interest and all other accrued or outstanding amounts under this Contract, upon written demand being made by the Bank in accordance with the following provisions.

10.01A Immediate demand

The Bank may make such demand immediately:

- (a) if the Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless:
- (i) its failure to pay is caused by an administrative or technical error or a Disruption Event; and
 - (ii) payment is made within 3 Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of the Borrower or any representation, warranty or statement made or deemed to be made by the Borrower in or pursuant to this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect at the time it was made or deemed to be made;
- (c) if, following any default of the Borrower in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan,

- (i) the Borrower is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
- (ii) any financial commitment for such other loan or obligation is cancelled or suspended;
- (d) if the Borrower is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if the Borrower defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union or financial instrument entered into with the Bank;
- (f) if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (g) if a Material Adverse Change occurs, as compared with the Borrower's condition at the date of this Contract;
- (h) if it is or becomes unlawful for the Borrower to perform any of its obligations under this Contract or this Contract is not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms;
- (i) if any event occurs which is likely to jeopardise the servicing of all or part of any Tranche or adversely affect any security therefore; or
- (j) if any obligation assumed by the Borrower under this Contract are adversely affected by the Borrower's implementation of the Debt Operation.

10.01B Demand after notice to remedy

The Bank may also make such demand:

- (a) If the Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.01A; or
- (b) If any fact stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within a reasonable period of time specified in a notice served by the Bank on the Borrower.

10.02 Other rights at law

Article 10.01 shall not restrict any other right of the Bank at law to require prepayment of the Loan.

10.03 Indemnity

10.03A Fixed Rate Tranches

In case of demand under Article 10.01 in respect of any Fixed Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with the Prepayment Indemnity on any amount of principal due to be prepaid. Such Prepayment Indemnity shall accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified.

10.03B Floating Rate Tranches

In case of demand under Article 10.01 in respect of any Floating Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) *per annum* calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the original amortisation schedule of the Tranche, until the Maturity Date.

The value shall be calculated at a discount rate equal to the Redeployment Rate applied as of each relevant Payment Date.

10.03C **General**

Amounts due by the Borrower pursuant to this Article 10.03 shall be payable on the date of prepayment specified in the Bank's demand.

10.04 **Non-Waiver**

No failure or delay or single or partial exercise by the Bank in exercising any of its rights or remedies under this Contract shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by law.

ARTICLE 11

Law and jurisdiction, miscellaneous

11.01 **Governing Law**

This Contract and its formation, construction and validity shall be governed by public international law. The laws of Ukraine relating to the existence or interpretation of contracts shall not apply to this Contract.

11.02 **Jurisdiction**

Any dispute, disagreement, controversy or claim (together referred to as a "Dispute") arising in connection with the existence, validity, interpretation, implementation or termination of this Contract shall, to the extent possible, be settled amicably by agreement between the Bank and the Borrower through consultations and negotiations. If a Dispute cannot be amicably settled by the Bank and the Borrower within 60 (sixty) days of the notification of the Dispute by either Party, the Dispute shall be settled by final and binding arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules in effect at the date of this Contract, which rules are deemed to be incorporated by reference into this Article.

The number of arbitrators shall be three. The language of the arbitral procedure shall be English. The arbitration proceedings shall take place in The Hague, the Netherlands.

Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the constitution of the arbitral tribunal. The tribunal shall render its decision within 60 (sixty) days following the delivery of the final submissions.

Any final award of the tribunal shall be binding from the day it is made, and the Parties hereby waive any right of appeal on the law and/or the merits to any court. Notwithstanding the UNCITRAL Arbitration Rules, the tribunal shall not take or provide and the Borrower shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank.

The Borrower shall abide by and carry out any such award in its territory without delay.

In case of failure by the Borrower to comply with its obligation in the preceding paragraph within 3 months from the date of the award, then, to the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, enforcement, attachment or other legal process, the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

11.03 **Evidence of sums due**

In any legal action arising out of this Contract the certificate of the Bank as to any amount or rate due to the Bank under this Contract shall in the absence of manifest error be *prima facie* evidence of such amount or rate.

11.04 **Entire Agreement**

This Contract constitutes the entire agreement between the Bank and the Borrower in relation to the provision of the Credit hereunder, and supersedes any previous agreement, whether express or implied, on the same matter.

11.05 Invalidity

If at any time any term of this Contract is or becomes illegal, invalid or unenforceable in any respect, or this Contract is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Contract or the effectiveness in any other respect of this Contract in that jurisdiction; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Contract or the effectiveness of this Contract under the laws of such other jurisdictions.

11.06 Amendments

This Contract may be amended by written agreement between the parties. Such amendments shall become effective on the terms set out in the relevant amendment instrument without the need for the Borrower to execute any internal procedures (being ratification and approval), if the abovementioned amendments:

- (a) do not require any increase in the financial obligations of the Borrower or the imposition of additional obligations on the Borrower under this Contract;
- (b) do not necessitate the changing of Laws of Ukraine or the approval of new Laws of Ukraine; and
- (c) do not incorporate any other rules other than stipulated in the decrees of the President or the Cabinet of Ministers of the Borrower.

11.07 Counterparts

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

ARTICLE 12

Final clauses

12.01 Notices to either Party

Notices and other communications given under this Contract addressed to either Party to this Contract shall be made to the address or facsimile number as set out below, or to such other address or facsimile number as a party previously notifies to the other in writing:

For the Bank

Attention: Ops
100 boulevard Konrad Adenauer
L-2950 Luxembourg
Facsimile no: + 352 4379 67495

For the Borrower

Attention: Ministry of Finance
12/2 Grusjevskogo Street
Kyiv 01008
Ukraine
Fax no: +380.44.277.54.87

12.02 Form of notice

Any notice or other communication given under this Contract must be in writing.

Notices and other communications, for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter or facsimile. Such notices and communications shall be deemed to have been received by the other party on the date of delivery in relation to a hand-delivered or registered letter or on receipt of transmission in relation to a facsimile.

Other notices and communications may be made by hand delivery, registered letter or facsimile or, to the extent agreed by the parties by written agreement, by email or other electronic communication.

Without affecting the validity of any notice delivered by facsimile according to the paragraphs above, a copy of each notice delivered by facsimile shall also be sent by letter to the relevant party on the next following Business Day at the latest.

Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.

12.03 Changes to parties

The Borrower may not assign or transfer any of its rights or obligations under this Contract without the prior written consent of the Bank.

The Bank may not assign all or part of its rights and benefits or transfer (by way of novation, sub-participation or otherwise) all or any part of its rights, benefits and obligations under this Contract without the prior written consent of the Borrower except for assignments and transfers within the meaning of this paragraph of Article 12.03 to the European Central Bank, any national central bank which is a member of the European System of Central Banks, or the EU Commission for which the Borrower's consent is not required.

12.04 Effectiveness of this Contract

This Contract shall become effective on the date (the "Date of Effectiveness") on which the law of Ukraine ratifying this Contract becomes effective.

If the Date of Effectiveness does not occur within 24 (twenty-four months) from the date of this Contract, this Contract shall not come into force and no further action shall be necessary or required.

12.05 Recitals, Schedules and Annexes

The Recitals and following Schedules form part of this Contract:

- Schedule A Technical Description and Reporting
- Schedule B Definition of EURIBOR
- Schedule C Forms for Borrower

The following Annexes are attached hereto:

- Annex I Authority of Signatory

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed in four originals in the English language and have caused Mr Dalibor Cerny on behalf of the Bank, and Andriy Bohushechko on behalf of the Borrower, to initial each page of this Contract on their behalf.

In Brussels this day of 9 July 2018.

Signed for and on behalf of
UKRAINE

Signed for and on behalf of
EUROPEAN INVESTMENT BANK

Ivanna Klymush Tsintsadze
Vice-Prime-Minister for
European and Euro-Atlantic
Integration of Ukraine

Vazil Hudák
Vice-President

**Project Specification and Reporting****A.1. TECHNICAL DESCRIPTION****Purpose, Location**

The Project will support the Ukraine's efforts to give priority to road safety in order to achieve European levels of road safety. The main purpose of the Project is to reduce the numbers of persons killed and seriously injured in road accidents in urban areas, with special attention to the largest group of victims - pedestrians and cyclists – and to improve the efficiency and safety of urban transport in general.

The Sub-Projects (schemes) to be implemented under the Project are located within the five cities Kyiv, Kharkiv, Dnipro, Odessa and Lviv and/or other cities as agreed between the Borrower and the Bank, which have been selected on basis of their size, experience and readiness to engage in a project of this scope.

The Borrower, acting through the Ministry of Infrastructure, will have general supervision of and responsibility for the implementation of the Project..

Description

The Project comprises multiple small Sub-Projects (schemes) of varying size in eight different categories, which are eligible for financing if they fulfil the following criteria:

- They are located within the jurisdiction of and managed by one of the cities as mentioned above;
- They are within the range of safety and public transport related interventions specified (see table below);
- They are justifiable on basis of road accident savings and/or;
- They are cost effective.

The following types of Sub-Projects (schemes) are eligible, alone or in combination:

Category	Description
1	Small public transport related infrastructure improvements (e.g. improvement of worn rails, safer pedestrian/cycle routes, access to public transport stops/terminals, safe crossings)
2	Improvement of the most dangerous accident blackspots (e.g. 20-30 locations in each of the five cities)
3	Intersection improvements (e.g. channellisations, roundabouts, upgrading of traffic signals to include pedestrian phases, better islands and pedestrian refuges)
4	Street renovations (e.g. a combination of facilities to increase safety and accessibility for pedestrians and cyclists: pedestrian streets, cycle paths, street lights, greenery)
5	Safe cycle and pedestrian networks (e.g. cycle lanes and sidewalks on existing roads or in separate alignments, removal of obstructions and dangerous conflict points)
6	Area wide schemes (e.g. where lower speeds are required near schools, in residential, areas, in city centres with many pedestrians)
7	Route action plans (e.g. with a combination of standard safety measures, or better conditions for cyclists and pedestrians along entire routes)
8	IT solutions (e.g. traffic management systems for better monitoring and control of vehicle traffic)

A Project Procedures Manual (PPM) will further elaborate the requirements. A pipeline of Sub-Projects (schemes) has been identified but the Bank and the MoI are not obliged to commit financing to these.

The approximate cost of the indicative lists of Sub-Projects (schemes) per city is ranging from EUR 21m-38m with a total Project investment Cost of EUR 177m.

The loan can also be utilised to finance contracts with consultants and experts appointed to support (i) the management, co-ordination, monitoring, planning of the Project and (ii) supervision, and implementation of Sub-Projects (schemes).

Calendar

The project is expected to be initiated in January 2018 and completed by December 2021.

Eligibility Criteria

The Sub-Projects (schemes) submitted for financing will be subject to individual appraisal by the Bank's services prior to allocation to ensure they are in line with the Bank's eligibility criteria. The detailed eligibility criteria shall be defined in the Project Procedures Manual (PPM) to be approved by the Borrower, in form and substance satisfactory to the Bank.

The eligibility criteria will include a requirement for the Borrower to verify the compliance of the Final Beneficiaries and Sub-Projects with the Bank's applicable policies and guidelines. All Sub-Projects shall be technically, economically and financially viable and sustainable, comply with the Bank's environmental and social standards, and undertaken in accordance with the Bank's Guide to Procurement.

The eligibility of Sub-Projects for financing under this Contract will be checked by the Bank at the allocation stage against the detailed criteria defined in the PPM.

General exclusions:

The following costs will not be eligible for Bank financing: VAT and other taxes and duties, land acquisition, purchase of buildings, maintenance and other operating costs, acquisition of second-hand assets, interest during construction, purchase of licences for the use of non-generated public resources (e.g. telecom licences), patents, brands and trademarks. Pure financial transactions are not eligible.

Excluded Sectors:

- Manufacture and distribution of weapons and ammunition, arms and military equipment
- Manufacture and distribution of tobacco or alcohol products
- Gambling and betting activities
- Detention facilities e.g. prisons, police stations, schools with custodial functions.
- Sectors and activities with a strong ethical dimension considered to carry significant reputation risk

Particular categories of investment schemes (Sub-Projects) excluded from this framework loan:

- Sub-Projects (schemes) in sectors other than those mentioned in the technical description;
- Sub-Projects (schemes) outside the project geographic scope described in technical description.

A.2. LOAN ALLOCATION AND MONITORING PROCEDURES

Detailed allocation and monitoring procedures shall be defined in the Project Procedures Manual (PPM) to be approved by the Borrower, in form and substance satisfactory to the Bank.

The Bank's funds will be allocated according to the scheme (Sub-Project) size in line with applicable framework loan procedures:

- a) Eligible Sub-Projects (schemes) or packages of Sub-Projects (schemes) with a total investment cost below EUR 25m are selected by the Borrower. The choices are subject to ex-post confirmation of eligibility by the Bank's services. The Borrower is to submit an allocation request in a form required by the Bank (as defined in the PPM).
- b) Eligible Sub-Projects (schemes) with a cost between EUR 25m and including EUR 50m are submitted ex-ante to the Bank for approval before funding, using a template as defined in the PPM or a feasibility study. The Bank keeps the right to ask for additional information. Partial or In-depth appraisal of the scheme (Sub-Project) will be undertaken, if judged necessary.

The allocation of projects could be subject to additional conditions to be agreed with the Final Beneficiary//Borrower when they are separately appraised.

The Bank may change its allocation procedure. All Information shall be provided in English to the Bank in an electronic form, templates, tables and spreadsheets. The Bank shall reserve the right to review at mid-term the allocation procedures in view of the development of the operation with the Borrower.

A.3. PROJECT INFORMATION TO BE SENT TO THE BANK AND METHOD OF TRANSMISSION

1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

	Financial Contact	Technical Contact
Company	Ministry of Finance	Ministry of Infrastructure
Contact person	Yuriy Butsa	Victor Dovhan
Title	Deputy Minister for European Integration	Deputy Minister for European Integration
Function / Department financial and technical	[Department for Cooperation with International Institutions]	Department of International Cooperation
Address	Mail address: Mezhygirs'ka, 11 Kyiv 04071 Ukraine Address of registration: 12/2 Grusjevskogo Street Kyiv 01008 Ukraine	14, Peremohy Avenue Kyiv 01035 Ukraine
Phone	Tel: +38 044 206 58 48 Tel: +38 044 277 53 33 Fax +38 044 425 90 26 Fax +38 044 277 54 87	Tel: +38 044 351 148 90 Tel: +38 044 351 140 86 Fax +38 044 351 41 15 Fax +38 044 351 40 84
E-mail	yb@minfin.gov.ua difi@minfin.gov.ua	rvana@mtu.gov.ua babiv@mtu.gov.ua

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being.

The Borrower shall inform the Bank immediately in case of any change.

2. Information on specific subjects

The Borrower shall deliver to the Bank the following information at the latest by the deadline indicated below:

Document / Information	Deadline
Fiche/Table For each scheme (Sub-Project) or package of schemes (Sub-Projects) to be included in the project the Ministry of Infrastructure will provide the Bank with a completed table, and fiche for schemes (Sub-Projects) or packages of schemes (Sub-Projects) above 25m EUR, in accordance with the format and instructions in Appendix A.3 and allocation procedures explained in Appendix A.1.	At allocation stage
Non-Technical Summaries of EIAs For each scheme (Sub-Project) or package of schemes (Sub-Projects) to be included in the project, the Ministry of Infrastructure will provide the Bank with the Non-Technical Summaries of EIAs for any scheme (Sub-Project) requiring an EIA, or confirmation that the proposed schemes (Sub-Projects) have been screened out.	Prior to disbursement against the concerned scheme (Sub-Project)
Forms similar to Form A and B in Annex A.1.3.3 For each scheme (Sub-Project) or package of schemes (Sub-Projects) to be included in the project with a potential effect on a conservation site as a result of their proximity to the site, a form similar to Form A or B should be submitted, or confirmation provided that the schemes (Sub-Projects) will not have any potential effect on habitats or conservation site.	Prior to disbursement against the concerned scheme (Sub-Project)

3. Information on the Project's implementation

The Borrower shall deliver to the Bank the following information on the Project's implementation at the latest by the deadline indicated below:

Document / Information	Deadline	Frequency of reporting
<p>Project Progress Report</p> <p>General</p> <ul style="list-style-type: none"> - Brief update on the allocation process, explaining the reasons for significant changes vs. initial scope; - Brief update on the effectiveness of technical assistance and identification of further technical assistance requirements. <p>For each city</p> <ul style="list-style-type: none"> - Updated date of completion of schemes (Sub-Projects) and reasons for any delays; - Update on costs of schemes (Sub-Projects), reasons for cost variations; - Description of major issues with social or environmental impacts; - Updated procurement plan - Update on procurement procedures; - Update on the scheme (Sub-Project) demand/sage; - Any significant issues or risks that may affect the schemes (Sub-Projects) operation; - Comments on any on-going legal actions concerning any scheme (Sub-Project); - Update on development in road accidents; - Update on the monitoring indicators (as defined in the PPM). 	Starting 6 months after contract signature	Semi-Annually

4. Information on the Project's completion and first year of operation

The Borrower shall deliver to the Bank the following information on the Project's completion and initial operation at the latest by the deadline indicated below:

Document / Information	Date of delivery to the Bank
<p>Completion Report</p> <p>General</p> <ul style="list-style-type: none"> - Final description of the allocation process as completed, explaining the reasons for any significant change compared to the initial scope; - Brief update on the effectiveness of technical assistance and identification of further technical assistance needed in the future, if any. <p>For each city</p> <ul style="list-style-type: none"> - Date of completion of each of the schemes (Sub-Projects) and reasons for any delays; - Final costs of schemes (Sub-Projects), reasons for any cost variations; - Employment effects of the schemes (Sub-Projects), if possible; - Final update on issues with social or environmental impacts; - Final update on procurement procedures, if relevant; - The schemes (Sub-Projects) actual demand/usage; - Any significant issues or risks that may affect the schemes (Sub-Projects) operation; - Comments on any on-going legal actions concerning any schemes (Sub-Projects); - The schemes (Sub-Projects) actual an expected future impacts on road safety; - Final update on the monitoring indicators (as defined in the PPM). 	15 months after completion of the project

The financing for this project benefits from an EU guarantee to the Bank under DECISION No 466/2014/EU of the European Parliament and of the Council. Pursuant to Article 9 (2) of this Decision, the Bank "shall require the project promoters to carry out thorough monitoring during project implementation until completion. Inter alia, on the economic, development, social, environmental and human rights impact of the investment project. The EIB shall verify on a regular basis the information provided by the project promoters and make it publicly available if the project promoter agrees. Where possible, project completion reports related to EIB financing operations shall be published excluding confidential information."

Accordingly, and without prejudice to the Bank's obligation to make publicly available any project-related environmental information under Aarhus [Convention/Regulation for JU to confirm], the Bank shall make publicly available all information provided by the Borrower in the Project Progress Reports and Project Completion Report provided that such information is expressly marked by the Borrower as "for publication on the EIB website".

Alternatively, the Borrower may also decide to publish this information on its own website and provide the EIB with the corresponding link (URL) which will be used as a source for EIB publication.

The EIB will not take any responsibility for the content of such information made public on its website. Documents marked as "for publication on the EIB website" will be published as received and will not be edited by the EIB. Only functioning URLs that link to the relevant project-related information will be published by the EIB.

5. Information required 3 years after the Project's completion report

The Borrower shall deliver to the Bank the following information at the latest by the deadline indicated below:

Document / information	Date of delivery to the Bank
Update on the Monitoring Indicators (as defined in the PPM)	3 years after the Project Completion Report

Language of reports	English
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Definitions of EURIBOR**A. EURIBOR**

"EURIBOR" means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear Interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period, (the period for which the rate is taken or from which the rates are interpolated being the "Representative Period").

For the purposes of paragraphs (b) and (c) above, "available" means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank.

"Screen Rate" means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the "Reset Date") which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such Screen Rate is not so published, the Bank shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11h00, Brussels time, on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than 2 (two) quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11h00, Brussels time, on the day which falls 2 (two) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European Banks for a period equal to the Representative Period.

If no rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate *per annum*) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

B. General

For the purposes of the foregoing definitions:

- (a) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with halves being rounded up.
- (b) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (c) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI and EURIBOR ACI (or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank) in respect of EURIBOR, the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.



Forms for Borrower

C.1 Form of Disbursement Offer/Acceptance (Articles 1.02B and 1.02C)

To: Ministry of Finance, Ukraine

From: European Investment Bank

Date:

Subject: Disbursement Offer/Acceptance for the Finance Contract between Ukraine and the European Investment Bank dated _____ (the "Finance Contract")

FI number 86.980

Serapls number 2016-0819

Dear Sirs,

We refer to the Finance Contract. Terms defined in the Finance Contract have the same meaning when used in this letter.

Following your request for a Disbursement Offer from the Bank, in accordance with Article 1.02B of the Finance Contract, we hereby offer to make available to you the following Tranche:

- (a) amount to be disbursed:
- (b) Scheduled Disbursement Date:
- (c) Interest rate basis:
- (d) Interest payment periodicity:
- (e) Payment Dates:
- (f) Terms for repayment of principal:
- (g) The first and last principal repayment dates:
- (h) The Fixed Rate or Spread, applicable until the Maturity Date.

To make the Tranche available subject to the terms and conditions of the Finance Contract, the Bank must receive a Disbursement Acceptance in the form of a copy of this Disbursement Offer duly signed on your behalf, to the following fax number [_____] no later than the Disbursement Acceptance Deadline of [time] Luxembourg time on [date].

The Disbursement Acceptance must be accompanied (if it has not been previously supplied) by:

- (i) the indication of the bank account (with IBAN code) where disbursement of the Tranche should be made; and
- (ii) evidence of the authority of the person or persons authorised to sign it on behalf of the Borrower and the specimen signature of such person or persons.

If not accepted by the above stated time, the offer contained in this document shall be deemed to have been refused and shall automatically lapse.

If you do accept the Tranche as described in this Disbursement Offer, all the related terms and conditions of the Finance Contract shall apply, in particular, the provisions of Article 1.04.

Yours faithfully,

EUROPEAN INVESTMENT BANK

We hereby accept the above Disbursement Offer and confirm that no obligation of the Borrower under the Contract falls within the scope of the Debt Operation:

For and on behalf of Ukraine

Date:

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C2. CERTIFICATES TO BE PROVIDED BY THE BORROWER

Form of Certificate from Borrower (Article 1.04C)

To: European Investment Bank

From: Ukraine

Date:

Subject: Finance Contract between Ukraine and the European Investment Bank dated
(the "Finance Contract")

FI number 86.980

Serapis Number 2016-0819

Dear Sirs,

Terms defined in the Finance Contract have the same meaning when used in this letter.

For the purposes of Article 1.04 of the Finance Contract we hereby certify to you as follows:

- (a) list of expenditures under the Project to be financed with the Tranche;
- (b) no Prepayment Event has occurred and is continuing unremedied;
- (c) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.01, save as previously communicated by us;
- (d) we have sufficient funds available to ensure the timely completion and implementation of the approved Sub-Projects in accordance with Schedule A.1;
- (e) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us or any of our subsidiaries any unsatisfied judgement or award;
- (g) the representations and warranties to be made or repeated by us under Article 6.08 are true in all respects;
- (h) the Borrower's obligations under the Finance Contract do not fall within the scope, and are not affected by, the Borrower's implementation of the Debt Operation; and
- (i) no Material Adverse Change has occurred, as compared with the situation at the date of the Finance Contract.

Yours faithfully,

For and on behalf of Ukraine

Date:

Authority of Signatory