Corporate Use

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EUROPEAN ROADS UKRAINE III

(Project for the Development of Trans-European Road Network)

Finance Contract

between

Ukraine

and the

European Investment Bank

London, 22 November 2019

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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 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg, represented by Ms. Lilyana PAVLOVA, Vice-President,	(the "**Bank**")
of the second part, and collectively the "**Parties**".	

WHEREAS:

(a) 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and which governs the Bank's activities in the territory of Ukraine (the "**Framework Agreement**", as may be amended, superseded or replaced from time to time).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.

(b) 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.

(c) 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, as amended by Decision No. 2018/412/EU, 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 alias, the Borrower (the "**EU Guarantee**"). As of the date of this Contract, Ukraine is an Eligible Country (as defined below).

(d) The Borrower has stated that it is undertaking operations (each a "**Sub-Project**", and together the "**Project**" or the "**Sub-Projects**") to finance (i) the construction of Lviv Northern bypass; and (ii) the rehabilitation of sections of M-05 in Cherkasy, Kirovohrad, Mykolayiv and Odesa regions in Ukraine, as more particularly described in the technical description set out in Schedule A.1 hereto (hereinafter referred to as the "**Technical Description**") and to be implemented by the State Road Service of Ukraine - Ukravtodor (hereinafter referred to as the "**Promoter**") with financial assistance provided, directly or indirectly, by the Borrower and with the assistance of a project implementation unit ("**PIU**") in accordance, *inter alia*, with the provisions of a project agreement between the Bank and the Promoter (the "**Project Implementation Agreement**") and the parties thereto shall comply with their obligations under such agreement at all times. The Borrower shall ensure that the Promoter shall comply with the provisions of the Project Implementation Agreement at all times.

(e) The Borrower, acting through the Ministry of Finance of Ukraine (the "**Ministry of Finance**") shall make the Credit (as defined below) available to the Promoter pursuant to a loan fund transfer agreement (a "**Loan Fund Transfer Agreement**") to be entered into between the Ministry of Finance and the Promoter.

(f) The total cost of the Project, as preliminarily estimated by the Bank, is EUR 1,050,000,000 (one billion fifty million euros). The Borrower has stated that it intends to finance the Project in an amount of EUR 450,000,000 (four hundred fifty million euros) from the proceeds of a Loan (as defined below) and the rest from own resources, EBRD financing, grants and/or other funding resources, in each case without recourse to the Bank.

(g) In order to finance the Project, the Borrower has requested from the Bank a credit of EUR 450,000,000 (four hundred fifty 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**").

(h) 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 450,000,000 (four hundred fifty million euros) under this finance contract (the "**Contract**"); provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent) of the total cost of the Project set out in Recital (f).

(i) The Promoter has drafted and submitted to the Bank an RPF (as defined below) which at the time of the appraisal of the Project by the Bank was disclosed for public consultations. The draft RPF was elaborated by the Promoter and its final version will be done with due consideration of the findings obtained during public consultations held with the different stakeholders. The final version of the RPF will be provided to the Bank and published on the official website of the Bank and the Promoter, and shall be made publicly available also by the respective local executive authorities in the territories where the Project will be implemented.

(j) 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 Standby Agreement approved by the Executive Board of the International Monetary Fund for the Borrower on 18 December 2018 (the "**Debt Operation**").

(k) 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.

(l) 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.

(m) 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.

(n) 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 European Union institutions and bodies and on the free movement of such data.

(o) By entering into this Contract, each party acknowledges that the Bank is bound to comply with the Sanctions (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).

(p) The Bank supports the implementation of international and EU standards in the field of anti-money laundering and countering the financing of terrorism and promotes tax good governance standards. It has established policies and procedures to avoid the risk of misuse of its funds for purposes which are illegal or abusive in relation to applicable laws. The EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism is available on the Bank's website and offers further guidance to EIB contracting counterparties.

NOW THEREFORE it is hereby agreed as follows:

INTERPRETATION AND DEFINITIONS

Interpretation

In this Contract:

(a) 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;

(b) references to "law" or "laws" mean

(i) any applicable law and any applicable treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which is binding or applicable case law, and

(ii) EU Law;

(c) references to applicable law, applicable laws or applicable jurisdiction means

(i) a law or jurisdiction applicable to the Borrower, its rights and/or obligations (in each case arising out of or in connection with this Contract), its capacity and/or assets and/or the Project; and/or, as applicable; or

(ii) a law or jurisdiction (including in each case the Bank's Statute) applicable to the Bank, its rights, obligations, capacity and/or assets;

(d) references to a provision of law are references to that provision as amended or re-enacted;

(e) references to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated, and

(f) words and expressions in plural shall include singular and vice versa.

Definitions

In this Contract:

"Acceptable Bank" means:

(a) Joint Stock Company "The State Import-Export Bank of Ukraine" (JSC "Ukreximbank");

(b) Joint Stock Company "State Savings Bank of Ukraine" (JSC "Oschadbank"); or

(c) any other bank which the Bank confirms in writing, from time to time, is acceptable to it.

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

"Agreed Deferred Disbursement Date" has the meaning given to it in Article 1.5.A(2)(b).

"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.A..

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

"Anti-Corruption Programme" means the anti-corruption programme setting out policies and procedures of the Promoter designed to achieve compliance with all applicable laws concerning Prohibited Conduct submitted to the Bank pursuant to Article 1.4.B, as may be amended from time to time with the prior written consent of the Bank.

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

"**Authorised Signatory**" means a person authorised to sign individually or jointly (as the case may be) Disbursement Acceptances on behalf of the Borrower and named in the most recent List of Authorised Signatories and Accounts received by the Bank prior to the receipt of the relevant Disbursement Acceptance.

"**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 4.3.A(3).

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

"**Contract Number**" shall mean the Bank generated number identifying this Contract and indicated on the cover page of this Contract after the letters "FI N°".

"**Credit**" has the meaning given to it in Article 1.1.

"**Date of Effectiveness**" has the meaning given to it in Article 12.3.

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

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

"**Deferment Indemnity**" means a fee calculated on the amount of disbursement deferred or suspended being the higher of (a) 0.125% (12.5 basis points), per annum, and (b) the percentage rate 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) EURIBOR (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 fee 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 Account**" means, in respect of each Tranche, the bank account denominated in EUR and opened and maintained with an Acceptable Bank, the details of which account are set out in the most recent List of Authorised Signatories and Accounts.

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

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

"**Dispute**" has the meaning given to it in Article 11.2 (a).

"**Disruption Event**" means either or both of:

(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; 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 from:

   (i) performing its payment obligations under this Contract; or

   (ii) 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.

"**EIA**" has the meaning given to it in Article 1.4.C (a) (ix).

"**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 European 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 of the European Union 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;

(c) cultural heritage; and

(d) 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 Laws and Social Laws applicable to the Project, the Borrower or the Promoter;

(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) an Environmental and Social Impact Assessment Study.

"**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 the Project.

"**Environmental or Social Claim**" means any claim, proceeding, formal notice or investigation by any person in respect of the Environment or Social Matters affecting the Project including any breach or alleged breach of any Environmental and Social Standard.

"**Environmental Law**" means:

(a) EU Law, including principles and standards save for any derogation accepted by the Bank for the purpose of this Contract based on any agreement between Ukraine and the European Union;

(b) Ukrainian laws and regulations; and

(c) international treaties and conventions signed and ratified by or otherwise applicable and binding on Ukraine,

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

"**EU Fourth Money Laundering Directive**" means Directive (EU) 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.

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

"**EU Law**" means the acquis communautaire of the European Union as expressed through the Treaties of the European Union, the regulations, directives, delegated acts, implementing acts, and the case law of the Court of Justice of the European Union.

"**EUR**" or "**euro**" means 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.

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

"**Event of Default**" means any of the circumstances, events or occurrences specified in Article 10.1.

"**External Debt Instrument**" has the meaning given to it in Article 7.1.

"**Final Availability Date**" means the date falling 5 (five) years from the Date of Effectiveness.

"**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 listed in the Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (as amended, replaced or re-enacted from time to time).

"**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. Such rate shall not be of negative value.

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

"**Floating Rate**" means a fixed-spread floating annual interest rate, determined by the Bank for each successive Floating Rate Reference Period equal to EURIBOR plus the Spread. If the Floating Rate for any Floating Rate Reference Period is calculated to be below zero, it will be set at zero.

"**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 the Floating Rate is applied.

"**Framework Agreement**" has the meaning given in Recital (a).

"**Guide to Procurement**" means the Guide to Procurement published on the Bank'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 the Project.

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**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 paragraphs 4.3.A(2) or 4.3.A(4).

"**List of Authorised Signatories and Accounts**" means a list, in form and substance satisfactory to the Bank, setting out:

(a) the Authorised Signatories, accompanied by evidence of signing authority of the persons named on the list and specifying if they have individual or joint signing authority,

(b) the specimen signatures of such persons, and

(c) the bank account(s) to which disbursements may be made under this Contract (specified by IBAN code if the country is included in the IBAN Registry published by SWIFT, or in the appropriate account format in line with the local banking practice), BIC/SWIFT code of the bank and the name of the bank account(s) beneficiary.

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

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

"**Loan Outstanding**" means the aggregate of the amounts disbursed from time to time by the Bank under this Contract that remains outstanding.

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

"**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 the Bank's 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; or

(c) in relation to a Tranche in respect of which interest 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 EURIBOR; or

  (ii) the Bank determines that adequate and fair means do not exist for ascertaining EURIBOR for the relevant currency of such Tranche or it is not possible to determine EURIBOR 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 has a material adverse effect on:

(a) the ability of the Borrower to perform its obligations under this Contract; or

(b) the condition (financial or otherwise) or prospects of the Borrower.

"**Maturity Date**" means the last or sole Repayment Date of a Tranche specified pursuant to Article 4.1.A(b)(iv) or Article 4.1.B.

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

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

"**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.

"**Operating Accounts**" has the meaning given to it in Article 1.2.D.

"**Payment Date**" means 20 April and 20 October 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 3.1 except for those cases where a payment is made as a single instalment, in accordance with Article 4.1.B, and to the final interest payment only, when it shall mean the preceding Relevant Business Day with adjustment to the interest due under Article 3.1; 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 3.1.

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

"Prepayment Amount" means the amount of a Tranche to be prepaid by the Borrower in accordance with Article 4.2.A or Article 4.3.A, as applicable.

"Prepayment Date" means the date, which shall be a Payment Date, on which the Borrower proposes to or is requested by the Bank, as applicable, to effect prepayment of a Prepayment Amount.

"Prepayment Event" means any of the events described in Article 4.3.A.

"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 (calculated as of the Prepayment Date or the date of cancellation pursuant to Article 1.6.C(2)) of the excess, if any, of:

(a) the interest that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date or the date of cancellation pursuant to Article 1.6.C(2) 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 4.2.C.

"Prepayment Request" means a written request from the Borrower to the Bank to prepay all or part of the Loan Outstanding, in accordance with Article 4.2.A.

"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.

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

"Project Account" has the meaning given to it in Article 1.2.D.

"Promoter" has the meaning given to it in Recital (d).

"Project Implementation Agreement" has the meaning given to it in Recital (d).

"**Redeployment Rate**" means the fixed annual rate determined by the Bank, being a rate which the Bank would apply on the day of the indemnity calculation to a loan that has the same currency, 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 or cancellation is proposed or requested to be made. Such rate shall not be of negative value.

"**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 Person**" means:

(a) with respect to the Borrower, any official or representative of any of its ministries, other central executive government bodies or other governmental sub-divisions, or any other person acting on its behalf or under its control, having the power to give directions and exercise control with respect to the Loan or the Project; and

(b) with respect to the Promoter any member of its management bodies; or any of its employees or any other person acting on behalf of the Promoter or under the Promoter's control, having the power to give directions and exercise control with respect to the Loan or the Project.

"**Repayment Date**" shall mean each of the Payment Dates specified for the repayment of the principal of a Tranche in the Disbursement Offer, in accordance with the criteria set out in Article 4.1.

"**Requested Deferred Disbursement Date**" has the meaning given to it in Article 1.5.A(1)(b).

"**RPF**" means the "Resettlement Policy Framework", which document's objective is to identify strategies, principles, institutional mechanisms, legislative framework and procedures for resettlement or alienation of assets under the Project Implementation Agreement, as well as to set forth the framework for the preparation of resettlement action plans, should any be required in the course of the Project implementation.

"**Sanctioned Person**" means any individual or entity (for the avoidance of doubt, the term entity includes, but is not limited to. any government, group or terrorist organisation) who is a designated target of, or who is otherwise the subject of, Sanctions.

"**Sanctions**" means the economic or financial sanctions laws, regulations, trade embargoes or other restrictive measures (including, in particular, but not limited to, measures in relation to the financing of terrorism) enacted, administered, implemented and/or enforced from time to time by any of the following:

(a) the United Nations, and any agency or person which is duly appointed, empowered or authorised by the United Nations to enact, administer, implement and/or enforce Sanctions; and

(b) the European Union, and any agency or person which is duly appointed, empowered or authorised by the European Union to enact, administer, implement and/or enforce Sanctions.

"**Scheduled Disbursement Date**" means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.2.B.

"**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, rule or regulation applicable in Ukraine relating to Social Matters;

(b) any ILO Standards; and

(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 (being of either positive or negative value) to EURIBOR as determined by the Bank and notified to the Borrower in the relevant Disbursement Offer.

"**State Aid Law**" has the meaning given to it in Article 1.4.B(I).

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

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

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

"**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 1.2.B.

ARTICLE 1

Credit and Disbursements

1.1 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 450,000,000.00 (four hundred fifty million euros) for the financing of the Project (the "**Credit**").

1.2 Disbursement procedure

1.2.A Tranches

The Bank shall disburse the Credit in up to 20 Tranches. The amount of the first Tranche shall (i) be in a minimum amount of EUR 20 000 000 (twenty million euros) or, solely in the case that the amount disbursed under the first Tranche is used only for consultancy services related to preparation of the Projects (e.g. financing of designs and/or (pre-)feasibility studies, etc.) in a minimum amount of EUR 200,000 (two hundred thousand euros); and (ii) not exceed EUR 45 000 000 (fourty-five million euros). The amount of each Tranche subsequent to the first shall be in a minimum amount of EUR 20 000 000 (twenty million euros) or (if less) the entire undrawn balance of the Credit. No more than one disbursement may be requested and shall be made per calendar month.

1.2.B Disbursement Offer

Upon request by the Borrower and subject to Article 1.4.A, provided that no event mentioned in Article 1.05 or Article 1.06B has occurred and is continuing, the Bank shall send to the Borrower within a reasonable time after the receipt of such request a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by the Bank of such Borrower's request is 15 (fifteen) Business Days before the Final Availability Date. The Disbursement Offer shall specify:

(a) the amount of the Tranche in EUR;

(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 3.1;

(d) the Payment Dates and the first interest Payment Date for the Tranche;

(e) the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.1;

(f) the Repayment Dates and the first and the last Repayment Date for the Tranche;

(g) for a Fixed Rate Tranche, the Fixed Rate and for a Floating Rate Tranche the Spread, applicable until the Maturity Date; and

(h) the Disbursement Acceptance Deadline.

1.2.C 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 signed by an Authorised Signatory with individual representation right or two or more Authorised Signatories with joint representation right and shall specify the Disbursement Account to which the disbursement of the Tranche should be made in accordance with Article 1.2.D.

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.

1.2.D Disbursement Account and Project Accounts

Disbursement shall be made to the Disbursement Account specified in the relevant Disbursement Acceptance provided that such Disbursement Account is acceptable to the Bank.

The Borrower may open and maintain other accounts with an Acceptable Bank in any currency for the purposes of implementing the Project (each an "**Operating Account**", and together with the Disbursement Account, the "**Project Accounts**"). The Borrower shall promptly notify the Bank in writing following the opening of any Operating Account.

Each Project Account shall be an account of the Borrower opened and maintained solely for the purposes of this Project. Each Project account shall be separated from any other assets of the Borrower. Funds available in the Disbursement Account may be transferred to any Project Account.

Notwithstanding Article 5.2(e), the Borrower acknowledges that payments to a Disbursement Account notified by the Borrower shall constitute disbursements under this Contract as if they had been made to the Borrower's own bank account.

Only one Disbursement 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 Project Account to contractors duly appointed for the purposes of implementing the Project or any Sub-Project.

1.3 Currency of disbursement

The Bank shall disburse each Tranche in EUR.

1.4 Conditions of disbursement

1.4.A Condition precedent to the first request for Disbursement Offer

The Bank shall have received from the Borrower in form and substance satisfactory to the Bank:

(a) evidence that the execution of this Contract by the Borrower and the execution of the Project Implementation Agreement by the Promoter has been duly authorised and that the person or persons signing this Contract on behalf of the Borrower and the Project Implementation Agreement on behalf of the Promoter, respectively, is/are duly authorised to do so together with the specimen signature of each such person or persons; and

(b) the List of Authorised Signatories and Accounts;

prior to requesting a Disbursement Offer under Article 1.2.B by the Borrower. Any request for a Disbursement Offer made by the Borrower without the above documents having been received by the Bank and to its satisfaction shall be deemed not made.

1.4.B First Tranche

The disbursement of the first Tranche under Article 1.2 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 (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively), of the following documents or evidence:

(a) the duly executed Project Implementation Agreement;

(b) a legal opinion issued by the Ministry of Justice of Ukraine in the English language on the due execution of this Contract by the Borrower and the legal, valid, binding and enforceable 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;

(c) a legal opinion under Ukrainian law issued by internal legal counsel of the Promoter acceptable to the Bank and addressed to the Bank with respect to the due execution of the Project Implementation Agreement by the Promoter and the legal, valid, binding and enforceable nature of the Project Implementation Agreement, supported by copies of the documents evidencing that the person or persons signing the Project Implementation Agreement on behalf of the Promoter are duly authorised to do so together with the specimen signature of such person or persons.

(d) evidence that no Authorisation 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 Project Accounts;

(e) evidence that the Borrower has obtained all necessary Authorisations required in connection with this Contract;

(f) 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;

(g) a copy of the Anti-Corruption Programme of the Promoter;

(h) evidence that the Loan Fund Transfer Agreement has been duly executed by all the parties thereto on terms satisfactory to the Bank and is in full force and effect, and that all conditions to the right of the Promoter to make drawings thereunder have been satisfied;

(i) evidence that a PIU has been established/ procured in the Promoter with responsibility for the allocation requests and progress reporting under this Contract;

(j) the Bank being satisfied that the first disbursement shall not exceed 10% (ten *per cent.*) of the Credit;

(k) evidence of payment of the project appraisal fee pursuant to Article 1.8 in full; and

(l) evidence acceptable to the Bank confirming that 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.

1.4.C All Tranches

The disbursement of each Tranche under Article 1.2, 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 (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche, of 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 drawdown of the relevant Tranche, the amount of the Loan will not exceed the aggregate eligible expenditure incurred or contractually committed by the Borrower in respect of the Project within 12 (twelve) months of the relevant Disbursement Offer;

(iii) a certificate from the Borrower in the form of Schedule C.2 signed by an authorised representative of the Borrower and dated no earlier than the date falling 30 (thirty) days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively);

(iv) if not previously provided, evidence that a Disbursement Account has been established;

(v) a procurement plan for each Allocation to be financed under the respective disbursement;

(vi) for all Tranches other than the first Tranche, evidence in writing that:

(1) 80% (eighty *per cent.*) of all previous disbursements have been allocated to eligible Sub-Projects; and

(2) 50% (fifty *per cent.*) of all previous disbursements have effectively been paid out towards any expenditure incurred with respect to any allocated Sub-Project;

(vii) for all Tranches, disbursement of which amounts to the last 10% (ten *per cent.*) of the Credit:

(1) evidence in writing that 90% (ninety *per cent.*) of all previous disbursements have been allocated; and

(2) a list of Sub-Projects expected to be allocated under this amount.

(viii) astage I road safety audit report prepared in accordance with principles of the Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management for each Sub-Project to be financed under the respective disbursement;

(ix) a competent Authority's confirmation that the road safety audit recommendations have been integrated in the final design before tendering or for measures that can not be implemented – justification for their exclusion and alternative solutions;

(x) for all Tranches, disbursement of which will be allocated to the Sub-Projects entailing new construction of Lviv bypass component:

(1) a copy of environmental impact assessment ("**EIA**") report, including a non-technical summary, satisfactory to the Bank;

(2) the environmental permit, issued by a competent Authority in Ukraine, and should this be a case, a relevant ecological permit or habitats form stating the significance of impact of the project on protected areas (similar to the requirement in the European Union of Form A or B);

(3) final version of the Environmental and Social Management Plan (the "ESMP"), including a Stakeholder Engagement Plan (the "SEP"), to the satisfaction of the Bank; and

(4) final version of the Resettlement Action Plan (the "RAP") in accordance with the Resettlement Policy Framework document drafted by the Promoter and approved by the Bank;

(xi) for Sub-Projects on M-05 road aimed at the rehabilitation and improvement and upgrading along the same alignment, prior to first disbursement against each such Sub-Project, Promoter needs to submit a screening document (decision of the competent Authority) which states whether a full environmental impact assessment is required or not. If not required, the screening document is sufficient together with environmental and social management plan and a resettlement action plan (in case of resettlement). If screening results in the need for a full environmental impact assessment the same conditions mentioned above for new construction of Lviv bypass will apply;

(xii) evidence of the authority of the person or persons authorised to sign Disbursement Acceptances and the authenticated specimen signature of such person or persons;

(xiii) 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 by the Promoter and that all necessary authority and powers to operate each Sub-Project being financed and all necessary Authorisations in connection with the Contract, have been received;

(xiv) 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 legality, validity, binding effect or enforceability of the same; and

(b) that the Bank is satisfied that on the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche:

(i) all facts and information contained in the Recitals are true and correct in all respects;

(ii) the EU Guarantee is legal, valid, binding and enforceable and that no event or circumstance has occurred which could, in the 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 under the EU Guarantee;

(iii) Ukraine is an Eligible Country; and

(iv) the Framework Agreement is legal, valid, binding and enforceable and that no event or circumstance has occurred which could, in the opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the Framework Agreement; and

(c) that on the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, on the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche:

(i) the representations and warranties which are repeated pursuant to Article 6.11 are correct in all respects; and

(ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:

(1) an Event of Default; or

(2) a Prepayment Event;

has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.

1.5 <u>Deferment of disbursement</u>

1.5.A Grounds for deferment

1.5.A(1) BORROWER'S REQUEST

The Borrower may send a written request to the Bank requesting the deferral of the disbursement of an Accepted Tranche. The written request must be received by the Bank at least 5 (five) Business Days before the Scheduled Disbursement Date of the an Accepted Tranche and specify:

(a) whether the Borrower would like to defer the disbursement in whole or in part and if in part, the amount to be deferred; and

(b) the date until which the Borrower would like to defer a disbursement of the above amount (the "**Requested Deferred Disbursement Date**"), which must be a date falling not later than:

(i) 6 (six) months from its Scheduled Disbursement Date; and

(ii) 30 (thirty) days prior to the first Repayment Date; and

(iii) the Final Availability Date.

Upon receipt of such a written request, the Bank shall defer the disbursement of the relevant amount until the Requested Deferred Disbursement Date.

1.5.A(2) Failure to satisfy conditions to disbursement

(a) The disbursement of an Accepted Tranche shall be deferred if any condition for disbursement of such an Accepted Tranche referred to in Article 1.4 is not fulfilled both:

(i) at the date specified for fulfilment of such condition in Article 1.4; and

(ii) at its Scheduled Disbursement Date (or, where the Scheduled Disbursement Date has been deferred previously, the date expected for disbursement).

(b) The Bank and the Borrower shall agree the date until which the disbursement of such an Accepted Tranche shall be deferred (the "**Agreed Deferred Disbursement Date**"), which must be a date falling not:

(i) earlier than 7 (seven) Business Days following the fulfilment of all conditions of disbursement; and

(ii) later than the Final Availability Date.

(c) Without prejudice to the Bank's right to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.6.B, the Bank shall defer disbursement of such an Accepted Tranche until the Agreed Deferred Disbursement Date.

1.5.A(3) DEFERMENT INDEMNITY

If disbursement of an Accepted Tranche is to be deferred pursuant to paragraphs 1.5.A(1) or 1.5.A(2) above, the Borrower shall pay the Deferment Indemnity.

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

If a disbursement has been deferred by more than 6 (six) months in aggregate pursuant to Article 1.5.A, the Bank may notify the Borrower in writing that such disbursement shall be cancelled and such cancellation shall take effect on the date of such written notification. The amount of the disbursement which is cancelled by the Bank pursuant to this Article 1.5.B shall remain available for disbursement under Article 1.2.

1.6 Cancellation and suspension

1.6.A Borrower's right to cancel

The Borrower may send a written notice to the Bank requesting the cancellation of the undisbursed portion of the Credit. The written notice:

(a) must specify whether the Borrower would like to cancel the undisbursed portion of the Credit in whole or in part and, if in part, the amount of the Credit the Borrower would like to cancel; and

(b) must not relate to an Accepted Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice.

Upon receipt of such written notice, the Bank shall cancel the requested undisbursed portion of the Credit with immediate effect.

1.6.B Bank's right to suspend and cancel

At any time upon the occurrence of the following events, the Bank may notify the Borrower in writing that the undisbursed portion of the Credit shall be suspended and/or (apart from on the occurrence of a Market Disruption Event) cancelled in whole or in part:

(a) a Prepayment Event;

(b) an Event of Default;

(c) 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;

(d) if Ukraine is no longer an eligible country for operations under the Mandate; or

(e) a Market Disruption Event provided the Bank has not received a Disbursement Acceptance.

On the date of such written notification the relevant undisbursed portion of the Credit shall be suspended and/or cancelled with immediate effect. Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

1.6.C Indemnity for suspension and cancellation of a Tranche

1.6.C(1) SUSPENSION

If the Bank suspends an Accepted Tranche upon the occurrence of 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.

1.6.C(2) CANCELLATION

(a) If an Accepted Tranche which is a Fixed Rate Tranche is cancelled:

(i) by the Borrower pursuant to Article 1.6.A;

(ii) by the Bank upon an Indemnifiable Prepayment Event or pursuant to Article 1.5.B,

the Borrower shall pay to the Bank the Prepayment Indemnity. The Prepayment 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.

(b) If the Bank cancels an Accepted Tranche upon the occurrence of an Event of Default, the Borrower shall indemnify the Bank in accordance with Article 10.3.

(c) Save in the cases (a) or (b) above, no indemnity is payable upon cancellation of a Tranche.

1.7 <u>Cancellation after expiry of the Credit</u>

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, any part of the Credit in respect of which no Disbursement Acceptance has been received in accordance with Article 1.2.C 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.

1.8 <u>Project appraisal fee</u>

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

(a) the date of the first Tranche, in which case the Bank may, and the Borrower hereby authorises the Bank to do so, retain the fee from the first tranche, and such amount retained by the Bank out of the first Tranche in payment of the project appraisal fee shall be deemed as having been disbursed by the Bank; and

(b) the Final Availability Date (or the date when the Loan is suspended or cancelled pursuant to Article 1.6, if earlier).

1.9 <u>Sums due under Article 1.5 and 1.6</u>

Sums due under Articles 1.5 and 1.6 shall be payable in EUR. Sums due under Articles 1.5 and 1.6 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 <u>Allocation</u>

1.10.A Allocation Request

At any time prior to the date falling 5 (five) 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 Scheme to qualify for financing hereunder, the Borrower must comply with the allocation procedure under this Article 1.10 and Schedule A (the "**Allocation Procedure**"), and with allocation undertakings under this Article 1.10.A.

The Loan shall be allocated to Sub-Projects, which are agreed with the Bank in accordance with the principles of the Bank review procedure set down in the Technical Description, provided that the Bank is satisfied that there is sufficient information available on such Sub-Projects.

Depending on the amount of the investment cost of the relevant eligible Sub-Project, the Bank's funds will initially be allocated in accordance with the following criteria:

(i) Eligible Sub-Projects with an investment cost below EUR 5,000,000 (five million Euros) are selected by the Promoter. The choices are subject to confirmation of eligibility by the Bank's services after disbursement to the Sub-Projects concerned. The Promoter shall submit an Allocation Request using a template as defined in Annex A 1.3;

(ii) Eligible Sub-Projects with a cost between EUR 5,000,000 (five million Euros) and EUR 50,000,000 (fifty million Euros) are submitted to the Bank for approval before allocating Bank funds to the Sub-Projects, using a template as defined in Annex A 1.4. The Bank keeps the right to ask for additional information; partial or in-depth appraisal of the Sub-Project will be undertaken, if judged necessary. Appraisal of such Sub-Projects may result in additional conditions and/or undertakings that will be stated in the Allocation Letter. Should the Borrower not accept these conditions/undertakings it should inform the Bank in writing within 10 days from the receipt of the Allocation Letter and the Bank will proceed with reallocation;

(iii) Eligible Sub-Projects with a cost above EUR 50,000,000 (fifty million Euros) are to be treated, in principle, as separate loans and appraised separately by the Bank's services. Sub-Projects will be subject to approval before allocation of the Loan's funds to the Sub-Project. The Promoter shall provide documentation requested by the Bank, at its discretion, as individually indicated by the Bank to the Promoter. Appraisal of such Sub-Projects may result in additional conditions and/or undertakings that will be stated in the Allocation Letter. Should the Borrower not accept these conditions/undertakings it should inform the Bank in writing within 10 days from the receipt of the Allocation Letter and the Bank will proceed with reallocation;

(iv) The Promoter should provide together with an allocation request the documentation required for procurement monitoring for all contracts subject to national procurement and signed prior to the date of the allocation request (unless it has been provided with the previous allocations).

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 the Promoter 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;

(ii) for each Sub-Project requiring an EIA under Ukrainian or any applicable EU Law, 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.

To be eligible for loan financing from the Bank, the Borrower shall verify the compliance of the Sub-Projects with the relevant and applicable Bank's 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 be undertaken following the procedures as described in the Bank's Guide to Procurement.

The following costs will not be eligible for Bank financing: recoverable VAT and other taxes and duties, land acquisition, maintenance and operating costs, purchase of licences and interest during construction.

1.10.B 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 <u>Reallocation Procedure</u>

1.11.A 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 (5) years from the Date of Effectiveness, propose to reallocate in accordance with Article 1.10 any part of the Loan Outstanding 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 Promoter. The period for the submission of a re-allocation proposal may be extended with the written agreement of the Bank and the Borrower 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 Outstanding 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 Outstanding which has been disbursed by the Bank subject to the original Allocation in accordance with Article 4.3.A(6).

1.11.B Reallocation at the request of the Bank

Upon the Bank's written request, the Borrower shall propose to reallocate any part of the Loan Outstanding 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 this 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 Outstanding in accordance with Article 4.3.A(6).

ARTICLE 2

The Loan

2.1 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 2.3.

2.2 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.

Other payment, if any, 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.

2.3 Confirmation by the Bank

The Bank shall deliver to the Borrower the amortisation table referred to in Article 4.1, if appropriate, showing the Disbursement Date, currency, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

ARTICLE 3

Interest

3.1 Rate of interest

3.1.A Fixed Rate Tranches

The Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate semi-annually in arrear 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 15 (fifteen) 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 5.1(a).

3.1.B Floating Rate Tranches

The Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate semi-annually in arrear 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 15 (fifteen) 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 Borrower of the Floating Rate within 10 (ten) days following the commencement of each Floating Rate Reference Period.

If pursuant to Articles 1.5 and 1.6 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date EURIBOR 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 5.1(b).

3.2 Interest on overdue sums

Without prejudice to Article 10 and by way of exception to Article 3.1, 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 (a) the applicable Fixed Rate plus 2% (200 basis points) or (b) EURIBOR plus 2% (200 basis points); and

(c) for overdue sums other than under (a) or (b) above, EURIBOR plus 2% (200 basis points),

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the EURIBOR in relation to this Article 3.2, 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.

3.3 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 30 (thirty) calendar days prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case, the following rules shall apply:

(a) 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 notice and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.2.B. 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.

(b) The Spread or the Fixed Rate previously accepted by the Borrower shall no longer be applicable.

ARTICLE 4

Repayment

4.1 Normal repayment

4.1.A Repayment by instalments

(a) The Borrower shall repay each Tranche by instalments on the Repayment Dates specified in the relevant Disbursement Offer in accordance with the terms of the amortisation table delivered pursuant to Article 2.3.

(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 30 (thirty) days from the Scheduled Disbursement Date and not later than the first Repayment Date immediately following the 5th (fifth) 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 25 (twenty-five) years from the Scheduled Disbursement Date.

4.1.B Single instalment

Alternatively, the Borrower shall repay the Tranche in a single instalment on the sole Repayment Date specified in the Disbursement Offer, being a date falling not less than 3 (three) years or more than 15 (fifteen) years from the Scheduled Disbursement Date.

4.2 Voluntary prepayment

4.2.A Prepayment option

Subject to Articles 4.2.B, 4.2.C and 4.4, 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 30 (thirty) calendar days' 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 5.5.C(a); and

(d) the Contract Number.

The Prepayment Request shall be irrevocable.

4.2.B Prepayment indemnity

4.2.B(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.

4.2.B(2) FLOATING RATE TRANCHE

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

4.2.C 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 4.2.B or, as the case may be, that no indemnity is due, the method of application of the Prepayment Amount and if a Prepayment Indemnity is applicable, the deadline by which the Borrower may accept the Prepayment Notice.

If the Borrower accepts the Prepayment Notice no later than by the deadline (if any) specified in the Prepayment Notice, the Borrower shall effect the prepayment. In any other case, the Borrower may not effect the prepayment.

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

4.2.D Administrative Fee

If the Borrower prepays a Tranche on a date other than a relevant Payment Date, or if the Bank exceptionally accepts, solely upon the Bank's discretion, a Prepayment Request with prior notice of less than 30 (thirty) calendar days, the Borrower shall pay to the Bank an administrative fee in such amount as the Bank shall notify to the Borrower

4.3 **Compulsory prepayment**

4.3.A **Prepayment Events**

4.3.A(1) PROJECT COST REDUCTION

If the total cost of the Project falls below the figure stated in Recital (f) so that the amount of the Credit exceeds 50% (fifty per cent) of such total cost of the Project, the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan Outstanding up to the amount by which the Credit exceeds 50% (fifty per cent) of the total cost of the Project, together with accrued interest and all other amounts accrued and outstanding under this Contract in relation to the proportion of the Loan Outstanding to be prepaid. 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.

4.3.A(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 Outstanding, together with accrued interest and all other amounts accrued and outstanding under this Contract in relation to the proportion of the Loan Outstanding to be prepaid. The proportion of the Loan Outstanding 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 5 (five) years.

4.3.A(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/or demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and 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), or the imposition of any Sanctions, that occurs after the date of this Contract and which, in the reasonable opinion of the Bank, would materially impair the Borrower's ability to perform its obligations under this Contract or the Promoter's ability to perform its obligations under the Project Implementation Agreement.

4.3.A(4) ILLEGALITY

If:

(a) it becomes unlawful in any applicable jurisdiction, or it becomes or is likely to become contrary to any Sanctions, 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, in the reasonable opinion of the Bank, is likely to be:

(i) repudiated or terminated by Ukraine or not binding on Ukraine in any respect;

(ii) not effective in accordance with its terms or alleged by Ukraine to be ineffective in accordance with its terms; or

(iii) breached as a result of Ukraine ceasing 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 Outstanding, 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.

4.3.A(5) NON-PERFORMANCE BY PROMOTER

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

(i) reallocate the corresponding portion of the Loan Outstanding to another Sub-Project approved by the Bank in accordance with Article 1.10; or

(ii) voluntary prepay any corresponding part of the Loan Outstanding pursuant to Article 4.2,

in each case within a period of 30 (thirty) days following the giving of that notice by the Bank.

4.3.A(6) FAILURE TO REALLOCATE

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

4.3.A(7) PROJECT IMPLEMENTATION AGREEMENT

If at any time while the Loan is outstanding:

(a) the Promoter fails to comply with a material obligation under the Project Implementation Agreement or the Project is not implemented in accordance with the Project Implementation Agreement;

(b) any information or document material for the Project (in the reasonable opinion of the Bank) given to the Bank by or on behalf of the Promoter or if any representation or statement made or deemed to be made by the Promoter in application of the Project Implementation Agreement or in connection with the negotiation or the performance of the Project Implementation Agreement is or proves to have been incorrect, incomplete or misleading in any material respect; or

(c) it becomes unlawful for the Promoter to perform any of its obligations under the Project Implementation Agreement, or the Project Implementation Agreement is not effective in accordance with its terms or is alleged by the Promoter to be ineffective in accordance with its terms;

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 reasonable opinion that the effects of the non-compliance cannot be mitigated to its satisfaction, the Bank may by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and 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.

4.3.B Prepayment mechanics

Any sum demanded by the Bank pursuant to Article 4.3.A, together with any interest or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.3.C, shall be paid on the date indicated by the Bank in its notice of demand.

4.3.C Prepayment indemnity

In the case of an Indemnifiable Prepayment Event, the indemnity, if any, shall be determined in accordance with Article 4.2.B.

4.4 General

4.4.A No prejudice to Article 10

This Article 4 shall not prejudice Article 10.

4.4.B No reborrowing

A repaid or prepaid amount may not be reborrowed.

ARTICLE 5

Payments

5.1 Day count convention

Any amount due by way of interest or indemnity 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; and

(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.

5.2 Time and place of payment

(a) 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.

(b) 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.

(c) The Borrower shall indicate the Contract Number in the payment details for each payment made hereunder.

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

(e) Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank. Any account in the name of the Borrower held with a duly authorised financial institution in the jurisdiction where the Borrower is incorporated or where the Project is undertaken is deemed acceptable to the Bank.

5.3 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.

5.4 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 this 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 5.4.

5.5 Application of sums received

5.5.A General

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

5.5.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:

(a) firstly, in or towards pro rata to each of any unpaid fees, costs, indemnities and expenses due under this Contract;

(b) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;

(c) thirdly, in or towards payment of any principal due but unpaid under this Contract; and

(d) fourthly, in or towards payment of any other sum due but unpaid under this Contract.

5.5.C Allocation of sums related to Tranches

(a) In case of:

(i) 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; or

(ii) 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.

(b) Sums received by the Bank following a demand under Article 10.1 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.

(c) 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

6.1 **Use of Loan and availability of other funds**

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 PIUs necessary for the implementation of the Project. The Borrower shall make the proceeds of the disbursed Tranches available to the Promoter 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 the 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.

The Borrower shall ensure that it has available to it the other funds listed in Recital (f) and that such funds are expended, to the extent required, on the financing of the Project.

6.2 **Completion of Project**

The Borrower shall carry out the Project, and procure that the Promoter carries out the relevant Sub-Project, in accordance with the Technical Description as may be modified from time to time with the approval of the Bank; and complete it by the final date specified therein.

6.3 **Increased cost of Project**

If the total cost of the Project exceeds the estimated figure set out in Recital (f), 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.

6.4 **Procurement procedure**

The Borrower shall procure that the Promoter shall:

(a) 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;

(b) permit independent observers agreed by the Bank to visit its premises during all stages of tendering;

(c) grant the right of the Bank in connection with the tendering of each Sub-Project:

(i) to review the evaluation reports prior to their approval by the relevant evaluation committees; and

(ii) to prescribe the venue of the tender evaluations and the manner of the receipt and storage of the bids;

(d) ensure that all contracts under each 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 each Sub-Project or with regard to any facts or circumstances listed under Article 6.10 related to each Sub-Project;

(ii) the requirement that the relevant contractor keeps books and records of all financial transactions and expenditures in connection with each Sub-Project; and

(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 6.10, to review the books and records of the relevant contractor in relation to each Sub-Project and to take copies of documents to the extent permitted by law;

(e) ensure that review procedures for remedies acceptable to the Bank are available to any person or entity having or having had an interest in obtaining a contract and (at risk of) being harmed by an alleged infringement from applicable procurement rules; and

(f) verify that contactors engaged in each Sub-Projects comply with the relevant procurement procedures complying, to the Bank's satisfaction, with the Bank's policy and standards as described in its Guide to Procurement.

6.5 Continuing Project undertakings

(a) **General**

The Borrower shall procure that the Promoter will:

(i) **Maintenance**: maintain, repair, overhaul and renew all property forming part of each Sub-Project as required to keep it in good working order;

(ii) **Project assets**: unless the Bank has given its prior consent in writing retain title to and possession of all or substantially all the assets comprising each Sub-Project or, as appropriate, replace and renew such assets and maintain each Sub-Project in substantially continuous operation in accordance with its original purpose; 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 each 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 each Sub-Project in accordance with Ukrainian industry practice for similar works of public interest;

(iv) **Rights and Permits**: maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of each Sub-Project;

(b) **Environment and Social Standards**

The Borrower shall procure that the Promoter shall:

(i) implement and operate each Sub-Project in compliance with Environmental and Social Standards, and procure that the contracts entered into between the Promoter and contractors for each 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 and verify that contractors engaged in Sub-Projects observe the provisions mentioned in Article 6.5(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 each Sub-Project that require an Environmental and Social Impact Assessment Study according to national or EU Law without/prior to such study being finalised and approved by the competent authority; and

(v) not use the Bank's funding for each 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 the Promoter shall:

(i) execute, operate and verify the compliance of each Sub-Project in accordance with the standards of EU Law, including, but not limited to, the field of environment, road safety, state aid and public procurement, to the extent implemented by the laws of Ukraine or specified by the Bank in this Contract; and

(ii) ensure and verify that contractors engaged in Sub-Projects observe the provisions mentioned in Article 6.5(c)(i) above.

(d) **PIUs**

The Borrower shall ensure that Promoter will maintain an adequately staffed PIU in the Promoter, throughout the project cycle to the satisfaction of the Bank.

(e) **Accounts**

The Borrower shall ensure that the Promoter request any disbursements from the Borrower, and the Borrower makes any payments to the Promoter in relation with the Project to a bank account in the name of the Promoter held with a duly authorised financial institution in the jurisdiction where the Promoter is incorporated or where the Project is undertaken by the Promoter.

(f) **Other undertakings**

The Borrower shall:

(i) procure that there is no double financing of the Sub-Project with other funds made available by the Bank, whether under this Contract or otherwise, or by other donors. For the avoidance of doubt, this undertaking shall not:

(1) prohibit any co-financing of Sub-Project by other donors or funding by the Borrower of other components of Sub-Project; or

(2) 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 allocated Sub-Project or the Sub-Project is cancelled;

(iii) confirm to the Bank that the Promoter has complied with all applicable policies and guidelines of the Bank, including (without limitation) the Environmental and Social Standards and the Bank's Guide to Procurement;

(iv) ensure that no Sub-Project:

(1) is carried out in an area in Ukraine which is experiencing active conflict;

(2) causes new active conflict to occur in Ukraine;

(3) prolongs any existing active conflict in Ukraine; or

(4) is carried out in an area which is not under the control of the Ukrainian Government;

(v) procure that the Promoter implements and maintains an adequate management system for each Sub-Project, which guarantees that the goals of each 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) suspend the authorisation of any Sub-Project and the payment of any part of a Tranche to the Promoter which, or whose management, is being investigated by a relevant authority for any Prohibited Conduct;

(vii) ensure that its payment obligations under this Contract do not fall within the scope of the Debt Operation;

(viii) procure that:

(1) all equipment, works and services acquired for, or in connection with, the provision of technical support for the Project from funding provided by the Bank or any applicable technical assistance or investment grants granted for the Project;

(2) all equipment, works and services acquired from any applicable technical assistance or investment grants granted for the Project; and

(3) all equipment donated by third parties to the Promoter for the Project,

are exempt from any applicable tax or other impost on such acquisition or transfer;

(ix) procure that the Promoter consults with the Bank prior to entering into any material amendments to contracts financed by this Loan;

(x) submit to the Bank for its review and approval the Loan Fund Transfer Agreement proposed to be entered into by the Borrower prior to the Borrower executing the Loan Fund Transfer Agreement; and

(xi) ensure that the Loan Fund Transfer Agreement includes provisions that inform the Promoter that the financing benefit from the financial support provided by the Bank with the backing of the European Union through the EU Guarantee.

B. GENERAL UNDERTAKINGS

6.6 Compliance with laws

The Borrower shall, and shall procure that the Promoter will, comply in all respects with all laws and regulations to which it or each Sub-Project is subject.

6.7 Change in business

The Borrower shall procure that no substantial change is made to the core business of the Promoter from that carried on at the date of this Contract.

6.8 Merger

The Borrower shall procure that the Promoter shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

6.9 Books and records

The Borrower shall procure that the Promoter maintains financial control procedures, accounting systems and other management systems to ensure that:

(a) it keeps and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Promoter, including expenditures in connection with the Project;

(b) the financial statements of the Promoter are prepared in accordance with IFRS as in effect from time to time; and

(c) the proceeds of the Loan made available to the Promoter under the Loan Fund Transfer Agreement are accounted for, and audited, separately from all other funds and assets of the Promoter.

6.10 Integrity

(a) **Prohibited Conduct**:

(i) The Borrower shall not (and shall ensure that the Promoter shall not) engage in (and neither the Borrower nor the Promoter 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 or the Project Implementation Agreement.

(ii) The Borrower undertakes (and shall procure that the Promoter 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 the Promoter shall undertake) to ensure that contracts financed by this 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 the Promoter shall not) directly or indirectly:

(i) maintain or enter into a business relationship with, and/or make any funds and/or economic resources available to, or for the benefit of, any Sanctioned Person in connection with the Project, or

(ii) use all or part of the proceeds of the Loan or lend, contribute or otherwise make available such proceeds to any person, in each case, in any manner that would directly result in a breach by the Borrower or the Bank of applicable Sanctions; or

(iii) fund all or part of any payment under the Finance Contract out of proceeds derived from activities or businesses with a Sanctioned Person, a person in breach of the Sanctions or in any manner that would directly result in a breach by the Borrower or the Bank of the Sanctions.

(c) **Relevant Persons:**

(i) The Borrower undertakes (and shall procure that the Promoter shall undertake) to take within a reasonable timeframe appropriate measures in respect of any Relevant Person who:

(1) becomes a Sanctioned Person;

(2) is the subject of a court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties; or

(3) 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 Promoter's activities (as applicable) in relation to the Loan and to the Project.

(ii) The Borrower undertakes (and shall procure that the Promoter shall undertake) to ensure that any bidder whose any beneficial owner is a family member or a person known to be a close associate to any Relevant Person will be identified and that adequate measures are adopted to address potential conflicts of interest prior to the award of contracts under any Sub-Project,

For the purposes of this Article 6.10 (c), 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 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.

(d) The Borrower shall take note of the EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, Money Laundering and Financing of Terrorism (as published on the Bank's website and as may be amended from time to time) in the Borrower's financing activities related to the Project.

6.11 <u>General Representations and Warranties</u>

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 action has 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 contravene or conflict with:

 (i) 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) 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) any provision of its constitutional laws;

(d) there has been no Material Adverse Change since 11 September 2019;

(e) no event or circumstance which constitutes a Prepayment Event or 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) the Promoter has obtained all necessary Authorisations in connection with the Project other than Authorisations which are not necessary for the implementation of the Project at the time this representation is made (or repeated) and in respect of which neither the Borrower nor the Promoter is aware of any reason (having made due and careful inquiry) for the Promoter being unable to obtain such Authorisations in due course;

(i) 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;

(j) it is in compliance with Article 6.5(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 or the Promoter; and

(k) 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;

(l) the Project falls within the scope of the Framework Agreement;

(m) it is in compliance with all undertakings under this Article 6;

(n) to the best of its knowledge, no funds invested in the Project by the Borrower or the Promoter are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism;

(o) neither the Borrower, the Promoter, any Relevant Person, nor any other person acting on their behalf or under their control has committed nor will commit

 (i) any Prohibited Conduct in connection with the Project or any transaction contemplated by the Contract or the Project Implementation Agreement; or

 (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;

(p) its payment obligations under this Contract do not fall within the scope of the Debt Operation;

(q) 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;

(r) neither the Borrower, nor the Promoter is a Sanctioned Person, or in breach of any Sanctions; and, to the best of its knowledge and belief, none of the Relevant Persons is a Sanctioned Person or in breach of any Sanctions.

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 date of Disbursement Acceptance, Disbursement Date and on each Payment Date.

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.

7.1 *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.

7.2 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.

7.3 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.

ARTICLE 8

Information and Visits

8.1 Information concerning the Project and the Promoter

The Borrower shall, and shall procure that the Promoter shall (as applicable):

(a) deliver to the Bank:

(i) the information in content and in form, and at the times, specified in Schedule A.2 and the Project Implementation Agreement or otherwise as agreed from time to time by the Parties to this Contract;

(ii) a progress report concerning the status of implementation of the Anti-Corruption Programme by the Promoter, to the satisfaction of the Bank, and the Promoter's compliance with the Anti-Corruption Programme, at the following times:

(1) semi-annually, together with the progress report with respect to the implementation of the Project by the dates specified in paragraph 3 of Schedule A.2; and

(2) thereafter, by no later than 30 June and 30 December of each year, unless the Bank confirms to the Borrower in writing that no further progress reports are required;

(iii) any such information or further document concerning the financing, procurement, implementation, operation of the Project and related environmental or social matters as the Bank may reasonably require within a reasonable time; and

any such information or further document concerning the Project as the Bank may reasonably require within a reasonable time to comply with its obligations under the Decision and the EU Guarantee,

(iv) 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 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 each 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 each Sub-Project;

(c) promptly notify the Bank of:

(i) the suspension or cancellation of the Project;

(ii) any material alteration to any laws, constitutional documents or shareholding structure relating to the Promoter with a material effect on the Project after the date of this Contract;

(iii) any Security granted or purported to be granted by the Promoter over any of assets forming part of the Project in favour of a third party; and

(iv) any disposal by the Promoter of any material assets forming part of the Project;

(d) 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 the Promoter or any Environmental or Social Claim that is to its knowledge commenced, pending or threatened against it or the Promoter with regard to environmental, social or other matters affecting the Project or any Sub-Project;

(ii) any fact or event known to the Borrower or the Promoter, which may substantially prejudice or affect the conditions of execution or operation of the Project or any Sub-Project;

(iii) any non-compliance by it or the Promoter with any Environmental and Social Standard;

(iv) any suspension, revocation or modification of any Environmental or Social Approval,

(v) a genuine allegation or complaint with regard to any Prohibited Conduct or Sanction related to the Promoter, the Loan, the Project or any Sub-Project;

(vi) any measure taken by the Promoter pursuant to Article 6.10 (*Integrity*) of this Contract;

(vii) any changes to the initial procurement plan(s);

(viii) any fact or event which results in the Promoter, or any Relevant Person or any other of the Promoter's duly authorised agents or representatives having direct decision and control powers in relation to each Sub-Project being or becoming a Sanctioned Person; and

(ix) any fact or information confirming or reasonably suggesting that (a) any Prohibited Conduct or any violation of any Sanction has occurred in connection with the Loan, the Project or any Sub-Project, or (b) any of the funds invested in the Project was derived from an illicit origin;

and set out the action to be taken with respect to such matters; and

(e) 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.2; and

(ii) a completion report with respect to the completion of the Project in the form and within the timeframe specified in Schedule A.2;

(f) provide to the Bank, if so requested:

(i) an insurance certificate showing fulfilment of the requirements of Article 6.5(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;

(g) store and keep updated (and, with respect to each Sub-Project, procure that the Promoter shall store and keep updated) documents relevant to the Project or each Sub-Project (including environmental studies related to the EIA) and provide (or procure that the Promoter provide) them to the Bank promptly on the Bank's request;

(h) notify the Bank of the suspension of payments by the Promoter or of any judicial or administrative proceedings commenced against the Promoter, in each case within 5 (five) days of such event occurring;

(i) 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;

(j) promptly inform the Bank of any currently ongoing pre-trial investigations and proceedings commenced against to the Promoter; and

(k) promptly inform the Bank of any material developments in any of the investigations/proceedings against current and previous members of the management of the Promoter and regional road services of the Promoter, which were ongoing at the time of the signature of the Contract or on the opening of any similar investigations or other proceedings.

8.2 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;

(ii) from time to time, such information on its general financial situation as the Bank may reasonably require;

(iii) customer or any other type of due diligence matters of, or for, the Borrower and the Promoter, including without limitation to comply with "know your customer" (KYC) or similar identification procedures, as the Bank may deem necessary or may reasonably require to be provided within a reasonable time;

(b) ensure that it maintains procedures and records adequate to fully reflect the operations relating to the financing, execution and operation of the Project;

(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 7.3 (*Clauses by inclusion*);

(vi) any intention on its part, or on the part of the Promoter, 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 the Promoter under the Loan Fund Transfer Agreement;

(viii) any Event of Default having occurred or being threatened or anticipated;

(ix) any fact or event which results in the Borrower or any Relevant Person or any of its other 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;

(x) any fact or event which results in any investigations concerning the integrity of any Relevant Person, or otherwise any member of the Promoter's management, coordinating or administrative bodies;

(xi) 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 the Promoter that informs the Borrower to that effect), is current, imminent or pending against the Borrower, the Promoter, any Relevant Person or the Promoter's management, coordinating or administrative bodies in connection with Prohibited Conduct related to the Loan, the Project or any Sub-Project;

(xii) any measure taken by the Borrower pursuant to Article 6.10 of this Contract;

(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.

8.3 <u>Visits, Right of Access and Investigation</u>

(a) The Borrower shall, and shall procure in the Loan Fund Transfer Agreement the Promoter 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 Promoter, 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 the Loan Fund Transfer Agreement the Promoter 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.

ARTICLE 9

Charges and expenses

9.1 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 withholding or deduction of any national or local impositions whatsoever required by law or under an agreement with a governmental authority or otherwise. If the Borrower is obliged to make any such withholding or deduction, it shall gross up the payment to the Bank so that after withholding or deduction, the net amount received by the Bank is equivalent to the sum due.

9.2 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.

9.3 Increased costs, indemnity and set-off

(a) The Borrower shall pay to the Bank any costs 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 which occurs 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 full 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

10.1 Right to demand repayment

The Borrower shall repay all or part of the Loan Outstanding (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.

10.1.A Immediate demand

The Bank may make such demand immediately without prior notice or any judicial or extra judicial step:

(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 (three) 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 expropriation, attachment, arrestment, 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;

(k) if any obligation assumed by the Borrower as stated in the Framework Agreement ceases to be fulfilled as regards any loan made to any borrower in the Borrower's territory from the resources of the Bank, or the European Union;

(l) if the Promoter default in the performance of any of their obligations under the Project Implementation Agreement; or

(m) if the conditions for cover under the EU Guarantee are not fulfilled or if the EU Guarantee ceases to be valid, effective or enforceable in accordance with its terms.

10.1.B Demand after notice to remedy

The Bank may also make such demand without prior notice or any judicial or extra judicial step (without prejudice to any notice referred to below):

(a) if the Borrower fails to comply with any provision of this Contract other than those referred to in Article 10.1.A; 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.

10.2 Other rights at law

Article 10.1 shall not restrict any other right of the Bank at law to require prepayment of the Loan Outstanding.

10.3 Indemnity

10.3.A Fixed Rate Tranches

In case of demand under Article 10.1 in respect of any Fixed Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with the indemnity on any amount of principal due to be prepaid. Such indemnity shall (i) 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, and (ii) be for the amount communicated by the Bank to the Borrower as the present value (calculated as of the date of the prepayment) of the excess, if any, of:

(a) the interest that would accrue thereafter on the amount prepaid over the period from the date of prepayment 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 of the applicable Tranche.

10.3.B Floating Rate Tranches

In case of demand under Article 10.1 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 applicable 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.

10.3.C **General**

Amounts due by the Borrower pursuant to this Article 10.3 shall be payable on the date specified in the Bank's demand.

10.4 **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

11.1 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.

11.2 Dispute Resolution

(a) 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.

(b) 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.

(c) 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.

(d) 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.

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

(f) 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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

12.1 Notices

12.1.A Form of Notice

(a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter, electronic mail and facsimile.

(b) 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, facsimile or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:

  (i) on the date of delivery in relation to a hand-delivered or registered letter;

  (ii) on receipt of transmission in relation to a facsimile; or

  (iii) in the case of any electronic mail, provided that it is addressed in such a manner as the parties shall specify for this purpose, when the electronic mail is sent.

(c) Any notice provided by the Borrower to the Bank by electronic mail shall:

  (i) mention the Contract Number in the subject line; and

(ii) be in the form of a non-editable electronic image (pdf, tif or other common non editable file format agreed between the Parties) of the notice signed by an Authorised Signatory with individual representation right or by two or more Authorised Signatories with joint representation right of the Borrower as appropriate, attached to the electronic mail.

(d) 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.

(e) Without affecting the validity of electronic mail or facsimile notices or communication made in accordance with this Article 12.1, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:

(i) Disbursement Acceptance;

(ii) any notices and communication in respect of the deferment, cancellation and suspension of a disbursement of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment, and

(iii) any other notice, communication or document required by the Bank.

(f) The Parties agree that any above communication (including via electronic mail) is an accepted form of communication, shall constitute admissible evidence in court and shall have the same evidential value as an agreement under hand (*sous seing privé*).

12.1.B Addresses

The address, fax number and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication to be made or document to be delivered under or in connection with this Contract is:

For the Bank	Attention: Ops 100 boulevard Konrad Adenauer L-2950 Luxembourg Facsimile no: + 352 4379 67495 email: ops-nc2-projects@eib.org
For the Borrower	Attention: Ministry of Finance 12/2 Hrushevskoho Street Kyiv 01008 Ukraine Fax no: +380.44.277.54.87 email: infomf@minfin.gov.ua; ifisdepartment@minfin.gov.ua

12.1.C Notification of communication details

The Bank and the Borrower shall promptly notify the other party in writing of any change in their respective communication details.

12.2 English language

(a) Any notice or communication given under or in connection with this Contract must be in English.

(b) All other documents provided under or in connection with this Contract must be:

(i) in English; or

(ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail.

12.3 Effectiveness of this Contract

This Contract shall become effective on the date (the "**Date of Effectiveness**") on which the Bank has confirmed in writing that the Contract has become effective and the following conditions are satisfied:

(a) the law of Ukraine ratifying this Contract becomes effective; and

(b) the final version of the RPF was provided to the Bank to the satisfaction of the Bank and published on the official website of the Bank and the Promoter, and made publicly available also by the respective local executive authorities in the territories where the Project will be implemented.

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.

12.4 Recitals, Schedules and Annex

The Recitals and following Schedules form part of this Contract:

Schedule A	Project Specification and Reporting
Schedule B	Definition of EURIBOR
Schedule C	Forms for Borrower

The following Annex is attached hereto:

Annex I	Authority of Signatory

The Parties hereto have caused this Contract to be executed in 4 (four) originals in the English language and have respectively caused Mr. Oleh Pavlyshyn, Counsellor and Ms. Kinga Soltész, Senior Legal Counsel to initial each page of this Contract on their behalf.

At London, this 22 November 2019

Signed for and on behalf of	Signed for and on behalf of
UKRAINE	**EUROPEAN INVESTMENT BANK**
H.E. Mr. Oleksiy Honcharuk	Lilyana PAVLOVA
Prime Minister of Ukraine	Vice-President

Schedule A

Project Specification and Reporting

A 1.1. TECHNICAL DESCRIPTION AND REPORTING

Purpose, Location

The overall objective of the project is to improve transportation efficiency and safety on the major road connections in the country, which are important for internal traffic, as well as are linking Ukraine internationally, and to the EU in particular, and connecting Kiev to the Black Sea ports of Ukraine. The project consists of two main components (i) a new construction of the Northern bypass of Lviv and (ii) rehabilitation of the road M-05 Kyiv – Odesa along the existing alignment. Lviv Northern bypass is located in Lviv region, while the M-05 sections are passing through Cherkasy, Kirovograd, Mykolaiv and Odessa regions. Road M-05 Kyiv – Odesa is the main route in north-south direction from Kyiv towards the Black Sea ports and along all its length is part of the extended TEN –T network.

Description

Lviv bypass

The project component comprises construction of an approximately 23 km long 2x2 - lanes road according to Category 1A along the new alignment, bypassing Lviv to the north of the city. Project section of the Northern Lviv bypass will connect international road M-06 Kyiv – Chop and a national road N-17 Lviv – Radekhiv - Lutsk with international roads M-09 Lviv – Rava Ruska, M-10 Lviv – Krakovets and M-11 Lviv – Shegyni on the route from Ukraine to Poland and further to Western Europe.

M05 Kyiv – Odesa road

The project component will address the rehabilitation and improvement along the existing alignment of an approximately 314 km long section of M-05 road between km 152+918 and km 466+700 in Cherkasy, Kirovograd, Mykolaiv and Odesa regions, and other sections if agreed between the Bank and the Promoter in writing. After the rehabilitation and improvement, the road will correspond to Category 1. The scope also includes construction of:

(i) safety elements identified after the completed Road Safety Audit (for example interchanges, bridges, passenger bridges, overpasses, etc.) on the M-05 road; and

(ii) new grade separated interchanges and completing of a number of interchanges and artificial construction elements in Odesa region, which have been started with national financing, but are not completed until now.

The project also includes supervision services by an independent Engineer as foreseen in FIDIC form of works contracts. The scope might also include other related technical and engineering services, including Road Safety Audits, which are necessary for implementing the works contracts. The project may also include consultancy services in relation to the preparation of new road infrastructure projects eligible for IFI financing.

The precise project scope and procurement plan will be identified and agreed with the Promoter and the EBRD during the Sub-Project allocations.

Calendar

The project is expected to be implemented between 2020 and 2025.

A.1.2. 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		
Contact person		
Title		
Function / Department financial and technical		
Address		
Phone		
Fax		
Email		

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

The Borrower shall inform the EIB 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 For each Sub-Project or package of Sub-Projects to be included in the project, the Promoter will provide the Bank with a completed fiche, in accordance with the format and instructions in Appendix A.1.3.	At allocation stage
RSA For each Sub-Project or package of Sub-Projects, submit a stage I Road Safety Audit report prepared in accordance with principles of the EC Road Safety Management Directive.	Prior to disbursement against the concerned Sub-Project
EIA For each Sub-Project or package of Sub-Projects to be included in the project, the Promoter will provide the Bank with the Non-Technical Summaries of EIAs for any Sub-Project requiring an EIA, or confirmation that the proposed Sub-Projects have been screened out. For each Sub-Project or package of 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 (as in Appendix A.1.4.) should be submitted, or confirmation provided that the Sub-Projects will not have any potential effect on habitats or conservation site.	Prior to disbursement against the concerned Sub-Project
Procurement Plan For each Sub-Project or package of Sub-Projects to be allocated the Promoter shall submit a procurement plan.	Prior to first disbursement against the concerned Sub-Projects

3. Information on the project's implementation

The Borrower shall deliver to the Bank the following information on project progress during implementation at the latest by the deadline indicated below.

Document / information	Deadline	Frequency of reporting
Project Progress Report: - *A brief update on the Technical Description, explaining the reasons for significant changes vs. initial scope;* - *Update on the date of completion of each of the Sub-Projects, explaining reasons for any possible delay;* - *Update on the cost of the Sub-Projects, explaining reasons for any possible cost variations vs. initial budgeted cost;* - *A description of any major issue with impact on the environment;* - *Update of the procurement plan information on status of procurement procedures;* - *Update on the project's demand or usage and comments;* - *Any significant issue that has occurred and any significant risk that may affect the project's operation;* - *Any legal action concerning the project that may be on-going;* - *Non-confidential project-related pictures, if available.*	*Starting 7 months after the Date of Effectiveness of the Finance Contract (for the first 6 months period)*	*Semi-annually*

4. Information on the end of works and first year of operation

The Borrower shall deliver to the Bank the following information on project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank
Project Completion Report, including: *A final Technical Description of the project as completed, explaining the reasons for any significant change compared to the Technical Description in A.1.;* - *The date of completion of each of the Sub-Projects, explaining reasons for any possible delay;* - *The final cost of the project (including the breakdown by Sub-Project/contract), explaining reasons for any possible cost variations vs. budgeted cost at allocation;* - *Employment effects of the project: person-days required during implementation as well as permanent new jobs created;* - *A description of any major issue with impact on the environment or social impacts;* - *Update on procurement procedures and explanation of deviations from the agreed procurement plan;* - *Update on the project's demand or usage and comments, if it significantly differs from the estimate at allocation;* - *Any significant issue that has occurred and any significant risk that may affect the project's operation;* - *Any legal action concerning the project that may be on going;* - *Non-confidential project-related pictures, if available;* - *An update on the following Monitoring Indicators:* • *Length of rods built or upgraded (in lane km):* • *Reduction of number of accidents involving HDV (%):* • *Road fatalities saved:* • *Number of beneficiaries (AADT):*	*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, 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 Completion Report

The Borrower shall deliver to the Bank the following information 3 years after the project completion report at the latest by the deadline indicated below.

Document / information	**Date of delivery to the Bank**
Update on the Monitoring Indicators listed in the table above.	*3 years after the Project Completion Report*

Language of reports	*English*

A 1.3: TEMPLATE FOR ALLOCATION REQUEST

Template for Sub-Projects with cost below EUR 5 millions.

DATE: DD/MM/YYYY

Name of EIB Operation

Number of EIB Operation

Currency: EUR

ALLOCATION and MONITORING TABLE (FOR ALL SCHEMES INCLUDED IN EIB OPERATION) - [illegible]

[illegible]

Explanatory notes

[illegible]

A.1.4. PROJECT FICHE TEMPLATE FOR ALLOCATION REQUEST

Project Fiche for Sub-Projects with cost above EUR 5 million.

PROJECT FICHE

Project for the Development of Trans-European Road Network

(European Roads Ukraine III - 2018-0239)

Sub-Project Name: Sub-Project reference number: Contact Person: Contact (e-mail, telephone):		Sub-Project promoter: Location: Sector: Type: new project/ extension/ rehabilitation Date: Signature of the promoter

1. Sub-Project

1.1 Background

1.2 Reasons for undertaking the Project and key objectives

1.3 Technical description of the project including relevant key dimensions and capacities

1.4 Entity(ies) responsible for project design, construction and supervision

1.5 Investment cost (total) in EUR

Engineering and supervision	-
Land	-
Civil works	-
Equipment	-
Miscellaneous	-
Technical contingencies	-
Price contingencies (...% escalation p.a.), if applicable	-
Interest during construction	-
Total	-

1.5.1 Financial plan of requested allocation

Sources of financing	EUR
EIB	-
EU grant	
National budget	
Other	
TOTAL	

1.6 Expected expenditure schedule (in EUR, excluding VAT)

year	Before 2019	2019			Total
EUR					

1.7 Expected technical/ economical life-span (years)

1.8 Implementation period (dates: month, year)

a) Start:

b) Completion:

1.9 Authorisation required to implement/operate the project

Please provide the name(s) of the authority(ties) issuing the relevant permit(s) and whether or not the authorisation(s) has (have) been issued. If permits are not issued, please indicate the expected date.

1.10 Jobs affected by the investment

Number of jobs that will be created, secured or lost as a consequence of the project

a) during construction:	
b) post construction (operation and maintenance) – secured:	

1.11 Physical indicators

Please indicate (quantify) planned physical output/result of the project.

Indicator name and definition	Baseline (year)	Target value (year)
a)		
b)		
c)		

1.12 Procurement

A Procurement Plan should be submitted, including as a minimum: number of contracts/lots envisaged, procurement procedures (as described in EIB GtP), media of publication, envisaged timetable, possible eligibility restrictions, public opening procedures, envisaged selection criteria, award notice and recourse mechanisms.

Type and specifics on tender(s):

Contracts/ lots name	Type of contract: e.g. design, design-build, supply, services	Tender procedure	Start (publication date)	End (contract signature date)	Publication reference (OJEU or national journal)	Contract value (EUR)	Company awarded (if available)

1.13 Environmental and Social impacts

a) Please explain briefly the effects of the project on the environment.

b) Does the Project have any particular environmental or social risks or benefits?

c) Compliance with environmental requirements (local, national, EU) and summary description of mitigating measures adopted, if any; indicate if an EIA or Resettlement Action Plan (RAP) are required and if the project is located within/impacts a Natura 2000 (or similar) sites. In the affirmative cases, please provide information on the relevant assessment and administrative decisions for such projects, the Bank services may require further information (such as a copy of the RAP; non-technical EIA summary, analysis of impact on Natura 2000 sites).

For Sub-Projects which fall under Annex II of the EIA Directive or equivalent and not requiring an EIA: The Promoter shall ensure that a screening procedure taking into account the criteria listed in Annex III of EU EIA Directive was carried out by the environmental competent authority. The screening decision can be common for several Sub-Projects. A copy of this decision shall be sent to EIB.

d) Compliance with the EU Habitats and Birds Directives (92/43/EEC and 79/409/EEC) or equivalent:

- For Sub-Projects with potential or likely significant effects on a Site of Community Importance (SCI) (Natura 2000 or likewise) and subject to a screening under the EU Habitats and Birds Directives (or equivalent): The Promoter shall provide the Form A or its equivalent signed by the competent authority responsible for the monitoring of Natura 2000. This declaration should confirm that the required assessments under the EU Habitats and Birds Directives have been carried out (if necessary), that the Sub-Project will have no significant impact on any protected site and that the appropriate mitigation measures have been identified.
- For Sub-Projects with a significant impact, potential or likely, on a SCI, requiring an assessment under Article 6(4) of the Habitats Directive: The Promoter shall provide the Form B or its equivalent - signed by the competent authority responsible for monitoring Natura 2000 Sites, together with the justification of overriding public interest as well as the opinion of the European Commission, if applicable.

Templates of Forms A and B included as the APPENDICE A.1.4.

1.14 Operation and maintenance of the facilities:

a) Organisation in charge of the operation and maintenance of the Sub-Project:

b) Operating and maintenance costs and available budget for operation and maintenance:

1.15 Economic and financial aspects

Population served by the Sub-Project, or other pertinent demand analysis (e.g. traffic). For road Sub-Project actual and forecast traffic flows shall be included. If applicable, a summary of cost-benefit or economic feasibility analysis.

2. <u>Overall conclusions and recommendations</u>

Place:

Date:

Promoter:

Responsible person:

Schedule B

Definition 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; and "**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 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.

Schedule C

Forms for Borrower

C.1 Form of Disbursement Offer/Acceptance (Articles 1.2.B and 1.2.C.)

To: Ukraine

From: European Investment Bank

Date:

Subject: Disbursement Offer/Acceptance for the Finance Contract between Ukraine and European Investment Bank dated 22 November 2019 (the "**Finance Contract**")

Contract number 89419 Operation number 2018-0239

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 1.2.B 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 Repayment Dates and the first and the last Repayment Date for the Tranche:

(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 [__] or e-mail [__] no later than the Disbursement Acceptance Deadline of [time] Luxembourg time on [date].

The Disbursement Acceptance below must be signed by an Authorised Signatory and must be fully completed as indicated, to include the details of the Disbursement Account.

If not duly 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 1.4.

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:

Account to be credited:

Account N°: ....

Account Holder/Beneficiary: ....

(please, provide IBAN format if the country is included in IBAN Registry published by SWIFT, otherwise an appropriate format in line with the local banking practice should be provided)

Bank name and address: ....

Bank identification code (BIC): ....

Payment details to be provided: ....

Please transmit information relevant to:

Name(s) of the Borrower's Authorised Signatory(ies):

....

Signature(s) of the Borrower's Authorised Signatory(ies):

IMPORTANT NOTICE TO THE BORROWER:

BY COUNTERSIGNING ABOVE YOU CONFIRM THAT THE LIST OF AUTHORISED SIGNATORIES AND ACCOUNTS PROVIDED TO THE BANK WAS DULY UPDATED PRIOR TO THE PRESENTATION OF THE ABOVE DISBURSEMENT OFFER BY THE BANK.

IN THE EVENT THAT ANY SIGNATORIES OR ACCOUNTS APPEARING IN THIS DISBURSEMENT ACCEPTANCE ARE NOT INCLUDED IN THE LATEST LIST OF AUTHORISED SIGNATORIES AND ACCOUNTS RECEIVED BY THE BANK, THE ABOVE DISBURSEMENT OFFER SHALL BE DEEMED AS NOT HAVING BEEN MADE.

C.2 Form of Certificate from Borrower (Article 1.4.C)

To: European Investment Bank

From: Ukraine

Date:

Subject: Finance Contract between Ukraine and European Investment Bank dated 22 November 2019 (the "**Finance Contract**")

Contract Number 89419 Operation Number 2018-0239

Dear Sirs,

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

For the purposes of Article 1.4 of the Finance Contract we hereby certify to you as follows:

(a) no Prepayment Event has occurred and is continuing unremedied or unwaived;

(b) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.1, save as previously communicated by us;

(c) we have sufficient funds available to ensure the timely completion and implementation of the approved Sub-Projects in accordance with Schedule A.1;

(d) 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;

(e) 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;

(f) the representations and warranties to be made or repeated by us under Article 6.11 are true in all respects;

(g) 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

(h) 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:

Annex I

Authority of Signatory

Extract from the Law of Ukraine on International Treaties of Ukraine No. 1906-IV of June 29, 2004.

"This Law establishes procedure for the conclusion, accomplishment and cancellation of international treaties of Ukraine for the purpose of proper ensuring national interests, implementation of the purposes, tasks and the principles of foreign policy of Ukraine stated in the Constitution of Ukraine and the legislation of Ukraine."

"Article 6. Authority on signing of the international treaty of Ukraine

1. Conducting negotiations on preparation of the text of the international treaty, acceptance, establishing of its authenticity, or signing the international treaty of Ukraine is accomplished only by the authorized persons.

2. The President of Ukraine, the Prime Minister of Ukraine and the Minister of Foreign Affairs of Ukraine have the right to negotiate and sign the international treaty of Ukraine without special authorization."