

FI N° 84.172

Serapis N° 2012 0493

UKRAINE HIGHER EDUCATION PROJECT

Finance Contract

between

UKRAINE

and the

European Investment Bank

Brussels, 19 December 2016



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ARTICLE 1	16
1.1	AMOUNT OF CREDIT 16
1.2	DISBURSEMENT PROCEDURE 16
1.2.A	TRANCHES 16
1.2.B	DISBURSEMENT OFFER 16
1.2.C	DISBURSEMENT ACCEPTANCE 16
1.2.D	DISBURSEMENT ACCOUNT 17
1.3	CURRENCY OF DISBURSEMENT 17
1.4	CONDITIONS OF DISBURSEMENT 17
1.4.A	FIRST TRANCHE 17
1.4.B	FIRST TRANCHE RELATING TO ENERGY EFFICIENCY COMPONENT AND NON-ENERGY EFFICIENCY COMPONENT IN PHASE II 18
1.4.C	SECOND AND SUBSEQUENT TRANCHES 18
1.4.D	ALL TRANCHES 19
1.5	DEFERMENT OF DISBURSEMENT 20
1.5.A	GROUND FOR DEFERMENT 20
1.5.B	CANCELLATION OF A DISBURSEMENT DEFERRED BY 6 (SIX) MONTHS 21
1.6	CANCELLATION AND SUSPENSION 21
1.6.A	BORROWER'S RIGHT TO CANCEL 21
1.6.B	BANK'S RIGHT TO SUSPEND AND CANCEL 21
1.6.C	INDEMNITY FOR SUSPENSION AND CANCELLATION OF A TRANCHE 21
1.7	CANCELLATION AFTER EXPIRY OF THE CREDIT 22
1.8	APPRAISAL FEE 22
1.9	SUMS DUE UNDER ARTICLE 1 22
ARTICLE 2	22
2.1	AMOUNT OF LOAN 22
2.2	CURRENCY OF REPAYMENT, INTEREST AND OTHER CHARGES 22
2.3	CONFIRMATION BY THE BANK 22
ARTICLE 3	23
3.1	RATE OF INTEREST 23
3.1.A	FIXED RATE TRANCHES 23
3.1.B	FLOATING RATE TRANCHES 23
3.2	INTEREST ON OVERDUE SUMS 23
3.3	MARKET DISRUPTION EVENT 24
ARTICLE 4	24
4.1	NORMAL REPAYMENT 24
4.1.A	REPAYMENT BY INSTALMENTS 24
4.2	VOLUNTARY PREPAYMENT 24
4.2.A	PREPAYMENT OPTION 24
4.2.B	PREPAYMENT INDEMNITY 25
4.2.C	PREPAYMENT MECHANICS 25
4.3	COMPULSORY PREPAYMENT 25
4.3.A	PREPAYMENT EVENTS 25

4.3.B	PREPAYMENT MECHANICS	27
4.3.C	PREPAYMENT INDEMNITY	27
4.4	GENERAL	27
ARTICLE 5		27
5.1	DAY COUNT CONVENTION	27
5.2	TIME AND PLACE OF PAYMENT	27
5.3	NO SET-OFF BY THE BORROWER	28
5.4	DISRUPTION TO PAYMENT SYSTEMS	28
5.5	APPLICATION OF SUMS RECEIVED	28
5.5.A	GENERAL	28
5.5.B	PARTIAL PAYMENTS	28
5.5.C	ALLOCATION OF SUMS RELATED TO TRANCHES	28
ARTICLE 6		29
6.1	USE OF LOAN AND AVAILABILITY OF OTHER FUNDS	29
6.2	COMPLETION OF PROJECT	29
6.3	INCREASED COST OF PROJECT	29
6.4	PROCUREMENT PROCEDURE	30
6.5	CONTINUING PROJECT UNDERTAKINGS	30
6.6	COMPLIANCE WITH LAWS	33
6.7	INTEGRITY	33
6.8	GENERAL REPRESENTATIONS AND WARRANTIES	34
ARTICLE 7		35
7.1	<i>PARI PASSU</i> RANKING	35
7.2	ADDITIONAL SECURITY	35
7.3	CLAUSES BY INCLUSION	35
ARTICLE 8		36
8.1	INFORMATION CONCERNING THE PROJECT AND FINAL BENEFICIARIES	36
8.2	INFORMATION CONCERNING THE BORROWER	37
8.3	VISITS, RIGHTS OF ACCESS AND INVESTIGATION	38
8.4	LANGUAGE	39
ARTICLE 9		39
9.1	TAXES, DUTIES AND FEES	39
9.2	OTHER CHARGES	39
9.3	INCREASED COSTS, INDEMNITY AND SET-OFF	39
ARTICLE 10		40
10.1	RIGHT TO DEMAND REPAYMENT	40
10.1.A	IMMEDIATE DEMAND	40
10.1.B	DEMAND AFTER NOTICE TO REMEDY	41
10.2	OTHER RIGHTS AT LAW	41
10.3	INDEMNITY	41
10.3.A	FIXED RATE TRANCHES	41
10.3.B	FLOATING RATE TRANCHES	41

10.3.C	GENERAL	41
10.4	NON-WAIVER	41
ARTICLE 11		42
11.1	GOVERNING LAW	42
11.2	JURISDICTION.....	42
11.3	EVIDENCE OF SUMS DUE	42
11.4	ENTIRE AGREEMENT	42
11.5	INVALIDITY	42
11.6	AMENDMENTS	43
11.7	COUNTERPARTS	43
ARTICLE 12		43
12.1	NOTICES TO EITHER PARTY.....	43
12.2	FORM OF NOTICE.....	44
12.3	CHANGES TO PARTIES.....	44
12.4	EFFECTIVENESS OF THIS CONTRACT	44
12.5	RECITALS, SCHEDULES AND ANNEXES	44
SCHEDULE A		46
SCHEDULE B		50
SCHEDULE C		53
ANNEX I		56

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 Mr Vazil Hudák, Vice President,

(the "Bank")

of the second part (and, together, the **"Parties"**).

WHEREAS:

- (a) In accordance with (i) Decision No. 466/2014/EU, published in the Official Journal of the European Union No L 135 of 8 May 2014, the European Parliament and the Council of the European Union decided to grant a guarantee to the Bank against losses under financing operations supporting investment projects outside the European Union (the "Decision") and (ii) the agreement entered into between the European Union, represented by the European Commission, and the Bank implementing such decision, in the event of non-payment, the European Union, by a guarantee, covers certain payments not received by the Bank and due to the Bank in relation to the Bank's financing operations entered into with, inter alios, the Borrower (the "EU Guarantee"). As of the date of this Contract, Ukraine is an Eligible Country (as defined below).
- (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) 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.
- (d) The Borrower has stated that it is undertaking a project to refurbish teaching, research and supporting facilities at various state higher education institutions in Ukraine with a view to improving their energy efficiency and making other non-energy efficiency related educational investments (each a "Sub-Project" and together, the "Project" or the "Sub-Projects"), as more particularly described in the technical description set out in Schedule A (the "Technical Description"). The Project will comprise two phases, the first phase relating to Sub-Projects at seven state higher education institutions in Ukraine identified during the Bank's appraisal and referred to in the Technical Description ("Phase I") and the second phase relating to Sub-Projects which remain to be identified by the Borrower on the basis of duly conducted calls for proposals and approved by the Bank ("Phase II"). Phase II may include Sub-Projects undertaken at any of the state higher education institutions participating in Phase I and any other Ukrainian state higher education institution acceptable to the Bank (each a "Final Beneficiary" and together "Final Beneficiaries"). Each Sub-Project shall be located within the territory of Ukraine under the control of the Government of the Borrower.
- (e) The total cost of the Project, as estimated by the Bank, is EUR 160,000,000 (one hundred and sixty million euros), including:

	Amount (EUR m)
Project costs (excluding VAT and interest during construction)	
Phase I	81.00
Phase II	79.00
TOTAL	160.00

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The Borrower has stated that it intends to finance the Project as follows:

Source	Amount (EUR m)
Credit from the Bank	120.00
E5P Investment Grant	10.00
Borrower's own funds except to the extent that other sources of funding become available	30.00
TOTAL	160.00

- (f) In order to fulfil the financing plan set out in Recital (e), the Borrower has requested from the Bank a credit equivalent to EUR 120,000,000 (one hundred and twenty 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").
- (g) The Borrower acting through the Ministry of Finance of Ukraine (the "Ministry of Finance"), and in conjunction with the Ministry of Education and Science of Ukraine (the "Ministry of Education and Science"), shall make the proceeds of the Credit available to each Final Beneficiary pursuant to a loan fund transfer agreement to be entered into between the Ministry of Finance, the Ministry of Education and Science and the relevant Final Beneficiary on terms and conditions acceptable to the Bank (a "Loan Fund Transfer Agreement").
- (h) The Project will be implemented by the Borrower acting through the Ministry of Education and Science. The Borrower, acting through the Ministry of Education and Science, will have general supervision of and responsibility for the implementation of the Project, including establishing a project management and support unit within the Ministry of Education and Science (the "PMSU") and ensuring that a project implementation unit is established by each Final Beneficiary (each a "PIU" and together the "PIUs").
- (i) 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 providing to it a credit in an amount equivalent to EUR 120,000,000 (one hundred and twenty million euros) under this finance contract (the "Contract"); provided that: (i) the credit provided by the Bank under this Contract for the purposes of financing the Energy Efficiency Component (as defined below) shall not exceed 75% (seventy five per cent) of the total cost of the Energy Efficiency Component; and (ii) the credit provided by the Bank under this Contract for the purposes of financing the Non-Energy Efficiency Component (as defined below) shall not exceed 50% (fifty per cent) of the total cost of the Non-Energy Efficiency Component.
- (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 Extended Fund Facility approved by the Executive Board of the International Monetary Fund for the Borrower on 11 March 2015 (the "Debt Operation").

- (k) On 4 May 2016, the Bank received a letter from the Ministry of Finance of Ukraine (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 Bank's group companies towards its stakeholders and the citizens of the European Union in general.
- (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 EU 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 Sanction Lists (as defined below) and that the Bank cannot, therefore, make funds available, directly or indirectly, to or for the benefit of a Sanctioned Person (as defined below).

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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 any law means, save as if explicitly stipulated otherwise, the law of the Borrower, and are references to that law as amended or re-enacted;
- (c) references to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) references to a "person" includes any individual, firm, company, corporation or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
- (e) unless the context otherwise requires, words denoting the singular include the plural and vice versa and references to one gender include the other genders.

Definitions

In this Contract:

"Acceptance Deadline" for a notice means:

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

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

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

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

"Change-of-Law Event" has the meaning given to it in Article 4.3.A(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

"Disruption Event" means 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:
 - (i) from performing its payment obligations under this Contract; or
 - (ii) from communicating with other parties,

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

"E5P Investment Grant" means an investment grant from the resources of the Eastern European Energy Efficiency and Environment Partnership (E5P) granted, or to be granted, for the purposes of financing the Project.

"Effectiveness Date" has the meaning given to it in Article 12.4.

"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.

"Energy Efficiency Component" means, with respect to any Sub-Project, eligible project costs relating to energy efficiency works aiming at increasing the energy efficiency of buildings under management or control by the relevant Final Beneficiary as identified by the energy audits referred to in Article 6.5(g)(i).

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

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

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

"Environmental Law" means:

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

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

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

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

"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.

"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 60 (sixty) months from the Effectiveness Date or any other later date agreed between the Parties in writing provided that the EU Guarantee continues to apply to each Tranche disbursed or to be disbursed.

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

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

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

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

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

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

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

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

"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 a Sub-Project.

"ILO" means the International Labour Organisation.

"ILO Standards" means:

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

"Indemnifiable Prepayment Event" means a Prepayment Event other than those specified in Articles 4.3.A(2), 4.3.A(4)(a) or 4.3.A(4)(c).

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

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

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

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

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

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

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

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

"Maturity Date" means the last repayment date of a Tranche specified pursuant to Article 4.1.A(b)(iv).

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

"Ministry of Education and Science" has the meaning given to it in Recital (g).

"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.

"Non-Energy Efficiency Component" means, in relation to any Sub-Project included in Phase II, eligible project costs which do not constitute the Energy-Efficiency Component.

"Payment Date" means each 20 June and 20 December 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; 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.

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

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

"Phase II EE Sub-Projects" means Sub-Projects which fall within the Energy Efficiency Component of Phase II, and a **"Phase II EE Sub-Project"** means anyone of them.

"Phase II Non-EE Sub-Projects - A" means Sub-Projects which fall within the Non-Energy Efficiency Component and which are undertaken at the state higher education institutions participating in Phase I and listed in Schedule A (*Technical Description*), and a **"Phase II Non-EE Sub-Project - A"** means anyone of them.

"Phase II Non-EE Sub-Projects - B" means Sub-Projects which fall within the Non-Energy Efficiency Component and which are not the Phase II Non-EE Sub-Projects - A, and a **"Phase II Non-EE Sub-Project - B"** means anyone of them.

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

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

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

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

"Prepayment Event" means any of the events described in Article 4.3.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 (as of the Prepayment Date) of the excess, if any, of:

- (a) the interest that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Maturity Date, if it were not prepaid; over

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- (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, 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 (d).

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

"Relevant Business Day" means:

- (a) for EUR, 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; and
- (b) for USD, a day on which banks are open for general business in New York.

"Relevant Interbank Rate" means:

- (a) EURIBOR for a Tranche denominated in EUR; and
- (b) LIBOR for a Tranche denominated in USD.

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

"Sanction Lists" means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, including but not limited to those as made available on the official EU websites https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/8442/consolidated-list-of-sanctions_en and https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2016-10-11-clean.pdf, as amended and supplemented from time to time or on any successor page; or
- (b) any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to Article 41 of the UN Charter including but not limited to those as made available on the official UN website <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>, as amended and supplemented from time to time or on any successor page.

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

"Social Law" means each of:

- (a) any law or other 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 to the Relevant Interbank Rate (being either plus or minus) determined by the Bank and notified to the Borrower in the relevant Disbursement Offer.

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

"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.

"USD" means the lawful currency of the United States of America.

"Verification Experts" mean the experts appointed by the Bank to carry out sample checks at different stages of the Project's implementation with the aim of ensuring that energy efficiency benefits are fully achieved to the satisfaction of the Bank.

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 equivalent to EUR 120,000,000 (one hundred and twenty 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 30 (thirty) Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall be in a minimum amount equivalent to EUR 3,000,000.00 (three million euros).

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

1.2.B Disbursement Offer

Upon request by the Borrower, provided that no event mentioned in Article 1.6.B has occurred and is continuing, the Bank shall send to the Borrower a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by the Borrower of a Disbursement Offer is 10 (ten) days before the Final Availability Date. The Disbursement Offer shall specify:

- (a) the currency, amount and EUR equivalent of the Tranche;
- (b) the Scheduled Disbursement Date, which shall be a Relevant Business Day, falling at least 10 (ten) days after the date of the Disbursement Offer and on or before the Final Availability Date;
- (c) the interest rate basis of the Tranche, being: (i) a Fixed Rate Tranche; or (ii) a Floating Rate Tranche, in each case pursuant to the relevant provisions of Article 3.1;
- (d) the interest payment periodicity for the Tranche, in accordance with the provisions of Article 3.1;
- (e) the first Payment Date for the Tranche;
- (f) the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.1;
- (g) the first and last repayment dates of principal for the Tranche;
- (h) for a Fixed Rate Tranche, the Fixed Rate and for a Floating Rate Tranche the Spread, applicable until and including the Maturity Date; and
- (i) 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 accompanied:

- (a) by the IBAN code (or appropriate format in line with local banking practice) and SWIFT BIC of the bank account to which disbursement of the Tranche should be made in accordance with Article 1.2.D; and

- (b) by evidence of the authority of the person or persons authorised to sign the Disbursement Acceptance and the specimen signature of such person or persons or a declaration by the Borrower that no change has occurred in relation to the authority of the person or persons authorised to sign Disbursement Acceptances under this Contract.

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

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

1.2.D Disbursement Account

The disbursement of each Tranche shall be made to an account of the Borrower (the "Disbursement Account") which is:

- (a) denominated in EUR or USD, as applicable;
- (b) opened and maintained with Joint Stock Company "The State Export-Import Bank of Ukraine" (JSC "Ukreximbank"), Public Joint Stock Company "State Savings Bank of Ukraine" (JSC "Oschadbank") or any other bank which the Bank has confirmed in writing is acceptable to it; and
- (c) notified by the Borrower to the Bank in writing not later than 10 (ten) days before the Scheduled Disbursement Date (with IBAN code or with the appropriate format in line with local banking practice).

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

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

Only one Disbursement Account may be specified for each Tranche.

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

1.3 Currency of disbursement

The disbursement of each Tranche shall be made in EUR or USD.

For the calculation of the sums available to be disbursed in USD, and to determine their equivalent in EUR, the Bank shall apply the rate published by the European Central Bank in Frankfurt, available on or shortly before submission of the Disbursement Offer as the Bank shall decide.

1.4 Conditions of disbursement

1.4.A 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, of the following documents or evidence:

- (a) a legal opinion issued by the Ministry of Justice of the Borrower in the English language on the due execution of this Contract by the Borrower and the validity, enforceability and binding nature of this Contract. Such opinion shall be in form and substance acceptable to the Bank and shall be supported by the relevant documents evidencing the Borrower's authority to enter into this Contract, a confirmation that ratification of this Contract by the Parliament of Ukraine is necessary for the Contract to have effect under the laws of Ukraine as well as evidence of due ratification of this Contract in accordance with the applicable laws of Ukraine, and a confirmation on the legal, valid, binding and enforceable nature of the Framework Agreement under Ukrainian law (*responsible authority – Ministry of Justice*);
- (b) 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 (*responsible authority – Ministry of Finance*);
- (c) evidence that no consent under any exchange control laws and regulations applicable in Ukraine is necessary to permit the Borrower to receive disbursements as provided in this Contract, to repay the disbursed Tranches in accordance with the terms of this Contract and to pay interest and all other amounts due hereunder, including the opening and maintenance of the accounts to which the Borrower directs the Bank to disburse the Credit (*responsible authority – Ministry of Finance*);
- (d) evidence that all Authorisations necessary in connection with the Contract have been received and are in full force and effect; and
- (e) evidence that the PMSU has been established within the Ministry of Education and Science (with participation from other relevant ministries of Ukraine) and become operational to the satisfaction of the Bank (*responsible authority – Ministry of Education and Science*).

1.4.B First Tranche relating to Energy Efficiency Component and Non-Energy Efficiency Component in Phase II

- (a) The disbursement of the first Tranche under Article 1.2 relating to the Phase II EE Sub-Projects (or anyone of them) is conditional upon the prior written approval by the Bank of all of the Phase II EE Sub-Projects proposed to be included in Phase II for financing under this Contract.
- (b) The disbursement of the first Tranche under Article 1.2 relating to the Phase II Non-EE Sub-Projects - A (or anyone of them) is conditional upon the prior written approval by the Bank of all of the Phase II Non-EE Sub-Projects - A which are proposed to be included in Phase II for financing under this Contract.
- (c) The disbursement of the first Tranche under Article 1.2 relating to the Phase II Non-EE Sub-Projects - B (or anyone of them) is conditional upon the prior written approval by the Bank of all of the Phase II Non-EE Sub-Projects - B which are proposed to be included in Phase II for financing under this Contract.

1.4.C Second and Subsequent Tranches

The disbursement of each Tranche under Article 1.2 following the first Tranche is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date, of the following evidence demonstrating that:

- (a) at least 80% (eighty per cent.) of the proceeds of the immediately preceding Tranche and 100% (one hundred per cent.) of the proceeds of all other previous Tranches (if any) have been made available to the Final Beneficiaries pursuant to the relevant Loan Fund Transfer Agreements and applied towards eligible costs of the relevant Sub-Projects;

- (b) the proceeds of all the previous Tranches allocated to the Energy Efficiency Component do not exceed 75% (seventy five per cent) of the total eligible costs of the Energy Efficiency Component; and
- (c) the proceeds of all the previous Tranches allocated to the Non-Energy Efficiency Component do not exceed 50% (fifty per cent) of the total eligible costs of the Non-Energy Efficiency Component.

1.4.D All Tranches

The disbursement of each Tranche under Article 1.2, including the first Tranche, is subject to the following conditions:

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date for the proposed Tranche, the following documents and evidence:
 - (i) evidence demonstrating that the borrowing of the total amount of all Tranches disbursed during the current fiscal year (including the proposed Tranche) has been approved in the budget of the Borrower for the current fiscal year;
 - (ii) evidence that the Borrower has sufficient funds available to it and/or the Final Beneficiaries on a committed basis to complete the Sub-Projects to be financed from the proceeds of that Tranche within the timeframe referred to in Schedule A.1 and otherwise in accordance with this Contract;
 - (iii) evidence demonstrating that, following the disbursement of the proposed Tranche, the amount of the Loan will not exceed the aggregate eligible expenditure incurred or contractually committed by the Borrower and, as applicable, the Final Beneficiaries in respect of the Project within 6 (six) months of the relevant Disbursement Offer;
 - (iv) a certificate from the Borrower in the form of Schedule C.2;
 - (v) evidence of the authority of the person or persons authorised to sign Disbursement Acceptances and the authenticated specimen signature of such person or persons;
 - (vi) evidence demonstrating that, in relation to each Sub-Project to be financed from the proceeds of the proposed Tranche, a Loan Fund Transfer Agreement has been duly executed and is in full force and effect, and that all conditions precedent to its effectiveness or to the right of the relevant Final Beneficiary to receive disbursements thereunder have been fulfilled;
 - (vii) evidence that all Authorisations necessary in connection with the implementation of the Sub-Projects to be financed from the proceeds of the relevant Tranche have been received and are in full force and effect, and that the relevant Final Beneficiaries have all necessary authority and powers to implement and operate the relevant Sub-Projects;
 - (viii) evidence that each Final Beneficiary to receive financing from the proceeds of the relevant Tranche has established a PIU and that such PIU has become operational to the satisfaction of the Bank;
 - (ix) evidence that appropriate technical support supporting the PMSU and Final Beneficiaries implementing the Sub-Projects is in place to the satisfaction of the Bank or will be acquired from grants or other committed funding sources;
 - (x) evidence that all irregularities identified by the Verification Experts have been rectified to the satisfaction of the Bank;
 - (xi) evidence that all fees, costs or charges which are due and payable by the Borrower under this Contract have been paid (including, but not limited to, the cost and expenses of the Verification Experts under Article 6.5(j)(iv)); and

- (xii) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the validity and enforceability of the same.
- (b) that, if requested by the Bank, the Bank has received, in form and substance satisfactory to it, on or before the date of the Disbursement Acceptance for the proposed Tranche, certified true copies of a contract or contracts entered into in connection with the Project and eligible for financing under this Credit for an aggregate value not less than the amount of the disbursed Tranches (including the Tranche requested to be disbursed) and otherwise on terms satisfactory to the Bank;
- (c) that on the Disbursement Date for the proposed Tranche:
 - (i) all facts and information contained in the Recitals continue to be true, correct and applicable;
 - (ii) the representations and warranties which are repeated pursuant to Article 6.8 are correct in all respects;
 - (iii) the EU Guarantee is valid, binding and enforceable and that no events or circumstances have occurred which could, in the reasonable opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the EU Guarantee, its applicability to any Tranche under this Contract or the Bank's right to make a demand thereunder;
 - (iv) Ukraine continues to be an Eligible Country;
 - (v) the Framework Agreement is valid, binding and enforceable and that no events or circumstances have occurred which could, in the opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the Framework Agreement in the territory of the Borrower where such Sub-Projects are being carried out; and
 - (vi) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
 - (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 Deferment of disbursement

1.5.A Grounds for deferment

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

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

If for an Accepted Tranche any of the conditions referred to in Article 1.4 is not fulfilled as at the specified date and at the Scheduled Disbursement Date (or the date expected for disbursement in case of a previous deferment), disbursement will be deferred to a date agreed between the Bank and the Borrower falling not earlier than 7 (seven) Business Days following the fulfilment of all conditions of disbursement (without prejudice to the right of the Bank to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.6.B). In such case, the Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

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

The Bank may, by notice in writing to the Borrower, cancel a disbursement which has been deferred under Article 1.5.A by more than 6 (six) months in aggregate. The cancelled amount 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 at any time by notice in writing to the Bank cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect in respect of an Accepted Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice.

1.6.B Bank's right to suspend and cancel

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

1.6.C Indemnity for suspension and cancellation of a Tranche

1.6.C(1) SUSPENSION

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

1.6.C(2) CANCELLATION

- (a) If pursuant to Article 1.6.A, the Borrower cancels:
 - (i) a Fixed Rate Tranche which is an Accepted Tranche, it shall indemnify the Bank under Article 4.2.B; or
 - (ii) a Floating Rate Tranche which is an Accepted Tranche or any part of the Credit other than an Accepted Tranche, no indemnity is payable.
- (b) If the Bank cancels:
 - (i) a Fixed Rate Tranche which is an Accepted Tranche upon an Indemnifiable Prepayment Event or pursuant to Article 1.5.B, the Borrower shall pay to the Bank the Prepayment Indemnity; or
 - (ii) an Accepted Tranche upon an Event of Default, the Borrower shall indemnify the Bank under Article 10.3.

Save in the cases referred to in paragraphs (a) and (b) above, no indemnity is payable upon cancellation of a Tranche by the Bank.

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

1.7 Cancellation after expiry of the Credit

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

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

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

1.9 Sums due under Article 1

Sums due under Articles 1.5 and 1.6 shall be payable in the currency of the Tranche concerned. They shall be payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

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 the currency in which the Tranche is disbursed.

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

2.3 Confirmation by the Bank

Within 10 (ten) days after disbursement of each Tranche, the Bank shall deliver to the Borrower the amortisation table referred to in Article 4.1, if appropriate, showing the Disbursement Date, currency, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

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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 arrears on the relevant Payment Dates as specified in the Disbursement Offer, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 30 (thirty) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.1(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 arrears on the relevant Payment Dates, as specified in the Disbursement Offer commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 30 (thirty) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

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

If pursuant to Articles 1.5 and 1.6 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date the Relevant Interbank Rate applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.1(b). If the Floating Rate for any Floating Rate Reference Period is below zero, it will be set at zero.

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) the Relevant Interbank Rate plus 2% (200 basis points); and
- (c) for overdue sums other than under (a) or (b) above, the Relevant Interbank Rate plus 2% (200 basis points),

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

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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 rate of interest applicable to such Accepted Tranche until the Maturity Date shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank. The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.2.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.

In such case, the Spread or the Fixed Rate previously notified by the Bank in the Disbursement Offer 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 Payment 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) first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 (sixty) days from the Scheduled Disbursement Date and not later than the first Payment 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 20 (twenty) 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 1 (one) month's prior notice specifying:

- (a) the Prepayment Amount;
- (b) the Prepayment Date;
- (c) if applicable, the choice of application method of the Prepayment Amount in line with Article 5.5.C(a); and

(d) the contract number ("Fi N° 84.172") mentioned on the cover page of this Contract.
Subject to Article 4.2.C the Prepayment Request shall be binding and 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 the Acceptance Deadline.

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

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

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 (e) so that:

- (a) the amount of the Credit allocated to the Energy Efficiency Component exceeds 75% (seventy five per cent.) of the total eligible costs of the Energy Efficiency Component; or
- (b) the amount of the Credit allocated to the Non-Energy Efficiency Component exceeds 50% (fifty per cent.) of the total eligible costs of the Non-Energy Efficiency Component;

the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan up to the amount by which the Credit exceeds the limits referred to in paragraphs (a) and/or (b) above, as applicable. 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. The proportion of the Loan that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

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

For the purposes of this Article, "Non-EIB Financing" includes any loan, (save for the Loan and any other direct loans from the Bank to the Borrower), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower for a term of more than 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 demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

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

For the purposes of this Article "Change-of-Law Event" means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation), that occurs after the date 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 any security provided in connection with this Contract.

4.3.A(4) ILLEGALITY

If:

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

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

4.3.A(5) NON-PERFORMANCE BY FINAL BENEFICIARY

If the Bank determines that a Final Beneficiary has failed to comply with any obligation imposed upon it as a requirement for any part of the Loan being made available to that Final Beneficiary, the Bank may give notice thereof to the Borrower. Within a period of 30 (thirty) days following the giving of that notice, the Borrower shall either:

- (a) subject to the Bank's prior approval, re-allocate the Loan to another eligible Sub-Project; or
- (b) prepay the Loan,

in each case in an amount equal to the amount made available to the relevant Final Beneficiary under the Credit.

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 and Article 4.4, 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

A repaid or prepaid amount may not be re-borrowed. This Article 4 shall not prejudice Article 10.

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

ARTICLE 5

Payments

5.1 Day count convention

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

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

5.2 Time and place of payment

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

Each sum payable by the Borrower under this Contract shall be paid to the relevant account notified by the Bank to the Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to

which the change applies. This period of notice does not apply in the case of payment under Article 10.

The Borrower shall indicate in each payment made hereunder the contract number ("FIN° 84.172") found on the cover page of this Contract.

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

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

5.3 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 payment pro rata 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; and
 - (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 the Loan exclusively for the execution of the Project and, subject to the Bank's prior written consent, for technical support which is required by the PMSU and/or the PIUs and is necessary for the implementation of the Project.

The Borrower shall make available to the Final Beneficiaries the proceeds of the disbursed Tranches pursuant to the Loan Fund Transfer Agreements on terms and conditions acceptable to the Bank and exercise its rights thereunder 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 not, except as the Bank otherwise agrees, assign, amend, abrogate or waive any right or provision of any Loan Fund Transfer Agreement.

6.2 Completion of Project

The Borrower shall carry out the 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.

The Borrower hereby undertakes that so long as a Tranche or any part thereof under this Contract is outstanding it shall: (i) fully control, or as applicable procure that the relevant Final Beneficiary shall fully control, all assets forming part of each Sub-Project; and (ii) not take or permit to be taken, and as applicable procure that the relevant Final Beneficiary shall not take or permit to be taken, any action that would prevent or interfere with the implementation or operation of any Sub-Project.

6.3 Increased cost of Project

If the total cost of the Project exceeds the estimated figure set out in Recital (e), 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 by the Borrower to the Bank without delay.

6.4 Procurement procedure

The Borrower shall.

- (a) procure that each Final Beneficiary shall purchase equipment, secure services and order works for the relevant Sub-Project by procurement procedures which, to the satisfaction of the Bank, comply with the policies and standards described in the Guide to Procurement (including, without limitation, the publication of tender notices in the Official Journal of the European Union with respect to any component of the Project which is subject to an international competitive tender);
- (b) procure that each Final Beneficiary shall:
 - (i) permit persons designated by the Bank as independent observers to visit its premises during all stages of tendering related to the relevant Sub-Project; and
 - (ii) grant the right to the Bank in connection with the tendering of the relevant Sub-Project:
 - (1) to review the evaluation reports prior to their approval by the relevant evaluation committees; and
 - (2) to prescribe the venue of the tender evaluations and the manner of the receipt and storage of the bids; and
- (c) procure that each Final Beneficiary shall ensure that all contracts relating to the relevant Sub-Project to be procured after the date of this Contract (in accordance with the procurement policies and standards referred to in paragraph (a) above) provide for:
 - (i) the requirement that the relevant contractor promptly informs the Bank and the Borrower of any genuine allegation, complaint or information with regard to Prohibited Conduct related to that Sub-Project;
 - (ii) the requirement that the relevant contractor keeps books and records of all financial transactions and expenditures in connection with that Sub-Project; and
 - (iii) the Bank's right, in relation to any alleged Prohibited Conduct, to review the books and records of the relevant contractor in relation to that Sub-Project and to take copies of documents to the extent permitted by law.

6.5 Continuing Project undertakings

The Borrower shall, or insofar as it is applicable to, and within the competence of, a Final Beneficiary undertaking the relevant Sub-Project shall procure that such Final Beneficiary shall:

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

- (e) **Environment and Social Standards:**
- (i) implement and operate the Project in compliance with Environmental and Social Standards;
 - (ii) ensure that each contract with any contractor engaged in the Project contains provisions that require such contractor to comply with ILO Standards as well as with occupational health and safety standards;
 - (iii) ensure that contractors engaged in the Project comply with the requirements referred to in paragraphs (i) and (ii) above;
 - (iv) obtain, maintain and comply with requisite Environmental or Social Approvals for the Project;
 - (v) ensure that no proceeds of the Loan are used for any component of the Project that requires an Environmental and Social Impact Assessment Study according to national or EU legislation until such Environmental and Social Impact Assessment Study has been finalised and approved by the competent authority; and
 - (vi) ensure that no proceeds of the Loan are used for any component of the Project that has a potential to affect a site of nature conservation importance that is protected under national legislation or international agreements until the competent authority has confirmed that the relevant component does not have a significant negative impact on the site.
- (f) **EU law:** execute and operate the Project in accordance with the relevant standards of EU law to the extent implemented by the laws of Ukraine or specified by the Bank in this Contract.
- (g) **Energy efficiency works and design:**
- (i) ensure that the scope of the Energy Efficiency Component of any Sub-Project is based on the results of an energy audit satisfactory to the Bank carried out in accordance with the standard "EN 16247- Energy audits - Part 1: General requirements" or any other standard agreed with the Bank prior to the commencement of such audit;
 - (ii) ensure that all technical designs relating to the Energy Efficiency Component of any Sub-Project are prepared in full compliance with the recommendations of the energy audit referred to in paragraph (i) above and related to such Sub-Project, and that such compliance is certified by the relevant designer in writing; and
 - (iii) with respect to each building refurbished as part of the Project, deliver to the Bank, within 3 (three) months following the completion of the relevant works, a copy of an ex-post energy performance certificate in accordance with the Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast).
- (h) **the PMSU:**
- (i) ensure that the PMSU is fully operational with adequate staff and technical support to the Bank's satisfaction;
 - (ii) enable the PMSU's timely and efficient work by establishing and maintaining an appropriate management structure of the PMSU to the satisfaction of the Bank; and
 - (iii) ensure that the PMSU is granted and maintains all necessary implementation and decision powers in connection with the implementation and monitoring of the Project in accordance with this Contract,
- in each case at all times until the completion of the Project;

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(i) the PIUs:

- (i) ensure that each PIU is fully operational with adequate staff and technical support to the Bank's satisfaction;
- (ii) enable the timely and efficient work of each PIU by establishing and maintaining an appropriate management structure of such PIU to the satisfaction of the Bank; and
- (iii) ensure that each PIU is granted and maintains all necessary implementation and decision powers in connection with the implementation and monitoring of the relevant Sub-Project in accordance with this Contract,

in each case at all times until the completion of the relevant Sub-Project;

(j) Verification Experts:

- (i) enable the Verification Experts appointed by the Bank to undertake sample checks at different stages of the implementation of the Project and to confirm whether or not the energy efficiency objectives of the verified Sub-Projects have been or will be fully achieved;
- (ii) procure that any irregularities identified by a Verification Expert are remedied by the relevant Final Beneficiary to the satisfaction of the Bank and within the timeframe acceptable to the Bank;
- (iii) ensure that, upon the Bank's request, each Verification Expert has appropriate access to any site or any document required for the implementation of the Project; and
- (iv) within 30 (thirty) days of the Bank's demand, reimburse the Bank, or pay directly to the relevant Verification Experts, in full the duly documented fees and costs of the Verification Experts, it being understood that such payment may be made by the Borrower out of the proceeds of the Loan (if available).

(k) Other undertakings

- (i) procure that there is no double financing of the same components of any Sub-Project using funds made available by the Bank under this Contract or otherwise, or using funds made available by other donors, provided that nothing in this Article shall:
 - (1) prohibit any co-financing by other donors or funding from the Borrower's own resources of other components of a 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;
- (iii) 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;
- (iv) suspend the authorisation of any Sub-Project and the payment of any part of a Tranche to a Final Beneficiary which, or whose management, is being investigated by a relevant authority for any Prohibited Conduct;
- (v) ensure that its payment obligations under this Contract do not fall within the scope of the Debt Operation;

- (vi) procure that:
- (1) all equipment, works and services acquired for, or in connection with, the provision of technical support for the Project from funding from the Bank;
 - (2) all equipment, works and services acquired from funds granted by third parties for the Project; and
 - (3) all equipment donated by third parties to Final Beneficiaries for the Project,
- are exempt from any applicable tax or other impost on such acquisition or transfer; and
- (vii) submit to the Bank for its review and approval each Loan Fund Transfer Agreement proposed to be entered into by the Borrower prior to the Borrower executing such Loan Fund Transfer Agreement (which shall specify, among other things, technical support eligible to be financed pursuant to such Loan Fund Transfer Agreement).

B. GENERAL UNDERTAKINGS

6.6 Compliance with laws

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

6.7 Integrity

(a) Prohibited Conduct:

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

(b) Sanctions:

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

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

(c) Management:

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

- (i) becomes a Sanctioned Person; or

- (ii) is the subject of a court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties,

in order to ensure that such person is suspended, dismissed or in any case excluded from any of the Borrower's or that Final Beneficiary's activities (as applicable) in relation to the Loan, the Project and as applicable the relevant Sub-Project.

6.8 General Representations and Warranties

The Borrower represents and warrants to the Bank that:

- (a) it has the power to execute, deliver and perform its obligations under this Contract and all necessary actions have been taken to authorise the execution, delivery and performance of the same by it;
- (b) this Contract constitutes its legally valid, binding and enforceable obligations;
- (c) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not 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 law;
- (d) there has been no Material Adverse Change since 21 October 2014;
- (e) no event or circumstance which constitutes an Event of Default has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it any unsatisfied judgement or award;
- (g) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (h) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (i) it is in compliance with Article 6.5(e) 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 any Final Beneficiary;
- (j) it is not (and, following the disbursement of the Loan, will not be) in breach of any restrictions applicable to it on the incurring of financial indebtedness;
- (k) the Project falls within the scope of the Framework Agreement;
- (l) it is in compliance with all undertakings under this Article 6;
- (m) to the best of its knowledge, no funds invested in the Project by the Borrower or in any Sub-Project by the relevant Final Beneficiary are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism;
- (n) neither the Borrower nor any person acting on its behalf or under its control has committed nor will commit (i) any Prohibited Conduct in connection with the Project or any transaction contemplated by the Contract; or (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;

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- (o) the Project (including without limitation, the negotiation, award and performance of contracts financed or to be financed by the Loan) has not involved or given rise to any Prohibited Conduct; and
- (p) its payment obligations under this Contract do not fall within the scope of the Debt Operation.

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

ARTICLE 7

Security

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 10.1 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 provision 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 inform the Bank and shall, at the request of the Bank, promptly execute an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

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ARTICLE 8
Information and Visits

8.1 Information concerning the Project and Final Beneficiaries

The Borrower shall:

- (a) deliver to the Bank:
- (i) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract; and
 - (ii) any such information or further document concerning the financing, procurement, implementation, operation of the Project and related environmental or social matters as the Bank may reasonably require within a reasonable time;

provided always that if such information or document is not delivered to the Bank on time, and the Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Borrower's expense and the Borrower shall provide such persons with all assistance necessary for the purpose;

- (b) submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the 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;
- (c) promptly inform the Bank of:
- (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower (or any Final Beneficiary) or any Environmental or Social Claim that is to its knowledge commenced, pending or threatened against it or any Final Beneficiary with regard to environmental, social or other matters affecting the Project;
 - (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
 - (iii) any non-compliance by it or any Final Beneficiary with any applicable Environmental Law or Social Law;
 - (iv) any suspension, revocation or modification of any Environmental or Social Approval;
 - (v) any fact or event which results in any investigations concerning the integrity of any member of the management or administrative bodies of any Final Beneficiary;
 - (vi) a genuine allegation or complaint with regard to any Prohibited Conduct related to the Project;
 - (vii) any measure taken by a Final Beneficiary pursuant to Article 6.7; and
 - (viii) any fact or event which results in any duly authorised agent or representative of any Final Beneficiary having direct decision and control powers in relation to the relevant Sub-Project being or becoming a Sanctioned Person,

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

- (d) deliver to the Bank, in form and substance satisfactory to the Bank:
- (i) quarterly progress reports with respect to the implementation of the Project in accordance with Schedule A.2; and

- (ii) a completion report with respect to the completion of the Project in accordance with Schedule A.2;
- (e) provide to the Bank, if so requested:
 - (i) insurance certificates showing fulfilment of the requirements of Article 6.5(c);
 - (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; and
 - (iii) certified copies of contracts financed with the proceeds of the Loan and evidence of expenditures relating to disbursements made under this Contract.
- (f) store and keep updated (and, with respect to each Sub-Project, procure that the relevant Final Beneficiary shall store and keep updated) documents relevant to the Project or, as applicable, the relevant Sub-Project (including environmental studies related to the environmental impact assessment) and provide (or procure that the relevant Final Beneficiary provides) them to the Bank promptly on the Bank's request;
- (g) notify the Bank of the suspension of payments by any Final Beneficiary or of any judicial or administrative proceedings commenced against any Final Beneficiary, in each case within five days of such event occurring; and
- (h) notify the Bank promptly of any audit reports in relation to the Project or any Sub-Project carried out by the Government of Ukraine or any competent authority.

8.2 Information concerning the Borrower

The Borrower shall:

- (a) deliver to the Bank:
 - (i) the audited accounts and auditor's reports relating to the Project within 6 (six) months after the end of each fiscal year; and
 - (ii) such information on its general financial situation as the Bank may reasonably require; and
- (b) ensure that it maintains procedures and records adequate to fully reflect the operations relating to the financing, execution and operation of the Project; and
- (c) inform the Bank immediately of:
 - (i) any Change-of-Law Event in accordance with Article 4.3.A(3);
 - (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;
 - (vi) any intention on its part, or on the part of any Final Beneficiary, to relinquish ownership or control 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;
 - (viii) any Event of Default having occurred or being threatened or anticipated;

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- (ix) 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 relevant Final Beneficiary that informs the Borrower to that effect), is current, imminent or pending against the Borrower or any Final Beneficiary, or their respective controlling entities or members of their respective management or administrative bodies in connection with Prohibited Conduct related to the Loan or the Project;
- (x) any measure taken by the Borrower pursuant to Article 6.7;
- (xi) any fact or event which results in any of its duly authorised agents or representatives having direct decision and control powers in relation to the Loan and to the Project being or becoming a Sanctioned Person;
- (xii) 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
- (xiii) the due ratification of this Contract by the Parliament of Ukraine in accordance with the laws of Ukraine.

8.3 Visits, Rights of Access and Investigation

- (a) The Borrower shall, and shall procure that each Final Beneficiary shall, permit persons designated by the Bank who may be accompanied by representatives of the European Court of Auditors, the European Commission and/or the European Anti-Fraud Office:
 - (i) to visit the sites, installations and works comprising the Project;
 - (ii) to interview representatives of the Borrower and/or each Final Beneficiary, and not obstruct contacts with any other person involved in or affected by the Project; and
 - (iii) to review the books and records of the Borrower and/or each Final Beneficiary 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) Without prejudice to the generality of paragraph (a) above, the scope of a visit and review by the Verification Experts appointed by the Bank may include, without limitation, the following aspects:
 - (i) compliance of the scope of the Energy Efficiency Component with recommendations of the energy audit;
 - (ii) quality of technical designs;
 - (iii) quality of works;
 - (iv) quality of materials used;
 - (v) quality of ex-post energy performance certification;
 - (vi) ex-post verification of real energy savings achieved; and
 - (vii) procurement.
- (c) The Borrower shall, and shall procure that each Final Beneficiary shall, 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.
- (d) The Borrower shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.
- (e) The Borrower acknowledges that the Bank may be obliged to communicate information relating to the Borrower and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law.

8.4 Language

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

ARTICLE 9

Charges and expenses

9.1 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 deduction of any national or local impositions whatsoever; provided that, if the Borrower is obliged to make any such deduction, it will gross up the payment to the Bank so that after deduction, the net amount received by the Bank is equivalent to the sum due.

9.2 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 sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation or application of) any law or regulation or compliance with any law or regulation made after the date of of this Contract, in accordance with or as a result of which:

- (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract; or
- (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.

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

(b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.

- (c) To the extent permitted under applicable law, 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 is reasonably 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 (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:

- (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 any other financial instrument entered into with the Bank;
- (f) if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;

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- (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 therefor; or
- (j) if any obligation assumed by the Borrower under this Contract are adversely affected by the Borrower's implementation of the Debt Operation.

10.1.B Demand after notice to remedy

The Bank may also make such demand:

- (a) if the Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.1.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.

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 Prepayment Indemnity on any amount of principal due to be prepaid. Such Prepayment Indemnity shall accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified.

10.3.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 original amortisation schedule of the Tranche, until the Maturity Date.

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

10.3.C General

Amounts due by the Borrower pursuant to this Article 10.3 shall be payable on the date of prepayment 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.

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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 the Borrower relating to the existence or interpretation of contracts shall not apply to this Contract.

11.2 Jurisdiction

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

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

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

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

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

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

11.3 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 to either Party

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

For the Bank

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

For the Borrower

Attention: Ministry of Finance
12/2 Grusjevskogo Street
Kyiv 01008
Ukraine
Fax no: +380 44 277 54 87

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12.2 Form of notice

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

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

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

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

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

12.3 Changes to parties

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

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

12.4 Effectiveness of this Contract

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

If the Effectiveness Date 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.

12.5 Recitals, Schedules and Annexes

The Recitals and following Schedules form part of this Contract:

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

The following Annexes are attached hereto:

Annex 1	Authority of Borrower Signatory
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IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed in four originals in the English language and have respectively caused

_____ and Ms Marta Pink, Legal Counsel, to initial each page of this Contract on their behalf.

In Brussels, this 19 day of December 2018.

Signed for and on behalf of
UKRAINE



Mr Yuriy Butsa
Deputy Minister Of Finance
For European Integration

Signed for and on behalf of
EUROPEAN INVESTMENT BANK



Mr Vazil Hudák
Vice President

Technical Description and Reporting**A.1 Technical Description****Purpose, Location**

The Project concerns the refurbishment of existing teaching, research and supporting facilities at various state higher education institutions in Ukraine with a view to improving their energy efficiency and making other non-energy efficiency related educational investments. The objective is to reduce the running costs of the state higher education institutions, and to improve the quality of teaching, learning and academic research facilities.

Description

The Energy Efficiency Component will include energy efficiency investments aiming at improving the energy performance of buildings. In particular, the Energy Efficiency Component may include, but is not limited to, energy efficiency investments relating to the building envelope, heating ventilation and air-conditioning systems, electric installations and heat supply systems.

The Non-Energy Efficiency Component will include other types of investments which are not energy efficiency related and which aim at improving teaching conditions.

The Loan shall be allocated for financing of the eligible expenditures related to the Energy Efficiency Component and the Non-Energy Efficiency Component.

The Project will comprise two phases: Phase I and Phase II.

Phase I will comprise energy efficiency investments falling within the Energy Efficiency Component at the following seven state higher education institutions with an approximate aggregate investment cost of EUR 81 m:

- (a) National Technical University "Kharkiv Polytechnic Institute", Kharkiv;
- (b) National Pedagogical Dragomanov University, Kyiv;
- (c) Lviv Polytechnic National University, Lviv;
- (d) Poltava National Technical Yuri Kondratyuk University, Poltava;
- (e) Chernihiv State Technological University, Chernihiv;
- (f) Sumy State University, Sumy; and
- (g) Vinnytsia National Technical University, Vinnytsia.

Phase II will comprise investments of approximately EUR 79,000,000 (seventy nine million euros). The Sub-Projects proposed to be financed under Phase II are subject to prior approval by the Bank. Phase II shall comprise energy efficiency investments falling within the Energy Efficiency Component, and may also include the Non-Energy Efficiency Component, provided that:

- (i) the total eligible investment costs of the Non-Energy Efficiency Component shall not exceed EUR 11,850,000 (being 15% of the total Project costs of Phase II as referred to in Recital (e)); and
- (ii) the Credit allocated or proposed to be allocated to Sub-Projects comprising the Non-Energy Efficiency Component shall not exceed 50% of their total investment cost.

The proposed scope of Phase II shall comply with the eligibility criteria agreed by the Bank.

The Borrower (acting through the Ministry of Education and Science) shall carry out thorough monitoring of the economic development, social, environmental and human rights impact of the Project, as well as such other aspects of the Project's implementation as

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requested by the Bank from time to time. The Bank may publish project completion reports relating to the Sub-Projects financed by the Bank.

Calendar

The commencement of the Project is expected in 2017. The Project is expected to be completed within 5 (five) years of the Effectiveness Date.

General exclusions

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

Excluded sectors:

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

Particular categories of investments excluded from the Loan:

- investments in sectors other than those mentioned in the Technical Description
- investments outside the Project's geographical scope described in the Technical Description

A.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:

Technical Contact	
Responsible Ministry	<i>Ministry of Education and Science</i>
Contact person	<i>Roman Greba</i>
Title	<i>Deputy Minister, Chief of Staff</i>
Function / Department	<i>Division for State Property and Enterprises</i>
Address	<i>10, Peremohy Avenue Kyiv 01135 Ukraine</i>
Phone	<i>+380 481-47-74</i>
Fax	<i>+380 481-47-74</i>
Email	<i>greba@mon.gov.ua</i>

Financial Contact	
Responsible Ministry	<i>Ministry of Finance</i>
Contact person	<i>Yuriy Butsa</i>
Title	<i>Deputy Minister for European Integration</i>
Function / Department	<i>Department for Cooperation with International Institutions</i>
Address	<i>12/2 Grusjevskogo Street Kyiv 01008 Ukraine</i>
Phone/Fax	<i>Tel: +38 044 206 58 48 Tel: +38 044 277 53 33 Fax +38 044 425 90 26 Fax +38 044 277 54 87</i>
Email	<i>yb@minfin.gov.ua kolosova@minfin.gov.ua</i>

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being. The Borrower shall inform the Bank immediately in case of any change.

2. Information on specific subjects

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

Document / Information	Deadline
<ul style="list-style-type: none"> For each Sub-Project that requires environmental and social impact assessment according to EU or national legislation, the Ministry of Education and Science shall provide the Bank with a copy (preferably in electronic format) of the Environmental and Social Impact Assessment Study, including a non-technical summary (NTS), or provide a web-site link to the location where the Environmental and Social Impact Assessment Study is published for at least 3 years. The Ministry of Education and Science shall confirm that the Project incorporates all mitigating measures recommended as a result of the Environmental and Social Impact Assessment Study, in order to ensure compliance with the Bank's transparency policy. 	Prior to allocation of the Loan to the relevant Sub-Project
<ul style="list-style-type: none"> If any Sub-Project has the potential to affect a site of nature conservation importance that is protected under national or international legislation or agreements, the Ministry of Education and Science shall obtain a confirmation from the competent nature conservation authority, or an equivalent assessment satisfactory to the Bank, that the scheme does not have a significant negative impact on the site of nature conservation importance that is protected under national or international legislation or agreements. 	Prior to allocation of the Loan to the relevant Sub-Project

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3. Information on the implementation of the Project

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

Document / information	Deadline	Frequency of reporting
Progress report on the implementation of the Project including: <ul style="list-style-type: none"> - 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 main components of the Project, explaining reasons for any possible delay; - update on the cost of the Project, explaining reasons for any possible cost increases vs. initial budgeted cost; - a description of any major issue with impact on the environment or social matters; - 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. 	31 March 30 June 30 September 31 December	Quarterly

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

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

Document / information	Date of delivery to the Bank
Report on the completion of the Project, including: <ul style="list-style-type: none"> - a brief description of the technical characteristics of the Project as completed, explaining the reasons for any significant change; - the date of completion of each of the main components of the Project, explaining reasons for any possible delay; - the final cost of the Project, explaining reasons for any possible cost increases vs. initial budgeted cost; - the number of new jobs created by the Project: both jobs during implementation and permanent new jobs created; - a description of any major issue with impact on the environment or social matters; - procurement up-date; - 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. - update of the actual values for the indicators of the project, for inclusion in the Bank's Results Measurement (REM) sheet 	Within 6 months following the completion of works
Language of reports	English

410

Schedule B

Definitions of EURIBOR and LIBOR

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 the rate resulting from the above is below zero, EURIBOR will be deemed to be zero.

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. LIBOR

"LIBOR" means, in respect of USD:

- (a) in respect of a relevant period of less than one month, the Screen Rate 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 "calculated and published" under the aegis of the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) for given maturities; and

"Screen Rate" means the rate of interest for deposits in USD for the relevant period as set by the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) and released by financial news providers at 11h00, London time, or at a later time acceptable to the Bank on the day (the "Reset Date") which falls 2 (two) London Business Days prior to the first day of the relevant period.

If such Screen Rate is not so released by any financial news provider acceptable to the Bank, the Bank shall request the principal London offices of 4 (four) major banks in the London interbank market selected by the Bank to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, London time, on the Reset Date, to prime banks in the London interbank market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If fewer than 2 (two) quotations are provided as requested, the Bank shall request the principal New York City offices of 4 (four) major banks in the New York City interbank market, selected by the Bank, to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, New York City time, on the day falling 2 (two) New York Business Days after the Reset Date, to prime banks in the European market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If the rate resulting from the above is below zero, LIBOR will be deemed to be zero.

If no rate is available as provided above, LIBOR 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.

YD





C. GENERAL

- (a) For the purposes of the foregoing definitions:
 - "London Business Day"** means a day on which banks are open for normal business in London; and
 - "New York Business Day"** means a day on which banks are open for normal business in New York.
- (b) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with halves being rounded up.
- (c) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (d) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of:
 - (i) EMMI and EURIBOR ACI (or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank) in respect of EURIBOR; or
 - (ii) the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited, as determined by the Bank) in respect of LIBOR,the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.

YB

Forms for the Borrower

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

To: Ministry of Finance, Ukraine
From: European Investment Bank
Date:
Subject: Disbursement Offer/Acceptance for the Finance Contract between Ukraine and the European Investment Bank dated 19 December 2016 (the "Finance Contract")

FI number 84.172

Serapis number 2012 0493

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

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

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

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

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

If you do accept the Tranche as described in this Disbursement Offer, all the related terms and conditions of the Finance Contract shall apply, in particular, the provisions of Article 1.4.

Yours faithfully,

EUROPEAN INVESTMENT BANK

YIB



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:

Y.B.



Certificates to be provided by the Borrower

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

To: European Investment Bank

From: Ukraine

Date:

Subject: Finance Contract between Ukraine and the European Investment Bank dated 19 December 2016 (the "Finance Contract")

FI number 84.172

Serapis number 2012 0493

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) list of expenditures under the Project to be financed with the Tranche, including the list of expenditures to be allocated to the Energy Efficiency Component;
- (b) no Prepayment Event has occurred and is continuing unremedied;
- (c) there has been no material change to any aspect of the Project or in respect of which we are obliged to report, or cause any Final Beneficiary to report, under Article 8.1, save as previously communicated by us;
- (d) we have sufficient funds available to ensure the timely completion and implementation of the Project in accordance with Schedule A.1;
- (e) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us or any of our subsidiaries any unsatisfied judgement or award;
- (g) the representations and warranties to be made or repeated by us under Article 6.8 are true in all respects;
- (h) the Borrower's obligations under the Finance Contract do not fall within the scope, and are not affected by, the Borrower's implementation of the Debt Operation; and
- (i) no Material Adverse Change has occurred, as compared with the situation at the date of the Finance Contract.

Yours faithfully,

For and on behalf of UKRAINE

Date:






Annex I

Authority of Borrower Signatory

YB