



*EIB Internal Classification Level: Corporate Use*



Corporate Use

Contract Number (FI N°) 90.604

Operation Number (Serapis N°) 2019-0001

## **UKRAINE URBAN PUBLIC TRANSPORT II**

### **Finance Contract**

*between*

**Ukraine**

*and the*

**European Investment Bank**

Kyiv, 9 December 2020

Luxembourg, 9 December 2020



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THIS CONTRACT IS MADE BETWEEN:

**UKRAINE**

(the "**Borrower**")

of the first part, and

the **EUROPEAN INVESTMENT BANK**  
having its seat at 100 blvd Konrad Adenauer,  
Luxembourg, L-2950 Luxembourg,  
represented by Mr. Werner Hoyer, President,

(the "**Bank**")

of the second part, and together with the  
Borrower the "**Parties**" and each a "**Party**".

# WHEREAS:

- (a) On 14 June 2005 the Borrower and the Bank signed a framework agreement which was ratified by the Parliament of Ukraine on 7 February 2006 in the Law of Ukraine 3392 "On Ratification of the Framework Agreement between Ukraine and the European Investment Bank" and which governs the Bank's activities in the territory of Ukraine (the "**Framework Agreement**", as may be amended, superseded or replaced from time to time). The Framework Agreement became effective on 8 April 2006 and continues to be in full force and effect throughout the term of this Contract (as defined below). By signing this Contract, the Borrower acknowledges that the loan financing to be provided hereunder falls within the scope of the Framework Agreement. The Borrower confirms the Bank's preferred creditor status as an international financial institution as stipulated in article 7 of the Framework Agreement.
- (b) In accordance with (i) Decision No. 466/2014/EU, published in the Official Journal of the European Union No L 135 of 8 May 2014, as amended by Decision No. 2018/412/EU, the European Parliament and the Council of the European Union decided to grant a guarantee to the Bank against losses under financing operations supporting investment projects outside the European Union (the "**Decision**") and (ii) the agreement entered into between the European Union, represented by the European Commission, and the Bank implementing the Decision, in the event of non-payment, the European Union, by a guarantee, covers certain payments not received by the Bank and due to the Bank in relation to the Bank's financing operations entered into with, *inter alia*, the Borrower (the "**EU Guarantee**"). As of the date of this Contract (as defined below), Ukraine is an Eligible Country (as defined below).
- (c) 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.
- (d) The Borrower has stated that it is undertaking operations to support the renewal of electric means of transport, rehabilitation of the existing urban public transport infrastructure and extending it with new elements of transport infrastructure in cities in Ukraine (each operate on a "**Sub-Project**", and collectively the "**Project**"), as more particularly described in the technical description set out in Schedule A hereto (the "**Technical Description**"). The Sub-Projects will be implemented in the territory of Ukraine by local state administrations and bodies of local self-government and municipal transport companies owned by the local community (each a "**Final Beneficiary**" and together the "**Final Beneficiaries**").
- (e) The Project will be implemented, managed and monitored by the Ministry of Infrastructure of Ukraine (or its legal successor) (the "**Promoter**") through a dedicated Programme Management Support Unit (the "**PMSU**"). Each Sub-Project will be prepared, implemented and monitored by a relevant project implementation unit (each a "**PIU**") to be established within each Final Beneficiary.
- (f) The total cost of the Project, as estimated by the Bank, is EUR 404,500,000 (four hundred and four million and five hundred thousand euros) and the Borrower has stated that it intends to finance the Project from the Loan (as defined below) from the Bank, and the rest from the own resources of the Final Beneficiaries, grants (including technical assistance grants in the amount of up to EUR 4,500,000 (four million and five hundred thousand euros) from the European Union and EPTATF) and other funding resources from other lenders (incl. EBRD), in each case without recourse to the Bank.
- (g) In order to finance the Project, the Borrower has requested from the Bank a credit of EUR 200,000,000 (two hundred million euros) to be made available from the Bank's own resources and pursuant to the Bank's 2014-2020 external lending mandate in accordance with the Decision (the "**Mandate**").
- (h) The Borrower, acting through the Ministry of Finance of Ukraine in cooperation with the Promoter, shall make the proceeds of the Credit available to each Final Beneficiary pursuant to a loan fund transfer agreement (each "**Loan Fund Transfer Agreement**"), on terms and conditions acceptable to the Bank from time to time.






- (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 of EUR 200,000,000 (two hundred million euros) under this finance contract (the "**Contract**"), provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent) of the total cost of the Project set out in Recital (f).
- (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 debt operation 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**"). On 4 May 2016, the Bank received a letter from the Ministry of Finance (the "**MoF Letter**") concerning external debt obligations of Ukraine included in the Debt Operation as approved by Resolution No. 318-p of the Cabinet of Ministers of Ukraine dated 4 April 2015 and confirming that such debt obligations do not include obligations owed to the Bank. On 9 June 2020, the Executive Board of the International Monetary Fund for the Borrower approved a new Stand-By Arrangement (the "**2020 IMF Program**").
- (k) 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. The Borrower confirms further that no laws and regulations of Ukraine regulating the implementation of the Debt Operation, the 2020 IMF Program 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 and has therefore established its transparency policy, the purpose of which is to enhance the accountability of the Bank's group towards its stakeholders.
- (n) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.
- (o) By entering into this Contract the Borrower acknowledges that the Bank is bound to comply with the Sanctions (as defined below) and that the Bank cannot, therefore, amongst others, make funds available, directly or indirectly, to or for the benefit of a Sanctioned Person (as defined below).
- (p) The Bank supports the implementation of international and EU standards in the field of anti-money laundering and countering the financing of terrorism and promotes tax good governance standards. It has established policies and procedures to avoid the risk of misuse of its funds for purposes which are illegal or abusive in relation to applicable laws. The EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism is available on the Bank's website and offers further guidance to EIB contracting counterparties.





**NOW THEREFORE** it is hereby agreed as follows:

## **INTERPRETATION AND DEFINITIONS**

### **Interpretation**

In this Contract:

- (a) references to Articles, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract;
- (b) references to "law" or "laws" mean:
  - (i) any applicable law and any applicable treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which is binding or applicable case law; and
  - (ii) EU Law;
- (c) references to "applicable law", "applicable laws" or "applicable jurisdiction" mean:
  - (i) a law or jurisdiction applicable to the Borrower, its rights and/or obligations (in each case arising out of or in connection with this Contract), its capacity and/or assets and/or the Project; and/or, as applicable;
  - (ii) a law or jurisdiction (including in each case the Bank's Statute) applicable to the Bank, its rights, obligations, capacity and/or assets;
- (d) references to a provision of law are references to that provision as amended or re-enacted;
- (e) references to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated; and
- (f) words and expressions in plural shall include singular and vice versa.

### **Definitions**

In this Contract:

**"2020 IMF Program"** has the meaning given to it in Recital (j).

**"Acceptable Bank"** means:

- (a) Joint Stock Company "The State Import-Export Bank of Ukraine" (JSC "Ukreximbank");
- (b) Joint Stock Company "State Savings Bank of Ukraine" (JSC "Oschadbank");
- (c) any other bank which the Bank confirms in writing, from time to time, is acceptable to it.

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

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

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

**"Allocation Letter"** has the meaning given to it in Article 1.10.B.

**"Allocation Procedure"** means the procedure set out in Article 1.10.A.

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

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

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

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

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

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

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

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

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

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

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

**"Deferment Indemnity"** means a fee calculated on the amount of disbursement deferred or suspended being the higher of:

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

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

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

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

**"Disbursement Account"** means, in respect of each Tranche, the bank account denominated in EUR and opened and maintained with an Acceptable Bank, the details of which account are set out in the most recent List of Authorised Signatories and Accounts.

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

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

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

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

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

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



**"EIA Directive"** means the Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), as amended or replaced from time to time.

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

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

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

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

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

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

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

**"Environmental and Social Standards"** means:

- (a) Environmental Laws and Social Laws applicable to the Project, the Borrower, the Promoter, the PMSU, any Final Beneficiary or any PIU;
- (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 an Environmental Law or a Social Law in connection with the construction or operation of the Project.

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

**"Environmental Law"** means:

- (a) EU Law to the extent implemented in the laws of Ukraine;
- (b) EU Law as specified by the Bank before the date of signing of this Contract, i.e.
  - (i) the Regulation No 1370/2007;
  - (ii) the EIA Directive;
- (c) Ukrainian laws and regulations; and
- (d) international treaties and conventions signed and ratified by or otherwise applicable and binding on, Ukraine,

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



**"EU Fourth Money Laundering Directive"** means Directive (EU) No. 2015/849 of the European Parliament and of the Council of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

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

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

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

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

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

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

**"Final Availability Date"** means the date falling 60 (sixty) months after the Date of Effectiveness or any other later date agreed between the parties in writing, provided in each case that the EU Guarantee continues to apply to each Tranche being disbursed.

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

**"Fixed Rate"** means an annual interest rate determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in the currency of the Tranche and bearing equivalent terms for the repayment of capital and the payment of interest. Such rate shall not be of negative value.

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

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

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

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

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

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

**"ILO"** means the International Labour Organisation.

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

**"Indemnifiable Prepayment Event"** means a Prepayment Event other than those specified in 4.3.A(2) (*Pari Passu* to non-EIB Financing) or 4.3.A(4) (Illegality)



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

- (a) the Authorised Signatories, accompanied by evidence of signing authority of the persons named on the list and specifying if they have individual or joint signing authority;
- (b) the specimen signatures of such persons; and
- (c) the bank account(s) to which disbursements may be made under this Contract (specified by IBAN code if the country is included in the IBAN Registry published by SWIFT, or in the appropriate account format in line with the local banking practice), BIC/SWIFT code of the bank and the name of the bank account(s) beneficiary.

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

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

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

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

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

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

**"Material Adverse Change"** means any event or change of condition, which, in the opinion of the Bank, has a material adverse effect on:

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

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

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

**"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-EIB Financing"** has the meaning given to it in Article 4.3.A(2).

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






**"Payment Date"** means 20 April and 20 October of each year specified in the Disbursement Offer 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; or
- (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.

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

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

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

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

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

**"Prepayment Indemnity"** means in respect of any principal amount to be prepaid or cancelled, the amount communicated by the Bank to the Borrower as the present value (calculated as of the Prepayment Date or the date of cancellation pursuant to Article 1.6.C(2)) of the excess, if any, of:

- (a) the interest that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date or the date of cancellation pursuant to Article 1.6.C(2) to the Maturity Date, if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

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

**"Prepayment Notice"** means a written notice from the Bank to the Borrower in accordance with Article 4.2.C.

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

**"Programme Procedures Manual"** means the programme procedures manual setting out, among other things: (1) procedures (including financial eligibility criteria) to be followed by the Promoter and the Final Beneficiaries during the implementation of the Project and Sub-Projects; (2) the description of technical support eligible for financing under this Contract; and (3) the role and competencies of the Steering Committee, the PMSU and the PIUs, as may be amended with the prior written agreement of the Bank.

**"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 (including, for the avoidance of doubt, taxation related) 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 this 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;
- (f) Tax Crime, meaning all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of Ukraine, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year.

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

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

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

"Redeployment Rate" means the fixed annual rate determined by the Bank, being a rate which the Bank would apply on the day of the indemnity calculation to a loan that has the same currency the same terms for the payment of interest and the same repayment profile to the Maturity Date as the Tranche in respect of which a prepayment or cancellation is proposed or requested to be made. Such rate shall not be of negative value.

"Regulation No 1370/2007" means the Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016, as amended or replaced from time to time.

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

"Relevant Person" means:

- (a) with respect to each of the Borrower, the Promoter and the PMSU, any official or representative of any of its ministries, other central executive government bodies or other governmental subdivisions, or any other person acting on its behalf or under its control, having the power to give directions and exercise control with respect to the Loan or the Project; and
- (b) with respect to each Final Beneficiary and PIU, as applicable, its mayor or any member of its management bodies; or any official or representative or any employee or any other person acting on its behalf or under its control, having the power to give directions and exercise control with respect to the Loan or the Project.

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

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

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

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

- (a) the United Nations, and any agency or person which is duly appointed, empowered or authorised by the United Nations to enact, administer, implement and/or enforce Sanctions;
- (b) the European Union, and any agency or person which is duly appointed, empowered or authorised by the European Union to enact, administer, implement and/or enforce Sanctions;
- (c) the United States Department of the Treasury Office of Foreign Asset Control (OFAC), the United States Department of State and/or the United States Department of Commerce.

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

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

**"Social Law"** means each of:

- (a) any law, rule or regulation applicable in Ukraine relating to Social Matters;
- (b) any ILO Standards;
- (c) any United Nations treaty, convention or covenant on human rights signed and ratified by or otherwise applicable and binding on Ukraine.

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

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

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

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

**"Steering Committee"** has the meaning given to it in Article 1.4.B(h).

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

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

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

**"Tranche"** means each disbursement made or to be made under this Contract. In case no Disbursement Acceptance has been received, Tranche shall mean a Tranche as offered under Article 1.2.B.





## ARTICLE 1

### Credit and Disbursements

#### 1.1 Amount of Credit

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount of EUR 200,000,000 (two hundred million euros) for the financing of the Project (the "Credit").

#### 1.2 Disbursement procedure

##### 1.2.A Tranches

The Bank shall disburse the Credit in up to 20 (twenty) Tranches. The amount of each Tranche subsequent to the first shall be in a minimum amount of EUR 5,000,000 (five million) or (if less) the entire undrawn balance of the Credit. The amount of the first Tranche shall be in a minimum amount of EUR 1,000,000 (one million euros). No more than one disbursement may be requested and shall be made per calendar month.

##### 1.2.B Disbursement Offer

Upon request by the Borrower and subject to Article 1.4.A, provided that no event mentioned in Article 1.5 or Article 1.6.B has occurred and is continuing, the Bank shall send to the Borrower within a reasonable time after the receipt of such request a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by the Bank of such Borrower's request is 15 (fifteen) Business Days before the Final Availability Date. The Disbursement Offer shall specify:

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

##### 1.2.C Disbursement Acceptance

The Borrower may accept a Disbursement Offer by delivering a Disbursement Acceptance to the Bank no later than the Disbursement Acceptance Deadline. The Disbursement Acceptance shall be signed by an Authorised Signatory with individual representation right or two or more Authorised Signatories with joint representation right and shall specify the Disbursement Account to which the disbursement of the Tranche should be made in accordance with Article 1.2.D.

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

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



#### 1.2.D Disbursement Account

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

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

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

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

Only one Disbursement Account may be specified for each Tranche.

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

#### 1.3 Currency of disbursement

The Bank shall disburse each Tranche in EUR.

#### 1.4 Conditions of disbursement

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

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

- (a) evidence that the execution of this Contract by the Borrower has been duly authorised and that the person or persons signing this Contract on behalf of the Borrower is/are duly authorised to do so together with the specimen signature of each such person or persons; and
- (b) the List of Authorised Signatories and Accounts;

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

##### 1.4.B First Tranche

The disbursement of the first Tranche under Article 1.2 is conditional upon receipt by the Bank in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5., the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively), of the following documents or evidence:

- (a) evidence that the Borrower has obtained all necessary Authorisations, required in connection with this Contract and the Project;
- (b) evidence that no Authorisation under any exchange control laws and regulations applicable in Ukraine is necessary to permit the Borrower to receive disbursements as provided in this Contract, to repay the disbursed Tranches in accordance with the terms of this Contract and to pay interest and all other amounts due hereunder, including the opening and maintenance of the Project Accounts (*responsible authority – Ministry of Finance*);




- (c) duly executed copies of this Contract;
- (d) 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 legal, valid, binding and enforceable nature of this Contract. Such opinion shall be in form and substance acceptable to the Bank and shall be supported by the relevant documents evidencing the Borrower's authority to enter into this Contract, a confirmation that ratification of this Contract by the Parliament of Ukraine (*Verkhovna Rada 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*);
- (e) evidence of payment of the appraisal fee pursuant to Article 1.8 in full;
- (f) evidence confirming that the rights of the Parties under the Contract are not affected by the implementation of the Debt Operation, the 2020 IMF Program or any similar arrangement between the Borrower and the Executive Board of the International Monetary Fund;
- (g) evidence that the PMSU:
  - (i) is fully functional within the Promoter to the satisfaction of the Bank, with sufficient financial resources and human resources with adequate skills, terms of reference, authority and technical assistance support to assume responsibility for allocation requests, monitoring, implementation and progress reporting on the Project; and
  - (ii) has assumed responsibility for the Allocation Requests, and the monitoring, implementation and progress reporting relating to funding under this Contract;
- (h) evidence that a steering committee (the "**Steering Committee**") has been duly established on terms satisfactory to the Bank, with sufficient representation, terms of reference, authority, including that the Steering Committee:
  - (i) has competences:
    - (A) to make strategic recommendations;
    - (B) to endorse the Allocation Requests prior to submitting to the Bank during the screening phase;
    - (C) to propose Sub-Projects for signature of a Loan Fund Transfer Agreement; and
    - (D) to facilitate and review the functioning of the PMSU and the progress of works under the Project; and
  - (ii) comprises of, as voting members, the representatives of, *inter alia*, the Promoter, the Ministry of Finance of Ukraine and/or others, as agreed by the Parties, and includes the representatives of EIB and EU Delegation in Kyiv as observers; and
- (i) evidence that:
  - (i) the Steering Committee has reviewed and endorsed the Programme Procedures Manual;
  - (ii) the Programme Procedures Manual (in form and substance satisfactory to the Bank) has been approved by the Promoter;
- (j) the Borrower shall have taken all action necessary to exempt from taxation for all payments of principal, interest and other sums due under this Contract and under technical assistance contracts related to the Project and to permit the payment of all such sums gross without deduction of tax at source shall have been taken; and
- (k) the Bank being satisfied that the first disbursement shall not exceed 10% (*ten per cent.*) of the Credit.



#### 1.4.C Subsequent Tranches

Without prejudice to the conditions precedent required in respect of all Tranches set out in Article 1.4.D (*All Tranches*), the disbursement of each Tranche under Article 1.2, subsequent to the first disbursement, is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively), of evidence demonstrating that:

- (a) at least 60% (sixty percent) of the proceeds of all previously disbursed Tranches have been applied towards the eligible costs of the relevant Sub-Projects;
- (b) except for the last Tranche, either:
  - (A) (i) the amount of the Tranche to be disbursed does not exceed 10% (ten per cent.) of the Credit; and (ii) 80% (eighty percent) of the proceeds of all previously disbursed Tranches have been allocated by the Bank through the Allocation Letter(s); or
  - (B) the amount of the Tranche to be disbursed does not exceed the actual amount allocated by the Bank through the Allocation Letter(s) minus the aggregate amount of the previously disbursed Tranches;
- (c) for the last Tranche:
  - (i) the amount of the last Tranche to be disbursed does not exceed 10% (ten per cent.) of the Credit;
  - (ii) 100% (one hundred percent) of the proceeds of all previously disbursed Tranches have been allocated to eligible Sub-Projects, as evidenced by Allocation Letters issued by the Bank; and
  - (iii) a list of Sub-Projects expected to be allocated under the last Tranche is submitted to the Bank.

#### 1.4.D All Tranches

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

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche, of the following documents or evidence:
  - (i) evidence demonstrating that the borrowing of the total amount of all Tranches disbursed during the current fiscal year, including the Tranche the disbursement of which is requested, has been approved in the budget of the Borrower for the current fiscal year;
  - (ii) evidence demonstrating that, following disbursement of the relevant Tranche, the amount of the Loan will not exceed the aggregate eligible expenditure incurred or forecast to be allocated in respect of the Project within twelve (12) months of the relevant Disbursement Offer;
  - (iii) a certificate from the Borrower in the form of Schedule C signed by an authorised representative of the Borrower and dated no earlier than the date falling 30 (thirty) days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively);
  - (iv) evidence demonstrating that appropriate technical support in accordance with the terms of reference and personnel as approved by the Bank supporting the PMSU and Final Beneficiaries implementing the Sub-Projects is in place or will be acquired from grants or other committed funding sources;

- (v) evidence that all Authorisations necessary to proceed with the implementation of each Sub-Project being financed by the Tranche sought in the Disbursement Offer have been received and that all necessary authority and powers to operate each Sub-Project being financed and all necessary Authorisations in connection with the Contract, have been received;
  - (vi) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the legality, validity, binding effect or enforceability of the same;
  - (vii) evidence that the proceeds of such Tranche are needed to meet the funding requirements in accordance with the most recent disbursement schedule and procurement plan delivered by the Borrower to the Bank pursuant to Article 6.5B(f); and
  - (viii) evidence acceptable to the Bank confirming that the Sub-Projects to be financed from the proceeds of the relevant Tranche do not and will not aim at production of certain types of goods or undertaking of certain types of economic activity, as specified in the law of Ukraine "On State Aid to Undertakings" (in Ukrainian: Закон України Про державну допомогу суб'єктам господарювання) dated 1 July 2014 (the "State Aid Law"), and, as such, the Sub-Projects to be financed from the proceeds of the relevant Tranche do not fall within the scope of the State Aid Law;
- (b) that the Bank is satisfied on the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche that:
- (i) all facts and information contained in the Recitals continue to be true and correct in all respects;
  - (ii) the EU Guarantee is legal, valid, binding and enforceable and that no event or circumstance has occurred which could, in the opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the EU Guarantee, its applicability to any Tranche under this Contract or the Bank's right to make a demand under the EU Guarantee;
  - (iii) Ukraine is an Eligible Country; and
  - (iv) the Framework Agreement is legal, valid, binding and enforceable and that no event or circumstance has occurred which could, in the opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the Framework Agreement; and
- (c) that on the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, on the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche:
- (i) the representations and warranties which are repeated pursuant to Article 6.11 are correct in all respects; and
  - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
    - (1) an Event of Default; or
    - (2) a Prepayment Event;
- has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.





## 1.5 Deferment of disbursement

### 1.5.A Grounds for deferment

#### 1.5.A(1) BORROWER'S REQUEST

The Borrower may send a written request to the Bank requesting the deferral of the disbursement of an Accepted Tranche. The written request must be received by the Bank at least 7 (seven) Business Days before the Scheduled Disbursement Date of the Accepted Tranche and specify:

- (a) whether the Borrower would like to defer the disbursement in whole or in part and if in part, the amount to be deferred; and
- (b) the date until which the Borrower would like to defer a disbursement of the above amount (the "**Requested Deferred Disbursement Date**"), which must be a date falling not later than:
  - (i) 6 (six) months from its Scheduled Disbursement Date;
  - (ii) 30 (thirty) days prior to the first Repayment Date; and
  - (iii) the Final Availability Date.

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

#### 1.5.A(2) FAILURE TO SATISFY CONDITIONS TO DISBURSEMENT

- (a) The disbursement of an Accepted Tranche shall be deferred if any condition for disbursement of such Accepted Tranche referred to in Article 1.4 is not fulfilled both:
  - (i) at the date specified for fulfilment of such condition in Article 1.4; and
  - (ii) at its Scheduled Disbursement Date (or, where the Scheduled Disbursement Date has been deferred previously, the date expected for disbursement).
- (b) The Bank and the Borrower shall agree the date until which the disbursement of such Accepted Tranche shall be deferred (the "**Agreed Deferred Disbursement Date**"), which must be a date falling not:
  - (i) earlier than 7 (seven) Business Days following the fulfilment of all conditions of disbursement; and
  - (ii) later than the Final Availability Date.
- (c) Without prejudice to the Bank's right to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.6.B, the Bank shall defer disbursement of such Accepted Tranche until the Agreed Deferred Disbursement Date.

#### 1.5.A(3) DEFERMENT INDEMNITY

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

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

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

## **1.6 Cancellation and suspension**

### **1.6.A Borrower's right to cancel**

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

- (a) must specify whether the Borrower would like to cancel the undisbursed portion of the Credit in whole or in part and, if in part, the amount of the Credit the Borrower would like to cancel; and
- (b) must not relate to an Accepted Tranche which has a Scheduled Disbursement Date falling within 7 (seven) Business Days of the date of the written notice.

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

### **1.6.B Bank's right to suspend and cancel**

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

- (a) a Prepayment Event;
- (b) an Event of Default;
- (c) an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event or an Event of Default;
- (d) if Ukraine is no longer an eligible country for operations under the Mandate; or
- (e) a Market Disruption Event provided the Bank has not received a Disbursement Acceptance.

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

### **1.6.C Indemnity for suspension and cancellation of a Tranche**

#### **1.6.C(1) SUSPENSION**

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

#### **1.6.C(2) CANCELLATION**

- (a) If an Accepted Tranche which is a Fixed Rate Tranche is cancelled:
  - (i) by the Borrower pursuant to Article 1.6.A; or
  - (ii) by the Bank upon an Indemnifiable Prepayment Event or pursuant to Article 1.5.3, the Borrower shall pay to the Bank the Prepayment Indemnity. The Prepayment Indemnity shall be calculated as if the cancelled amount had been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.
- (b) If the Bank cancels an Accepted Tranche upon the occurrence of an Event of Default, the Borrower shall indemnify the Bank in accordance with Article 10.3.
- (c) Save in the cases (a) or (b) above, no indemnity is payable upon cancellation of a Tranche.



## **1.7 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, any part of the Credit in respect of which no Disbursement Acceptance has been received in accordance with Article 1.2.C shall be automatically cancelled, without any notice being served by the Bank to the Borrower and without liability arising on the part of either party.

## **1.8 Appraisal fee**

The Borrower shall pay to the Bank an appraisal fee in the amount of EUR 50,000.00 (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 the 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 1.6, if earlier).

## **1.9 Sums due under Articles 1.5 and 1.6**

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

## **1.10 Allocation**

### **1.10.A Allocation Request**

- (a) Between the Date of Effectiveness and the fifth (5<sup>th</sup>) anniversary of the Date of Effectiveness the Borrower may submit to the Bank a request for allocation (the "**Allocation Request**").
- (b) The Loan may solely be allocated to Sub-Projects identified as eligible for financing in the Technical Description, which (i) fulfil the standards and eligibility requirements set out in the Programme Procedure Manual; (ii) approved by the Steering Committee; and (iii) has a procurement plan submitted to the Bank. In order for a Sub-Project to qualify for financing hereunder, the Borrower must comply with the allocation procedure under this Article 1.10 and in the Technical Description, and with the allocation undertakings under this Article 1.10.A.
- (c) The Loan shall be allocated to Sub-Projects, which are agreed with the Bank in accordance with the principles of the Bank framework loan allocation review procedure set out in the Technical Description, provided that the Bank is satisfied that there is sufficient information available on such Sub-Projects.
- (d) The Bank's funds will be allocated to the eligible Sub-Projects with procedures modulated according to the Sub-Projects size and in line with the Bank's applicable procedures for framework loans, as set out in the Technical Description.
- (e) The Borrower shall provide the Bank with any additional information regarding the Sub-Projects as the Bank, at its own discretion, may request.
- (f) To be eligible for loan financing from the Bank, the Borrower shall verify the compliance of the Sub-Projects with the relevant and applicable Bank's policies and guidelines. All Sub-Projects shall be technically, economically and financially viable and sustainable, comply with the Bank's environmental and social standards, and be undertaken following the procedures as described in the Bank's Guide to Procurement.

- (g) The Borrower shall provide, together with each Allocation Request, the following documents or evidence in form and substance satisfactory to the Bank:
  - (i) evidence that each Final Beneficiary undertaking a Sub-Project included in that Allocation Request has established a PIU to manage the implementation and monitoring of such Sub-Project with staff, terms of reference, authority and technical support satisfactory to the Bank;
  - (ii) a procurement plan for a Sub-Project included in that Allocation Request;
  - (iii) evidence that sufficient funds are available to the Borrower and/or the Final Beneficiaries to meet the balance of the investment costs of the Sub-Projects included or proposed to be included in the Project.
- (h) The Bank reserves the right to review the Allocation Procedure and may, by notice to the Borrower, amend the Allocation Procedure, to bring it into line with the Bank's policies or to reflect the results of the review(s) of the implementation capacity and performance of the Project.

#### **1.10.B Allocation Letter**

- (a) The Bank shall have full discretion whether or not to approve the Allocation Request so submitted following such examination of the Sub-Projects as it deems necessary and shall, in the event of confirmation/approval, issue a letter of allocation (the "**Allocation Letter**"), informing the Borrower of its confirmation/approval of the Sub-Projects submitted and of the amount in EUR allocated to such Sub-Project. In the event the Bank does not approve a submitted Allocation Request, the Bank shall inform the Borrower thereof.
- (b) The Bank may by notice to the Borrower amend the Allocation Procedure to bring it into line with the Bank's policies or reflect the results of the review of the implementation capacity and performance. In such case, the Bank shall inform the Borrower thereof and the Borrower shall promptly adapt its internal allocation procedures accordingly.

#### **1.11 Reallocation Procedure**

##### **1.11.A Reallocation at the request of the Borrower**

- (a) Prior to the fifth (5<sup>th</sup>) anniversary of the Date of Effectiveness, the Borrower may, by written request to the Bank, which request shall include also the reasons of the request of the Borrower, propose to reallocate in accordance with the provisions of Article 1.10 any part of the Loan Outstanding which has been allocated but not spent on a Sub-Project, or not made available in full, directly or indirectly, by the Borrower and the Promoter to the Final Beneficiaries.
- (b) The Bank may, in its discretion, accept the Borrower's proposal for reallocation and reallocate any portion of the Loan Outstanding in accordance with the provisions of Article 1.10.
- (c) If the reallocation is not possible or possible only in part, the Borrower shall, in accordance with Article 4.3.A(6), prepay immediately to the Bank the part of the Loan Outstanding which has been disbursed by the Bank subject to the original Allocation.

##### **1.11.B Reallocation in connection with the ineligibility of a Sub-Project**

Upon the Bank's written request, the Borrower shall propose to reallocate any part of the Loan Outstanding which has been allocated, in accordance with the procedures described in Article 1.10, in relation to a Sub-Project if such Sub-Project, in the opinion of the Bank, is ineligible for financing by the Bank under the Bank's Statute, policies or guidelines or under Article 309 of the Treaty on the Functioning of the European Union or if the Sub-Project no longer complies with the requirements of this Contract. If within the timeframe provided for in the Bank's written request the Borrower fails to replace such Sub-Project, the Borrower shall repay all or part of the Loan Outstanding in accordance with Article 4.3.A(6).



## ARTICLE 2

### The Loan

#### 2.1 Amount of Loan

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, 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.

Other payment, if any, shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

#### 2.3 Confirmation by the Bank

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

## ARTICLE 3

### Interest

#### 3.1 Rate of interest

##### 3.1.A Fixed Rate Tranches

The Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate semi-annually in arrear on the relevant Payment Dates as specified in the Disbursement Offer, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.1(a).

##### 3.1.B Floating Rate Tranches

The Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate semi-annually in arrear on the relevant Payment Dates, as specified in the Disbursement Offer commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

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

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

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.1 (b).

### 3.2 Interest on overdue sums

Without prejudice to Article 10 and by way of exception to Article 3.1, if the Borrower fails to pay any amount payable by it under this Contract on its due date, interest shall accrue on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to:

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

and shall be payable in accordance with the demand of the Bank. For the purpose of determining EURIBOR in relation to this Article 3.2, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

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

### 3.3 Market Disruption Event

If at any time (i) from the receipt by the Bank of a Disbursement Acceptance in respect of a Tranche; and (ii) until the date falling 30 (thirty) calendar days prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case, the following rules shall apply:

- (a) The rate of interest applicable to such Accepted Tranche until the Maturity Date shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notice and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.2.B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.

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

## ARTICLE 4

### Repayment

#### 4.1 Normal repayment

- (a) The Borrower shall repay each Tranche by instalments on the Repayment Dates specified in the relevant Disbursement Offer in accordance with the terms of the amortisation table delivered pursuant to Article 2.3.
- (b) Each amortisation table shall be drawn up on the basis that:
  - (i) in the case of a Fixed Rate Tranche, repayment shall be made semi-annually by equal instalments of principal or constant instalments of principal and interest;






- (ii) in the case of a Floating Rate Tranche, repayment shall be made by equal semi-annual instalments of principal;
- (iii) the first Repayment Date of each Tranche shall be a Payment Date falling not earlier than 30 (thirty) days from the Scheduled Disbursement Date and not later than the first Repayment Date immediately following the 5th (fifth) anniversary of the Scheduled Disbursement Date of the Tranche; and
- (iv) the last Repayment Date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 22 (twenty-two) years from the Scheduled Disbursement Date.

## **4.2 Voluntary prepayment**

### **4.2.A Prepayment option**

Subject to Articles 4.2.B, 4.2.C and 4.4, the Borrower may prepay all or part of any Tranche, together with accrued interest and indemnities if any, upon giving a Prepayment Request with at least 30 (thirty) calendar days' prior notice specifying:

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

The Prepayment Request shall be irrevocable.

### **4.2.B Prepayment indemnity**

#### **4.2.B(1) FIXED RATE TRANCHE**

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

#### **4.2.B(2) FLOATING RATE TRANCHE**

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

### **4.2.C Prepayment mechanics**

Upon presentation by the Borrower to the Bank of a Prepayment Request, the Bank shall issue a Prepayment Notice to the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date. The Prepayment Notice shall specify the Prepayment Amount, the accrued interest due thereon, the Prepayment Indemnity payable under Article 4.2.B or, as the case may be, that no indemnity is due, the method of application of the Prepayment Amount and if a Prepayment Indemnity is applicable, the deadline by which the Borrower may accept the Prepayment Notice.

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

The Borrower shall accompany the payment of the Prepayment Amount by the payment of accrued interest and the Prepayment Indemnity (if any), due on the Prepayment Amount, as specified in the Prepayment Notice and the fee under Article 4.2.D (if any).

### **4.2.D Administrative Fee**

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

### 4.3 Compulsory prepayment

#### 4.3.A Prepayment Events

##### 4.3.A(1) PROJECT COST REDUCTION

If the total cost of the Project falls below the figure stated in Recital (f) so that the amount of the Credit exceeds 50% (fifty per cent) of such total cost of the Project, the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan Outstanding up to the amount by which the Credit exceeds 50% (fifty per cent) of the total cost of the Project, together with accrued interest and all other amounts accrued and outstanding under this Contract in relation to the proportion of the Loan Outstanding to be prepaid. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

##### 4.3.A(2) *PARI PASSU* TO NON-EIB FINANCING

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

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

For the purposes of this Article, "**Non-EIB Financing**" includes any loan (save for the Loan and any other direct loans from the Bank to the Borrower, credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally available to the Borrower for a term of more than 5 (five) years.

##### 4.3.A(3) CHANGE OF LAW

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

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

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

##### 4.3.A(4) ILLEGALITY

If:

- (a) it becomes unlawful in any applicable jurisdiction, or it becomes or is likely to become contrary to any Sanctions, for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan;



- (b) the Framework Agreement is or, in the reasonable opinion of the Bank, is likely to be:
  - (i) repudiated or terminated by Ukraine or not binding on Ukraine in any respect; or
  - (ii) not effective in accordance with its terms or alleged by Ukraine to be ineffective in accordance with its terms; or
  - (iii) breached as a result of Ukraine ceasing to fulfil any obligation assumed by it in the Framework Agreement; or
  - (iv) inapplicable to the Project or 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 the Project or any Sub-Project;
- (c) in relation to the EU Guarantee:
  - (i) it is no longer valid or in full force and effect;
  - (ii) the conditions for cover thereunder are not fulfilled;
  - (iii) it does not apply to any Tranche disbursed or to be disbursed under this Contract; or
  - (iv) it is not effective in accordance with its terms or is alleged to be ineffective in accordance with its terms;

the Bank may by notice to the Borrower immediately (1) suspend or cancel the undisbursed portion of the Credit; and/or (2) demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued or outstanding under this Contract on the date indicated by the Bank in its notice to the Borrower.

#### 4.3.A(5) NON-PERFORMANCE BY 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 it, the Bank may give notice thereof to the Borrower, and the Borrower shall, at its option:

- (i) reallocate the corresponding portion of the Loan Outstanding to another Sub-Project approved by the Bank in accordance with Article 1.10; or
- (ii) voluntarily prepay any corresponding part of the Loan Outstanding pursuant to Article 4.2,

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

#### 4.3.A(6) FAILURE TO REALLOCATE

The Borrower shall immediately prepay any part of the Loan Outstanding, which has not been reallocated in accordance with Article 1.11, together with accrued interest and all other amounts accrued or outstanding under this Contract on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

#### 4.3.B Prepayment mechanics

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

#### 4.3.C Prepayment indemnity

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

#### **4.4 General**

##### **4.4.A No prejudice to Article 10**

This Article 4 shall not prejudice Article 10.

##### **4.4.B No reborrowing**

A repaid or prepaid amount may not be reborrowed.

### **ARTICLE 5**

#### **Payments**

##### **5.1 Day count convention**

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

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

##### **5.2 Time and place of payment**

- (a) Unless otherwise specified in this Contract or in the Bank's demand, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand.
- (b) Each sum payable by the Borrower under this Contract shall be paid to the relevant account notified by the Bank to the Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.
- (c) The Borrower shall indicate the Contract Number in the payment details for each payment made hereunder.
- (d) A sum due from the Borrower shall be deemed paid when the Bank receives it.
- (e) Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank. Any account in the name of the Borrower held with an Acceptable Bank in Ukraine is deemed acceptable to the Bank.

##### **5.3 No set-off by the Borrower**

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

##### **5.4 Disruption to Payment Systems**

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

- (a) the Bank may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of this Contract as the Bank may deem necessary in the circumstances;



- (b) the Bank shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.4.

## **5.5 Application of sums received**

### **5.5.A General**

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

### **5.5.B Partial payments**

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

- (a) first, in or towards pro rata to each of any unpaid fees, costs, indemnities and expenses due under this Contract;
- (b) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;
- (c) thirdly, in or towards payment of any principal due but unpaid under this Contract; and
- (d) fourthly, in or towards payment of any other sum due but unpaid under this Contract.

### **5.5.C Allocation of sums related to Tranches**

- (a) In case of:
  - (i) a partial voluntary prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied pro rata to each outstanding instalment, or, at the request of the Borrower, in inverse order of maturity; or
  - (ii) a partial compulsory prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.
- (b) Sums received by the Bank following a demand under Article 10.1 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.
- (c) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Borrower on their application, the Bank may apply these between Tranches at its discretion.

## **ARTICLE 6**

### **Borrower undertakings and representations**

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

#### **A. PROJECT UNDERTAKINGS**

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

The Borrower shall use all amounts borrowed by it under this Contract exclusively for the execution of the Project through the financing of Sub-Projects which are subject of Allocation Requests approved by the Bank and, subject to the Bank's prior written consent, for technical support required by the Steering Committee, the PMSU and/or the PIUs and is necessary for the implementation of the Project. The Borrower shall make the proceeds of the disbursed Tranches

available to the Final Beneficiaries pursuant to a Loan Fund Transfer Agreement on terms and conditions acceptable to the Bank, and exercise its rights under such Loan Fund Transfer Agreement in such a manner as to protect the interests of the Borrower, the Final Beneficiaries 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 procure that the Promoter, the PMSU, any Final Beneficiary and any PIU uses all amounts received by the Borrower under this Contract for the execution of the Project in accordance with this Contract.

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

**6.2 Completion of Project**

- (a) The Borrower shall carry out the Project and shall procure that the Promoter and the PMSU carry out the Project and each Final Beneficiary and each PIU carries out the relevant Sub-Projects in accordance with the Technical Description, as may be modified from time to time with the approval of the Bank, and the Programme Procedures Manual. The Borrower shall ensure that the Project is completed by the final date specified in the Technical Description.
- (b) The Borrower shall not take, or permit to be taken, any action that would prevent or interfere with the implementation or operation of the Project and any Sub-Project by the Promoter, the PMSU, any Final Beneficiary or any PIU.

**6.3 Increased cost of Project**

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

**6.4 Procurement procedure**

- (a) The Borrower shall, and shall procure that the Promoter, the PMSU, and/or the relevant Final Beneficiary and the relevant PIU (as applicable) shall purchase equipment, secure services and order works for the Project by acceptable procurement procedures complying, to the Bank's satisfaction, with its policy as described in its Guide to Procurement and as set out in the Programme Procedures Manual.
- (b) The Borrower shall ensure that review procedures for remedies acceptable to the Bank are available in the procurement procedures in relation with the Project and each Sub-Project to any person or entity which had an interest in obtaining the contract and was (at risk of being) harmed by an (alleged) infringement of the applicable procurement rules and ensure that the tender dossiers for all contracts to be financed by the Loan from the Bank shall include a mechanism for the remedy of complaints acceptable to the Bank.

**6.5 Continuing Project undertakings**

**6.5.A The Borrower shall ensure:**

- (a) **Maintenance:** (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall maintain, repair, overhaul and renew all property forming part of the Project or any Sub-Project as required to keep it in good working order;
- (b) **Project assets:** (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall, 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 any Sub-Project or, as appropriate, replace and renew such assets and maintain the Project and any Sub-Project in substantially continuous operation in accordance with its original purpose; the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the Project or any 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:** (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall insure all works and property forming part of the Sub-Projects in accordance with the most comprehensive relevant Ukrainian industry practice for similar works of public interest;
- (d) **Rights and Permits:** (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Sub-Projects;
- (e) **Environment and Social Standards:**
  - (i) (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries shall implement and operate each Sub-Project in compliance with Environmental and Social Standards;
  - (ii) (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries shall procure that the contracts entered into between each Final Beneficiary (directly or through its PIU) and the contractors for each Sub-Project will contain provisions that require the contractors to comply with the ILO Standards, as well as with occupational health and safety standards; and each Final Beneficiary (directly or through its PIU) shall actively monitor on its own sites the respect by the contractors of such compliance requirement;
  - (iii) (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall obtain, maintain and comply with requisite Environmental or Social Approvals for each Sub-Project;
  - (iv) (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall ensure that the Loan is not used for the financing of any Sub-Project that require an Environmental and Social Impact Assessment Study according to the Environmental Laws and Social Laws before such Environmental and Social Impact Assessment Study is finalised and approved by the competent authority;
  - (v) (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall ensure that the Loan is not used for the financing of any Sub-Project that have a potential to affect a site of nature conservation importance that is protected under national legislation or international agreements, until the time the competent authority confirms that the component does not have a significant negative impact on the site;
- (f) **EU Law:** (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall
  - (i) execute, operate and verify the compliance of each Sub-Project in accordance with the standards of EU Law, including, but not limited to, the field of environment, road safety, state aid and public procurement, to the extent implemented by the laws of Ukraine or specified by the Bank in this Contract, i.e. (1) Regulation No 1370/2007; and (2) the EIA Directive; and
  - (ii) ensure and verify that contractors engaged in Sub-Projects observe the provisions mentioned in point (i) above;
- (g) **Location of the Sub-Project:** ensure that each Sub-Project to be financed by the Bank under this Contract is carried out in the territory of Ukraine (1) which is under the control of the Ukrainian Government; and (2) where the rights conferred by the Framework Agreement can be enforced by the Bank;
- (h) **PMSU:**

ensure that Promoter will maintain an adequately staffed PMSU in the Promoter, throughout the project cycle to the satisfaction of the Bank;
- (i) **Steering Committee:**

ensure that the Steering Committee is maintained throughout the project cycle to the satisfaction of the Bank;



- (j) **Amendments:** (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall consult with the Bank regarding the amendment of the contracts, in relation to the Project or any Sub-project, financed by the Bank and shall seek the Bank's non-objection prior to entering into any material amendments to those contracts;

(k) **Accounts**

(directly or through the Promoter and/or the PMSU) that the Final Beneficiaries (directly or through their PIUs) shall request any disbursements under the Loan Fund Transfer Agreements, and any payments to the Final Beneficiaries under the Loan Fund Transfer Agreements are made in relation with the Project to bank accounts in the name of the relevant Final Beneficiaries held with a duly authorised financial institution in Ukraine (where the relevant Final Beneficiary is incorporated and where the Sub-Project is undertaken);

(l) **Others**

- (i) and shall ensure (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries and their PIUs shall, take note of the EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, Money Laundering and Financing of Terrorism (as published on the Bank's website and as may be amended from time to time) in the financing activities related to the Project;
- (ii) ensure that any bidder whose any beneficial owner is a family member or a person known to be a close associate to any member of its management bodies and senior staff members will be identified and that adequate measures are adopted to address potential conflicts of interest prior to the award of contracts under any Sub-Project.

For the purposes of this Article 6.6 (e), each of "**family member**", "**person known to be a close associate**" and "**beneficial owner**" has the meaning given to it by the corresponding definitions under the EU Fourth Money Laundering Directive, subject to the definitions in the EU Fourth Money Laundering Directive having a general application and not being limited to politically exposed person.

**6.5.B The Borrower shall:**

- (a) procure that there is no double financing of the same components of any Sub-Project with other funds made available by the Bank, whether under the Contract or otherwise, or by other donors. For the avoidance of doubt, this undertaking shall not:
- (i) prohibit any co-financing of any Sub-Projects by other donors or funding by the Borrower of other components of any Sub-Project; or
- (ii) 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;
- (b) procure that the Bank is promptly notified of the suspension or cancellation of the implementation of any Sub-Project;
- (c) procure that the Promoter shall confirm to the Bank that each Final Beneficiary and each PIU has complied with all applicable policies and guidelines of the Bank, including (without limitation) the Environmental and Social Standards, the Bank's Guide to Procurement and the Programme Procedures Manual; and shall procure that adequate and trained staff are employed and maintained at the Promoter to ensure that this compliance is observed;
- (d) ensure that no Sub-Project:
- (i) is carried out in an area in Ukraine which is experiencing active conflict;
- (ii) causes new active conflict to occur in Ukraine;
- (iii) prolongs any existing active conflict in Ukraine; or
- (iv) is carried out in an area which is not under the control of the Ukrainian Government;



- (e) procure that each Final Beneficiary (directly or through its PIU) implements and maintains an adequate management system for each Sub-Project satisfying the requirements set out therefor in the Programme Procedures Manual, which guarantees that the goals of relevant Sub-Project(s) are fully achieved including (without limitation) that the quality of construction works is in full compliance with best practice construction standards and that the progress of construction works is recorded in the construction site record books;
- (f) provide to the Bank:
  - (a) prior to the allocation request related to each Sub-projects, an initial disbursement schedule and an initial procurement plan; and
  - (b) thereafter on a semi-annual basis, the updated disbursement schedule and the updated procurement plan,
 in each case prepared on the basis of the Allocation Requests approved or confirmed by the Bank in accordance with this Contract and any associated funding requirements;
- (g) ensure that the PMSU is maintained until the end of the implementation period of the Project or any Sub-Project with appropriate staff to the satisfaction of the Bank;
- (h) ensure that the Steering Committee is maintained until the end of the implementation period of the Project or any Sub-Project to the satisfaction of the Bank;
- (i) facilitate the mission of any other technical support consultant hired by the Bank to provide sector advice and project monitoring in connection with the Project;
- (j) further to the request of the Bank, suspend the authorisation of any Sub-Project for financing from the Loan and the payment of any part of a Tranche to a Final Beneficiary which, or whose officers or management, is being investigated by a relevant authority for any Prohibited Conduct;
- (k) ensure that the Loan is not used for purchasing of land in connection with any Sub-Project or otherwise;
- (l) ensure that its payment obligations under this Contract do not fall within the scope of the Debt Operation, the 2020 IMF Program or any similar debt restructuring;
- (m) procure that:
  - (i) all equipment, works and services acquired for, or in connection with, the provision of technical support for the Project from funding provided by the Bank or any applicable technical assistance or investment grants granted for the Project;
  - (ii) all equipment, works and services acquired from any applicable technical assistance or investment grants granted for the Project; and
  - (iii) all equipment donated by third parties to Final Beneficiaries (directly or through their PIUs) for the Project,
 are exempt from any applicable tax or other impost on such acquisition or transfer;
- (n) 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);
- (o) ensure that the Loan Fund Transfer Agreement includes provisions that inform the Final Beneficiaries that the financing benefit from the financial support provided by the Bank with the backing of the European Union through the EU Guarantee;
- (p) procure that each Final Beneficiary (directly or through its PIU) prepares or updates the existing sustainable urban mobility plan (SUMP) and approves it in form and substance satisfactory to the Bank in accordance with the procedures and within the timeframe set out in the Programme Procedures Manual; and

- (q) ensure that, prior to the completion of the relevant Sub-Project, each Final Beneficiary (directly or through its PIU) enters into a public service contract for the provision of city passenger transport services with the relevant transport authority reflecting the requirements of the Regulation No 1370/2007 regarding financial and organisational management of land passenger transport and otherwise in form and substance satisfactory to the Bank.

## **B. GENERAL UNDERTAKINGS**

### **6.6 Compliance with laws**

The Borrower shall, and shall procure that the Promoter, the PMSU, the Final Beneficiaries and/or the PIUs (as applicable) shall, comply in all respects with all laws and regulations to which they themselves are subject or the Project or the relevant Sub-Project(s) are subject.

### **6.7 Books and records**

The Borrower undertakes, and shall procure that the Promoter and the PMSU shall undertake:

- (a) to represent that it has kept and will continue to keep, and procure that each Final Beneficiary shall represent that it has kept and will continue to keep, proper books and records of account, in which full and correct entries are made with respect to all financial transactions and their assets and business, including expenditures in connection with the Project or any Sub-Project, in accordance with the laws of Ukraine as in effect from time to time;
- (b) to keep, and procure that each Final Beneficiary undertakes to keep, record of contracts financed with the proceeds of the Loan, including a copy of the relevant contract itself and material documents relating to the procurement for at least 6 years from substantial performance of the relevant contract;
- (c) ensures that the proceeds of the Loan made available in connection with the Project or any Sub-Project are accounted for, and audited, separately from all other funds and assets of the Borrower, the Promoter, the PMSU and of each Final Beneficiary and each PIU (as applicable).

### **6.8 Integrity**

#### **6.8.A Prohibited Conduct**

- (a) The Borrower shall not, and shall procure that the Promoter, the PMSU, the Final Beneficiaries and the PIUs shall not, engage in, or authorise or permit any Relevant Person, Affiliate or any other person acting on its behalf to engage in, any Prohibited Conduct in connection with the Project and any Sub-Project, any tendering procedure for the Project or any Sub-Project, or any transaction contemplated by the Contract.
- (b) The Borrower undertakes, and shall procure that the Promoter, the PMSU, the Final Beneficiaries and the PIUs undertake, to take any such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project and any Sub-Project.
- (c) The Borrower undertakes, and shall procure that the Promoter, the PMSU, the Final Beneficiaries and the PIUs undertake, to ensure that contracts financed by this Loan include the necessary provisions to enable the Borrower, the Promoter, the PMSU, the Final Beneficiaries and/or the PIUs (as applicable) to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project or any Sub-Project.



### 6.8.B Sanctions

The Borrower shall not, and shall procure that the Promoter, the PMSU, the Final Beneficiaries and the PIUs shall not, directly or indirectly:

- (a) maintain or enter into a business relationship with, and/or make any funds and/or economic resources available to, or for the benefit of, any Sanctioned Person in connection with the Project or any Sub-Project; or
- (b) use all or part of the proceeds of the Loan or lend, contribute or otherwise make available such proceeds to any person, in each case, in any manner that would result in a breach by itself or by the Bank of applicable Sanctions; or
- (c) fund all or part of any payment under the Contract out of proceeds derived from activities or businesses with a Sanctioned Person, a person in breach of the Sanctions or in any manner that would result in a breach by itself or by the Bank of the Sanctions.

### 6.8.C Management

The Borrower undertakes, and shall procure that the Promoter, the PMSU, the Final Beneficiaries and the PIUs shall undertake, to take, within a reasonable timeframe, appropriate measures in respect of any Relevant Person who:

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


in order to ensure that such Relevant Person is suspended, dismissed or in any case excluded from any of their activities in relation to the Loan and to the Project or any Sub-Project.

For the purposes of Article 6.10, each of "family member", "person known to be a close associate" and "beneficial owner" has the meaning given to it by the corresponding definitions under the EU Fourth Money Laundering Directive, subject to the definitions in the EU Fourth Money Laundering Directive having a general application and not being limited to politically exposed person.

## 6.9 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 laws;
- (d) there has been no Material Adverse Change since the date of the approval of the Project by the Management Committee of the Bank, i.e. 8 September 2020;
- (e) no event or circumstance which constitutes a Prepayment Event or an Event of Default has occurred and is continuing unremedied or unwaived;

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- (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 or the Promoter or the PMSU or the Final Beneficiaries or the PIUs 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) each of the Promoter and the PMSU (as applicable) 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;
  - (i) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
  - (j) it is not (and will not, after the disbursement of the Loan, be) in breach of any restrictions applicable to it, on the incurring of financial indebtedness;
  - (k) the Project falls within the scope of the Framework Agreement;
  - (l) it is in compliance with Article 6.5.A (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 the Promoter or the PMSU; and
  - (m) it is in compliance with all undertakings under this Article 6;
  - (n) to the best of its knowledge, no funds invested in the Project are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism;
  - (o) neither the Borrower, nor the Promoter, the PMSU, any Final Beneficiary or any PIU, has committed:
    - (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;
  - (p) the Project (including without limitation, the negotiation, award and performance of contracts financed or to be financed by the Loan) has not involved or given rise to any Prohibited Conduct; and
  - (q) none of the Borrower, the Promoter, the PMSU, the Final Beneficiaries or the PIUs is a Sanctioned Person; or is in breach of any Sanctions; and, to the best of its knowledge and belief, none of the Relevant Persons is a Sanctioned Person or in breach of any Sanctions.

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

## ARTICLE 7

### Security

#### 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 provisions regarding its financial ratios, a cross default clause and/or a *pari passu* clause not provided for in this Contract or is more favourable to the relevant financial creditor than equivalent provision(s) of this Contract, the Borrower shall promptly so inform the Bank and shall, at the request of the Bank, forthwith execute an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

# ARTICLE 8

## Information and Visits

### 8.1 Information concerning the Project

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


- (a) deliver to the Bank:
  - (i) the information in content and in form, and at the times, specified in Schedule A.3 or otherwise as agreed from time to time by the parties to this Contract;
  - (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; and
  - (iii) any such information or further document concerning the Project as the Bank may reasonably require within a reasonable time to comply with its obligations under the Decision and the EU Guarantee,




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

- (b) submit for the approval of the Bank without delay any material change to the Project or to Sub-Projects, 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 or for a Sub-Project;
- (c) promptly inform the Bank of:
  - (i) the suspension or cancellation of the Project or any Sub-Project;
  - (ii) any material alteration to any laws or internal regulations relating to the Promoter or the PMSU with a material effect on the Project after the date of this Contract;
  - (iii) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower, the Promoter, the PMSU, any Final Beneficiary or any PIU, or any Environmental or Social Claim that is to its knowledge commenced, pending or threatened against;
  - (iv) any fact or event known to the Borrower, the Promoter, the PMSU, any Final Beneficiary or any PIU, which may substantially prejudice or affect the conditions of execution or operation of the Project or any Sub-Project;
  - (v) any non-compliance by the Borrower, the Promoter, the PMSU, any Final Beneficiary or any PIU with any Environmental and Social Standard;
  - (vi) any suspension, revocation or modification of any Environmental or Social Approval,
  - (vii) any changes to the accepted procurement plans;
  - (viii) a genuine allegation or complaint with regard to any Prohibited Conduct or Sanction related to the Project or any Sub-Project;
  - (ix) should it become aware of any fact or information confirming or reasonably suggesting that:
    - (1) any Prohibited Conduct or any violation of any Sanction has occurred in connection with the Project or any Sub-Project, or
    - (2) any of the funds invested in the share capital of any Final Beneficiary or in the Project or Sub-Project was derived from an illicit origin;
  - (x) any Security granted or purported to be granted in connection with any asset forming part of the Project or any Sub-Project in favour of a third party; and
  - (xi) any disposal by the Promoter, the PMSU, a Final Beneficiary or a PIU of any material assets forming part of the Project or any Sub-Project;
- (d) deliver to the Bank, in form and substance satisfactory to the Bank:
  - (i) semi-annual Project progress reports during Project implementation as specified in Schedule A.3;
  - (ii) a Project completion report as specified in Schedule A.3;
- (e) provide to the Bank, if so requested:
  - (i) a certificate of its insurers showing fulfilment of the requirements of Article 6.5 A (c); and
  - (ii) annually, a list of policies in force covering the insured property forming part of the Sub-Projects, together with confirmation of payment of the current premiums; and
  - (iii) true copies of contracts financed with the proceeds of the Loan and evidence of expenditures relating to disbursements;




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- (f) store and keep updated (and procure that the Promoter, the PMSU, each Final Beneficiary and each PIU shall store and keep updated) documents relevant to the Project and the Sub-Projects and provide (or procure that the Promoter or the PMSU provides) them to the Bank promptly on the Bank's request;
  - (g) notify the Bank of the suspension of payments by a Final Beneficiary or a PIU or of any judicial or administrative proceedings commenced against a Final Beneficiary or a PIU, in each case within five days of such event occurring; and
  - (h) notify the Bank promptly of any audit 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 Promoter, the PMSU, the Final Beneficiaries and/or PIUs**



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

- (a) deliver to the Bank:
  - (i) the audited Project Accounts and auditor's reports in the English language or with English translation within 6 (six) months from the end of each fiscal year;
  - (ii) from time to time, such information on its general financial situation as the Bank may reasonably require;
  - (iii) customer or any other type of due diligence matters of, or for, the Borrower, the Promoter, the PMSU, any Final Beneficiary or any PIU, including without limitation to comply with "know your customer" (KYC) or similar identification procedures, as the Bank may deem necessary or may reasonably require to be provided within a reasonable time;
- (b) ensure that the Borrower, the Promoter and the PMSU maintains procedures and records adequate to fully reflect the operations relating to the financing, execution and operation of the Project and each Final Beneficiary and each PIU maintains procedures and records adequate to fully reflect the operations relating to the financing, execution and operation of each Sub-Project;
- (c) inform the Bank immediately of:
  - (i) any Change-of-Law Event in accordance with Article 4.3.A(3) or any material alteration to any relevant laws, statutes, by-laws, memoranda and articles of association with a bearing on the Project after the date of this Contract;
  - (ii) any fact which obliges the Borrower 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 intention on its part, or on the part of the Promoter or the PMSU or on the part of a Final Beneficiary or a PIU to relinquish ownership of any material component of the Project or any Sub-Project;
  - (vi) any event or decision that constitutes or may result in the events described in Article 7.3 (*Clauses by inclusion*);
  - (vii) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower, the Promoter, the PMSU, any Final Beneficiary or any PIU under this Contract;
  - (viii) any Event of Default having occurred or being threatened or anticipated;
  - (ix) 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
  - (x) the due ratification of this Contract by the Parliament of Ukraine in accordance with the laws of Ukraine;



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- (d) inform the Bank immediately after becoming aware of the relevant fact or event of:
- (i) any fact or event which results in any investigations concerning the integrity of any Relevant Person or any other official or representative of the Borrower, Promoter, the PMSU, a Final Beneficiary or a PIU;
  - (ii) to the extent permitted by applicable law of Ukraine and the EU Law, any material litigation, arbitration, administrative proceedings or investigations carried out by a court, administration or similar public authority, which to the best of the Borrower's knowledge and belief (or to the best of the knowledge and belief of the Promoter, the PMSU, a Final Beneficiary or a PIU, informing the Borrower to that effect), is current, imminent or pending against the Borrower, the Promoter, the PMSU, a Final Beneficiary, a PIU or any Relevant Person of the Borrower, Promoter, the PMSU, a Final Beneficiary or a PIU in connection with Prohibited Conduct related to the Project or any Sub-Project; and
  - (iii) any fact or event which results in any Relevant Person of the Borrower, Promoter, the PMSU, a Final Beneficiary or a PIU being or becoming a Sanctioned Person,
  - (iv) any measure taken by the Borrower pursuant to Article 6.8 (*Integrity*) of this Contract; in each case setting out the action the Borrower (and, as applicable, the Promoter, the PMSU, the relevant Final Beneficiary and/or the relevant PIU) has taken, or intends to take, with respect to such matters.

### 8.3 Visits, Right of Access and Investigation

- (a) The Borrower shall, and shall ensure that the Promoter, the PMSU, each of the Final Beneficiaries and each of the PIUs shall, permit persons designated by the Bank, as well as persons designated by other institutions or bodies of the European Union when so required by the relevant mandatory provisions of EU Law, the competent EU institutions including the Court of Auditors of the European Communities, the European Commission and the European Anti-Fraud Office to:
- (i) visit the sites, installations and works comprising the Project and any Sub-Project and to conduct such checks as they may wish for purposes connected with this Contract and the financing of the Project and any Sub-Project;
  - (ii) interview representatives of the Borrower and/or the PMSU and/or the Promoter and/or the Final Beneficiaries and/or PIUs, and not obstruct contacts with any other person involved in or affected by the Project and/or a Sub-Project; and
  - (iii) review the Borrower's, Promoter's, the PMSU's, the Final Beneficiaries' and/or the PIU's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.
- (b) The Borrower shall, and shall procure that the PMSU, the Promoter, each of the Final Beneficiaries and each of the PIUs 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.
- (c) The Borrower shall, and shall procure that the PMSU, the Promoter, each of the Final Beneficiaries and each of the PIUs will, provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.
- (d) The Borrower acknowledges, and shall procure that the PMSU, the Promoter, each of the Final Beneficiaries and each of the PIUs acknowledges, that the Bank may be obliged to communicate information relating to the Borrower, the PMSU, the Promoter and/or the Project to any competent institution or body of the European Union including the Court of Auditors of the European Communities, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the relevant mandatory provisions of EU Law.
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## ARTICLE 9

### Charges and expenses

#### 9.1 Taxes, duties and fees

- (a) The Borrower shall pay any Taxes, duties, fees and other charges 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.
- (b) The Borrower shall pay all principal, interest, indemnities and other amounts due under this Contract gross without withholding or deduction of any national or local impositions whatsoever required by law or under an agreement with a governmental authority or otherwise. If the Borrower is obliged to make any such withholding or deduction, it shall gross up the payment to the Bank so that after withholding or deduction, the net amount received by the Bank is equivalent to the sum due.

#### 9.2 Other charges

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

#### 9.3 Increased costs, indemnity and set-off

- (a) The Borrower shall pay to the Bank any costs or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation which occurs after the date of signature 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 support for any such charges or expenses upon the Borrower's request.

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

## ARTICLE 10

### Events of Default

#### **10.1 Right to demand repayment**

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

#### **10.1.A Immediate demand**

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

- (a) if the Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless:
  - (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and
  - (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of the Borrower or any representation, warranty or statement made or deemed to be made by the Borrower in, pursuant to or for the purposes of entering into 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 when it was made or deemed to be made;
- (c) if, following any default of the Borrower in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan:
  - (i) the Borrower is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
  - (ii) any financial commitment for such other loan or obligation is cancelled or suspended;
- (d) if the Borrower is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if the Borrower defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union or financial instrument entered into with the Bank;
- (f) if any expropriation, attachment, arrestment, distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (g) if a Material Adverse Change occurs, as compared with the Borrower's condition at the date of this Contract;
- (h) if it is or becomes unlawful for the Borrower to perform any of its obligations under this Contract or this Contract is not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms;
- (i) if any event occurs which is likely to jeopardise the servicing of all or part of any Tranche or adversely affect any security therefore; or
- (j) if any obligation assumed by the Borrower under this Contract are adversely affected by the Borrower's implementation of the Debt Operation, the 2020 IMF Program or any similar arrangement between the Borrower and the Executive Board of the International Monetary Fund;
- (k) if any obligation assumed by the Borrower as stated in the Framework Agreement ceases to be fulfilled as regards any loan made to any borrower in the Borrower's territory from the resources of the Bank, or the European Union; or
- (l) if the conditions for cover under the EU Guarantee are not fulfilled or if the EU Guarantee ceases to be valid, effective or enforceable in accordance with its terms.



### **10.1.B Demand after notice to remedy**

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

- (a) if the Borrower fails to comply with any provision of this Contract (other than those referred to 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 or the Borrower.

### **10.2 Other rights at law**

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

### **10.3 Indemnity**

#### **10.3.A Fixed Rate Tranches**

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

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

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

#### **10.3.B Floating Rate Tranches**

In case of demand under Article 10.1 in respect of any Floating Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the applicable amortisation schedule of the Tranche, until the Maturity Date.

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

#### **10.3.C General**

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

### **10.4 Non-Waiver**

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

## ARTICLE 11

### Law and dispute resolution, miscellaneous

#### 11.1 Governing Law

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

#### 11.2 Dispute Resolution

- (a) Any dispute, disagreement, controversy or claim (together referred to as a "**Dispute**") arising in connection with the existence, validity, interpretation, implementation or termination of this Contract shall, to the extent possible, be settled amicably by agreement between the Bank and the Borrower through consultations and negotiations. If a Dispute cannot be amicably settled by the Bank and the Borrower within 60 (sixty) days of the notification of the Dispute by either Party, the Dispute shall be settled by final and binding arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules in effect at the date of this Contract, which rules are deemed to be incorporated by reference into this Article.
- (b) The number of arbitrators shall be three. The language of the arbitral procedure shall be English. The arbitration proceedings shall take place in The Hague, the Netherlands.
- (c) Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the constitution of the arbitral tribunal. The tribunal shall render its decision within 60 (sixty) days following the delivery of the final submissions.
- (d) Any final award of the tribunal shall be binding from the day it is made, and the Parties hereby waive any right of appeal on the law and/or the merits to any court. Notwithstanding the UNCITRAL Arbitration Rules, the tribunal shall not take or provide and the Borrower shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank.
- (e) The Borrower shall abide by and carry out any such award in its territory without delay.
- (f) In case of failure by the Borrower to comply with its obligation in the preceding paragraph within 3 months from the date of the award, then, to the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, enforcement, attachment or other legal process, the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

#### 11.3 Evidence of sums due

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

#### 11.4 Entire Agreement

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



## 11.5 Invalidity

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

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

## 11.6 Amendments

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

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

## 11.7 Counterparts

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


# ARTICLE 12

## Final clauses

## 12.1 Notices

### 12.1.A Form of Notice

- (a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter, electronic mail and facsimile.
- (b) Notices and other communications for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter, facsimile or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:
  - (i) on the date of delivery in relation to a hand-delivered or registered letter;
  - (ii) on receipt of transmission in relation to a facsimile;
  - (iii) in the case of any electronic mail provided that it is addressed in such a manner as the Parties shall specify for this purpose, when the electronic mail is sent.
- (c) Any notice provided by the Borrower to the Bank by electronic mail shall:
  - (i) mention the Contract Number in the subject line; and
  - (ii) be in the form of a non-editable electronic image ( pdf, tif or other common non editable file format agreed between the parties) of the notice signed by an Authorised Signatory with individual representation right or by two or more Authorised Signatories with joint representation right of the Borrower attached to the electronic mail.

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- (d) Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.
  - (e) Without affecting the validity of electronic mail or facsimile notices or communication made in accordance with this Article 12.1, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:
    - (i) Disbursement Acceptance
    - (ii) any notices and communication in respect of the deferment, cancellation and suspension of a disbursement of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment, and
    - (iii) any other notice, communication or document required by the Bank.
  - (f) The Parties agree that any above communication (including via electronic mail) is an accepted form of communication, shall constitute admissible evidence in court and shall have the same evidential value as an agreement under hand.

#### 12.1.B Addresses

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

For the Bank

Attention: *OPS-NC2*

100 boulevard Konrad Adenauer  
L-2950 Luxembourg  
Facsimile no: + 352 4379 67495  
E-mail address: [ops-nc2-projects@eib.org](mailto:ops-nc2-projects@eib.org)

For the Borrower

Attention: Ministry of Finance

12/2 Hrushevskoho Street  
Kyiv 01008  
Ukraine  
Fax number: +380.44.277.54.87  
E-mail address: [infomf@minfin.gov.ua](mailto:infomf@minfin.gov.ua)

#### 12.1.C Notification of communication details

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



**12.2 English language**

- (a) Any notice or communication given under or in connection with this Contract must be in English.
- (b) All other documents provided under or in connection with this Contract must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail.

**12.3 Effectiveness of this Contract**

This Contract shall become effective on the date (the "**Date of Effectiveness**") on which the Bank has confirmed in writing that it has received evidence that the law of Ukraine ratifying this Contract has become effective and the Contract has become effective.

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

**12.4 Recitals, Schedules and Annexes**

The Recitals and following Schedules form part of this Contract:

Schedule A	Project Specification and Reporting
Schedule B	Definition of EURIBOR
Schedule C	Forms for Borrower
Schedule D	Form of Certificate from Borrower

The following Annex is attached hereto:

Annex I	Authority of Signatory
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The Parties hereto have caused this Contract to be executed in 4 (four) originals in the English language and have respectively caused Ms. Nataliya Forsyuk, Deputy Minister of European integration and Ms. Kinga Soltész, Senior Legal Counsel to initial each page of this Contract on their behalf.

At Kyiv, this 9 December 2020; and

at Luxembourg, this 9 December 2020.

Signed for and on behalf of

**UKRAINE**

A handwritten signature in black ink, consisting of a large circular loop followed by several horizontal strokes.

Denys Anatoliyovych Shmyhal  
Prime Minister

Signed for and on behalf of

**EUROPEAN INVESTMENT BANK**

A handwritten signature in blue ink, consisting of a stylized 'W' followed by a horizontal stroke.

Werner Hoyer  
President



## Schedule A

### Project Specification and Reporting

#### A.1 TECHNICAL DESCRIPTION

##### **Purpose, Location**

The project will support the National Transport Strategy of Ukraine up to 2030 approved by the Cabinet of Ministers of Ukraine, being implemented by the Ministry of Infrastructure of Ukraine (MoI). The project will support electric urban public transport sub-projects in medium to large size cities that aim at purchasing new rolling stock (trolleybuses, trams, metro coaches and electric buses) or rehabilitating the existing urban public transport infrastructure or extending it with new elements. The operation targets some 20 cities, including cities located in the Eastern Part of Ukraine in the public urban transport sectors and comprises multiple sub-projects in varying sizes very largely between EUR 1m to 50m. The final beneficiaries will be local state administrations and bodies of local self-government and municipal transport companies owned by the local community. The Bank will limit its support to sub-projects in the areas under Ukrainian Government control.

##### **Description**

Cities are eligible for the programme by fulfilling the following criteria:

- Population is above 100,000 as determined at last census;
- City public transport fleet of at least 50 units in aggregate - trams, metro, trolleybus and buses combined;
- Prioritised those cities, which are located in the Azov Sea region.

The following types of sub-projects, alone or in combination, are targeted as eligible provided they meet the eligibility and appraisal standards to be defined in the Programme Procedures Manual (PPM):

Category ID	Description
1	Purchase of new rolling stock (trolleybuses, trams, metro coaches and electric buses)
2	Capital rehabilitation of rolling stock (trolleybuses, trams, metro coaches and electric buses)
3	Infrastructure rehabilitation – tracks, catenary, depots, sub-stations
4	Infrastructure development – new tram tracks, catenary, depots, sub-stations, supply and installation of passenger information and ticket collection systems, fleet operation, communication and ITS modules for Urban Public Transport operation/management
5	Services for planning, design, supervision and monitoring of above activities
6	Services for technical assistance to Promoter and to city authorities to prepare bankable new project proposal for new financial contracts, preparation of SUMP, SUMS

Conditionally the following cities have applied to Mol for financial support under the project:

Category ID	Cities Applied to Mol	Tentative amount (in million EURO)
Purchase of new rolling stock (trolleybuses, trams, metro coaches and buses)	Kharkiv, Severodonetsk, Vynysia, Uzgorod, Cherkasy, Kremenchug, Beli Tserkva, Melitopol, Kamyansk, Khemnytskyi, Ternopil, Kryvyi Rih, Dnipro, Lutsk, Poltava, Kyiv, Odessa	235,6
Capital rehabilitation of rolling stock	-	-
Infrastructure rehabilitation – tracks, catenary, depots, sub stations	Cherkasy, Beli Tserkva, Kamyansk, Dnipro, Lviv	73,3
Infrastructure development – new tram tracks, catenary, depots, sub-stations, supply and installation of passenger information and ticket collection systems, fleet operation, communication and ITS modules for Urban Public Transport operation/management	Cherkasy, Kremenchug, Zaporizhya	29,7
<b>Total</b>	<b>28</b>	<b>338,6</b>

The loan can also be utilized to finance contracts with consultants and experts appointed to support (i) the management, co-ordination, monitoring, planning of the investment programme on the Promoter (incl. PMSU) and Final Beneficiary level, including SUMP (Sustainable Urban Mobility Plan), PSC (Public Service Contract), SUMS (Sustainable Urban Mobility Strategy); and (ii) preparation, design, supervision and implementation of sub-projects.

The schemes that have an estimated investment cost over EUR 50m will be subject to individual appraisal prior to allocation.

At appraisal stage, a tentative list of sub-projects was identified to be potentially allocated under the Framework Loan. Nevertheless, being a Framework Loan operation, further sub-projects as well as some degree of change is expected in the already identified list of sub-projects. Therefore, all allocation requests to be made by the Promoter will be reviewed by the Bank's services in order to ensure that proposed sub-projects are in line with the main investment areas listed above and within the Bank's eligibility criteria. The indicative pipeline of sub-projects will be updated regularly by the Programme Management Support Unit (PMSU) of the Mol.

It should be noted that the indicative pipeline is for information only and does not constitute an obligation for the Mol or EIB to commit financing to the sub-projects.

### Calendar

The loan allocation period will be 5 years (2021-2026). Implementation of the different sub-projects will depend on the specific investments but is expected to be completed within 5 years after the FL become effective according to the Ukrainian legislation.

The completion of the project is expected by end 2026.






## A.2 ALLOCATION PROCEDURES

Sub-projects eligible for financing shall meet the Bank's eligibility criteria. Detailed eligibility criteria shall be defined in the Programme Procedures Manual (PPM) to be approved by the Borrower, in form and substance satisfactory to the Bank.

The eligibility criteria will include a requirement on the Borrower to verify the compliance of the final beneficiaries and sub-projects with the relevant and applicable Bank's policies and guidelines. All sub-projects shall be technically, economically and financially viable and sustainable, comply with the Bank's environmental and social standards, and undertaken in accordance with the Bank's Guide to Procurement.

The eligibility of sub-projects for EIB financing will be checked by the Bank at the allocation stage against the detailed criteria defined in the PPM.

### General exclusions:

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

### Excluded Sectors:

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

### Particular categories of investment sub-projects excluded from this framework loan:

- Sub-projects in sectors other than those mentioned in the technical description;
- Sub-projects outside the project geographic scope described in technical description.

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

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

- a) Eligible sub-projects with a total investment cost below EUR 5m are selected by the Promoter. The choices are subject to ex-post confirmation of eligibility by the Bank's services. The Promoter is to submit an allocation request in a form required by the Bank (as defined in the PPM).
- b) Eligible sub-projects with a cost between EUR 5m and including EUR 50m are submitted ex-ante to the Bank for approval before funding, using a template as defined in the PPM or a feasibility study. The Bank keeps the right to ask for additional information; partial or in-depth appraisal of the scheme will be undertaken, if judged necessary.
- c) Eligible sub-projects with a cost above EUR 50m are to be treated, in principle, like separate loans and appraised separately by the Bank's services. Sub-projects will be subject to approval before disbursement of the Bank's funds to the final beneficiaries. The Bank will request documentation, at its discretion, as individually indicated by the Bank to the Promoter.

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

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

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

#### 1. Dispatch of information: designation of the person responsible

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

	Financial Contact	Technical Contact
Company	Ministry of Finance of Ukraine	Ministry of Infrastructure of Ukraine
Contact person	Kateryna Elishyeva	Nataliya Forsyuk
Title	Head of Department	Deputy Minister
Function / Department financial and technical	International Financial Projects Department	Deputy Minister of Infrastructure of Ukraine for European Integration
Address	+380 44 277 54 33	14, Peremohy Avenue 01135 Kyiv, Ukraine
Phone	+380 44 277 54 33	+380 44 351 40 05
Fax	+380 44 425 90 26 +380 44 277 54 87	+380 44 351 48 45
Email	<a href="mailto:infomf@minfin.gov.ua">infomf@minfin.gov.ua</a> <a href="mailto:ifisdepartment@minfin.gov.ua">ifisdepartment@minfin.gov.ua</a>	<a href="mailto:forsiuk@mtu.gov.ua">forsiuk@mtu.gov.ua</a>

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

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

#### 2. Information on specific subjects

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

Document / information	Deadline
Procurement Plan	Allocation Request
Sub-projects' feasibility study (FS), cost-benefit analysis (CBA), Environmental and Social Impact Assessment Study if applicable	Allocation Request



### 3. Information on the project's implementation

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

Document / information	Deadline	Frequency of reporting
<p>Project Progress Report</p> <p>Progress Report on the implementation of the operation, including the status of progress on the schemes allocated to the loan:</p> <ul style="list-style-type: none"> <li>- A brief update on the allocation process, explaining the reasons for significant changes vs. initial scope;</li> <li>- A brief update on the effectiveness of technical assistance and identification of further technical assistance requirements;</li> <li>- Update on the date of completion of each of the main sub-projects, explaining reasons for any possible delay;</li> <li>- Update on the costs of the sub-projects, explaining reasons for any possible cost variations vs. initial budgeted cost;</li> <li>- A description of any major issue with social or environmental impacts;</li> <li>- Update on procurement procedures;</li> <li>- Update on the sub-projects' demand or usage;</li> <li>- Comment on any significant issues or risks that may affect the schemes' operation;</li> <li>- Comment on any legal actions concerning the sub-projects that may be on-going;</li> <li>- Non-confidential project-related pictures, if available.</li> </ul>	Starting 6 months after contract effectiveness	Semi-Annually

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

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

Document / information	Date of delivery to the Bank
<p>Completion Report on the operation, including information on the completion or progress on the sub-projects allocated to the loan:</p> <ul style="list-style-type: none"> <li>- A final description of the allocation process as completed, explaining the reasons for any significant change compared to the initial scope;</li> <li>- The date of completion of each of the sub-projects, explaining reasons for any possible delay;</li> <li>- The final cost of the sub-projects, explaining reasons for any possible cost variations vs. initial budgeted cost;</li> <li>- Employment effects of the sub-projects: person-days required during implementation as well as permanent new jobs created;</li> <li>- A description of any major issue with social or environment impacts;</li> <li>- Update on procurement procedures;</li> <li>- Update on the sub-projects' demand or usage;</li> <li>- Comments on any significant issue or risk that may affect the sub-project's operation;</li> <li>- Comments on any legal actions concerning the sub-projects that may be on-going;</li> <li>- Update on the monitoring indicators (as defined in the PPM).</li> </ul>	15 months after completion of the programme

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

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

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

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

5. Information required 3 years after the Project Completion Report

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

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






## Schedule B

### Definition of 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 (a) to (c) above:

- (i) "**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), or any successor to that function of EMMI, as determined by the Bank; and
- (ii) "**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 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 11:00 a.m., 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 no sufficient 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 11:00 a.m., 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. The Bank shall inform the Borrower without delay of the quotations received by the Bank.

All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one thousandth of a percentage point, with halves being rounded up.

If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI (or any successor to that function of EMMI as determined by the Bank) in respect of EURIBOR, the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.

If the Screen Rate becomes permanently unavailable, the EURIBOR replacement rate will be the rate (inclusive of any spreads or adjustments) formally recommended by (i) the working group on euro risk-free rates established by the European Central Bank (ECB), the Financial Services and Markets Authority (FSMA), the European Securities and Markets Authority (ESMA) and the European Commission, or (ii) the European Money Market Institute, as the administrator of EURIBOR, or (iii) the competent authority responsible under Regulation (EU) 2016/1011 for supervising the European Money Market Institute, as the administrator of the EURIBOR, (iv) the national competent authorities designated under Regulation (EU) 2016/1011, or (v) the European Central Bank.

If no Screen Rate and/or the EURIBOR replacement 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.



## Schedule C

### Forms for the Borrower

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

To: Ukraine  
From: European Investment Bank  
Date:  
Subject: Disbursement Offer/Acceptance for the UKRAINE URBAN PUBLIC  
TRANSPORT II Finance Contract between Ukraine and the  
European Investment Bank dated \_\_\_\_\_ 2020  
(the "Finance Contract")

Contract Number: 90.604

Operation Number: 2019-0001

Dear Sirs,

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

Following your request for a Disbursement Offer from the Bank, in accordance with Article 1.2.B of the Finance Contract, we hereby offer to make available to you the following Tranche:

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

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

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

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

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

Yours faithfully,

EUROPEAN INVESTMENT BANK



We hereby accept the above Disbursement Offer and confirm that no obligation of the Borrower under the Contract falls within the scope of the Debt Operation, the 2020 IMF Program or any similar arrangement between the Borrower and the Executive Board of the International Monetary Fund:

\_\_\_\_\_

for and on behalf of Ukraine

Date:

Account to be credited:

Account N°: .....

Account Holder/Beneficiary: .....

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

Bank name and address: .....

Bank identification code (BIC): .....

Payment details to be provided: .....

Please transmit information relevant to:

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

.....

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

**IMPORTANT NOTICE TO THE BORROWER:**

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

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



Schedule D

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

To: European Investment Bank  
From: Ukraine  
Date:  
Subject: Certificate for the UKRAINE URBAN PUBLIC TRANSPORT II Finance  
Contract between Ukraine and the European Investment Bank dated  
\_\_\_\_\_ 2020 (the "**Finance Contract**")

Contract Number: 90.604

Operation Number: 2019-0001

Dear Sirs,

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

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

- (a) no Prepayment Event has occurred and is continuing unremedied or unwaived;
- (b) no security of the type prohibited under Article 1.1 has been created or is in existence;
- (c) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.1, 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 6.9 are true in all respects; and
- (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, the 2020 IMF Program or any similar arrangement between the Borrower and the Executive Board of the International Monetary Fund;
- (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 Signatory