

CONFIDENTIAL

MEMORANDUM TO PARLIAMENT

BY

MINISTER FOR FINANCE

ON

THE REQUEST FOR WAIVER OF TAXES AND DUTIES  
ON GOODS ASSESSED AND TO BE PROCURED FOR  
THE IMPLEMENTATION OF THE PHOTOVOLTAIC-  
BASED (SOLAR) STREET LIGHTING PROGRAMME IN  
SELECTED COMMUNITIES (PHASE II)

PARLIAMENT OF GHANA LIBRARY

27<sup>TH</sup> JULY, 2018

## **1.0 ACTION REQUIRED**

1.1 Hon. Members of Parliament are respectfully invited to consider and approve the request for the waiver of Two million and Twenty-Eight Thousand Eight Hundred and Sixty-Three Euros (**€2,028,863.00**) being taxes and duties on goods assessed and to be procured for the implementation of Phase II of the Photovoltaic based street lighting programme in selected communities in the country.

1.2 It is to be noted that Parliament at its Forty-Ninth Sitting of the Third Meeting held on Thursday, 21<sup>st</sup> December, 2017, approved by Resolution the Export Credit Agreement between the Government of Ghana and Unicredit Bank Austria AG for an amount of Seven Million, Five Hundred Thousand Euros (**€7,500,000.00**) for the Enhancement of Road Safety (Phase 2)-Turnkey Implementation of the Photovoltaic-Based Street Lighting Programme in selected communities across the country.

1.3 The request for tax and duty exemption on goods assessed and to be procured under the contract is to satisfy the provisions of Article 174 (2) of the Constitution.

## **2.0 BACKGROUND TO THE PROJECT**

2.1 Successive Governments have through the National Road Safety Commission (NRSC) always pursued various road safety programmes and campaigns aimed at addressing the numerous and unacceptably high level of accidents that frequently occur on our country's roads. Road Traffic accidents are increasingly becoming a developmental and public health issue and have been a matter of great concern to

government especially when lives and human capital have unfortunately been lost in the process.

2.2 The NRSC in collaboration with key stakeholders including the Ministries of Transport and Roads and Highways, together with their agencies, the Driver and Vehicle Licensing Authority (DVLA) and the Motor Traffic and Transport Department (MTTD) of the Ghana Police Service are always doing what they can within their mandates to address the issue of road safety in the country. While some road safety strategies have made significant impact in curbing the spate of car accidents on our roads, it is very evident that a lot still remains to be done.

2.3 It is worth noting that between January to August 2017, a total of **8,081** cases of road traffic accidents were reported involving **12,718** vehicles. These accidents resulted in **1,382** deaths and **7,761** injuries. The cost of road accidents in Ghana is estimated at 1.67% of annual GDP. It is also reported that road traffic accidents account for far more deaths in Ghana than violent crimes including robbery. These accidents and deaths affect productivity, damage to property; increase in medical bills and in some cases result in permanent disabilities leading to an increase in the dependency burden and ultimately poverty.

Statistics reveal that about 80% of the night-time car fatalities in Ghana have occurred on sections of our roads which are without any street lights and has therefore caused poor visibility to many road users. It is sad to note that street lights are non-existent on a number of our road networks especially those linking the regional capitals and those in urban areas. This situation has contributed a lot to road



accidents resulting in pedestrian fatalities.

2.4 The implementation of the Photovoltaic-based (solar) street lighting programme in the selected communities in the country has therefore been designed to address national road safety focus issues, relating to areas noted and designated as black spots and are prone to accidents mainly due to the poor visibility in such places. The project is therefore aimed at implementing practical and cost-effective measures which would influence and enhance visibility and in the process vehicle/pedestrian conspicuity in the night especially on sections of the roads where lack of street lights is believed to be the predominant contributory factor to accidents.

### **3.0 PROJECT OBJECTIVES**

3.1 The main objective of the project is directed at improving the physical condition or management of hazardous and accident-prone locations (Black Spots) with a history of accidents by installing street lights in such places notably:

- Communities along Trunk Roads;
- Major Junctions; &
- Approaches to Bridges.

### **4.0 SCOPE OF PROJECT**

4.1 The accident-prone locations earmarked for the installation of the street lights under Phase II of the project are selected trunk roads, major junctions and approaches to bridges in several communities in seven regions namely Ashanti (54), Eastern (63), Brong Ahafo (32), Volta (1) Upper East (1), Northern (1) and Central (2).

The selection of the locations in the targeted regions was informed by

the fact that poor night visibility in these areas is believed to be the main cause of accidents that occurs there. The scope of works to be executed include the following:

- (i) Engineering, design, supply and installation of solar panels and batteries, poles, lighting equipment including cabling and construction of foundation for poles;
- (ii) Supply and installation of traffic signs;
- (iii) Supply of spares and maintenance tools;
- (iv) Road safety Awareness program for communities and schools;
- (v) Training on maintenance of street lights; &
- (vi) Supply of maintenance vehicles and equipment.

## 5.0 FINANCING DETAILS

5.1 The project is being financed through a concessional loan facility offered by Unicredit Bank Austria which has already been approved by Parliament through a resolution.

Below is a summary of the terms and conditions of the loan agreement:

Loan Amount	EUR € 7,500,000
Repayment Period	14 years
Grace Period	7.5 years
Maturity	21.5 years
Interest Rate	0.9% (0%+ OeKB Guarantee margin 0.9%)
Commitment Fee	0.5%
Management Fee	0.5%
Upfront Fee	0.5%
<b>Grant Element</b>	<b>49.84%</b>

## 6.0 JUSTIFICATION FOR GOVERNMENT'S SUPPORT FOR TAX WAIVER

6.1 Government of Ghana upon signing the concessional loan facility and the commercial contract for the implementation of this project is expected to abide by and satisfy fully, conditions provided for under

the agreement.

It is to be noted that under Clause 9 of the commercial contract, Government of Ghana agreed to exempt the contract from payment of taxes including VAT, duties and levies that may be imposed by any Ghanaian Authority.

In this regard, the Government of Ghana is required to bear the component of the project financing cost covering taxes, duties and other applicable fiscal levies which may be imposed in the Republic of Ghana with respect to the supply of materials and equipment for the execution of the contract, hence the justification for the request for tax and duty exemption on core project related goods as assessed by the Ghana Revenue Authority.

## **7.0 ASSESSMENT OF DUTIES, TAXES AND LEVIES TO BE EXEMPTED**

7.1 Tax assessment was conducted by Ghana Revenue Authority (GRA) on goods to be procured for the implementation of the project. Gross taxes per GRA computation amounted to a total of **€2,028,863.00**.

### **SUMMARY OF EXEMPTIONS**

Descr- ption	CIF €	I/D RATE	Import Duty	VAT	NHIL	ECO LEVY	EXIM LEVY	SIL	Total €
Imports	5,085,370	Various	877,222	894,389	149,065	25,427	38,140	44,620	2,028,863

## **8.0 CONCLUSION**

8.1 The Ministry of Roads and Highways is optimistic that motorists and pedestrians alike stand to benefit tremendously when the project is completed.

The Project which is the second phase of the Photovoltaic Street Lighting Programme will further provide cost-effective and energy

efficient street lighting systems based on renewable energy. It will promote and maintain safety for all users of the highway with special consideration for all vulnerable user groups, e.g. pedestrians, cyclists, the elderly or people with disabilities and children. The benefits of the project in contributing to the enhancement of road safety by way of ensuring visibility within the respective areas and thereby reducing accidents and road fatalities cannot be over-emphasized.

8.2 Based on the above-mentioned benefits it would be highly appreciated if Hon. Members of Parliament could kindly consider and approve the waiver of duties and taxes of **€2,028,863.00** on goods to be procured for the implementation of the project. The request for tax exemption is in line with Article 174(2) of the Constitution.



**KEN OFORI-ATTA**  
**(MINISTER FOR FINANCE)**



**ATTACHMENTS:**

1. Cabinet approval for tax waiver;
2. Cabinet approval of Loan Agreement;
3. Parliamentary approval of Loan Agreement;
4. Relevant Sections of Loan Agreement between Government of Ghana and Unicredit Bank Austria AG.;
5. Copy of Commercial Agreement between the Ministry of Roads and Highways (represented by Ghana Highway Authority) and Fleck Elektroinstallationen GMBH; for supply and installation of street lights; &
6. Tax assessment by Ghana Revenue Authority.

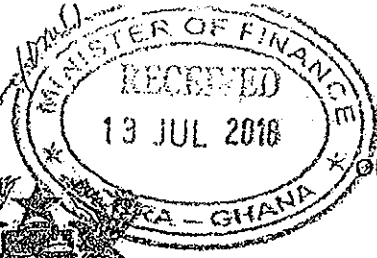
**CONFIDENTIAL**

In case of reply the number and date of this letter should be quoted.

My Ref. No OPCA.3/3/120718e

Your Ref. No.....

*ADM*  
*to: CD*  
*M/201/2018*  
*16/07/2018*  
*16/07/18*



OFFICE OF THE PRESIDENT  
P.O. BOX 1627  
ACCRA  
TEL: 0302-201000/2



REPUBLIC OF GHANA

12<sup>th</sup> July, 2018

REQUEST FOR WAIVER OF TAXES AND DUTIES ON GOODS ASSESSED AND TO BE PROCURED FOR THE IMPLEMENTATION OF THE PHOTOVOLTAIC-BASED (SOLAR) STREET LIGHTING PROGRAMME IN SELECTED COMMUNITIES PHASE II

Cabinet at its Thirty-seventh meeting held on Thursday, 12<sup>th</sup> July, 2018 considered a report of the Cabinet Committee on Economic Matters on the above Memorandum submitted by the Minister for Finance.

2. The Memorandum requested Cabinet to consider, approve and recommend to Parliament, the request for the waiver of Two million, twenty-eight thousand, eight hundred and sixty-three Euros (EUR2,028,863.00) being taxes and duties on goods assessed and to be procured under the Photovoltaic-based street lighting programme (Phase II) in selected communities.

3. Cabinet approved the Memorandum and recommended same to Parliament for consideration.

4. I should be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH-KARIKARI  
SECRETARY TO THE CABINET

THE HON. MINISTER FOR FINANCE

- cc: Chief of Staff
- Secretary to the President
- Secretary to the Vice President
- Chairperson, Cabinet Committee on Economic Matters
- Hon. Minister for Parliamentary Affairs



*MW*  
*re*

*(16/7/18)*  
*re*

*WH/CO*  
*re*  
*16/07/18*

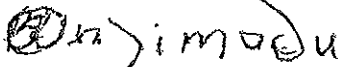
the International Development Association (IDA) for an amount equivalent to One Hundred and Ten Million, Six Hundred Thousand Special Drawing Rights (SDR 110,600,000) [equivalent to US\$150 million] to finance the proposed Transport Sector Improvement Project.

**THIS HONOURABLE HOUSE HEREBY RESOLVES AS FOLLOWS:**

In accordance with the provisions of the said Article 181 of the Constitution and Sections 55 and 56 of the Public Financial Management Act, 2016 (Act 921), this House approves the Financing Agreement between the Government of the Republic of Ghana and the International Development Association (IDA) for an amount equivalent to One Hundred and Ten Million, Six Hundred Thousand Special Drawing Rights (SDR 110,600,000) [equivalent to US\$150 million] to finance the proposed Transport Sector Improvement Project.

The Resolution is respectfully submitted for your appropriate action.

Yours sincerely,



**EMMANUEL ANYIMADU  
CLERK TO PARLIAMENT**

Cc: Hon. Minister for Transport

Hon. Attorney-General and Minister for Justice.

Hon. Minister for Parliamentary Affairs.

FRWA-B

CD

In case of any  
number and date of this  
letter should be quoted.

My Ref. No OPCA.3/5/180917

Your Ref.



REPUBLIC OF GHANA

OFFICE OF THE PRESIDENT  
P.O. BOX 1627  
ACCRA  
TEL: 0302-201000/2

18 September, 2017

**CONFIDENTIAL**

APPROVAL OF A CONCESSIONAL LOAN AGREEMENT BETWEEN THE GOVERNMENT  
OF GHANA AND UNICREDIT BANK AUSTRIA AG FOR AN AMOUNT OF  
EUR 7,500,000.00 FOR THE ENHANCEMENT OF ROAD SAFETY TURNKEY  
IMPLEMENTATION OF PHOTOVOLTAIC-BASED (SOLAR) STREET LIGHTING PROGRAMME  
IN SELECTED COMMUNITIES

Cabinet at its Sixteenth Meeting, held on Thursday, 14<sup>th</sup> September, 2017 discussed the report presented by the Cabinet Committee on Economic Matters on the above Memorandum jointly submitted by the Minister for Roads and Highways and the Minister for Finance.

2. The Memorandum requested Cabinet to consider, approve and recommend to Parliament, a concessional loan agreement between the Government of Ghana and the Unicredit bank Austria AG in the sum of EUR 7,500,000.00 (Seven Million, Five Hundred Thousand Euro) for the implementation of Photovoltaic-Based (Solar) Street Lighting Programme for hazardous black spot locations in selected communities.

3. Cabinet granted approval for the Memorandum together with the Contract Agreement to be submitted to Parliament for consideration.

4. I shall be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH-KARIKARI  
SECRETARY TO THE CABINET

THE HON. MINISTER FOR ROADS  
AND HIGHWAYS

THE HON. MINISTER FOR FINANCE

cc: Chief of Staff  
Secretary to the President  
Secretary to the Vice President  
Chairman, Cabinet Committee on  
Economic Matters

# PARLIAMENTARY SERVICE

Parliament House - Accra (Ghana)



In case of a reply the number and date of this letter should be quoted

My Ref. No. DP/T/R/0291

Telephone No. 0302 664184 (4lines)  
Fax No. 0302 665957

Your Ref.:

22<sup>nd</sup> DEC 2017

THE HON. MINISTER  
MINISTRY OF FINANCE  
ACCRA.



Hon. Minister,

EXPORT CREDIT AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF GHANA AND UNICREDIT BANK AUSTRIA AG FOR AN  
AMOUNT OF SEVEN MILLION, FIVE HUNDRED THOUSAND EUROS  
(€7,500,000.00) FOR THE ENHANCEMENT OF ROAD SAFETY (PHASE II)—  
TURNKEY IMPLEMENTATION OF PHOTOVOLTAIC-BASED STREET  
LIGHTING PROGRAMME IN SELECTED COMMUNITIES

Parliament at its Forty-Ninth Sitting of the Third Meeting held on Thursday, 21<sup>st</sup> December 2017, approved by resolution the Export Credit Agreement between the Government of the Republic of Ghana and Unicredit Bank Austria AG for an amount of Seven Million, Five Hundred Thousand Euros (€7,500,000.00) for the Enhancement of Road Safety (Phase II)—Turnkey Implementation of Photovoltaic-Based Street Lighting Programme in selected communities.

I am directed to forward to you the text of the Resolution as follows:

**WHEREAS**

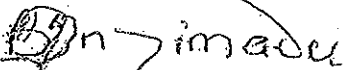
1. By the provisions of Article 181 of the Constitution and Sections 55 and 56 of the Public Financial Management Act, 2016 (Act 921), the terms and conditions of all government borrowings shall be laid before Parliament and shall not come into operation unless the terms and conditions are approved by a resolution of Parliament in accordance with article 181 of the Constitution;
2. Pursuant to the provisions of the said Article 181 of the Constitution and Sections 55 and 56 of the Public Financial Management Act, 2016 (Act 921), at the request of the Government of the Republic Ghana acting through the Minister responsible for Finance, there has been laid before Parliament the terms and conditions of an Export Credit Agreement between the Government of the Republic of Ghana and Unicredit Bank Austria AG for an amount of Seven Million, Five Hundred Thousand Euros (€7,500,000.00) for the Enhancement of Road Safety (Phase II)—Turnkey Implementation of Photovoltaic-Based Street Lighting Programme in selected communities.

THIS HONOURABLE HOUSE HEREBY RESOLVES AS FOLLOWS:

In accordance with the provisions of the said Article 181 of the Constitution and Sections 55 and 56 of the Public Financial Management Act, 2016 (Act 921), this House approves the Export Credit Agreement between the Government of the Republic of Ghana and UniCredit Bank Austria AG for an amount of Seven Million Five Hundred Thousand Euros (€7,500,000.00) for the Enhancement of Road Safety (Phase II)—Turnkey Implementation of Photovoltaic-Based Street Lighting Programme in selected communities.

The Resolution is respectfully submitted for your appropriate action.

Yours sincerely,



EMMANUEL ANYIMADU  
CLERK TO PARLIAMENT

Cc: Hon. Minister for Roads and Highways.

Hon. Minister for Parliamentary Affairs.

Hon. Attorney-General and Minister for Justice.

EUR 7,500,000

EXPORT CREDIT AGREEMENT 235.877

dated 11.10.2018

between

THE REPUBLIC OF GHANA

acting by and through the Ministry of Finance

as Borrower

and

UNICREDIT BANK AUSTRIA AG

as Lender

in relation to the financing of the project  
"Enhancement of Road Safety - Phase II, Turnkey implementation of Photovoltaic based  
Street lighting Programme"

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This EXPORT CREDIT AGREEMENT No. 235.877 (the "Agreement") dated ...../...../2018 is made between

1. THE REPUBLIC OF GHANA, acting by and through the Ministry of Finance (hereinafter referred to as the "Borrower")

and

2. UNICREDIT BANK AUSTRIA AG, a bank duly incorporated under the laws of Austria, with its registered office at Schottengasse 6-8, 1010 Vienna, Austria and registered at the Handelsgericht Wien under number FN 150714p (hereinafter referred to as the "Lender").

WHEREAS

- A. FLECK ELEKTROINSTALLATIONEN GESELLSCHAFT.m.b.H., Vienna, Austria has concluded with the Republic of Ghana, represented by the Ministry of Roads and Highways, Ghana Highway Authority, the Purchase Agreement (as defined below) dated 17 October 2017 for the works known as "Enhancement of Road Safety - Phase II, Turnkey implementation of Photovoltaic based Street lighting Programme" with a total Project value of EUR 7,500,000.
- B. The Republic of Ghana approved on ...../...../....., the Project "Enhancement of Road Safety - Phase II, Turnkey implementation of Photovoltaic based Street lighting Programme" and the Purchase Agreement for a total amount of EUR 7,500,000. The purpose of this Agreement is to finance this project by making available a soft loan amount of up to EUR 7,500,000.--.
- C. UniCredit Bank Austria AG has agreed subject to the terms and conditions set forth therein, to provide the necessary financing for the Purchase Agreement referred to in A above.
- D. The financing made available to the Borrower hereunder is extended under and pursuant to the provisions of the rules and regulations for export credits promulgated by the Republic of Austria in accordance with the Export Promotion Act 1981 as amended and is supported by public aid funds with a concessionality level (according to OECD regulations) of at least 35%.
- E. OeKB (as defined below) has expressed its availability to issue an OeKB Guarantee (as defined below) insuring the Lender against sovereign risk deriving from the financing of this Agreement, subject to the terms and conditions thereunder.

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IT IS AGREED as follows

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement and the Annexes hereto the following expressions shall have the following meanings:

“Annex” means an annex to this Agreement the terms of which annex shall be deemed to be incorporated into this Agreement and form a part thereof.

“Availability Period” means the period specified in Annex 3 during which Borrowings may be drawn against the Credit Facility.

“Borrowing” means an amount drawn down by the Borrower against the Credit Facility.

“Business Day” means a day (other than Sunday or Saturday) on which (a) banks are generally open for business in Vienna and Accra and, (b) in relation to any date for payment of EUR, a Target Day.

“Closing Date” means the date defined in Section 7 hereof.

“Credit Facility” means the amount specified in Annex 3 against which the Borrower may draw Borrowings during the Availability Period.

“Disbursement Document” means each of the documents listed in Annex 4.

“Euro” or “EUR” or “€” means the single currency of those member states of the European Union that adopt the Euro as their currency in accordance with legislation of the European Community relating to European Economic and Monetary Union.

“External Indebtedness” means any indebtedness for money borrowed (including guarantees for money borrowed) at any one time which is:

- (i) denominated, payable or optionally payable otherwise than in Ghana cedi (GHS); and/or
- (ii) owed to a person resident or having its head office or principal place of business outside of the Republic of Ghana.

“Event of Default” means any event or circumstance specified as such in Section 8.1.

“Facility Account” means the account opened in the name of the Borrower in accordance with the provisions of Section 2.3.

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“Interest Payment Dates” means 31st March, 30th June, 30th September and 31st December in each year, provided that if any such date shall not be a Business Day, references to such date shall be to the immediately preceding Business Day.

“Loan” means the aggregate principal amount of the Borrowings advanced under the Credit Facility and for the time being outstanding.

“Mandatory Repayment Dates” means the dates in each year specified in Annex 3, provided that if any such date shall not be a Business Day, references to such date shall be to the immediately preceding Business Day.

“OeKB” means Oesterreichische Kontrollbank Aktiengesellschaft, Am Hof 4, A-1011 Vienna, Austria, being the Austrian export credit agency and acting for and on behalf of the Republic of Austria.

“OeKB Guarantee” means a guarantee with the number 235.877 issued by OeKB in respect of the Credit Facility for and on behalf of the Republic of Austria in accordance with the Export Promotion Act 1981 as amended.

“Party” means a party to this Agreement.

“Payment Procedure” means the procedure for the payment of Borrowings specified in Annex 4.

“Project” means the project specified in Annex 2.

“Project Buyer” means the project buyer defined in Annex 2.

“Project Exporter” means the Austrian exporter defined as project exporter in Annex 2.

“Purchase Agreement” means the agreement relating to the Project entered into between the Project Exporter and the Project Buyer and specified in Annex 2.

“Sanctions” means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by (i) the United Nations, (ii) the United States of America, (iii) the European Union, (iv) the United Kingdom of Great Britain and Northern Ireland, (v) the Republic of Austria or (vi) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (“OFAC”), the United States Department of State and the United States Department of Commerce, and Her Majesty’s Treasury of the United Kingdom.

“Section” means a section of this Agreement.

“Security” means any mortgage, charge, pledge, lien, hypothecation, encumbrance, title retention or other security interest of any kind whatsoever and howsoever arising.

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“Target Day” means a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open.

“UniCredit Group” means UniCredit S.p.A and those companies or entities, (a) in which UniCredit S.p.A holds directly or indirectly 25 % or more of the shares (or similar rights of ownership) or voting rights or (b) which are controlled by UniCredit S.p.A or (c) which are listed from time to time on the UniCredit Group website at <https://www.unicreditgroup.eu/en/worldwide/our-worldwide-presence.html>. In this context “control” means the power to direct the policies and management of such company or entity whether by contract or otherwise.

1.2 Constructions

- a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the “Lender”, the “Borrower”, the “Project Exporter”, “Project Buyer” or “OeKB” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) “assets” includes present and future properties, revenues and rights of every description;
  - (iii) the “Agreement”, “Purchase Agreement”, or any other agreement or instrument is a reference to this Agreement, Purchase Agreement or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (iv) “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (v) a “person” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (vi) a “regulation” or “law” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (vii) a provision of law or regulation is a reference to that provision as amended or re-enacted; and
- b) a time of day is a reference to Vienna time.
- c) Section and Annex headings are for ease of reference only.

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- d) Unless a contrary indication appears, a term used in any other document or in any notice given under or in connection with this Agreement has the same meaning in that document or notice as in this Agreement.
- e) Words importing the singular number shall be construed so as to include the plural and vice versa.
- f) A Default is "continuing" if it has not been remedied or waived.

### 1.3 OeKB override

- a) Notwithstanding anything to the contrary, nothing in this Agreement shall oblige the Lender to act (or omit to act) in a manner that is inconsistent with any requirement of OeKB under or in connection with the OeKB Guarantee and, in particular:
  - (i) the Lender shall be authorised to take all such actions as it may deem necessary to ensure that all requirements of OeKB under or in connection with the OeKB Guarantee are complied with; and
  - (ii) the Lender shall not be obliged to do anything if, in its opinion, to do so could result in a breach of any requirements of OeKB under or in connection with the OeKB Guarantee or affect the validity of the OeKB Guarantee.
- b) The Borrower agrees and acknowledges that the OeKB Guarantee is a separate arrangement between OeKB and the Lender and the Borrower shall not have any right or recourse against the Lender in respect of or arising by reason of any payment made by OeKB to the Lender pursuant to any OeKB Guarantee.
- c) Nothing in this Section 1.3 shall affect the obligations of the Borrower.

## 2. CREDIT FACILITY

### 2.1 The Facility

- a) Subject to the terms of this Agreement, the Lender makes available to the Borrower an EUR credit facility in an aggregate principal amount specified as the "Credit Facility" in Annex 3 hereof.
- b) The Lender hereby agrees to make the Credit Facility available to the Borrower during the Availability Period on the terms and conditions set forth in this Agreement, provided that a Borrowing may only be made under the Credit Facility in accordance with the Payment Procedure specified in Annex 4.
- c) The Credit Facility granted hereunder is extended under and pursuant to the

provisions of the rules and regulations for export promotion promulgated by the Republic of Austria. The Borrower hereby takes note that the financing is supported by public aid funds with a concessionality level (according to OECD-regulations) of 36.49 % (thirty six point fourty nine per cent) (as indication at the date of this Agreement).

**2.2 Purpose**

The Borrower shall apply all amounts borrowed by it under the Credit Facility towards financing of the Project by making payments directly to the Project Exporter under the Purchase Agreement. The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

**2.3 Facility Account**

The Lender shall open a Euro facility account in the name of the Borrower, designated "Facility Account". Each Borrowing made hereunder shall be debited to the Facility Account, in accordance with this Agreement, with the value date being the date of payment of such Borrowing. Repayments and prepayments shall be applied to the Facility Account accordingly.

**2.4 Independence of Agreement and Purchase Agreement**

The Agreement and the Purchase Agreement are separate and independent agreements. No failure of the Project Exporter to fulfil its obligations under the Purchase Agreement shall affect the obligations of the Borrower towards the Lender, nor shall the Lender be liable for any failure of the Project Exporter and/or any other party to the Purchase Agreement.

**3. INTEREST**

**3.1 Interest on the Facility Account**

The Borrower will pay interest on the Interest Payment Dates at a fixed rate as specified in Annex 3, calculated on the Loan.

**3.2 Computation and Date for Payment of Interest**

Interest due in accordance with Section 3.1 shall accrue from day to day, shall be computed on the basis of the actual number of days elapsed and a year of 360 days, and, except as provided in Section 6.1, shall be paid quarterly in arrears by the Borrower to the Lender on the Interest Payment Dates.

**3.3 Default Interest**

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SIGNING PAGE

IN WITNESS WHEREOF the parties hereto have executed this Agreement the date stated at the beginning of this Agreement in two originals in the English language.

THE REPUBLIC OF GHANA

acting by and through the Ministry of Finance

[Seal:]

KEN OFORI-ANTA

[name, title] MINISTER FOR FINANCE name, title]

Witness:

U.A. AZAMETI

[name, title] LEGAL COUNSEL

UNICREDIT BANK AUSTRIA AG

 UniCredit Bank Austria AG  
1010 Wien, Schottengasse 6-8 

Georg Karner, Director

Monika Alvarez, Director

Witness:

Kurt Firlinger, First Vice President, CIB legal department

connection with the negotiation, preparation and execution of: this Agreement.

- b) The Borrower shall, within fifteen Business Days of demand, pay to the Lender the amount of all costs and expenses (including but not limited to legal fees, translations and travel expenses, the latter limited to economy class) reasonably incurred by the Lender in connection with the enforcement of, or the preservation of any rights under this Agreement.
- c) All taxes, duties or other charges levied on the Lender under the laws of the Republic of Ghana in relation to this Agreement and the transactions contemplated hereunder, shall be for the account of the Borrower and shall be payable by the Borrower to the Lender.
- d) If the Borrower requests an amendment, waiver or consent in relation to this Agreement, the Borrower shall, within fifteen Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including but not limited to legal fees and travel expenses, the latter limited to economy class) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

**5. REPAYMENT**

**5.1 Mandatory Repayment**

The Loan which is outstanding at the end of the Availability Period shall be repaid by the Borrower on the Mandatory Repayment Dates as specified in Annex 3. The Borrower may not re-borrow any part of the Credit Facility which is repaid or prepaid.

**5.2 Voluntary Prepayment**

- a) The Borrower may prepay the whole or any part (if part, in the Voluntary Prepayment Amount set forth in Annex 3 or integral multiples thereof) of the Loan upon giving at least 30 (thirty) calendar days prior written notice (such notice to be irrevocable) of the proposed prepayment date to the Lender subject to the approval of OeKB and subject to payments of any break costs (as may be charged by OeKB to the Lender in the discretion of OeKB) incurred by the Lender.
- b) Any such prepayment shall, if made during the Availability Period, reduce the amount of the Credit Facility by an amount equal to such prepayment. Any references to the Credit Facility in this Agreement shall thereafter be deemed to be references to the amount specified in Annex 3 as so reduced. Any such prepayment shall, if made after the expiry of the Availability Period, be applied

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to satisfy the next following repayment instalments due thereafter.

- c) The Borrower may not re-borrow any part of the Credit Facility which is prepaid.

## 6. PAYMENTS

### 6.1 Notice of Payment

- a) Not later (i) than 20 (twenty) calendar days prior to each Interest Payment Date during the Availability Period, and (ii) than 45 (forty five) calendar days prior to each Interest Payment Date or, as the case may be, Mandatory Repayment Date falling after the last day of the Availability Period, the Lender shall notify the Borrower of such amounts as are due to be paid by the Borrower to the Lender in accordance with the provisions of this Agreement in respect of principal, OeKB Guarantee premium payable as margin under Section 4.3 b), interest and commitment fee, provided that failure to give such notice as aforesaid shall not relieve the Borrower of its obligation to make payments of such amounts as aforesaid when due.
- b) If any amount whatsoever is debited and/or credited to the Facility Account and/or any other account which may be opened in connection with this Agreement at any time within (i) 20 (twenty) days prior to any Interest Payment Date during the Availability Period, and (ii) 45 (forty-five) calendar days prior to any Interest Payment Date falling after the last day of the Availability Period, interest or any other amounts due in respect thereof on such Interest Payment Date shall be carried forward and become due and payable to the Lender on the next succeeding Interest Payment Date and (only in case of amounts credited) the respective amount shall be recalculated on the next succeeding Interest Payment Date.

### 6.2 Method of Payment

- a) Euro is the currency of account and payment for any sum due from the Borrower under this Agreement, provided however that each payment in respect of costs, expenses or taxes shall be made in the currency in which the costs, expenses or taxes are incurred. Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.
- b) On each date on which the Borrower is required to make a payment under this Agreement, the Borrower shall make the same amount available to the Lender (unless a contrary indication appears in this Agreement) in the place of payment with value date on the due date and in the currency of the amounts due.
- c) Any payment which is due to be made on a day that is not a Business Day shall

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be made on the preceding Business Day.

- d) All payments by the Borrower to the Lender under this Agreement shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in Vienna) as the Lender specifies.

### 6.3 Waiver of Set-off or Counterclaim

The Borrower hereby waives any and all rights of set-off or counterclaim which it may have with regard to any amount due to the Lender hereunder and agrees that it will not withhold payment for any reason whatsoever of any amounts due for payment. In particular the Borrower will not withhold payment of amounts due to the Lender under this Agreement on the grounds that it has any claims, rights of action, entitlements or demands against the Project Exporter or other suppliers in relation to the Project.

### 6.4 Payments free of Withholding Taxes and other Charges

All payments to be made by the Borrower under this Agreement shall be made without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, deductions, withholdings or other charges of whatsoever nature of the Republic of Ghana unless the Borrower is required by law to make such deduction. If so required by law, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that after making of such deduction of taxes, duties, deductions, withholdings or other charges the Lender receives on the due date for such payment a net sum equal to the sum which it would have received had no such deduction of taxes, duties, deductions, withholdings or other charges been required to be made. The Borrower shall promptly deliver to the Lender any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

### 6.5. Increased Costs

- a) If the result of (x) any change in, or the introduction of, any law, regulation or regulatory requirement; or (y) any change in the interpretation or application thereof or compliance by the Lender with any direction, request or requirement (whether or not having the force of law) of any central bank, monetary, regulatory or other authority (including, in each case, without limitation, those relating to capital adequacy, liquidity, reserve assets and special deposits) is to:
- (i) increase the cost to, or impose an additional cost on, the Lender in making or keeping its commitment available or maintaining or funding the Loan; and/or
  - (ii) reduce the amount payable or the effective return to the Lender under this Agreement; and/or

- b) The Lender shall promptly inform the Borrower of the application of payments made. Any instructions to the contrary given by the Borrower shall be disregarded.
- c) The Borrower hereby acknowledges that OeKB has under the OeKB Guarantee reserved towards the Lender the right to vary the appropriation of payments as set out above. In such case the Lender shall immediately inform the Borrower in writing and the Borrower shall accept the appropriation of OeKB and hereby undertakes to repay the Loan and any other amounts outstanding under this Agreement as then notified (including a detailed calculation) by the Lender to the Borrower.

6.7 Set-off

The Lender may set off any matured obligation due from the Borrower under this Agreement against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

7. CONDITIONS PRECEDENT

- a) No Borrowing is permitted before the date on which the Lender confirms to the Borrower that it has received in a form and substance satisfactory to it (or in respect of any such document or evidence, has waived receipt thereof) the following documents and evidences ("Closing Date"):
  - (i) a copy of the valid Purchase Agreement;
  - (ii) a certificate executed by a duly authorised officer of the Project Exporter at a date not more than fourteen days prior to the Closing Date substantially in the form of Annex 6 confirming that the Purchase Agreement in the form submitted to the Lender is in full force and effect (subject to the effectiveness of this Agreement only);
  - (iii) a legal opinion from the Attorney General and Minister of Justice of the Republic of Ghana substantially in the form of Annex 5 together with certified copies of any consents or authorisations referred to in such opinion;
  - (iv) specimen signatures of the person or persons authorised to sign and deliver this Agreement and to certify on behalf of the Borrower under this Agreement certified and/or legalised (in the manner applicable to international agreements/by Attorney General/Ministry of Justice of the Republic of Ghana

- (v) certified specimen signatures of the person or persons authorised to sign notices to be given to the Lender hereunder on behalf of the Borrower under this Agreement confirmed by the person who has signed this Agreement;
- (vi) the copies of the photo-identifications of the person or persons authorised to sign and deliver this Agreement and to sign notices to be given to the Lender hereunder on behalf of the Borrower certified and/or legalised (in the manner applicable to international agreements/by Attorney General/Ministry of Justice of the Republic of Ghana);
- (vii) confirmation by the process agent substantially in the form of Annex 7 of its acceptance of the process agency;
- (viii) payment of the fee for management and structuring according to Section 4.2;
- (ix) payment of all costs and expenses (if any) payable pursuant to Section 4.6 a);
- (x) the OeKB Guarantee;
- (xi) payment of the up-front part of the OeKB Guarantee premium according to Section 4.3 a);
- (xii) payment of the handling fee of OeKB according to Section 4.5;
- (xiii) a refinancing agreement with OeKB for the Credit Facility;
- (xiv) a side agreement between the Lender and the Project Exporter;
- (xv) certified copies of the relevant approval of (i) the Parliament of the Republic of Ghana, and (ii) the Cabinet of Government of the Republic of Ghana, approving the terms of, and the transactions contemplated by this Agreement;
- (xvi) a letter from the relevant authorities, in form and substance satisfactory to the Lender, as to availability and transferability of foreign currency necessary to make payments under this Agreement;
- (xvii) such other document, evidence or authorisation which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement or for the validity and enforceability of this Agreement;
- (xviii) such documents as the Lender may require as proof of compliance by it with the provisions of the Austrian Banking Act relating to money

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laundering and customer identification, which the Lender will use best endeavours to have in draft form and agree with the Borrower prior to signing; and

(xix) such other documents as the Lender may reasonably require or as OeKB may require on the issuance of the OeKB Guarantee.

- (b) Upon satisfaction of all the aforementioned conditions, the Lender shall forthwith notify the Borrower to that effect. If such conditions shall not have been satisfied within 60 (sixty) calendar days after the date of this Agreement (or within any other longer period as the Lender may agree), without prejudice to the Borrower's obligations under Sections 4.2 and 4.5, the Lender shall not be obliged to disburse any Borrowing hereunder.
- (c) Each of the above mentioned documents and notices shall be in English or German. If not in English or German a certified translation in English or German shall be attached to said document.

**8. EVENTS OF DEFAULT**

**8.1 Events of Default**

Each of the following events shall constitute an Event of Default:

- (a) The Borrower does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is payable unless its failure to pay is caused by administrative or technical error; and payment is made within 15 (fifteen) Business Days of its due date;
- (b) The Borrower does not comply with any provision of this Agreement (other than those referred to in Section 8.1 (a) above);
- (c) Any representation or statement made by the Borrower in this Agreement or any other document delivered by or on behalf of the Borrower under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made;
- (d) (i) Any External Indebtedness of the Borrower is not paid when due within any originally applicable grace period or is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) or (ii) any commitment for any External Indebtedness of the Borrower is cancelled or suspended by a respective creditor of the Borrower as a result of an event of default (however described) or (iii) any creditor of the Borrower declares any External Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however

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