

CONFIDENTIAL

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My Ref. No. OPCA.3/3/301

Your Ref. No.



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

30th November, 2018

WAIVER OF TAX LIABILITY ON GOODS, MATERIALS AND PROJECT VEHICLES TO BE IMPORTED FOR THE PROJECT "SERVICES FOR ENHANCEMENT OF THE NATIONWIDE WATER NETWORK MANAGEMENT" BY THE GHANA WATER COMPANY LIMITED (GWCL)

Cabinet at its Forty-fourth meeting held on Thursday, 29th November, 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 waiver of tax liability of Eight Hundred and two thousand, two hundred and sixty-two Euros (EUR802,262.00) (equivalent of GHS4,211,795.27) on materials and project vehicles to be imported for implementation of the project on "Services for Enhancement of the Nationwide Water Network Management".

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

4. Cabinet further directed that GWCL should:
- (a) collaborate with the National Information Technology Agency on the proposed technology to be used for the project; and
 - (b) develop a comprehensive plan on water management for the consideration of Cabinet.

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

Mercy Debrah-Karikari
MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR FINANCE

MEMORANDUM TO PARLIAMENT

BY

THE MINISTER FOR FINANCE

ON

**THE REQUEST FOR WAIVER OF TAX LIABILITY AMOUNTING TO €802,262.00
(EQUIVALENT TO GH¢4,211,795.27) ON PROJECT MATERIALS AND EQUIPMENT TO
BE IMPORTED FOR IMPLEMENTATION OF THE PROJECT "SERVICES FOR THE
ENHANCEMENT OF NATIONWIDE WATER NETWORK MANAGEMENT".**

GOG CONTRACT

20th December, 2018

1.0 ACTION REQUIRED

1.1 Parliament is respectfully invited to consider and approve the waiver of tax liability amounting to **€802,262.00**, equivalent to GH¢4,211,795.27 on project materials to be imported for implementation of the project "Services for the Enhancement of Nationwide Water Network Management".

1.2 It is noted that Parliament at its Forty-Sixth Sitting of the Third Meeting held on Monday, 18th 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 **€8,000,000.00** (Eight million Euros) to finance Services for the Enhancement of the Nationwide Water Network Management by the Ghana Water Company Limited (GWCL).

2.0 BACKGROUND

1.2. The project involves the establishment of a Geographic Information System (GIS) for some of the regional offices of GWCL as well as facilitating proper planning and maintenance of the systems, improvement of revenue collection, reduction in non-revenue water and public relation support of the company. This will be achieved through the use of modern geo-referenced data base information technologies, which will additionally enhance the quality of the administration of the company, as well as water service delivery to the general public. GWCL would acquire, or possibly develop digital maps of the regions and demographic data for this project in addition to all relevant hardware, software and training.

2.2 It is noted that rapid advancement in technology continues to exert its strong effect on GIS planning process in both hardware and software. Building and maintaining a GIS and Hydraulic Network Model is an investment which encompasses gathering and maintaining quality data, creating manageable workflows, providing supporting software and hardware, and user training and technical support. The effective management and control of this investment is

therefore an essential part of improving accountability, financial efficiency, risk management and relationships with users.

3.0 SCOPE OF WORKS

The works to be undertaken comprises but not limited to the following:

- Design and Engineering;
- Procurement of Software including AutoCAD, ArcGIS and Hydraulic Network Modelling;
- Procurement of Hardware including GPS Receivers, GPS Base Stations, Pressure loggers, Ultra-sonic flow meters, Leak detection instruments, Pipe locating Instruments, Work station, AO Photogrammetric Scanner, Plotters, LAN Support, External Hard Disk and GPS devices;
- Procurement of Data including Digital Maps and Satellite Images;
- Procurement of Equipment and logistics including vehicles;
- Procurement of the Services of a Supervising Engineer and Provision of Clients Monitoring Expenses;
- Training of Staff in GIS, Leak detection, Hydraulic Network Modelling and Approximation of Non-Revenue Water Calculations;
- Establishment of Local Area Network in all GWCL Regional Offices; and
- Pilot project in the creation of District Metering Areas (DMAs) in Accra.

4.0 OBJECTIVE

4.1 The objective for this phase of the project is to provide GWCL with a tool that will support the company to:

- develop a plan for systematic measurement and reduction of non-revenue water within the service area;
- develop an area map for flow control and the effective management of districts to the walk and cycle level;
- locate the strategic assets, conditions of the assets, develop applications and remotely manage these assets;
- increase revenue collection; and
- ensure sustainable potable water service delivery.

6.0 ASSESSMENT OF DUTIES, TAXES AND LEVIES TO BE EXEMPTED

6.1. Tax Assessment was conducted by Ghana Revenue Authority. Gross taxes and duties per GRA computation amounted to €895,006, equivalent to GH¢4,698,692. The estimates have been reviewed to arrive at a figure of €802,262.00, equivalent to GH¢4,211,795.27.

6.2. MoF computation took out inspection fee and withholding being third party payment and income tax on account respectively. The revised import duty and taxes and levies applicable is summarized as follows:

Description	IMP DUTY	IMP VAT/GETFUND	IMP NHIL	ECO LEVY	EXIM LEVY	SIL	Total(€)
Import	208,406	446,761	77,794	14,517	221,775	13,000	802,262

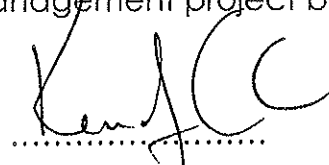
7.0 JUSTIFICATION FOR EXEMPTION FROM PAYMENT OF TAXES, DUTIES AND LEVIES

7.1 It is noted in the Contract Agreement for Supply, Works and Services, Remarks C.2.2. (Point 3) that the contract price does not include any taxes, duties, customs or similar imposts levied in the country of the Client.

7.2 Accordingly, per Article 174(2) of the 1992 Constitution, the tax liabilities on goods and materials have to be submitted to Parliament for consideration and approval.

8.0 CONCLUSION

Considering the potential benefits to be derived from the project, Parliament is respectfully requested to consider and approve, the waiver of the taxes and duties totaling **€802,262.00** for the implementation of the services for the execution of the Nationwide Water Network Management project by GWCL.



KEN OFORI-ATTA

(MINISTER FOR FINANCE)

ATTACHMENTS:

- a. Cabinet approval letter,
- b. Commercial Contract Agreement,
- c. Parliamentary Approval for the Commercial Agreement,
- d. Tax Assessment,
- e. Facility Agreement.

EUR 8,000,000.--

EXPORT CREDIT AGREEMENT 232.307

dated 11 / 05 / 2018

between

THE REPUBLIC OF GHANA

acting by and through the Ministry of Finance

as Borrower

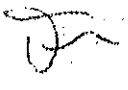
and

UNICREDIT BANK AUSTRIA AG

as Lender

in relation to the financing of the project

“Services for the Enhancement of the Nationwide Water Network Management”



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SIGNING PAGE

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This EXPORT CREDIT AGREEMENT No. 232.307 (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. SFC Umwelttechnik GmbH, Salzburg, Austria has concluded with the Ghana Water
Company Ltd, the Purchase Agreement (as defined below) for the works known as
"Services for the Enhancement of the Nationwide Water Network Management" with
a total Project value of EUR 8,000,000.

The Republic of Ghana approved on / / , the Project "Services for the
Enhancement of the Nationwide Water Network Management" and the Purchase
Agreement for a total amount of EUR 8,000,000.--. The purpose of this Agreement is
to finance this project by making available a soft loan amount of up to
EUR 8,000,000.--.

B. 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.

C. 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%.

D. 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.



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.

"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 232.307 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.

"Taking-Over Certificate" means the site acceptance certificate in the form provided for in the Purchase Agreement duly completed and signed by the parties thereto.

"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.
- 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 35.03 % (thirty five point zero three 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

If the Borrower fails to pay when due any amount payable by it under this Agreement, it shall pay interest on such overdue amount from the date of such failure up to the date of actual payment at the rate specified in Annex 3. Default interest as per this Section 3.3 shall be computed on the basis of the actual number of days elapsed and a year of 360 days and shall be due and payable on the Interest Payment Dates.

4. FEES AND EXPENSES

4.1 Commitment Fee

- a) The Borrower shall pay to the Lender for the period from and including the date of this Agreement to and including the last day of the Availability Period a non-refundable commitment fee at the rate specified in Annex 3.
- b) The commitment fee due in accordance with Section 4.1 a) shall be calculated by the Lender on (1) the balance of the Credit Facility that is undrawn on the Calculation Dates, (2) the actual number of days elapsed from one Calculation Date to the following (or the last day of the Availability Period in case of the last payment of commitment fee), and (3) a year of 360 days.

“Calculation Date” means:

- (i) in case of the first payment of commitment fee: the date of this Agreement; and
- (ii) in case of any succeeding payment of commitment fee: each Interest Payment Date

Each amount so calculated shall be paid in arrears by the Borrower to the Lender on the Interest Payment Date next following the Calculation Date on which the calculation of the commitment fee is made.

4.2 Management Fee

Within 30 (thirty) calendar days from the date of this Agreement, the Borrower shall pay to the Lender the non refundable fee for management and structuring specified in Annex 3 sub-clause 6 (“*Management Fee*”) calculated on the amount of the Credit Facility.

4.3 OeKB Guarantee premium

a) **OeKB Guarantee premium payable up-front**

Within 30 (thirty) calendar days from the date of this Agreement, the Borrower shall pay to the Lender (for the account of OeKB) the part of the OeKB Guarantee premium that is payable up-front in the amount specified in Annex 3.

b) **OeKB Guarantee premium payable as margin**

Starting with the first Interest Payment Date following the Closing Date, the Borrower shall pay to the Lender (for the account of OeKB) the remaining part of the OeKB Guarantee premium payable as a margin at the rate as calculated by OeKB and specified in Annex 3. Such part of the OeKB Guarantee premium shall be due and payable quarterly in arrears on each Interest Payment Date.

c) The final amount of the part of the OeKB Guarantee premium that is payable up-front and the part of the OeKB Guarantee premium that is payable as margin as well as the payment schedule of the part of the OeKB Guarantee premium that is payable as margin will be determined by OeKB upon issuance of the OeKB Guarantee. The Lender shall promptly notify the Borrower of such final amounts and the payment schedule accordingly and such notification shall become an integral part of this Agreement.

d) If the final amount of the part of the OeKB Guarantee premium payable up-front determined and notified as referred to in paragraph (c) above exceeds the amount specified in Annex 3, the Borrower shall promptly on first demand by the Lender indemnify the Lender for the amount of such surplus.

4.4 **Increased OeKB costs**

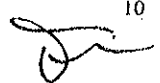
In the event of any amendment of this Agreement (including without limitation any change in the aggregate principal amount covered by the OeKB Guarantee or any extension of any of the Mandatory Repayment Dates), OeKB may re-calculate the amount of its charges in respect of the OeKB Guarantee and may charge an additional premium to the Lender. The Lender shall promptly notify the Borrower of any such increase in the charges in respect of the OeKB Guarantee and the Borrower shall within 15 Business Days of first demand by the Lender indemnify the Lender for the amount of any such additional premium.

4.5 **Handling fee of OeKB**

Within 30 (thirty) calendar days from the date of this Agreement, the Borrower shall pay to the Lender (for the account of OeKB) the handling fee in the amount specified in Annex 3.

4.6 **Cost and Expenses**

a) The Borrower shall promptly on demand pay the Lender 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 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 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 the 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 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
 - (iii) reduce the Lender's rate of return on its overall capital by reason of a change in the manner in which it is required to allocate capital resources to its obligations under this Agreement; and/or
 - (iv) require the Lender to make a payment or forgo a return on, or calculated by reference to, any amount received or receivable by it under this Agreement,

then the Lender shall notify the Borrower in writing of the occurrence of any of such cost, reduction, payment or forgone return and the Borrower shall pay to the Lender within fifteen (15) Business Days of demand any such cost, reduction, payment or forgone return already incurred or suffered by the Lender.

- b) Any certificate of the Lender as to such cost, reduction, payment or forgone return shall, in the absence of manifest error, be conclusive evidence and binding on the Borrower.
- c) For the purpose of this Section 6.5 the Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class thereof) on such basis as they consider appropriate.

6.6 Appropriation of Payments

- a) All payments received by the Lender from the Borrower hereunder will (unless



the Lender varies the order of application) be applied by the Lender towards payment of amounts due hereunder in the following order, and the Borrower hereby consents to the application of such payments in such order (and to any variation thereof by the Lender):

- (i) amounts due under Section 4.2 (*Management Fee*);
 - (ii) amounts due under Section 4.5 (*Handling fee of OeKB*);
 - (iii) amounts due under Section 4.3 (*OeKB guarantee premium*);
 - (iv) amounts due under Section 4.1 (*Commitment Fee*);
 - (v) amounts due under Section 4.6 (*Cost and Expenses*);
 - (vi) amounts due under Section 3.3 (*Default Interest*);
 - (vii) amounts overdue under Section 5.1 (*Mandatory Repayment*);
 - (viii) amounts due under Section 5.1 (*Mandatory Repayment*);
 - (ix) amounts due under Section 5.2 (*Voluntary Prepayment*);
 - (x) any other amounts due (if any).
- 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

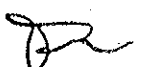
The Lender may set off any matured obligation due from the Borrower under this Agreement against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may 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 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 described). No Event of Default will occur under this Section 8.1 (d) if the aggregate amount of all External Indebtedness and/or commitments for External Indebtedness falling within points (i) to (iii) above is less EUR 30,000,000 (or its equivalent in any other currency).
- (e) any licences, consents, registrations or approvals (governmental or otherwise) required for the validity, enforceability or legality of this Agreement or the Loan or the performance thereof is withdrawn or ceases for any reason to be in full force and effect;
- (f) A moratorium is declared on the payment of any External Indebtedness of the Borrower or the Borrower is unable to pay its External Indebtedness as they fall due or commences negotiations with any or more of its foreign creditors with a view to the general readjustment or rescheduling of its External Indebtedness;
- (g) The Borrower ceases to be a member in good standing or becomes ineligible to use the resources of the International Monetary Fund.

- (h) It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.
- (i) The Borrower repudiates this Agreement or evidences an intention to repudiate this Agreement.
- (j) OeKB Guarantee and/or the refinancing agreement with OeKB for the Credit Facility ceases to be in full force and effect;
- (k) The Central Bank (or any other competent authority) of the Republic of Ghana fails duly to perform any act or diligence as are necessary to enable the Borrower to satisfy in euro the obligations of the Borrower under this Agreement;
- (l) Any event or series of events occur(s) which has, or in the reasonable opinion of the Lender could be expected to have, a material adverse effect to the ability of the Borrower to fulfil its obligations under this Agreement,

provided however that no Event of Default under Section 8.1 (b), (c), (d), (e) and (l) above will occur if such default is capable of remedy and is remedied within 30 (thirty) Business Days of the earlier of (i) the Lender giving written notice to the Borrower or (ii) the Borrower becoming aware of such default.

8.2 Action upon Events of Default

- (a) If an Event of Default has occurred and at any time thereafter shall then be continuing any or all of the following actions may be taken by the Lender:
 - (i) the Lender may by written notice to the Borrower declare the principal of and accrued interest in respect of the Loan and all other amounts payable to the Lender hereunder to be forthwith due and payable, whereupon the same shall become forthwith due and payable; and/or
 - (ii) the Lender may by written notice to the Borrower declare the Credit Facility terminated, whereupon the Lender's obligation to make and continue the Loan hereunder shall terminate immediately; and/or
 - (iii) such other actions as are permitted by law or contract, including, but not limited to, starting any of the proceedings specified in Section 10.2. ("*Arbitration*").
- (b) The Borrower hereby agrees to indemnify the Lender on demand against all losses, reasonable expenses and liabilities which the Lender may sustain as a consequence of any default (including but not limited to any interest paid by the Lender to lenders of funds borrowed by it to maintain any amounts in default). A certificate by a duly authorised officer of the Lender setting forth the amount of such losses, reasonable expenses and liabilities and the basis of calculation

thereof, when forwarded to the Borrower, shall (save for manifest error) be conclusive evidence of the amount of such losses, expenses and liabilities, provided that such certificate shall be supported by documents to give evidence of such losses, expenses and liabilities and such certificates shall be supported by appropriated documents.

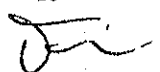
- (c) The Borrower shall, as soon as it becomes aware of the same, give written notice to the Lender of:
 - (i) any Event of Default; or
 - (ii) any condition, event or act which with the giving of notice or lapse of time or both or the fulfilment of any condition could lead to or constitute an Event of Default.

9. REPRESENTATIONS AND UNDERTAKINGS

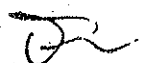
9.1 Representations

The Borrower makes as at the date of this Agreement the following representations:

- (a) the Borrower has the power to enter into this Agreement and to borrow hereunder and to execute, deliver and perform this Agreement and has taken all necessary action to authorise the terms and conditions of this Agreement and to authorise the execution, delivery and performance of this Agreement;
- (b) all authorisations, licenses, consents, registrations or approvals (governmental or otherwise) necessary on the part of the Borrower in connection with the execution, delivery, performance, validity or enforceability of this Agreement have been obtained or effected and are in full force and effect;
- (c) this Agreement constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms;
- (d) the execution, delivery and performance of this Agreement will not violate any provision of any existing law or regulation applicable to the Borrower or any other agreement, contract or undertaking to which the Borrower is a party or which is binding upon it or its assets;
- (e) the Borrower is not in default with the payment of its External Indebtedness the aggregate amount of which is more than EUR 30,000,000 (or its equivalent in any other currency) and no Event of Default has occurred or is continuing or might reasonably be expected to result from the making of any Borrowing;
- (f) the choice of Austrian law as the governing law of this Agreement and any judgment obtained in Austria in relation to this Agreement will be recognised and enforced in the Republic of Ghana.



- (g) the payment obligations of the Borrower under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by the applicable law.
- (h) under the law of the Republic of Ghana it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in the Republic of Ghana or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.
- (i) subject to Section 10.4 (b) the Borrower is not entitled to claim immunity for itself or any of its assets in relation to any proceedings taken in relation to this Agreement;
- (j) the Borrower's execution of this Agreement constitutes, and the Borrower's exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes.
- (k) the Borrower is a member in good standing and eligible to use the resources of the International Monetary Fund and up to the Closing Date there has been no material adverse change in the financial condition of the Borrower since the date of the IMF Country Report No. 16/321 for Republic of Ghana prepared by International Monetary Fund and published on October 3, 2016, which report is accepted by the Borrower.
- (l) In respect of this Agreement and in respect of its obligations and rights under this Agreement, the Borrower is acting as principal and for its own account and not as an agent or trustee or in any other capacity on behalf of any other party.
- (m) neither the Borrower nor the Project Buyer has created or agreed to create any Security on the whole or any part of the goods supplied pursuant to the Purchase Agreement.
- (n) to the best of its knowledge and belief, neither the Borrower nor the Project Buyer or any of its affiliates or officers, directors, employees or agents acting on its behalf have offered, given, insisted on, received or solicited any illegal payment or improper advantage to influence the action of any person in connection with this Agreement;
- (o) the Loan will not be used, lent, contributed or otherwise made available in any manner or for any purpose that is prohibited by Sanctions or would result in a violation of Sanctions by the Borrower or any of its agencies (or any of their officers, employees or agents acting on their behalf); and
- (p) neither the Borrower nor any of its agencies (nor any of their officers, employees or agents acting on their behalf), so far as it is aware, is currently a designated target of, or is otherwise a subject of, Sanctions.



The representations set out above shall survive until the final payment due under this Agreement is made by the Borrower to the Lender under this Agreement and shall be deemed repeated on each date of Borrowing and on each Interest Payment Date.

9.2 Undertakings

The Borrower hereby covenants and undertakes with and to the Lender as follows:

- (a) The Borrower shall (and shall use best endeavours, including but not limited to liaising with The Ministry of Water Resources Works and Housing (or the Ministry which is majority shareholder of the Project Buyer at the time), to ensure that the Project Buyer will):
 - (i) (x) maintain records adequate to identify the goods and services financed by the Loan, (y) disclose the use thereof in the Project and (z) record the progress of the Project, including the cost thereof;
 - (ii) allow the Lender's and/or OeKB's representatives to inspect the Project, the undertaking of the Project Buyer, the goods and services supplied pursuant to the Purchase Agreement and any relevant records and documents, provided that at least two weeks' prior written notice has been given to the Borrower, and further provided that there may be not more than two inspections per calendar year;
 - (iii) furnish to the Lender all such information as the Lender shall reasonably request concerning the expenditure of the Loan, the Project and the goods and services supplied pursuant to the Purchase Agreement.
- (b) The payment obligations of the Borrower under this Agreement shall rank at least *pari passu* with all other outstanding unsecured and unsubordinated External Indebtedness of the Borrower except for obligations that are mandatorily preferred by the applicable law.
- (c) The Borrower shall not (and shall use best endeavours, including but not limited to liaising with The Ministry of Water Resources Works and Housing (or the Ministry which is majority shareholder of the Project Buyer at the time), to ensure that the Project Buyer will not) create or permit to subsist any Security over any of the goods supplied pursuant to the Purchase Agreement other than any lien arising by operation of law.
- (d) The Borrower shall not (and shall use best endeavours, including but not limited to liaising with The Ministry of Water Resources Works and Housing (or the Ministry which is majority shareholder of the Project Buyer at the time), to ensure that the Project Buyer will not) amend, vary, novate, supplement, supersede, waive, suspend the operation of, repudiate or terminate any term, other than where the amendment is of a mere non-material nature, of the

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