

PARLIAMENTARY MEMORANDUM

BY

**KEN OFORI-ATTA
MINISTER FOR FINANCE**

ON THE

**ON-LENDING AGREEMENT BETWEEN THE GOVERNMENT OF
GHANA AND THE DEVELOPMENT BANK GHANA (DBG) FOR AN
AMOUNT OF ONE HUNDRED AND SEVENTY MILLION EUROS
(€170,000,000.00)**

ON THE

ESTABLISHMENT OF THE DEVELOPMENT BANK GHANA (DBG)

**28th
..... FEBRUARY 2023**

1 DECISION REQUESTED

Parliament is respectfully requested to consider and approve the on-lending agreement between the Government of Ghana, represented by the Ministry of Finance and the Development Bank Ghana (DBG) for an amount of One Hundred and Seventy Million Euros (€170,000,000.00) to resource the DBG.

An Executive Approval dated 15th February 2023 was granted for this memorandum to be laid before Parliament.

2 BACKGROUND INFORMATION

Access to long term finance, especially for the economic sectors, remains one of the challenges of most countries. Even though conventional banks such as commercial, industrial and investment banks have supported long term financing, the funds have mostly fallen short of the scope and volume required to sustainably support the economic sectors. Capital constraints therefore led to the establishment of the first development bank, Societe Generale de Belgique, in 1822 in Belgium to provide long term capital and technical assistance.

The establishment of development banks did not however, gain prominence until after World War II where the massive reconstruction of war-ravaged countries led to its proliferation.

Since then, countries have established development banks to fulfil financial, administrative and technical requirements for the development of transportation, electricity, communication, health, education, agriculture, industry, mining, among others. These banks are formed in response to failures of the capital markets to provide the financing necessary for entrepreneurial activity and industrialization.

In economies with significant capital constraints, these banks serve to alleviate capital scarcity and promote entrepreneurial action to boost new or existing industries.

These banks do not only provide long-term lending for large industrial and infrastructure projects but also for the new ventures needed to bear the costs of discovery of new technologies and productive processes. Additionally, information asymmetries and the inherent riskiness of development projects result in high interest rates deterring otherwise willing investors.

In Ghana, inadequate supply of long-term financing consistently constraints the ability of enterprises to invest in projects with long gestation periods, limiting economic growth and job creation. Government first hinted the idea of establishing a development bank in the 2017 Budget Statement and Economic Policy. The move is to provide innovative and long-term financing to support the economic transformation programme of government which is anchored on the Ghana Beyond Aid vision. In subsequent budget statements and economic policies, government has sought to make clear its intention to establish the bank as a vehicle for transforming industry, agriculture, agro-processing, manufacturing, ICT and tourism.

The DBG would therefore serve as a promotional bank with focus on mobilising medium and long-term funds to support targeted sectors essential for Ghana's development. It would provide partial credit guarantee facilities and help to develop the capital market.

Parliament in a letter dated 7th November 2020 approved a concessional loan facility agreement, for an amount of €170,000,000.00, between the Republic of Ghana and the European Investment Bank (EIB) to co-finance the establishment of the DBG.

The loan agreement was subsequently executed between the two parties in December 2020 under the following terms:

Grace period	5 years
Repayment period	15 years
Tenor	20 years
Indicative Interest rate	0.503%
Grant element	40.59%

3 ON-LENDING ARRANGEMENT

The Government of Ghana, through the Ministry of Finance is seeking to on-lend the €170,000,000.00 secured from the EIB to DBG. This is in accordance with the Government policy to on-lend the proceeds of financing agreements and any related financing costs from commercially or partial-commercially viable projects to implementing state institutions.

The execution of the on-lending agreement is also a condition precedent to the effectiveness of the EIB loan. DBG cannot enter into any contractual arrangement for the utilisation of the funds until the on-lending agreement has been executed.

We are submitting the on-lending agreement for Parliamentary approval following the establishment of the DBG.

Pursuant to Section 67 of the Public Financial Management Act, 2016 (Act 921), the Minister for Finance, prior to lending funds on behalf of the Government of Ghana, is required to receive from the Debt Management Office, in writing the:

- i. Result of the credit risk assessment;
- ii. Method used in the assessment; and
- iii. Proposed rate of interest.

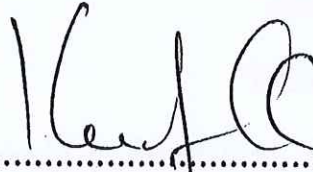
The credit risk assessment has been carried out by the Debt Management Office. However, because the DBG is a nascent bank and would serve as a wholesale bank for other financial institutions, the proposal is to on-lend the proceeds of the loan on the same EIB terms, save the interest rate, which would be fixed at 1% per annum.

This is meant to adequately resource the bank to play its wholesale banking role and to support, especially, the MSME sector, which is the backbone of government's transformation strategy.

DBG, as a wholesale bank, will lend funds to participating financial institutions (PFIs), who will make sub-loans to sub-borrowers. The wholesale banking model would strategically position DBG to support PFIs to lengthen their maturities, rather than consider financial institutions as competitors.

4 CONCLUSION

Given the immense benefit to be derived from the DBG and the urgency to sign the on-lending agreement to make the EIB loan effective, Parliament is respectfully requested to consider and approve the proposal set out in paragraph 1 above.



.....
KEN OFORI-ATTA
MINISTER FOR FINANCE

28th

....., FEBRUARY 2023



REPUBLIC OF GHANA

**OFFICE OF
THE PRESIDENT**

SECRETARY TO THE PRESIDENT

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Ref. No.

OPS 182/23/139

15th February, 2023

Honorable Minister:

**RE: REQUEST FOR EXECUTIVE APPROVAL:
ONLENDING AGREEMENT BETWEEN THE MINISTRY OF FINANCE AND THE
DEVELOPMENT BANK GHANA**

I refer to your letter dated 8th February, 2023, with reference number MoF/ERMERD/EIB/DBG/02, in respect of the above subject matter.

The President has granted approval for the onlending agreement between the Government of Ghana, represented by the Ministry of Finance, and the Development Bank Ghana (DBG) for an amount of One Hundred and Seventy Million Euros (€170,000,000.00) to resource the DBG.

I shall be grateful if you could take the requisite action on the above.

**NANA BEDIATUO ASANTE
SECRETARY TO THE PRESIDENT**

**THE HON. MINISTER
MINISTRY OF FINANCE
ACCRA**

ATTN: MR. KEN OFORI-ATTA

Cc: The Vice President
Jubilee House, Accra

The Chief of Staff
Jubilee House, Accra

Secretary to the Cabinet
Jubilee House, Accra



REPUBLIC OF GHANA

MINISTRY OF FINANCE

ON-LENDING AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF GHANA
(REPRESENTED BY THE MINISTER FOR FINANCE)

AND

DEVELOPMENT BANK OF GHANA

FOR

ONE HUNDRED AND SEVENTY MILLION EUROS (€170,000,000)

FOR SUPPORTING THE ESTABLISHMENT OF A FINANCIALLY SUSTAINABLE
DEVELOPMENT BANK

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ON-LENDING AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA AND DEVELOPMENT BANK GHANA

This On-Lending Agreement (hereinafter referred to as "the Agreement") is made this day of 2022 between the Government of Ghana (GoG), acting through the Ministry of Finance (hereinafter referred to as the "On-Lender") of P.O. Box MB40 and Digital Address: GA-144-2024, and represented by the Minister for Finance of the one part,

AND

The Development Bank Ghana (hereinafter referred to as "the Promoter" or "DBG") whose registered office is at 8th Floor, Accra Financial Centre, Liberia Road, Accra with registration number CS004662020 and duly represented by the Chief Executive Officer of the other part.

GoG and DBG shall collectively be referred to as "the Parties.

PREAMBLE

WHEREAS:

- A. The Government of Ghana (GoG) is desirous of increasing access to finance, in particular Long-Term Finance for Viable Micro, Small and Medium Enterprises (hereinafter referred to as "MSMEs") and Small Corporates through the establishment of a financially sustainable development bank (hereinafter referred to as the "Project");
- B. To achieve the above objective, the GoG sought an amount of One Hundred and Seventy Million Euros (€170,000,000.00) (hereinafter referred to as the Credit") from the European Investment Bank (hereinafter referred to as "the Bank");
- C. Under a Finance Contract dated 28th December, 2020, (hereinafter referred to as the "Finance Contract" and attached as an integral part of this Agreement as Appendix 1), between the On-Lender acting as Borrower therein and the Bank, the Bank agreed to provide the On-Lender with the Credit;
- D. In accordance with the Finance Contract, the On-Lender has agreed to on-lend the Credit (hereinafter referred to as the "On-lent Facility"), to the DBG, who in turn shall on-lend the funds received in foreign currency, to Participating Financial Institutions (hereinafter referred to as a "Financial Intermediary" and together the "Financial Intermediaries"), by means of Intermediated Loans, for the financing of Sub-Projects to be carried out by Ghanaian SMEs and Mid-Caps active in the agribusiness, manufacturing, information and communications technology and tourism sectors (each hereinafter referred to as a "Final Beneficiary" and together the "Final Beneficiaries" in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

CLAUSE 1 – DEFINITIONS AND INTERPRETATION

Except as otherwise stated in this Agreement or required by the context, words and phrases used in this Agreement shall have the same meaning assigned to them in the Finance Contract and in the General Conditions incorporated by reference to the Finance Contract.

'Business Day' means a day (other than a Saturday, Sunday, or public holiday) on which banks are open for business in Accra, Ghana.

'Debt Service Account' means the Ministry of Finance account designated to receive the Repayment Amount.

'Debt Service Reserve Account' means the bank account opened by the DBG and communicated to and acceptable by the On-Lender for the purpose of repaying the On-Lent Facility.

'Effective Date' means the Signing Date of this On-Lending Agreement.

'EIB Annex' means the annex to each Sub-Loan Agreement incorporating EIB's requirements listed in Article 6.3(c) of the Finance Contract and forming part of each Sub-Loan Agreement.

'Euro' means the lawful currency for the time being of the European Union.

'Final Repayment Date' means the last date specified in the tranche amortization Schedule as the maturity date of the On-Lent Facility.

'Interest Payment Date' means each date on which payment of accrued interest in respect of an Interest Period is due and shall be on March 15 and September 15 of each calendar year

'Interest Period' means the period for which interest is charged from the date of disbursement until the Interest Payment Date immediately following the disbursement.

'Intermediated Loans' means loans extended by Participating Financial Institutions (PFIs)

'Participating Financial Institutions' means the banks and other financial institutions that the Borrower shall on-lend the funds received in foreign currency to.

'Repayment Amount' means each amount payable by the DBG to the On-lender on each due date commencing from first Repayment Date to the Final Repayment Date.

'Repayment Date' means each date falling on March 15 and September 15 in each calendar year as set out in each tranche disbursement and amortization schedule up to and including the Final Repayment Date.

'Repayment Schedule' means the tranche amortization schedule agreed upon by the Parties from time to time.

'Signing Date' means the last date of signing this Agreement.

'Unpaid Sum' means any sum (excluding interest accrued on any outstanding principal) due and payable but unpaid by the DBG under this Agreement.

1.2 Construction

- 1.2.1 Unless a contrary indication appears, any reference in this Agreement to:
- A. the "**On-lender**", the "**DBG**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - B. an "**amendment**" includes a supplement, novation, replacement, assignment or re-enactment (and "**amended**" shall be construed accordingly);
 - C. a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - D. a "**regulation**" 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;
 - E. words importing the singular include the plural and vice versa.

CLAUSE 2 – THE ON-LENT FACILITY

- 2.1 The On-Lender hereby agrees to on-lend to the DBG on favourable terms, and the DBG agrees to accept, the One Hundred and Seventy Million Euros (€170,000,000.00) in accordance with the terms and conditions of this Agreement.
- 2.2 The DBG, in accordance with Article 6.1 of the Finance Contract, shall apply the proceeds of the On-lent Facility exclusively for funding the Sub-Loans dedicated to eligible Sub-Projects.
- 2.3 The DBG shall ensure that:
- 2.3.1 At least seventy percent (70%) of the On-Lent Facility shall be allocated to Sub-Loans dedicated to Sub-Projects undertaken by SMEs; and
 - 2.3.2 Maximum thirty percent (30% percent (70%) of the On-Lent Facility shall be allocated to Sub-Loans dedicated to Sub-Projects undertaken by Mid-Caps.

CLAUSE 3 – CONDITIONS PRECEDENT TO DISBURSEMENT AND DISBURSEMENT

- 3.1 The DBG shall submit the following documents to the On-Lender in order to trigger disbursement under this Agreement:
- a) Disbursement Request;
 - b) List of Authorised Signatories and accounts;
 - c) Details of the foreign currency account into which the proceeds of the On-Lent Facility are to be deposited.

- 3.2 The right of the DBG to withdraw the proceeds of the On-Lent Facility is subject to the right of the On-Lender as Borrower, to withdraw the proceeds of the Credit from the Bank, under the Finance Contract.
- 3.3 The Credit shall be disbursed in accordance with the terms and procedures in the Finance Contract.
- 3.4 The On-Lent Facility shall be credited directly by the Bank to the DBG.

CLAUSE 4 – DEBT SERVICE RESERVE ACCOUNT AND DEBT SERVICE ACCOUNT

- 4.1 To secure repayment of the On-Lent Facility and all interest and other sums due hereunder, the DBG shall, at its sole cost and expense for so long as any amount remains unpaid, open and maintain a Debt Service Reserve Account with the DSRA Bank, for the purpose of depositing in advance sufficient amounts solely for the repayment of the On-Lent Facility and notify same to the On-Lender within sixty (60) days from signing of this Agreement.
- 4.2 The On-lender shall notify the DBG of the Debt Service Account into which repayment of the On-Lent Facility, interest or any other charges related to this Agreement shall be made.
- 4.3 The DBG shall pay into the Debt Service Account, each Repayment Amount notified in writing to the DBG by the On-lender, on each Repayment Date as specified by the On-lender in the tranche Disbursement Notices and Amortization Schedules.
- 4.4 The DBG shall pay into the Debt Service Reserve Account, no later than thirty (30) days from the first Repayment Date, the first Repayment Amount as specified by the On-lender in the tranche Disbursement Notices and Amortization Schedules and shall until the Final Repayment Date maintain in the Debt Service Reserve Account an amount equal to the next Repayment Amount.
- 4.5 In the event that the DBG fails to honor its repayment obligations as outlined in clause 5 of this Agreement, in three cumulative instances, the On-lender shall increase the DSRA Repayment amount to twice the Repayment Amount.
- 4.6 The On-lender shall notify the DBG of any change to the Debt Service Account at least thirty (30) Business Days before the Repayment Date to which the change applies.

CLAUSE 5 – REPAYMENT AND PREPAYMENT

5.1 Repayment of the On-Lent Facility

- 5.1.1 The DBG shall repay the On-Lent Facility in the Repayment Amounts and on the Repayment Dates as per the tranche Disbursement Notices and the Tranche Amortization Schedule.
- 5.1.2 Repayment of the principal and interest shall be in Euros unless otherwise agreed by the parties.
- 5.1.3 The principal of the On-Lent Facility shall be paid semi-annually over a period of fifteen (15) years after a moratorium of five (5) years
- 5.1.4 Without prejudice to sub-Clause 5.1.1 above, all outstanding amounts of the On-Lent Facility shall be repaid on or before the Final Repayment Date.
- 5.1.5 The DBG shall pay in full to the On-lender all sums due under this Agreement without any deduction whatsoever for any taxes, duties, set-off or otherwise. In the event that any monies are required to be paid by law or regulation or to be deducted or withheld from any amount payable, the DBG shall be liable to pay such additional monies to the On-lender on the date the Repayment Amount is transferred in accordance with Clause 5.1.1 above.
- 5.1.6 Payments due hereunder, other than principal and interest, are payable within ten (10) business days of receipt by DBG of a demand by the On-lender, and shall be deemed paid when received by the On-lender in the Debt Service Account.
- 5.1.7 In the event that the On-lender incurs any additional costs or interest on the Credit repayments as a result of the DBG's repayment default, the DBG shall pay the On-lender the full amount of any costs and Default Interest incurred as a result of the DBG's default.

5.2 Prepayment

- 5.2.1 The DBG may, subject to giving a written notice to the On-lender not less than Twenty (20) Business Days prior, or without such notice is required to prepay on the next succeeding Interest Payment Date, the whole or any part of the On-Lent Facility.
- 5.2.2 Together with any voluntary prepayment, the DBG shall on the date of prepayment pay to the On-lender accrued interest on the amount prepaid.

CLAUSE 6 – INTEREST

6.1 Calculation of Interest

- 6.1.1 The rate of interest applicable to this Agreement for each Interest Period shall be [one] percent (1.0%) per annum.
- 6.1.2 Interest shall be charged on the portion or all of the On-Lent Facility disbursed from the dates at which disbursements are made, to the Interest Payment Date.
- 6.1.3 Any interest, commission or fee accrue from day to day and shall be computed on the basis of a 360-day year and 30-day month.
- 6.1.4 The DBG shall pay the interest charge on the On-Lent Facility or any portion thereof in respect of each Interest Period to coincide with the repayment dates as stated in each tranche amortisation Schedule.

7.1 Default Interest

- 7.1.1 If the DBG fails to pay any Repayment Amount, or interest payable under this Agreement on its due date, interest shall accrue on such Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is not less than 2% per annum higher than the rate of interest under clause 6.1 of this agreement.
- 7.1.2 Any interest accruing under Clause 7.1 (Default interest) shall be payable by the DBG, on the next Interest Payment Date together with any other payments due.
- 7.1.3 For the avoidance of doubt, Default Interest (if unpaid) arising on an Unpaid Sum will not be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain due and payable at the next Interest Repayment Date.

CLAUSE 8 – COSTS AND EXPENSES

8.1 Costs and Expenses

The DBG shall promptly on demand, pay to the On-lender the amount of all costs and expenses (including legal fees) incurred by the On-lender in connection with a default under, or the preservation or enforcement of any rights under this Agreement.

CLAUSE 9 – OBLIGATIONS OF THE DBG

- 9.1 The DBG shall fully collaborate with the On-lender at all times in order to ensure timely compliance with the repayment requirements set forth in this Agreement, including but not limited to:
- 9.1.1 Ensuring that one Repayment Amount is paid into and maintained throughout the repayment period in the Debt Service Reserve Account in accordance with Clause 4 above.
 - 9.1.2 Maintaining a financial management system and preparing financial statements in accordance with consistently applied accounting standards acceptable to the On-lender both in a manner adequate to reflect its operations and financial condition, including the operations, resources and expenditures related to the Projects.
 - 9.1.3 Having such financial statements audited annually by an independent auditor acceptable to the On-lender, in accordance with consistently applied auditing standards acceptable to the On-lender, and promptly furnishing the audited statements to the On-lender.
 - 9.1.4 Preparing and furnishing to the On-lender any and all such information as the On-lender may reasonably request relating to the Project
- 9.2 The DBG shall fully collaborate with the On-lender at all times in order to ensure timely compliance with the repayment requirements set forth in this Agreement.
- 9.3 The DBG shall implement the Project in accordance with the provisions of the Environmental and Social Management System.
- 9.4 The Promoter shall implement its Anti-Money Laundering/ Combating the Financing of Terrorism (AML/CFT) programme.
- 9.5 The DBG shall: (a) maintain a separate financial management system for implementing the Project; (b) prepare financial statements in accordance with consistently applied accounting standards acceptable to the On-Lender as DBG and the Bank, adequate to reflect its operations and financial condition; and (3) register separately the operations, resources and expenditures related to the Project.
- 9.6 The DBG shall carry out the Project with due diligence and efficiency, in conformity with appropriate administrative, financial, technical, environmental and social practices, under the supervision of qualified and experienced management assisted by competent staff in adequate numbers, and in accordance with the provisions of this Agreement.
- 9.7 The DBG shall promptly inform the On-Lender and the Bank of any condition which interferes or threatens to interfere with the progress of the Project and the performance of its obligations under this Agreement.

9.8 The DBG shall neither take nor concur in any action which would have the effect of amending, abrogating, assigning or waiving this Agreement.

9.9 The DBG shall furnish or forward to the On-Lender each quarter, details of all withdrawals and disbursements which the DBG makes.

CLAUSE 10 – OBLIGATIONS OF THE ON-LENDER

10.1 The On-lender shall:

10.1.1 Take or permit to be taken all action to enable the DBG to comply with its obligations under this Agreement;

10.1.2 Take remedial actions against the DBG if the DBG fails to comply with any of its obligations under this Agreement;

10.1.3 Exercise its rights under this Agreement in such manner as to protect its interests and ensure repayment of the On-Lent Facility.

CLAUSE 11– DBG UNDERTAKINGS AND REPRESENTATIONS

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

11.2 Use of On-Lent Facility and availability of other funds

11.2.1 The DBG shall:

(a) Cause each Financial Intermediary to use any funds made available to them by the DBG from the proceeds, and solely for the purpose of funding the Sub-Loans dedicated to eligible Sub-Projects.

(b) Ensure that at least 70% (seventy per cent) of the On-Lent Facility shall be allocated to Sub-Loans dedicated to Sub-Projects undertaken by SMEs; and maximum 30% (thirty per cent) of the On-Lent Facility shall be allocated to Sub-Loans dedicated to Sub-Projects undertaken by Mid-Caps.

11.3 Intermediated Loan Agreements and Sub-Loan Agreements

11.3.1 DBG shall ensure that:

(a) upon disbursement by the On-Lender, sums advanced by the On-Lender hereunder shall be made available to Financial Intermediaries that have been previously approved by the On-Lender and the Bank;

- (b) the financing under the Intermediated Loan Agreements and the Sub-Loan Agreement shall conform at all times with the Eligibility Criteria and the Side Letter.

11.3.2 DBG shall undertake:

- (a) to obtain the Bank's approval on the first two (2) Environmental and Social Management System to be implemented by Financial Intermediaries before any disbursement under an Intermediated Loan Agreement; and
- (b) to subject any disbursement under an Intermediated Loan Agreement to the implementation by each relevant Financial Intermediary of an Environmental and Social Management System in substance aligned to the ones approved by the Bank in accordance with Paragraph 11.3.2(a) above;

11.3.3 The DBG shall ensure that:

- (a) It inserts on its relevant website(s) information acceptable to the Bank on the Bank's activity in favour of eligible Financial Intermediaries and Final Beneficiaries, including eligibility criteria; all references and information made public on the DBG's relevant website(s) related to the Bank shall be previously agreed between the Bank and DBG;
- (b) It provides to the Bank a hyperlink to all pages on its relevant website(s) at which the DBG inserts any references or information pursuant to Clause 11.3.3(a), including all amendments and supplements to such page(s) and any successor page(s);
- (c) it applies and complies with the Recommendations of the Financial Action Task Force and the sanctions imposed by the United Nations, the European Union and the United States of America.
- (d) each Intermediated Loan Agreement that is entered into with a Financial Intermediary is substantially in the same form and substance as the model Intermediated Loan Agreement approved by the Bank pursuant to Article 6.3(a)(vi) of the Finance Contract;
- (e) the EIB annex included in each Sub-Loan Agreement that is entered into with a Final Beneficiary is substantially in the same form and substance as the EIB annex approved by the Bank;
- (f) each Financial Intermediary and Final Beneficiary complies with all regulatory, anti-money laundering and combating financing terrorism requirements applicable to it, including under applicable laws, rules, decisions and regulations, as well as the instructions of relevant regulatory authorities;

- (g) each Intermediated Loan Agreement includes an undertaking that each Financial Intermediary shall deliver to the DBG such further information, evidence or document concerning the compliance with the due diligence requirements of the DBG, including without limitation to comply with "know your customer" (KYC) or similar identification procedures, when requested and within a reasonable time;
- (h) the Financial Intermediaries will not modify the EIB Annex without the prior written consent of the Bank; and

11.3.4 The DBG shall ensure that in each Intermediated Loan Agreement to which a Financial Intermediary is a party, each Financial Intermediary shall:

- (a) represent to the DBG that, to the best of its knowledge, no funds invested in the Sub-Projects concerned by it or any of its controlling entities are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism, as well as undertakes to promptly inform the DBG if at any time it becomes aware of the illicit origin of any such funds;
- (b) undertake not to
 - i. enter into a business relationship with any Sanctioned Person, or
 - ii. make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;
- (c) undertake to take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who:
 - i. becomes a Sanctioned Person; or
 - ii. is the subject of a final and irrevocable court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties

in order to ensure that such member is excluded from any activity in relation to any funds made available to it under the relevant Intermediated Loan Agreement or in relation to the relevant Sub-Project;

- (d) unless prohibited by law, undertake to promptly inform the DBG of a genuine allegation, complaint or information with regard to Prohibited Conduct related to any Sub-Project financed by it;
- (e) undertake not to engage in (and not to authorise or permit any Affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with any Sub-Project, any tendering procedure for any Sub-Project, or any transaction contemplated by the Intermediated Loan Agreement, and inform the DBG immediately upon becoming aware of such a situation;

- (f) undertake to take such action as the DBG shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct; and
- (g) undertake to apply and comply with the Recommendations of the Financial Action Task Force and the sanctions imposed by the United Nations, the European Union and the United States of America.

11.3.5 The DBG shall ensure that the Financial Intermediaries will ensure that in each Sub-Loan Agreement to which a Final Beneficiary is a party each Final Beneficiary:

- (a) undertakes to use the Sub-Loan for the financing and/or implementation of the Sub-Project concerned;
- (b) undertakes to complete the Sub-Project within a period of time specified in the Sub-Loan Agreement;
- (c) shall ascertain, for all Sub-Projects, that all goods, services and works relating to Sub-Projects are procured following fair and transparent procedures in order to seek the most economically advantageous offer in the interest of the Sub-Projects, taking into account quality and timing and following appropriate procedures in view of the circumstances and local legislation.
- (d) had the Final Beneficiary been incorporated in an EU country, the Sub-Project of the Final Beneficiary would not have been subject to (mandatory) public procurement under EU procurement laws (link: Guide to Procurement for projects financed by the EIB);
- (e) undertakes to deliver to the Financial Intermediary such further information, evidence or document concerning the compliance with the due diligence requirements of the Financial Intermediary, including without limitation to comply with "know your customer" (KYC) or similar identification procedures, when requested and within a reasonable time;
- (f) undertakes to:
 - i. implement and operate the relevant Sub-Project, as the case may be, in compliance with Environmental and Social Standards and in conformity with Environmental Laws (as further specified in the Finance Contract and upon the On-Lender's request, supply evidence to verify its fulfilment of that obligation; and
 - ii. obtain, maintain and comply with requisite Environmental or Social Approvals for the Sub-Project; the DBG undertakes to exercise such rights in respect of any Final Beneficiary at the specific request of the Bank and On-lender and to transmit to the Bank and On-Lender forthwith any material information received in relation to such request;

- (g) undertakes to execute and operate the Sub-Project in accordance with the relevant laws of a jurisdiction where such Sub-Project is carried out;
- (h) undertakes to keep books and records of all financial transactions and expenditures in connection with the Sub-Project, in which full and correct entries shall be made of all financial transactions and the assets and business of such Final Beneficiary, including to the extent applicable, expenditures in connection with the Sub-Project;
- (i) represents to the Financial Intermediary that, to the best of its knowledge, no funds invested in the Sub-Projects concerned by it or any of its controlling entities are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism, as well as undertakes to promptly inform the Financial Intermediary if at any time it becomes aware of the illicit origin of any such funds;
- (j) undertakes to:
 - i. allow persons designated by the Bank and the On-lender and, when required by the relevant mandatory provisions of EU Law, the competent EU institutions (including the European Court of Auditors, the European Commission, the European Anti-Fraud Office), as well as persons designated by the foregoing:
 - to visit the sites, installations and works comprising any Sub-Project and to conduct such checks as they may wish;
 - to interview representatives of any Final Beneficiary, and not obstruct contacts with any other person involved in or affected by any Sub-Project; and
 - to conduct such on the spot audits and checks as they may wish and to review any Final Beneficiary's books and records in relation to the execution of any Sub-Project and to be able to take copies of related documents.
 - ii. provide the On-lender and the Bank (or any such other institution or body), or ensure that the Bank (or any such other institution or body) is provided, with all necessary assistance for the purposes described in this Paragraph 11.3.5(j).
- (k) requests any disbursements from, and makes any payments to the Financial Intermediary, under a Sub-Loan Agreement using bank account(s) in the name of such Final Beneficiary held with a duly authorised financial institution in the jurisdiction where such Final Beneficiary is incorporated or has its place of residence or where the Sub-Project is undertaken by such Final Beneficiary;
- (l) undertake not to:
 - i. enter into a business relationship with any Sanctioned Person, or
 - ii. make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;

- (m) unless prohibited by law, undertakes to promptly inform the relevant Financial Intermediary of a genuine allegation, complaint or information with regard to Prohibited Conduct related to any Sub-Project it undertakes;
- (n) undertake not to engage in (and not to authorise or permit any Affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with any Sub-Project, any tendering procedure for any Sub-Project, or any transaction contemplated by any Sub-Loan Agreement, and inform the Financial Intermediary immediately upon becoming aware of such a situation;
- (o) undertake to take such action as the Financial Intermediary shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct;
- (p) undertake to ensure that contracts financed by the Sub-Loan Agreement include the necessary provisions to enable the Final Beneficiary to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Sub-Project;
- (q) undertakes to facilitate investigations by the On-lender and/or the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the On-Lender and/or the Bank, or ensure that the On-lender and/or the Bank are provided, with all necessary assistance for the purposes described in Paragraphs 11.3.5(o) and 11.3.5(p) of the Finance Contract;
- (r) acknowledges that the On-lender and the Bank may be obliged to communicate information relating to the Final Beneficiary, the Sub-Loan and/or any Sub-Project to any competent institution or body of Ghana and the European Union respectively including the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the laws of the European Union in accordance with the relevant mandatory provisions of European Union law;
- (s) comply with the ILO Standards; and
- (t) and undertakes to prepay the Sub-Loan in case of non-compliance with the above terms and conditions.

11.4 Compliance with laws

The DBG shall comply and make sure that the Financial Intermediaries and Final Beneficiaries will comply, in all respects with all laws and regulations to which they or any Sub-Project is subject.

11.5 Integrity

11.5.1 Prohibited Conduct

- (a) The DBG shall not engage in (and shall not authorise or permit any other person acting on its behalf to engage in) any Prohibited Conduct (as defined in the Finance Contract) in connection with the Sub-Project, any tendering procedure for the Sub-Project, or any transaction contemplated by the Finance Contract.
- (b) The DBG undertakes to take such action as the On-lender and/or the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Sub-Project.
- (c) The DBG undertakes to ensure that contracts financed by this On-Lent Facility include the necessary provisions to enable the DBG to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Sub-Project.

11.5.2 Sanctions

The DBG shall not:

- (a) enter into a business relationship with any Sanctioned Person (as defined in the Finance Contract under definitions); or
- (b) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person.

11.5.3 DBG's officers and management bodies

The DBG undertakes to take within a reasonable timeframe appropriate measures to the extent permitted by applicable law in respect of any of its agents, officers, members of any of its agents who:

- (i) becomes a Sanctioned Person,
- (ii) is the subject of a final and irrevocable court ruling in connection with a Prohibited Conduct perpetrated in the course of the exercise of their professional duties, or
- (iii) is charged with or otherwise formally indicted in respect of a Prohibited Conduct,

in order to ensure that such member is suspended, dismissed or in any case excluded from any of the DBG's activity in relation to the On-Lent Facility and to the Project.

CLAUSE 12- INFORMATION AND VISITS

12.1 Information concerning Sub-Projects, Financial Intermediaries and Financial Beneficiaries

12.1.1 The DBG shall:

- a) supply to the Bank (within a reasonable time) a list of all Financial Intermediaries who have signed Intermediated Loan Agreements;
- b) within one (1) month following the end of each Allocation Period, provide to the Bank evidence that the entire amount disbursed to the DBG under the Tranche concerned has been allocated by the Financial Intermediaries to eligible Sub-Projects;
- c) semi-annually as from the Disbursement Date of the first Tranche, provide to the Bank a portfolio report in the form set out in the Side Letter;
- d) upon request from the Bank, promptly deliver to the Bank:
 - i. all documents and information necessary to enable the Bank to verify compliance by On-Lender, DBG, any Financial Intermediary or any Final Beneficiary in accordance with clause 11.3; or
 - ii. copies of Intermediated Loan Agreements and Sub-Loan Agreements and any addendum or amendment thereto and evidence of disbursements made thereunder;
 - iii. any other information or further document concerning:
 - 1) the financing, procurement, implementation, operation and environmental impact of, or for, the Sub-Projects;
 - 2) customer due diligence matters of, or for, a Financial Intermediary or a Final Beneficiary; and
 - 3) any Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) customer due diligence performed by any Financial Intermediary,as the Bank may reasonably require within a reasonable time;
- e) promptly inform the Bank of:
 - i. any default, fact or event, which entitles, or which would with the lapse of time entitle the DBG to demand prepayment from

- a Financial Intermediary pursuant to an Intermediated Loan Agreement;
- ii. any notice of intention to prepay given by any Financial Intermediary in accordance with an Intermediated Loan Agreement;
 - iii. any prepayment by a Financial Intermediary;
 - iv. any action or protest initiated or any objection raised by any third party or any genuine complaint received by the On-Lender, DBG or a Financial Intermediary or any Environmental or Social Claim that is to their knowledge commenced, pending or threatened against the On-Lender, DBG, a Financial Intermediary or a Final Beneficiary with regard to environmental, social or other matters affecting any Sub-Project;
 - v. any fact or event known to the On-Lender, DBG or a Financial Intermediary, which may substantially prejudice the financial condition of the DBG or any Financial Intermediary;
 - vi. any non-compliance by the On-Lender, DBG, any Financial Intermediary or any Final Beneficiary with any applicable Environmental and Social Standard;
 - vii. any suspension, revocation or modification of any Environmental or Social Approval applicable to the On-Lender, DBG, any Financial Intermediary or any Final Beneficiary;
 - viii. should they become aware of any fact or information confirming or reasonably suggesting that:
 - (1) any Prohibited Conduct has occurred in connection with any Sub-Project; or
 - (2) any of the funds invested in the share capital of a Financial Intermediary or in connection with any Sub-Project was derived from an illicit origin including products of Money Laundering or linked to the Financing of Terrorism; and
 - ix. any fact or event which results in (1) any public official of the DBG or any member of the management bodies of any Financial Intermediary or any Final Beneficiary or (2) any of the controlling entities of any Financial Intermediary or any Final Beneficiary, being a Sanctioned Person,

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

12.2 Information concerning The DBG

The DBG shall:

- (a) deliver to the Bank such further information, evidence or document concerning:
 - i. its general financial situation; and
 - ii. compliance with the due diligence requirements of the Bank for the DBG, the Promoter of any Financial Intermediary, including, but not limited to "know your customer" (KYC) or similar identification procedures,when requested and within a reasonable time; and
- (b) deliver to the Bank an annual report on the implementation of the DBG's Environmental and Social Management System in content and in form as agreed from time to time with the Bank;
- (c) inform the Bank immediately of:
 - i. any fact which obliges it to prepay any financial indebtedness or any European Union funding;
 - ii. any event or decision that constitutes or may result in a Prepayment Event;
 - iii. any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the DBG under this Agreement;
 - iv. any breach of this Agreement;
 - v. any Event of Default having occurred or being threatened or anticipated;
 - vi. any fact or event which results in any member of its public officials being a Sanctioned Person;
 - vii. unless prohibited by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the DBG or its public officials in connection with this Agreement, the Intermediated Loan Agreements, the Sub-Loan Agreements or the Sub-Projects;
 - viii. any measure taken by the DBG pursuant to 11.5 of this Agreement; and

- ix. any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change.

12.3 Visits, Rights of Access and Investigations

- (a) The DBG shall ensure that the Financial Intermediaries will allow persons designated by the Bank, as well as persons, designated by the competent European Union institutions including the Court of Auditors of the European Union, the European Commission and the European Anti- Fraud Office to:
 - i. visit the sites, installations and works comprising the Sub-Projects and to conduct such checks as they may wish for purposes connected with this Contract and the financing of the Sub-Projects;
 - ii. interview representatives of the On-Lender, DBG, any Financial Intermediary and/or any Final Beneficiary, and not obstruct contacts with any other person involved in or affected by the On-Lent Facility and/or Sub-Projects; and
 - iii. review the On-Lender, DBG, Financial Intermediary and/or any Final Beneficiary's books and records in relation to the On-Lent Facility and/or the Sub-Projects and to be able to take copies of related documents to the extent permitted by the law.
- (b) The On-Lender shall facilitate investigations by the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this clause.
- (c) The On-Lender acknowledges, and the DBG and each Financial Intermediary shall be deemed, when taking benefit of the proceeds of the On-Lent Facility, to acknowledge that the Bank may be obliged to communicate information relating to the On-Lender, DBG, each Financial Intermediary and the Sub-Projects to any competent institution or body of the European Union including the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the laws of the European Union.

12.3.1 Integrity and Audit Rights

The DBG shall ensure that, all contracts under the Project procured after the date of signature of this Agreement provide for:

- (a) the requirement that the relevant party promptly informs the on-lender, DBG and the Bank of a genuine allegation, complaint or information with regard to Prohibited Conducts related to the Project;
- (b) the requirement that the relevant party keeps books and records of all financial transactions and expenditures in connection with the Project; and
- (c) the On-lender and Bank's right, in relation to an alleged Prohibited Conduct, to review the books and records of the relevant party in relation to the Project and to take copies of documents to the extent permitted by law.

12.3.2 On-lending of funds

- (d) The DBG shall immediately inform the On-lender of the occurrence of any termination event under the On-lending Agreement, together with details of proposed remedial actions;
- (e) If sums disbursed by the On-lender to the DBG pursuant to the On-lending Agreement are:
 - (i) voluntarily prepaid by the DBG to the On-lender; or
 - (ii) repaid by the DBG to the On-lender in consequence of a demand for repayment under the On-lending Agreement.

CLAUSE 13– EVENTS OF DEFAULT

13.1 It is an Event of Default if the DBG does not pay on the due date any amount payable under this Agreement at the place and in the currency in which it is expressed to be payable unless:

13.1.1 the failure is caused by administrative and technical error and duly notified to the Lender; and

13.1.2 payment is made within seven (7) Business Days from the due date.

13.2 It is an Event of Default if the DBG defaults on any of its obligations (other than a payment obligation) under this Agreement.

CLAUSE 14– REMEDIES TO THE ON-LENDER

14.1 Suspension

14.1.1 The On-Lender shall give the DBG written notice of its intention to suspend the right of the DBG to receive any unwithdrawn amount of the On-Lent Facility if the DBG fails to comply with any of its obligations under this Agreement.

14.1.2 The On-Lender shall stipulate a period, not less than 30 days, for the DBG to demonstrate compliance with clause 14.1.1.

14.1.3 In case of failure by the DBG to demonstrate compliance by the expiration of the given period, the On-Lender may suspend the right of the DBG to receive any unwithdrawn amount of the On-Lent Facility.

14.2 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing, the On-lender may, by notice to the DBG declare that all or part of the On-Lent Facility with accrued interest, and all other amounts accrued or outstanding under this Agreement be immediately due and payable on demand, whereupon it shall become immediately due and payable on demand;

14.3 Termination

If the DBG continues to default in its obligations despite notices to it from the On-Lender, the On-Lender shall terminate the agreement.

CLAUSE 15-- INDEMNITIES

In the event that the On-lender incurs any additional costs or interest on the On-Lent Credit as a result of the DBG's default, the DBG shall fully indemnify the On-lender for any losses the On-lender may incur as a result of the default.

CLAUSE 16 – ADMINISTRATION

16.1 Partial payments

16.1.1 If the On-Lender receives a payment that is insufficient to discharge all the amounts due and payable by the DBG under this Agreement, the On-Lender may apply that payment towards the obligations of the DBG under this Agreement in the following order:

- (A) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the On-lender under this Agreement;
- (B) secondly, in or towards payment of any pro rata default interest due but unpaid under this Agreement;
- (C) thirdly, in or towards payment pro rata of any accrued interest due but unpaid under this Agreement;

(D) fourthly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

(E) fifthly, in or towards payment pro rata of any other sum due but unpaid under this Agreement.

16.1.2 The On-lender may at its own discretion vary the order set out in Clause 16.1.1 above.

16.2 Business Days

16.2.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

16.2.2 During any extension of the due date for payment of any principal or Unpaid Sum under Clause 16.2.1 above, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

CLAUSE 17 – MISCELLANEOUS

17.1 The Parties may, by written agreement, amend this Agreement or any provisions thereof. Any amendment of this Agreement shall not be effective until the consent in writing of the Bank has been obtained.

17.2 Except as the Bank shall otherwise agree, neither Party shall assign, abrogate or waive this Agreement or any provision thereof.

17.3 In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Finance Contract, the provisions of the Finance Contract shall prevail.

17.4 This Agreement is not subject to stamp duty and registration fees.

17.5 Pari passu ranking

The DBG shall ensure that its payment obligations under this Agreement ranks and continues to rank at least pari passu with all of its other unsecured and unsubordinated Indebtedness.

17.6 Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

17.7 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the On-Lender, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

17.8 This Agreement shall come into force on the date that it is signed by both Parties.

CLAUSE 18 – GOVERNING LAW

This Agreement shall be governed by and in accordance with the Laws of the Republic of Ghana.

CLAUSE 19 – DISPUTE RESOLUTION

19.1 The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or its interpretation.

19.2 Any dispute between the parties not settled amicably within Forty-Five (45) Business Days of written notice by the Party seeking amicable settlement, shall first be referred to for determination by mediation. If the dispute cannot be settled through mediation, either Party may submit it for settlement by arbitration in the Republic of Ghana in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798) and the rules of Arbitration of the Ghana Arbitration Centre

19.3 The arbitration shall be by a tribunal of three (3) arbitrators. Each party shall appoint one arbitrator and the third arbitrator shall be appointed by agreement between the arbitrators so appointed, or in default of agreement between them, by the Ghana Arbitration Centre.

19.4 Any award rendered shall be final and binding and may be enforced by either Party in any court of competent jurisdiction.

19.5 The language of arbitration shall be English.

CLAUSE 20– TERM OF AGREEMENT AND EXPIRATION

20.1 This Agreement shall from Signing Date remain in force for a period of twenty (20) years or any later period as the Parties may agree.

20.2 Upon the full payment of the entire principal including any accrued interest on the On-Lent Facility and any other fees, costs and expenses stipulated herein, this Agreement and all obligations and rights created herein shall expire forthwith.

CLAUSE 21 – NOTICES

21.1 Notices and other communications with fixed periods shall be by hand delivery, email, registered letter or other means of delivery with evidence of receipt by the addressee.

The date of registration in the case of a registered letter only when it has been left at the relevant address or if mailed at least Five (5) Business Days after being deposited in the post, postage prepaid, in an envelope addressed to that address; or if by way of email, when it is acknowledged by the intended recipient of the email, shall be conclusive for the determination of a period.

21.2 Notices and other communication required to be sent under this Agreement shall be sent to the respective addresses below, or to any other address, department or officer previously notified in writing by either party to the other as its new address, department or officer for such purposes, by not less than five (5) Business Days' notice

21.3 Any notice, request, approval, or consent required or permitted to be given or made pursuant to this Agreement shall be in writing.

21.4 The following addresses are specified for the purposes of this Agreement:

For the On-lender:

The Chief Director
Ministry of Finance
P.O. Box MB40
Accra, Ghana
Tel: 0302 66 53 10
Fax: 0302 66 38 54
Email: chiefdirector@mofep.gov.gh

For the DBG:

The Chief Executive Officer
Development Bank Ghana
8th Floor
Accra Financial Centre
Ridge, Accra, Ghana
Tel:
Email: k.duker@dbg.com.gh

CLAUSE 22 – COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each of which shall be an original with the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

IN WITNESS WHEREOF the Parties hereto acting through their duly authorized representatives have signed this Agreement the day and year first above written.

FOR THE ON-LENDER

FOR THE DBG

SIGNATURE: _____

SIGNATURE: _____

NAME:

NAME:

POSITION:

POSITION: CHIEF EXECUTIVE OFFICER

IN THE PRESENCE OF:

WITNESS

NAME:

NAME:

POSITION:

POSITION:

SIGNATURE:

SIGNATURE:

SCHEDULE 1: EIB ANNEX

The Final Beneficiary being SMEs and MidCaps, DBG shall:

- (i) undertake to use this loan for the financing and/or implementation of the Project;

- (ii) undertake to complete the Project within the period of time specified in this loan agreement;
- (iii) undertake to deliver to the Financial Intermediary such further information, evidence or document concerning the compliance with the due diligence requirements of the [Financial Intermediary], including without limitation to comply with "know your customer" (KYC) or similar identification procedures, when requested and within a reasonable time;
- (iv) undertake to (i) implement and operate the Project, as the case may be, in compliance with DBG's Environmental and Social Standards and in conformity with Environmental Laws of the Republic of Ghana and on DBG's request, supply evidence to verify its fulfilment of that obligation; and (ii) obtain, maintain and comply with requisite Environmental or Social Approvals for the Project;
- (v) undertake to execute and operate the Project in accordance with the relevant laws of a jurisdiction where such Project is carried out;
- (vi) ascertain, for all Sub-Projects, that all goods, services and works relating to Sub-Projects are procured following fair and transparent procedures in order to seek the most economically advantageous offer in the interest of the Sub-Projects, taking into account quality and timing and following appropriate procedures in view of the circumstances and local legislation;
- (vii) ascertain that, had the Final Beneficiary been incorporated in an EU country, the Sub-Project of the Final Beneficiary would not have been subject to (mandatory) public procurement under EU procurement laws (link: Guide to Procurement for projects financed by the EIB);
- (viii) undertake to keep books and records of all financial transactions and expenditures in connection with the Project, in which full and correct entries shall be made of all financial transactions and the assets and business of the Final Beneficiary, including to the extent applicable, expenditures in connection with the Project;
- (ix) represent to the [Financial Intermediary] that, to the best of its knowledge, no funds invested in the Project concerned by it or any of its controlling entities are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism, as well as undertakes to promptly inform the [Financial Intermediary] if at any time it becomes aware of the illicit origin of any such funds;
- (x) undertake to:
 - (1) allow persons designated by the EIB and, when required by the relevant mandatory provisions of EU Law, the competent EU institutions (including the European Court of Auditors, the European Commission, the European Anti-Fraud Office), as well as persons designated by the foregoing:
 - to visit the sites, installations and works comprising the Project and to conduct such checks as they may wish;
 - to interview representatives of the Final Beneficiary, and not obstruct contacts with any other person involved in or affected

by the Project; and

- to conduct such on the spot audits and checks as they may wish and to review the Final Beneficiary's books and records in relation to the execution of the Project and to be able to take copies of related documents; and
- (2) provide the EIB (or any such other institution or body), or ensure that the EIB (or any such other institution or body) is provided, with all necessary assistance for the purposes described in this paragraph (xi);
- (xi) request any disbursements from, and makes any payments to the [Financial Intermediary], under a loan agreement using bank account(s) in the name of the Final Beneficiary held with a duly authorised financial institution in the jurisdiction where the Final Beneficiary is incorporated or has its place of residence or where the Project is undertaken by the Final Beneficiary;
- (xii) undertake not to (i) enter into a business relationship with any Sanctioned Person, or (ii) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;
- (xiii) unless prohibited by law, undertake to promptly inform the [Financial Intermediary] of a genuine allegation, complaint or information with regard to Prohibited Conduct related to any Project it undertakes;
- (xiv) undertake not to engage in (and not to authorise or permit any Affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with the Project, any tendering procedure for the Project, or any transaction contemplated by this [loan agreement], and inform the [Financial Intermediary] immediately upon becoming aware of such a situation;
- (xv) undertake to take such action as the [Financial Intermediary] or DBG shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct;
- (xvi) undertake to ensure that contracts financed by this [loan agreement] include the necessary provisions to enable the DBG to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project;
- (xvii) undertake to facilitate investigations by the EIB and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the EIB, or ensure that the EIB is provided, with all necessary assistance for the purposes described in [Articles (xv) and (xvi) above];
- (xviii) acknowledges that the EIB may be obliged to communicate information relating to the Final Beneficiary, this loan and/or the Project to any competent institution or body of the European Union including the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the laws of the European Union in accordance with the relevant mandatory provisions of European Union law;

- (xix) comply with the ILO Standards; and
- (xx) undertake to prepay this loan in case of non-compliance with the above terms and conditions.
- (xxi) confirm that it is not involved in any Excluded Activities;

Definitions:

"**Affiliate**" means, with respect to any person, a Subsidiary or Holding Company of the person or a Subsidiary of that Holding Company.

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

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

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

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

- (a) Environmental Laws and Social Laws applicable to a Sub-Project, the DBG, any Financial Intermediary or any Final Beneficiary; and
- (b) the environmental and social impact assessment study (if required pursuant to the Side Letter).

"**Environmental or Social Approval**" means any permit, licence, authorisation, consent or other approval required by an Environmental Law or a Social Law in connection with an Intermediated Loan, a Sub-Loan or the construction or operation of each Sub-Project.

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

"**Environmental Law**" means:

- (a) DBG's environmental and social standards;
- (b) Ghanaian national laws and regulations; and
- (c) international treaties and conventions signed and ratified by or otherwise applicable and binding on Ghana,

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

"**Excluded Activities**" means:

1. Projects which result in limiting people's individual rights and freedom, or violation of human rights, including production or use of, or trade in, or activities involving harmful or exploitative forms of forced labour¹ or harmful child labour², as defined by ILO Fundamental Labour Conventions.
2. Military or police equipment or infrastructure, and equipment or infrastructure which result in limiting people's individual rights and freedom (i.e. prisons, detention centres/correctional facilities in any form) or in violation of human rights.
3. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international phase out or bans, such as:
 - a) Production of or trade in products containing PCBs;³
 - b) Production, placing on the market and use of asbestos fibres, and of articles and mixtures containing these fibres added intentionally⁴;
 - c) Production, use of or trade in pharmaceutical, pesticides/herbicides, ozone depleting substances,⁵ chemicals,⁶ and other hazardous substances subject to international phase-outs or bans;
 - d) The export of mercury and mercury compounds, and the manufacture, export and import of a large range of mercury-added products;⁷
 - e) Production or use of or trade in persistent organic pollutants;⁸

¹ Forced labour means traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking."¹ also called "modern-slavery" to shed light on working and living conditions contrary to human dignity;

² Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, moral or social development. In addition any labour that is performed by a person which has not yet reached the age of 15 is considered to be harmful, unless the local legislation specifies compulsory school attendance or the minimum age for working to be higher; in such cases, the higher age will be applied for defining harmful child labour.

³ PCBs: Polychlorinated biphenyls are a group of highly toxic chemicals.

⁴ Commission Regulation (EU) 2016/1005 of 22 June 2016 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards asbestos fibres (chrysotile).

⁵ Ozone Depleting Substances (ODS): Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol on Substances that Deplete the Ozone Layer lists ODs and their target reduction and phase-out date.

⁶ Reference documents: Regulation (EU) No. 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals as amended; United Nations Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments; Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); World Health Organisation Recommended Classification of Pesticides by Hazard.

⁷ Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury.

⁸ Reference document: Stockholm Convention on Persistent Organic Pollutants (POPs) as amended in 2009.

- f) Production or trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species or Wild Fauna and Flora (CITES);
 - g) Transboundary movements of waste prohibited under public international law.⁹
4. Production or trade in weapons or munitions or critical components thereof.
 5. Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where DBG considers the radioactive source to be trivial and/or adequately shielded.
 6. Activities targeting tobacco manufacturing, processing, or specialist tobacco distribution, and activities facilitating the use of tobacco (e.g. "smoking halls").¹⁰
 7. Gambling, casinos and equivalent enterprises.
 8. Any business relating to pornography or prostitution.
 9. Production and distribution of racist, anti-democratic and/or neo-Nazi media.
 10. Any business with political or religious content.
 11. Public administration
 12. Production or trade in alcoholic beverages (excluding beer and wine).¹¹
 13. Mining/quarrying activities.
 14. Microenterprises that are active in the production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals (gasoline, kerosene, other petroleum products, textile dyes, etc)
 15. Activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources, or cultural heritage.
 16. Activities damaging to national monuments and other critical heritage.¹²

⁹ Reference documents: Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste; and Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations.

¹⁰ This does not apply to enterprises that are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to an enterprise's primary operations.

¹¹ This does not apply to enterprises that are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to an enterprise's primary operations.

¹² Critical cultural heritage consists of (i) the internationally recognized heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes; and

17. Any activity involving destruction,¹³ conversion or significant impairment of critical habitats¹⁴ and/or any activities in legally protected areas.
18. Any activities involving the destruction, conversion or significant impairment of natural habitats without adequate mitigation, restoration and/or compensation in accordance with the requirements of internally recognised standards and the mitigation hierarchy.
19. Animal cloning, in particular livestock activities.
20. Unsustainable fishing methods (i.e. drift net fishing in the marine environment using nets in excess of 2.5 km in length and destructive fishing methods such as blast fishing, electric shocks).
21. Activities involving live animals for experimental scientific purposes.
22. Production or trade in wood or forestry products other than sustainably managed forests.¹⁵
23. Commercial concessions over, and logging on, tropical natural forest; conversion of natural forest into a plantation.
24. Purchase of logging equipment for use in tropical natural forests or high nature value forest in all regions; and activities that lead to clear cutting and/or degradation of tropical natural forests or high nature value forest;
25. Forestry enterprises producing wood or existing palm oil plantations must either comply with recognised international certification systems (FSC or RSPO) or equivalent regulations to ensure sustainable cultivation conditions or must be in the process of achieving such compliance.
26. New palm oil plantations.

(ii) legally protected cultural heritage areas, including those proposed by national governments for such designation.

¹³ Destruction means the (1) elimination or severe deterioration of the integrity of an area caused by a major, long-term change in use of land or water and/or (2) the alteration of a habitat which leads to the inability of the affected area to perform its function.

¹⁴ Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value that meet the criteria of the World Conservation Union ("IUCN") classification, including habitat required for the survival of critically endangered or endangered species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Primary Forest or forests of High Conservation Value shall be considered Critical Habitat.

¹⁵ Sustainable forest management may be demonstrated by the application of industry-specific good practices and available technologies. In some cases, it may be demonstrated by certification/verification or progress towards certification/verification under a credible standards system, e.g. for large forestry enterprises FSC certification.

27. Irrigated forests.¹⁶
28. Breeding and physical cultivation of Genetically Modified Organism (GMO) seeds or transgenic horticultural crops.
29. AFOLU/LULUCF¹⁷ investments and/or other projects that aim to produce or make use of agricultural or forestry products associated with unsustainable expansion of agricultural activity into land that had the status of high carbon stock and high biodiversity areas (i.e. primary and secondary forest, peatlands, wetlands, and natural grasslands) as at January 1st 2008 or after (e.g. new palm oil plantations).
30. Production or activities that have adverse impacts, including relocation, on the lands, natural resources, or critical cultural heritage subject to traditional ownership or under customary use by historically underserved traditional local communities
31. Activities involving land acquisition and/or restrictions on land use resulting in involuntary resettlement or economic displacement.¹⁸
32. Biomaterial and biofuel production that make use of feed-stocks that can serve as food or compromise food-security.
33. Extraction, mining of conflict minerals and metals.¹⁹
34. Projects related to
 - a) Nuclear power plants (apart from measures that reduce environmental hazards of existing assets) and mines with uranium as an essential source of extraction;
 - b) Prospection, exploration and mining of coal; land-based means of transport and related infrastructure essentially used for coal; power plants, heating stations and cogeneration facilities essentially fired with coal, as well as associated stub lines;²⁰
 - c) oil exploration and production, refining, transmission, distribution and storage;
 - d) Non-conventional prospection, exploration and extraction of oil from bituminous shale, tar sands or oil sands.
35. The following Projects can only be financed if specific conditions are met:

¹⁶ Except of temporary watering in the first 3 years after planting is allowed for the seedlings to develop deep rooting systems for ensuring high survival rates.

¹⁷ AFOLU: Agriculture, Forestry and Other Land Use - LULUCF: Land Use, Land-Use Change and Forestry.

¹⁸ Land acquisition and/or restrictions on land use may result in the physical displacement of people (involuntary resettlement) as well as their economic displacement (as loss of assets and/or means of livelihood, regardless of whether or not the affected people are physically displaced)

¹⁹ Minerals and metals covered by the Regulation (EU) 2017/821.

²⁰ Investments in power transmission grids with significant coal-based power feed-in will only be pursued in countries and regions with an ambitious national climate protection policy or strategy (NDC), or where the investments are targeted at reducing the share of coal-based power in the relevant grid. In developing countries, heating stations and cogeneration facilities (CHP) essentially fired with coal can be co-financed in individual cases based on a rigid assessment, if there is a particularly high sustainability contribution, major environmental hazards are reduced, and if there demonstrably is no more climate-friendly alternative

- a) Large dams²¹ and hydropower projects provided that the recommendations of the World Commission on Dams (WCD) are used as a benchmark;
- b) Conventional and non-conventional prospection, exploration, and extraction of gas will disclose in accordance with international standards, that no material groundwater drawdown or contamination is to be expected, - that measures for resource protection (in particular water) and recycling are taken, - that suitable technology is used for safe drilling, which includes integrated bore piping and pressure testing.

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

"ILO" means the International Labour Organisation.

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

"Money Laundering" means:

- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; or
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

"Prohibited Conduct" means any Financing of Terrorism, Money Laundering or Prohibited Practice.

²¹ Dams with a height of at least 15 meters measured from the foundation or dams with a height between 5 and 15 meters with a reservoir volume of more than 3 million cubic meters.

"Prohibited Practice" means any:

- (a) Coercive Practice, meaning the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- (b) Collusive Practice, meaning an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (c) Corrupt Practice, meaning the offering, giving, receiving or soliciting, directly or indirectly, of anything of value by a party to influence improperly the actions of another party;
- (d) Fraudulent Practice, meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial (including for the avoidance of taxation related) or other benefit or to avoid an obligation;
- (e) Obstructive Practice, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with this Loan or a Sub-Project,
 - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intending to materially impede the exercise of the contractual rights of audit or access to information; or
- (f) Tax Crime, meaning all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of Ghana, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year.

"Sanction Lists" means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, as available in the official EU website: https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en, as amended and supplemented from time to time or on any successor page;
- (b) any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to Article 41 of the UN Charter as available in the official UN website: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-llst>, as amended and supplemented from time to time or on any successor page; or
- (c) any economic, financial and trade restrictive measures and arms embargoes issued by the competent bodies/official institutions or agencies charged with administering, enacting or enforcing sanctions in the United States, including

the US Treasury Department's Office of Foreign Assets Control, including but not limited to those as made available in the official website <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, as amended and supplemented from time to time or on any successor page.

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

"Social Law" means each of:

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

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



PARLIAMENTARY SERVICE

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

My Ref. No.: PS/CS/80/15/A

Your Ref.:

7th NOV. 2020

THE HON. MINISTER,
MINISTRY OF FINANCE,
ACCRA.

Hon. Minister,

**FINANCE CONTRACT AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF GHANA (REPRESENTED BY THE MINISTER FOR FINANCE)
AND THE EUROPEAN INVESTMENT BANK FOR AN AMOUNT OF ONE
HUNDRED AND SEVENTY MILLION EUROS (€170,000,000.00) FOR THE
ESTABLISHMENT OF THE DEVELOPMENT BANK GHANA (DBG)**

Parliament at its Twenty-Third Sitting of the Third Meeting held on Saturday, 7th November, 2020 approved by resolution, the Finance Contract Agreement between the Government of the Republic of Ghana (represented by the Minister for Finance) and the European Investment Bank for an amount of One Hundred and Seventy Million Euros (€170,000,000.00) for the establishment of the Development Bank Ghana (DBG).

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

WHEREAS

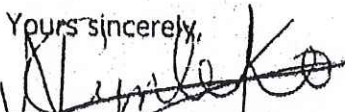
1. By the provisions of Article 181 of the Constitution and Sections 55 and 56 of the Public Financial Management Act, 2016 (Act 921), the terms and conditions of all government borrowings shall be laid before Parliament and shall not come into operation unless the terms and conditions are approved by 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 a Finance Contract Agreement between the Government of the Republic of Ghana (represented by the Minister for Finance) and the European Investment Bank for an amount of One Hundred and Seventy Million Euros (€170,000,000.00) for the establishment of the Development Bank Ghana (DBG).

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, by resolution, the Finance Contract Agreement between the Government of the Republic of Ghana (represented by the Minister for Finance) and the European Investment Bank for an amount of One Hundred and Seventy Million Euros (€170,000,000.00) for the establishment of the Development Bank Ghana (DBG).

The Resolution is respectfully submitted for your appropriate action.

Yours sincerely,



CYRIL K. O. NSIAH
Clerk to Parliament

Cc: Hon. Minister for Parliamentary Affairs.

Hon. Attorney-General and Minister for Justice.

Contract Number (FI N°) 91197

Operation Number (Serapis N°) 2019-0410

DEVELOPMENT BANK GHANA

Finance Contract

between the

Republic of Ghana

and the

European Investment Bank

Accra, 23 DECEMBER 2020

Luxembourg, 28 December 2020

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THIS CONTRACT IS MADE BETWEEN:

The Republic of Ghana, acting through its
Ministry of Finance, represented by
Ken Ofori-Atta, Minister for Finance,

(the "Borrower")

of the first part, and

The European Investment Bank having its
seat at 100 boulevard Konrad Adenauer,
Luxembourg, L-2950 Luxembourg,
represented by Mr Diederick Zambon,
Head of Division, Public Sector, Sub-
Saharan Africa and Mr. Kevin McKeon,
Legal Counsel,

(the "Bank")

of the second part.

WHEREAS:

- (a) The Borrower has requested the Bank to establish in its favour a credit in an amount of EUR 170,000,000 (one hundred seventy million euros) to be extended from the Investment Facility resources and pursuant to the Partnership Agreement between the members of the African, Caribbean and Pacific (ACP) Group of States (the "**ACP States**"), on the one hand, and the European Union and its Member States, on the other hand, signed in Cotonou, Benin, on 23 June 2000, as amended from time to time (the "**Cotonou Agreement**").
- (b) The credit is to be used by the Borrower for on-lending to the Development Bank Ghana, a state-owned development bank having its seat at 8th Floor, Accra Financial Centre, Liberia Road, Accra, Ghana, incorporated by the Borrower on 14 January 2020 (the "**Promoter**") under an On-Lending Agreement (the "**On-Lending Agreement**"), which in turn shall on-lend the funds received in local currency to participating financial institutions (each, hereafter a "**Financial Intermediary**" and together the "**Financial Intermediaries**"). The Financial Intermediaries shall use the funds for the financing of Sub-Projects (as defined below) to be carried out by Ghanaian SMEs and Mid-Caps (as these terms are defined below) active in the agribusiness, manufacturing, information and communications technology and tourism sectors (each, hereafter a "**Final Beneficiary**" and together the "**Final Beneficiaries**"). The eligibility criteria for both lending to Financial Intermediaries and Final beneficiaries and details of allocation procedures for the Sub-Projects shall be in accordance with those set out in the Side Letter (as defined below) which may be subsequently modified by the Bank, according to its policy in force from time to time, with prior notice to the Borrower (the "**Eligibility Criteria**").
- (c) The Promoter will provide finance from the credit on-lent to it by the Borrower to Financial Intermediaries by means of intermediated loans (each an "**Intermediated Loan**") pursuant to intermediated loan agreements (each an "**Intermediated Loan Agreement**") to be entered into between the Promoter and the relevant Financial Intermediary.
- (d) Each Financial Intermediary will provide finance from the credit on-lent to it by the Promoter to Sub-Projects by means of loans (each a "**Sub-Loan**") pursuant to loan agreements (each a "**Sub-Loan Agreement**") to be entered into between the relevant Financial Intermediary and the relevant Final Beneficiary.
- (e) The Bank considering that the financing of the Sub-Projects falls within the scope of its functions and is consistent with the objectives of the Cotonou Agreement, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrower's request providing to it a credit in an amount of EUR 170,000,000 (one hundred seventy million euros) under this Finance Contract (the "**Contract**") and from the Bank's own resources under the Cotonou Agreement and benefiting from the Investment Facility Guarantee (as defined below).
- (f) The Parliament of the Borrower has authorised the borrowing of the sum of EUR 170,000,000 (one hundred and seventy million euros) represented by this credit on the terms and conditions set out in this Contract in the form set out in Annex I.
- (g) By a letter sent by the Bank on 19 August 2020 and countersigned on 28 August 2020, the Borrower consented to the granting of the loan for the purposes of the Cotonou Agreement and accordingly the undertaking of the Borrower in Article 6 of Annex II to the Cotonou Agreement with regard to exchange control and tax exemptions apply to the credit.
- (h) Pursuant to the provisions of Article 6 of Annex II to the Cotonou Agreement, the ACP States agreed to:
 - (i) grant exemption from all national or local duties, fiscal charges on interest, commission and amortisation of loans due in accordance with the law or laws of the ACP State or States concerned;
 - (ii) place at the disposal of the beneficiaries the currency necessary for the payment of interest, commission and the amortisation of loans due in terms of financing contracts granted for the implementation of projects and programmes on their territories; and
 - (iii) make available to the Bank the foreign currency necessary for the transfer of all sums received by it in national currency at the exchange rate applicable between the euro or other currencies of transfer and the national currency at the date of transfer.

- (i) Pursuant to Article 4.2 of Annex II of the Cotonou Agreement, the Bank's financing under this Contract shall include an interest rate subsidy (the "Interest Rate Subsidy") in accordance with the terms set-out in Article 3.1 of this Contract.
- (j) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank's loan operations must be consistent with relevant policies of the European Union.
- (k) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its transparency policy, the purpose of which is to enhance the accountability of the Bank's group towards its stakeholders.
- (l) The processing of personal data shall be carried out by the Bank in accordance with applicable EU Law on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.
- (m) The Bank supports the implementation of international and EU standards in the field of anti-money laundering and countering the financing of terrorism and promotes tax good governance standards. It has established policies and procedures to avoid the risk of misuse of its funds for purposes which are illegal or abusive in relation to applicable laws. The EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism is available on the Bank's website and offers further guidance to EIB contracting counterparties¹.

¹ <http://www.eib.org/about/compliance/tax-good-governance/index.htm?f=search&media=search>

NOW THEREFORE it is hereby agreed as follows:

INTERPRETATION AND DEFINITIONS

Interpretation

In this Contract:

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

Definitions

In this Contract:

- "ACP States" has the meaning given to it in Recital (a).
- "Affiliate" means, with respect to any person, a Subsidiary or Holding Company of the person or a Subsidiary of that Holding Company.
- "Agreed Deferred Disbursement Date" has the meaning given to it in Article 1.5.A(2)(b).
- "Allocation" means the portion of the Credit which is allocated to the relevant Sub-Project(s) (each such portion being hereafter called an "Allocation", which term shall also include Re-allocation of funds pursuant to Article 1.9 or Re-employment of funds pursuant to 1.10).
- "Allocation Period" means the period starting on the Disbursement Date of the Tranche concerned and ending 24 (twenty-four) months thereafter.
- "Authorisation" means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, notarisisation or registration.
- "Authorised Signatory" means a person authorised to sign individually or jointly (as the case may be) Disbursement Requests on behalf of the Borrower and named in the most recent List of Authorised Signatories and Accounts received by the Bank prior to the receipt of the relevant Disbursement Request.
- "Business Day" means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.
- "Change-of-Law Event" has the meaning given to it in Article 4.3.A(2).
- "Change-of-Statutes Event" has the meaning given to it in Article 4.3.A(4).

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

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

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

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

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

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

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

"Disbursement Account" means, in respect of each Tranche, the bank account set out in the most recent List of Authorised Signatories and Accounts.

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

"Disbursement Notice" means a notice from the Bank to the Borrower pursuant to and in accordance with Article 1.2.C.

"Disbursement Request" means a notice substantially in the form set out in Schedule B.

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

"Disruption Event" means either or both of:

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

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

"EIB Annex" means the annex to each Sub-Loan Agreement incorporating the Bank's requirements listed in Article 6.3(c) and forming part of each Sub-Loan Agreement.

"Eligibility Criteria" has the meaning given to it in Recital (b).

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

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

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

"Environmental and Social Management System" means an internal management system integrating environmental and social considerations in compliance with the Environmental and Social Standards and EIB lists of excluded and restricted activities as well as sector requirements, as determined in the Side Letter, into credit and investment decision-making processes, and including the

organisational structure (roles and responsibilities) for its implementation. The Environmental and Social Management System shall include: (a) environmental and social policy; (b) defined procedures for identification, assessment and management of risks; (c) organisational capacity; (d) monitoring and review of the environmental and social risks of the Sub-Projects and portfolio and (e) external communications mechanism.

"Environmental and Social Standards" means:

- (a) Environmental Laws and Social Laws applicable to a Sub-Project, the Borrower, any Financial Intermediary or any Final Beneficiary; and
- (b) the environmental and social impact assessment study (if required pursuant to the Side Letter).

"Environmental or Social Approval" means any permit, licence, authorisation, consent or other approval required by an Environmental Law or a Social Law in connection with an Intermediated Loan, a Sub-Loan or the construction or operation of each Sub-Project.

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

"Environmental Law" means:

- (a) the environmental and social standards published on the Bank's website² which outlines the Bank's environmental and social requirements of the projects that it finances and the responsibilities of the various parties;
- (b) Ghanaian national laws and regulations; and
- (c) international treaties and conventions signed and ratified by or otherwise applicable and binding on Ghana,

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

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

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

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

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

"Final Availability Date" means the day falling sixty (60) months after the signature of this Contract.

"Final Beneficiary" has the meaning given to it in Recital (b).

"Financial Intermediary" has the meaning given to it in Recital (b).

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

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

"Ghana" means the Republic of Ghana.

"Holding Company" means, with respect to any person, an entity in respect of which the person is a Subsidiary.

² <https://www.eib.org/en/publications/environmental-and-social-standards.htm>

"ILO" means the International Labour Organisation.

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

"Indemnifiable Prepayment Event" means a Prepayment Event other than those specified in paragraphs 4.3.A(1) (Pari Passu to Non-EIB Financing) or 4.3.A(3) (Illegality).

"Interest Rate Subsidy" has the meaning given to it in recital (i).

"Intermediated Loan" has the meaning given to it in Recital (c).

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

"Investment Facility Guarantee" means the Guarantee signed between the Bank and the Investment Facility on 5 October 2018 in respect of loans made available by the Bank from its own resources for public sector projects in the ACP States.

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

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

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

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

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

- (a) there are, in the opinion of the Bank, events or circumstances adversely affecting the Bank's access to its sources of funding; or
- (b) in the opinion of the Bank, funds are not available from the Bank's ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche.

"Margin" means the component of the rate of interest quantified in Article 3.1.

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

- (a) the ability of the Borrower to perform its obligations under this Contract;
- (b) the business, operations, property, condition (financial or otherwise) or prospects of the Borrower or the Promoter; or
- (c) the legality, validity or enforceability of, or the effectiveness or ranking of, or the value of any Security granted to the Bank, or the rights or remedies of the Bank under this Contract.

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

"Mid-Cap" has the meaning given to it in the Side Letter.

"Money Laundering" means:

- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; or
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

"Non-EIB Financing" has the meaning given to it in Article 4.3.A(1).

"Notified Tranche" means a Tranche in respect of which the Bank has issued a Disbursement Notice.

"On-Lending Agreement" has the meaning given to it in Recital (b).

"Payment Date" means the semi-annual dates specified in the Disbursement Notice until and including the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means the following Relevant Business Day, without adjustment to the interest due under Article 3.1.

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

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

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

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

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

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

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

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

"Prohibited Conduct" means any Financing of Terrorism, Money Laundering or Prohibited Practice.

"Prohibited Practice" means any:

- (a) Coercive Practice, meaning the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- (b) Collusive Practice, meaning an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (c) Corrupt Practice, meaning the offering, giving, receiving or soliciting, directly or indirectly, of anything of value by a party to influence improperly the actions of another party;
- (d) Fraudulent Practice, meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial (including for the avoidance of taxation related) or other benefit or to avoid an obligation;
- (e) Obstructive Practice, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with this Loan or a Sub-Project, (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intending to materially impede the exercise of the contractual rights of audit or access to information; or

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

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

"Reallocation" means, during the Allocation Period, a re-assignment of the Allocation by the Promoter or by a Financial Intermediary from a Sub-Project already approved by the Promoter or a Financial Intermediary towards financing of another Sub-Project(s), which satisfy the Eligibility Criteria set out in the Side Letter and on the terms and conditions of the allocation procedures set out in Article 1.9 and "Reallocate" shall be construed accordingly.

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

"Reemployment" means, after the end of the Allocation Period, the re-assignment of the Allocation by the Promoter or by a Financial Intermediary from a Sub-Project either already approved by the Promoter or a Financial Intermediary, Reallocated pursuant to Article 1.9 or previously Reemployed pursuant to Article 1.10 towards financing of another Sub-Project(s) in accordance with Article 1.10 and "Reemploy" shall be construed accordingly.

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

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

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

"Sanction Lists" means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, as available in the official EU website: https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en, as amended and supplemented from time to time or on any successor page;
- (b) any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to Article 41 of the UN Charter as available in the official UN website: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-llst>, as amended and supplemented from time to time or on any successor page; or
- (c) any economic, financial and trade restrictive measures and arms embargoes issued by the competent bodies/official institutions or agencies charged with administering, enacting or enforcing sanctions in the United States, including the US Treasury Department's Office of Foreign Assets Control, including but not limited to those as made available in the official website <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, as amended and supplemented from time to time or on any successor page.

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

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

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

"Side Letter" means a side letter issued by the Bank on or around the date of this Contract that can be modified at the Bank's sole discretion from time to time and delivered by the Bank to the Borrower on or around the date hereof, setting out the Eligibility Criteria as well as certain restrictions in relation to Sub-Projects. Any modification of the Side Letter after the date of signature of this Contract does not apply retroactively.

"SME" has the meaning given to it in the Side Letter.

"Social Law" means each of:

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

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

"Sub-Loan" has the meaning given to it in Recital (d).

"Sub-Loan Agreement" has the meaning given to it in Recital (d).

"Sub-Project" has the meaning given to it in the Side Letter and by reference to the type of Final Beneficiary, and for as long as the financing made available by a Financial Intermediary to a Final Beneficiary with respect to such Sub-Project has not been Reallocated or Reemployed by the Promoter and/or a Financial Intermediary, as the case may be, on the terms and conditions hereunder.

"Subsidiary" means with respect to any person, any company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned person;
- (b) at least half of the issued share capital or the ownership or any other equity interests of which are owned, directly or indirectly, by the first mentioned person, or majority voting rights are directly or indirectly controlled by the first mentioned person; or
- (c) which is a subsidiary of another subsidiary of the first mentioned person,

and, for these purposes, a company or corporation shall be treated as being controlled by another person if that other person is able to direct its affairs and/or to control the composition of majority of its statutory bodies, supervisory board or equivalent bodies.

"Subsidised Interest Rate" has the meaning given to it in Article 3.1.A.

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

"Tranche" means each disbursement made or to be made under this Contract. In case no Disbursement Notice has been delivered, Tranche shall mean a Tranche as requested under Article 1.2.B.

ARTICLE 1
CREDIT AND DISBURSEMENTS

1.1 Amount of Credit

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount of EUR 170,000,000 (one hundred seventy million euros) for the financing of Sub-Loans (the "Credit").

1.2 Disbursement procedure

1.2.A Tranches

The Bank shall disburse the Credit in up to 12 (twelve) Tranches.

The amount of each Tranche except the first Tranche shall be in a minimum amount of EUR 10 (ten million euros) or (if less) the entire undrawn balance of the Credit.

The amount of the first Tranche shall be the lower of:

- (a) the amount equivalent to 50% (fifty percent) of the total loan amount signed between the Promoter and the Financial Intermediaries on the date the Borrower presents to the Bank a Disbursement Request in accordance with Article 1.2.B; or
- (b) EUR 20,000,000 (twenty million euros).

1.2.B Disbursement Request

(a) The Borrower may present to the Bank a Disbursement Request for the disbursement of a Tranche, such Disbursement Request to be received at the latest 15 (fifteen) days before the Final Availability Date. The Disbursement Request shall be in the form set out in Schedule B and shall specify:

- (i) the amount of the Tranche in EUR;
- (ii) the preferred disbursement date for the Tranche; such preferred disbursement date must be a Relevant Business Day falling at least 15 (fifteen) days after the date of the Disbursement Request and, in any event, on or before the Final Availability Date. It being understood that notwithstanding the Final Availability Date the Bank may set the disbursement date for the Tranche at a date falling up to 4 (four) calendar months from the date of the Disbursement Request;
- (iii) the preferred terms for repayment of principal for the Tranche, chosen in accordance with Article 4.1;
- (iv) the preferred first and last dates for repayment of principal for the Tranche; and
- (v) the Disbursement Account to which the disbursement of the Tranche should be made in accordance with Article 1.2.D.

(b) Each Disbursement Request shall be signed by an Authorised Signatory with individual representation right or two or more Authorised Signatories with joint representation right.

(c) Subject to Article 1.2.C(b), each Disbursement Request is irrevocable.

1.2.C Disbursement Notice

(a) Not less than 10 (ten) days before the proposed Scheduled Disbursement Date of a Tranche the Bank shall, if the Disbursement Request conforms to Article 1.2, deliver to the Borrower a Disbursement Notice which shall specify:

- (i) the amount of the Tranche in EUR;
- (ii) the Subsidised Interest Rate;
- (iii) the Scheduled Disbursement Date;
- (iv) the Payment Dates and the first interest Payment Date for the Tranche;

- (v) the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.1;
- (vi) the Repayment Dates and the first and the last Repayment Date for the Tranche; and
- (vii) the Fixed Rate applicable to the Tranche until the Maturity Date.

(b) If one or more of the elements specified in the Disbursement Notice does not reflect the corresponding element, if any, in the Disbursement Request, the Borrower may following receipt of the Disbursement Notice revoke the Disbursement Request by written notice to the Bank to be received no later than 12h00 noon in Luxembourg time on the next business day when the Bank is open and thereupon the Disbursement Request and the Disbursement Notice shall be of no effect. If the Borrower has not revoked in writing the Disbursement Request within such period, the Borrower will be deemed to have accepted all elements specified in the Disbursement Notice.

1.2.D Disbursement Account

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

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

Only one Disbursement Account may be specified for each Tranche.

1.3 Currency of disbursement

The disbursement of each Tranche shall be made in EUR.

1.4 Conditions of disbursement

1.4.A Condition precedent to the first Disbursement Request

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

- (a) evidence that the execution of this Contract by the Borrower has been duly authorised (in the form of a letter from the Ministry of Finance stating that it has obtained the Parliament's approval to enter into the Finance Contract) and that the person or persons signing this Contract on behalf of the Borrower is/are duly authorised to do so together with the specimen signature of each such person or persons; and

- (b) the List of Authorised Signatories and Accounts,

prior to a presentation of a Disbursement Request by the Borrower. Any Disbursement Request made by the Borrower without the above documents having been received by the Bank and to its satisfaction shall be deemed not made.

1.4.B First Tranche

The disbursement of the first Tranche under Article 1.2 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 15 (fifteen) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively), of the following documents or evidence:

- (a) evidence that the Borrower and the Promoter have obtained all necessary Authorisations, required in connection with this Contract and the financing of Sub-Projects;
- (b) certified copies of any law, decree, official publication, ratification, or any other formalities, if any, required in connection with this Contract or the Sub-Projects under the laws of Ghana;

- (c) the Side Letter duly acknowledged by the Borrower and the Promoter;
- (d) the On-Lending Agreement between the Borrower and the Promoter has been entered into in a form and substance satisfactory to the Bank, and the Borrower and the Promoter have obtained all necessary Authorisations and internal approvals required in connection with On-Lending Agreement and a certified copy of the On-Lending has been received by the Bank;
- (e) evidence that the model Intermediated Loan Agreement has been submitted by the Promoter to, and approved, by the Bank;
- (f) evidence that at least one Intermediated Loan Agreement has been signed,
- (g) evidence that the model EIB Annex has been submitted by the Promoter to, and approved by, the Bank;
- (h) evidence that the financing agreement between the Borrower and the World Bank for the financing of the Promoter and technical assistance was duly executed by all parties;
- (i) the constitutional documents of the Promoter, including its articles of incorporation and all amendments thereto and its certificate of incorporation;
- (j) evidence that the Board of Directors of the Promoter was duly constituted;
- (k) evidence that the Chief Executive Officer of the Promoter was duly appointed;
- (l) evidence that the Promoter acquired its relevant banking license from Bank of Ghana;
- (m) evidence that the Promoter has adopted key operational policies and systems on lending, governance, risk management, compliance and "know your customer";
- (n) a detailed description of the Promoter's Environmental and Social Management System as approved by the Bank;
- (o) evidence that Promoter recruited an environmental specialist and a social specialist;
- (p) a legal opinion addressed to the Bank and issued by the Attorney General of the Borrower:
 - (i) which confirms that any action necessary to obtain exemption from taxation for all payments of principal, interest and other sums due hereunder and to permit the payment of all such sums gross without deduction of tax at source shall have been taken;
 - (ii) which confirms that any necessary exchange control consents shall have been obtained to permit receipt of Disbursements hereunder, repayment of the same and payment of interest and all other amounts due hereunder;
 - (iii) on the legal capacity and due authorisation of the Borrower;
 - (iv) on the due execution and enforceability of (a) this Contract and the relevant documentation by the Borrower, (b) the On-Lending Agreement by the Borrower and the Promoter; and
 - (v) on the legal, valid, binding and enforceable character of (a) the Borrower's obligations under this Contract and the relevant documentation agreed by the Bank prior to the signing of this Contract and (b) the Borrower and Promoter's obligations under the On-Lending Agreement; and
 - (vi) on the legal capacity and due authorisation of the Promoter,
- (q) the Borrower shall have taken all action (if any) necessary for the exemption from taxation for all payments of principal, interest and other sums due hereunder and to permit the payment of all such sums gross without deduction of tax at source; and
- (r) any necessary exchange control consents (if any) shall have been obtained to permit receipt of disbursements hereunder, repayment of the same and payment of interest and all other amounts due hereunder; such consents must extend to the opening and maintenance of the accounts to which disbursement of the Credit is directed.

1.4.C Last Tranche

The disbursement of the last Tranche under Article 1.2 is subject to the receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 15 (fifteen) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the last Tranche, of the evidence that the aggregate amounts disbursed from time to time by the Bank under this Contract does not exceed 50% (fifty percent) of the total amount lent by the Financial Intermediaries to the Final Beneficiaries.

1.4.D All Tranches

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

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 15 (fifteen) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche, of the following documents or evidence:
 - (i) a certificate from the Borrower in the form of Schedule C signed by an authorised representative of the Borrower and dated no earlier than the date falling 30 (thirty) days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively);
 - (ii) except for the first and the last Tranches, evidence that:
 - (1) the aggregate amounts disbursed from time to time by the Bank under this Contract does not exceed 80% (eighty percent) of the total amount lent by the Financial Intermediaries to the Final Beneficiaries; and
 - (2) the amount which has not been allocated from the Credit yet by the Financial Intermediaries to Sub-Projects shall not exceed 10% (ten per cent) of the total amount of the Credit as set out in Article 1.1;
 - (iii) a satisfactory update on the implementation status of the Promoter's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) programme and a satisfactory update on the details of the Borrower's supervision and regulation;
 - (iv) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the legality, validity, binding effect or enforceability of the same;
- (b) that on the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, on the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche:
 - (i) the representations and warranties which are repeated pursuant to Article 6.6 are correct in all respects;
 - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
 - (1) an Event of Default; or
 - (2) a Prepayment Event,has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche, and

- (iii) the Investment Facility Guarantee (or any instrument replacing it to the satisfaction of the Bank) is valid, of full force and effect and enforceable against the signatory parties and no event or circumstance has occurred which would, in the reasonable opinion of the Bank, adversely affect the validity, applicability or enforceability of the Investment Facility Guarantee or the Bank's right to demand payment under the Investment Facility Guarantee.

1.5 Deferment of disbursement

1.5.A Grounds for deferment

1.5.A(1) BORROWER'S REQUEST

- (a) The Borrower may send a written request to the Bank requesting the deferral of the disbursement of a Notified Tranche. The written request must be received by the Bank at least 15 (fifteen) Business Days before the Scheduled Disbursement Date of the Notified Tranche and specify:
- (i) whether the Borrower would like to defer the disbursement in whole or in part, and if in part, the amount to be deferred; and
 - (ii) the date until which the Borrower would like to defer a disbursement of the above amount (the "**Requested Deferred Disbursement Date**"), which must be a date falling not later than:
 - (1) 6 (six) months from its Scheduled Disbursement Date;
 - (2) 30 (thirty) days prior to the first Repayment Date; and
 - (3) the Final Availability Date.
- (b) Upon receipt of such a written request, the Bank shall defer the disbursement of the relevant amount until the Requested Deferred Disbursement Date.

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

- (a) The disbursement of a Notified Tranche shall be deferred if any condition for disbursement of such Notified Tranche referred to in Article 1.4 is not fulfilled both:
- (i) at the date specified for fulfilment of such condition in Article 1.4; and
 - (ii) at its Scheduled Disbursement Date (or, where the Scheduled Disbursement Date has been deferred previously, the date expected for disbursement).
- (b) The Bank and the Borrower shall agree the date until which the disbursement of such Notified Tranche shall be deferred (the "**Agreed Deferred Disbursement Date**"), which must be a date falling:
- (i) not earlier than 15 (fifteen) Business Days following the fulfilment of all conditions of disbursement; and
 - (ii) not later than the Final Availability Date.
- (c) Without prejudice to the Bank's right to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.6.B, the Bank shall defer disbursement of such Notified Tranche until the Agreed Deferred Disbursement Date.

1.5.A(3) DEFERMENT INDEMNITY

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

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

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

amount of the disbursement which is cancelled by the Bank pursuant to this Article 1.5.B shall remain available for disbursement under Article 1.2.

1.6 Cancellation and suspension

1.6.A Borrower's right to cancel

- (a) The Borrower may send a written notice to the Bank requesting the cancellation of the undisbursed portion of the Credit. The written notice:
- (i) must specify whether the Borrower would like to cancel the undisbursed portion of the Credit in whole or in part and, if in part, the amount of the Credit the Borrower would like to cancel; and
 - (ii) must not relate to:
 - (1) a Notified Tranche which has a Scheduled Disbursement Date falling within 15 (fifteen) Business Days of the date of the written notice; or
 - (2) a Tranche in respect of which a Disbursement Request has been submitted but no Disbursement Notice has been issued.
- (b) Upon receipt of such written notice, the Bank shall cancel the requested undisbursed portion of the Credit with immediate effect.

1.6.B Bank's right to suspend and cancel

- (a) At any time upon the occurrence of the following events, the Bank may notify the Borrower in writing that the undisbursed portion of the Credit shall be suspended and/or (apart from on the occurrence of a Market Disruption Event) cancelled in whole or in part:
- (i) a Prepayment Event;
 - (ii) an Event of Default;
 - (iii) an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event or an Event of Default;
 - (iv) an event or circumstance has arisen which would, in the reasonable opinion of the Bank, have an adverse effect on the validity, applicability or enforceability of the Investment Facility Guarantee or the right of the Bank to make a claim for payment under the Investment Facility Guarantee;
 - (v) if Ghana is no longer an eligible country for operations under the Cotonou Agreement;
 - (vi) if the Bank determines that the Borrower is not in compliance with Article 6.5 or 8.3;
 - (vii) a Material Adverse Change; or
 - (viii) a Market Disruption Event provided the Bank has not issued a Disbursement Notice.
- (b) On the date of such written notification the relevant undisbursed portion of the Credit shall be suspended and/or cancelled with immediate effect. Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

1.6.C Indemnity for suspension and cancellation of a Tranche

1.6.C(1) SUSPENSION

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

1.6.C(2) CANCELLATION

- (a) If a Notified Tranche is cancelled:
 - (i) by the Borrower pursuant to Article 1.6.A; or
 - (ii) by the Bank upon an Indemnifiable Prepayment Event or upon the occurrence of a Material Adverse Change or pursuant to Article 1.5.B,the Borrower shall pay to the Bank the Prepayment Indemnity. The Prepayment Indemnity shall be calculated as if the cancelled amount had been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.
- (b) If the Bank cancels a Notified Tranche upon the occurrence of an Event of Default, the Borrower shall indemnify the Bank in accordance with Article 10.3.
- (c) Save in the cases (a) or (b) above, no indemnity is payable upon cancellation of a Tranche.

1.7 Cancellation after expiry of the Credit

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, any part of the Credit in respect of which no Disbursement Request has been made in accordance with Article 1.2.B shall be automatically cancelled, without any notice being served by the Bank to the Borrower and without liability arising on the part of either party.

1.8 Sums due under Articles 1.5 and 1.6

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

1.9 Reallocation

If, during the Allocation Period, any of the following events occurs:

- (a) a Sub-Loan has not, or will have not, been committed or be committed only in part to a Final Beneficiary;
- (b) the eligible costs of any Sub-Project (as such costs are defined in the Side Letter) have been reduced to the extent that the Credit allocated to any such Sub-Project exceed the amount eligible under the Side Letter;
- (c) any Sub-Project is cancelled, abandoned or terminated;
- (d) a Final Beneficiary is not in compliance with the provisions of the relevant Sub-Loan Agreement (including the EIB Annex), Implementing Article 6.3; or
- (e) it is ascertained, after Allocation, that any information or document given to the Promoter or a Financial Intermediary or any representation or statement made therein, is or proves to have been incorrect or misleading such that the Promoter or the relevant Financial Intermediary is of the opinion that it has had an impact on the assessment of eligibility of any respective Sub-Project or Final Beneficiary and, should the correct information be delivered, such Sub-Project or Final Beneficiary would have not been approved by Promoter or the Financial Intermediary under the terms of the side letter;
- (f) the Borrower or the Promoter has notified the Bank, or the Bank has become aware, of any fact, which in the judgement of the Borrower or the Promoter (or the Bank as the case may be), may substantially prejudice or affect the conditions of execution or operation of a Sub-Project; or
- (g) a Sub-Loan is no longer eligible according to the provisions of (i) this Contract and (ii) the Side Letter as set out on the date the relevant Allocation was made,

then a corresponding part of the Credit shall be promptly Re-allocated for the purpose of financing other Sub-Project(s), which satisfy the criteria set out in this Contract and the Side Letter. Alternatively, the Borrower may voluntarily prepay any corresponding part of the Loan in question pursuant to Article 4.2.

If the Promoter or a Financial Intermediary does not Re-allocate such amount to the Bank's satisfaction during the Allocation Period or within 90 (ninety) days of the occurrence of the relevant event listed above in this Article 1.9, the Bank may require that the Borrower prepay immediately the amount so disbursed, in accordance with the provisions of Article 4.3.A(6).

1.10 Reemployment

If, any of the following events occur, namely:

- (a) at any time after the Allocation Period, an event listed in Article 1.9 occurs; or
- (b) a Sub-Loan is voluntarily prepaid (or redeemed, as the case may be) by a Final Beneficiary; or
- (c) a Sub-Loan is prepaid (or redeemed, as the case may be) by a Final Beneficiary following a demand for prepayment (or a call for early redemption, as the case may be) from the Promoter or a Financial Intermediary, or it is cancelled for any reason,

the Borrower shall ensure that the Promoter or the relevant Financial Intermediary shall within 90 (ninety) days Re-employ such sums to finance other Sub-Projects which satisfy the criteria set out in this Contract and the Side Letter. Alternatively, the Borrower may voluntarily prepay such sums under Article 4.2.

If the Promoter or the relevant Financial Intermediary fails to disburse any Re-employed amount of the Credit to the respective Final Beneficiary within the said period of 90 (ninety) days, the Borrower shall prepay such portion of the Loan Outstanding to the Bank no later than 30 (thirty) days following the lapse of the above-mentioned 90 (ninety) days period in accordance with the provisions of Article 4.3.A(7).

ARTICLE 2 **THE LOAN**

2.1 Amount of Loan

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, as confirmed by the Bank pursuant to Article 2.3.

2.2 Currency of repayment, interest and other charges

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrower in the currency in EUR.

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

2.3 Confirmation by the Bank

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

ARTICLE 3
INTEREST

3.1 Rate of interest

For the purposes of this Contract, "Margin" means 50 basis points (0.50%).

3.1.A Subsidised Interest Rate

The Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at an annual rate of interest (the "**Subsidised Interest Rate**") equal to the higher of (a) the Fixed Rate less 3% (three per cent), unless this value is less than zero, in which case it will be set at zero and (b) 50% (fifty per cent) of the Fixed Rate.

Interest shall be payable semi-annually in arrear on the relevant Payment Dates as specified in the Disbursement Notice, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the date on which disbursement was made to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.1.

3.1.B Interest Rate Subsidy

The interest payable by the Borrower to the Bank shall benefit from the Subsidised Interest Rate. It is a condition of the availability of the Subsidised Interest Rate that the Borrower fulfils the conditions set out in Article 1.4.

The Bank may at any time suspend or cancel the application of the Interest Rate Subsidy upon the occurrence of any Event of Default or if, as a result of the Borrower, the Promoter or any Financial Intermediary's conduct, any fraud or corruption is found to have occurred in the Borrower, the Promoter, any Financial Intermediary or any Final Beneficiary's performance of a Sub-Project, in which case interest shall accrue and be payable at the Fixed Rate.

The Bank may also demand that the Borrower repay an amount equivalent to the Interest Rate Subsidy that the Borrower has received if, as a result of the Borrower, the Promoter, any Financial Intermediary and/or any Final Beneficiary's conduct, any fraud or corruption is found to have occurred in the performance of a Sub-Project.

3.2 Interest on overdue sums

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

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

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the EURIBOR in relation to this Article 3.2, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date. Any unpaid but due interest may be capitalised in conformity with article 1154 of the Luxembourg Civil Code. For the avoidance of doubt, capitalisation of interest shall occur only for interest due but unpaid for a period of more than one year. The Borrower hereby agrees in advance to have the unpaid interest due for a period of more than one year compounded and that as of the capitalisation, such unpaid interest will in turn produce interest at the interest rate set out in this Article 3.2.

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

3.3 Market Disruption Event

- (a) If at any time:
 - (i) from the issuance by the Bank of the Disbursement Notice in respect of a Tranche; and
 - (ii) until the date falling 30 (thirty) calendar days prior to the Scheduled Disbursement Date;
- a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case, the following rules shall apply.
- (b) The rate of interest applicable to such Notified Tranche until the Maturity Date shall be the percentage rate per annum which is the sum of:
 - (i) the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank,
 - (ii) plus the Margin,
 - (iii) minus the new Interest Rate Subsidy calculated in accordance with Article 3.1.
 - (b) The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notice and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.2.B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.
 - (c) The Fixed Rate and the Interest Rate Subsidy previously notified by the Bank shall no longer be applicable.

ARTICLE 4 REPAYMENT

4.1 Normal repayment

- (a) The Borrower shall repay each Tranche by instalments on the Repayment Dates specified in the relevant Disbursement Notice in accordance with the terms of the amortisation table delivered pursuant to Article 2.3.
- (b) Each amortisation table shall be drawn up on the basis that:
 - (i) repayment shall be made semi-annually by equal instalments of principal or constant instalments of principal and interest;
 - (ii) the first Repayment Date of each Tranche shall be a Payment Date falling not earlier than 30 (thirty) days from the Scheduled Disbursement Date and not later than the first Repayment Date immediately following the 5th (fifth) anniversary of the Scheduled Disbursement Date of the Tranche; and
 - (iii) the last Repayment Date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 20 (twenty) years from the Scheduled Disbursement Date.

4.2 Voluntary prepayment

4.2.A Prepayment option

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

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

The Prepayment Request shall be irrevocable.

4.2.B Prepayment indemnity

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

4.2.C Prepayment mechanics

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

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

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

4.2.D Administrative Fee

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

4.3 Compulsory prepayment

4.3.A Prepayment Events

4.3.A(1) PARI PASSU TO NON-EIB FINANCING

If the Borrower voluntarily prepays (for the avoidance of doubt, prepayment shall include a repurchase or cancellation where applicable) a part or the whole of any Non-EIB Financing and:

- (a) such prepayment is not made within a revolving credit facility (save for the cancellation of the revolving credit facility);
- (b) such prepayment is not made out of the proceeds of a loan or other indebtedness having a term at least equal to the unexpired term of the Non-EIB Financing prepaid;

the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and outstanding under this Contract in relation to the proportion of the Loan

Outstanding to be prepaid. The proportion of the Loan Outstanding that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

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

For the purposes of this Article, "Non-EIB Financing" includes any loan (save for the Loan and any other direct loans from the Bank to the Borrower), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower) for a term of more than 3 (three) years.

4.3.A(2) CHANGE OF LAW

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

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

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

4.3.A(3) ILLEGALITY

If:

- (a) it becomes unlawful in any applicable Jurisdiction for the Bank to:
 - (i) perform any of its obligations as contemplated in this Contract; or
 - (ii) fund or maintain the Loan,
- (b) the Cotonou Agreement is or is likely to be:
 - (i) no longer valid or in full force and effect; or
 - (ii) not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms; or
 - (iii) repudiated by the Borrower or not binding on the Borrower in any respect,
- (c) the Investment Facility Guarantee is or is likely to be:
 - (i) no longer valid or in full force and effect; or
 - (ii) not effective in accordance with its terms,

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

4.3.A(4) CHANGE OF STATUTES

The Borrower shall promptly inform the Bank if a Change-of-Statutes Event has occurred or is likely to occur. In such case, or if the Bank has reasonable cause to believe that a Change-of-Statutes Event has occurred or is about to occur, the Bank may request that the Borrower consult with it. Such consultation shall take place within 30 (thirty) days from the date of the

Bank's request. If, after the lapse of 30 (thirty) days from the date of such request for consultation the Bank is of the opinion that the effects of the Change-of-Statutes Event cannot be mitigated to its satisfaction, the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and outstanding under this Contract.

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

For the purposes of this Article "Change-of-Statutes Event" means the proposal or enactment of any change in or amendment to the Promoter's statutes (including any other constitutional documents) that occurs after the date of this Contract, which results or is reasonably likely to result in a Material Adverse Change.

4.3.A(5) BREACH OF THE ON-LENDING AGREEMENT

In the event that the Borrower and/or the Promoter is in breach of any provision which has material impact under the On-Lending Agreement or if the Borrower does not make available to the Promoter any part of the Loan under this Contract or any part of the funds made available to the Promoter under the On-Lending Agreement is not utilized for Intermediated Loans and/or Sub-Loans, the Bank may cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

4.3.A(6) FAILURE TO ALLOCATE, RE-ALLOCATE OR RE-EMPLOY

Upon the Bank's written demand to the Borrower, the Borrower shall prepay to the Bank on the date indicated by the Bank in its notice to the Borrower, any part of the Loan Outstanding that corresponds to:

- (a) any part of the Loan that has been disbursed by the Bank to the Borrower at any time hereunder but has failed to be allocated, Re-allocated or Re-employed by the Financial Intermediaries during the Allocation Period; or
- (b) the amount allocated to Final Beneficiaries, but which has failed to be disbursed by the Financial Intermediaries to the Final Beneficiaries within 180 (one hundred and eighty) days of the Allocation Period, unless it has been Re-employed or Re-allocated.

The Borrower shall effect payment of the amount demanded together with accrued interest and all other amounts accrued or outstanding under this Contract on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

4.3.A(7) ELIGIBILITY

If:

- (a) the Bank is of the view that one or more Sub-Projects financed do not satisfy the Eligibility Criteria or is no longer eligible according to the provisions of (i) this Contract or (ii) the Side Letter as set out on the date the relevant Allocation(s) was/were made;
- (b) the Promoter fails to sign an Intermediated Loan Agreement with a Financial Intermediary in accordance with this Contract; or
- (c) any Financial Intermediary fails to sign a Sub-Loan Agreement with a Final Beneficiary in accordance with this Contract or fails to make sums advanced by the Bank hereunder available to the Final Beneficiaries;

the Bank may by written notice to the Borrower designate the relevant transaction as an "affected transaction". Within a period of 90 (ninety) days following the giving of that notice, the Borrower shall obtain the Re-allocation or Re-employment of the relevant portion of the Loan Outstanding in accordance with Article 1.9 or 1.10. If such Re-allocation or Re-employment is not carried out in accordance with this Contract, the Borrower shall, within 30 (thirty) days, prepay such relevant portion of the Loan Outstanding together with accrued interest and all other amounts accrued under this Contract.

4.3.B Prepayment mechanics

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

4.3.C Prepayment indemnity

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

4.4 General

4.4.A No prejudice to Article 10

This Article 4 shall not prejudice Article 10.

4.4.B No reborrowing

A repaid or prepaid amount may not be reborrowed.

ARTICLE 5
PAYMENTS

5.1 Day count convention

Any amount due by way of interest or indemnity from the Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days.

5.2 Time and place of payment

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

5.3 No set-off by the Borrower

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

5.4 Disruption to Payment Systems

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

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

5.5 Application of sums received

5.5.A General

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

5.5.B Partial payments

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

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

5.5.C Allocation of sums related to Tranches

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

ARTICLE 6
UNDERTAKINGS AND REPRESENTATIONS

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

6.1 Use of Loan and availability of other funds

- (a) The Borrower shall use the proceeds of the Loan and shall cause the Promoter and each Financial Intermediary to use any funds made available to them by the Borrower or the Promoter, as the case may be, from the proceeds, and for the purpose, of the Loan solely for the purpose of funding the Sub-Loans dedicated to eligible Sub-Projects.
- (b) The Borrower shall ensure that:
 - (i) at least 70% (seventy per cent) of the Loan shall be allocated to Sub-Loans dedicated to Sub-Projects undertaken by SMEs; and
 - (ii) maximum 30% (thirty per cent) of the Loan shall be allocated to Sub-Loans dedicated to Sub-Projects undertaken by Mid-Caps.

6.2 On-Lending Agreement

The Borrower shall:

- (a) ensure that the On-Lending Agreement will be entered into in the English language and for a duration of at least the same tenor that this Contract.
- (b) make sums advanced by the Bank hereunder available to the Promoter under the On-Lending Agreement upon disbursement by the Bank under this Contract and on favourable terms but in local currency.

6.3 Intermediated Loan Agreements and Sub-Loan Agreements

- (a) The Borrower shall ensure that the Promoter shall:
 - (i) upon disbursement by the Bank, make sums advanced by the Bank hereunder available to Financial Intermediaries that have been previously approved by the Bank;
 - (ii) ensure that the financing under the Intermediated Loan Agreements and the Sub-Loan Agreement shall conform at all times with the Eligibility Criteria and the Side Letter;
 - (iii) undertake:
 - (1) to obtain the Bank's approval on the first two (2) Environmental and Social Management System to be implemented by Financial Intermediaries before any disbursement under an Intermediated Loan Agreement; and
 - (2) to subject any disbursement under an Intermediated Loan Agreement to the implementation by each relevant Financial Intermediary of an Environmental and Social Management System identical to the ones approved by the Bank in accordance with Paragraph (1) above;
 - (iv) insert on its relevant website(s) information acceptable to the Bank on the Bank's activity in favour of eligible Financial Intermediaries and Final Beneficiaries, including Eligibility Criteria; all references and information made public on the Promoter's relevant website(s) related to the Bank shall be previously agreed between the Bank, the Borrower and the Promoter;
 - (v) provide to the Bank a hyperlink to all pages on its relevant website(s) at which the Promoter inserts any references or information pursuant to Article 6.3(a)(iv), including all amendments and supplements to such page(s) and any successor page(s);

- (vi) ensure that each Intermediated Loan Agreement that is entered into with a Financial Intermediary is substantially in the same form and substance as the model Intermediated Loan Agreement approved by the Bank pursuant to Article 1.4.B(d);
 - (vii) ensure that each Sub-Loan Agreement that is entered into with a Final Beneficiary includes the EIB Annex, in the same form and substance as the model EIB Annex approved by the Bank pursuant to Article 1.4.B(g);
 - (viii) ensure that each Financial Intermediary and Final Beneficiary complies with all regulatory, anti-money laundering and combating financing terrorism requirements applicable to it, including under applicable laws, rules, decisions and regulations, as well as the instructions of relevant regulatory authorities;
 - (ix) ensure that each Intermediated Loan Agreement includes an undertaking that each Financial Intermediary shall deliver to the Promoter such further information, evidence or document concerning the compliance with the due diligence requirements of the Promoter, including without limitation to comply with "know your customer" (KYC) or similar identification procedures, when requested and within a reasonable time;
 - (x) ensure that the Financial Intermediaries will not modify the EIB Annex without the prior written consent of the Bank; and
 - (xi) applies and complies with the Recommendations of the Financial Action Task Force and the sanctions imposed by the United Nations, the European Union and the United States of America.
- (b) The Borrower shall ensure that in each Intermediated Loan Agreement to which a Financial Intermediary is a party each Financial Intermediary:
- (i) represents to the Promoter that, to the best of its knowledge, no funds invested in the Sub-Projects concerned by it or any of its controlling entities are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism, as well as undertakes to promptly inform the Promoter if at any time it becomes aware of the illicit origin of any such funds;
 - (ii) undertakes not to (i) enter into a business relationship with any Sanctioned Person, or (ii) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;
 - (iii) undertakes to take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who:
 - (1) becomes a Sanctioned Person; or
 - (2) is the subject of a final and irrevocable court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties,

In order to ensure that such member is excluded from any activity in relation to any funds made available to it by the Promoter under the relevant Intermediated Loan Agreement or in relation to the relevant Sub-Project;
 - (iv) unless prohibited by law, undertakes to promptly inform the Promoter of a genuine allegation, complaint or information with regard to Prohibited Conduct related to any Sub-Project financed by it;
 - (v) undertakes not to engage in (and not to authorise or permit any Affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with any Sub-Project, any tendering procedure for any Sub-Project, or any transaction contemplated by the Intermediated Loan Agreement, and inform the Promoter immediately upon becoming aware of such a situation;
 - (vi) undertakes to take such action as the Promoter shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct; and

- (vii) undertakes to apply and comply with the Recommendations of the Financial Action Task Force and the sanctions imposed by the United Nations, the European Union and the United States of America.
- (c) The Borrower shall ensure that the Promoter and the Financial Intermediaries will ensure that in each Sub-Loan Agreement (including the EIB Annex) to which a Final Beneficiary is a party, each Final Beneficiary:
- (i) undertakes to use the Sub-Loan for the financing and/or implementation of the Sub-Project concerned;
 - (ii) undertakes to complete the Sub-Project within a period of time specified in the Sub-Loan Agreement;
 - (iii) undertakes to purchase equipment, secure services and order works for the Sub-Project by procurement procedures which, to the satisfaction of the Bank, respect the criteria of economy and efficiency and comply with the Promoter's guide to procurement;
 - (iv) to the extent applicable, undertakes to maintain, repair, overhaul and renew, as well as properly insure all property forming part of the Sub-Project as required to keep it in good working order;
 - (v) undertakes to deliver to the Financial Intermediary such further information, evidence or document concerning the compliance with the due diligence requirements of the Financial Intermediary, including without limitation to comply with "know your customer" (KYC) or similar identification procedures, when requested and within a reasonable time;¹
 - (vi) undertakes to (i) implement and operate the relevant Sub-Project, as the case may be, in compliance with Environmental and Social Standards and in conformity with Environmental Laws (as further specified in the Side Letter) and upon the Borrower and/or Promoter's request, supply evidence to verify its fulfilment of that obligation; and (ii) obtain, maintain and comply with requisite Environmental or Social Approvals for the Sub-Project; the Borrower undertakes to exercise such rights in respect of any Final Beneficiary at the specific request of the Bank and to transmit to the Bank forthwith any material information received in relation to such request;
 - (vii) undertakes to execute and operate the Sub-Project in accordance with the relevant laws of a jurisdiction where such Sub-Project is carried out;
 - (viii) undertakes to keep books and records of all financial transactions and expenditures in connection with the Sub-Project, in which full and correct entries shall be made of all financial transactions and the assets and business of such Final Beneficiary, including to the extent applicable, expenditures in connection with the Sub-Project;
 - (ix) represents to the Financial Intermediary that, to the best of its knowledge, no funds invested in the Sub-Projects concerned by it or any of its controlling entities are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism, as well as undertakes to promptly inform the Financial Intermediary if at any time it becomes aware of the illicit origin of any such funds;
 - (x) undertakes to:
 - (1) allow persons designated by the Bank and, when required by the relevant mandatory provisions of EU Law, the competent EU institutions (including the European Court of Auditors, the European Commission, the European Anti-Fraud Office), as well as persons designated by the foregoing:
 - to visit the sites, installations and works comprising any Sub-Project and to conduct such checks as they may wish;
 - to interview representatives of any Final Beneficiary, and not obstruct contacts with any other person involved in or affected by any Sub-Project; and

- to conduct such on the spot audits and checks as they may wish and to review any Final Beneficiary's books and records in relation to the execution of any Sub-Project and to be able to take copies of related documents; and
- (2) provide the Bank (or any such other institution or body), or ensure that the Bank (or any such other institution or body) is provided, with all necessary assistance for the purposes described in this paragraph 6.3(c)(x);
 - (xi) requests any disbursements from, and makes any payments to the Financial Intermediary, under a Sub-Loan Agreement using bank account(s) in the name of such Final Beneficiary held with a duly authorised financial institution in the jurisdiction where such Final Beneficiary is incorporated or has its place of residence or where the Sub-Project is undertaken by such Final Beneficiary;
 - (xii) undertake not to (i) enter into a business relationship with any Sanctioned Person, or (ii) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;
 - (xiii) unless prohibited by law, undertakes to promptly inform the relevant Financial Intermediary of a genuine allegation, complaint or information with regard to Prohibited Conduct related to any Sub-Project it undertakes;
 - (xiv) undertake not to engage in (and not to authorise or permit any Affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with any Sub-Project, any tendering procedure for any Sub-Project, or any transaction contemplated by any Sub-Loan Agreement, and inform the Financial Intermediary immediately upon becoming aware of such a situation;
 - (xv) undertake to take such action as the Financial Intermediary or the Promoter shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct;
 - (xvi) undertake to ensure that contracts financed by the Sub-Loan Agreement include the necessary provisions to enable the Final Beneficiary to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Sub-Project;
 - (xvii) undertakes to facilitate investigations by the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in Articles 6.3(c)(xv) and 6.3(c)(xvi);
 - (xviii) acknowledges that the Bank may be obliged to communicate information relating to the Final Beneficiary, the Sub-Loan and/or any Sub-Project to any competent institution or body of the European Union including the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the laws of the European Union in accordance with the relevant mandatory provisions of European Union law;
 - (xix) comply with the ILO Standards; and
 - (xx) and undertakes to prepay the Sub-Loan in case of non-compliance with the above terms and conditions.

6.4

Compliance with laws

The Borrower shall comply, and make sure that the Promoter, the Financial Intermediaries and Final Beneficiaries will comply, in all respects with all laws and regulations to which they or any Sub-Project is subject.

6.5

Integrity

(a) **Prohibited Conduct:**

- (i) The Borrower shall not engage in (and shall not authorise or permit any person acting on its behalf to engage in) any Prohibited Conduct in connection with the Sub-Projects, any tendering procedure for the Sub-Projects, or any transaction contemplated by this Contract.
- (ii) The Borrower undertakes to take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct.
- (iii) The Borrower undertakes to ensure that contracts financed by this Loan include the necessary provisions to enable the Borrower to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Sub-Projects.

(b) **Sanctions:** The Borrower shall not:

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

(c) **Borrower's public officials:** The Borrower undertakes to take within a reasonable timeframe appropriate measures in respect of any of its public officials who:

- (i) becomes a Sanctioned Person; or
- (ii) is the subject of a final and irrevocable court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties,

in order to ensure that such member is excluded from any Borrower's activity in relation to the Loan and to the Sub-Projects.

6.6

General Representations and Warranties

The Borrower represents and warrants to the Bank that:

- (a) it has the power to execute, deliver and perform its obligations under this Contract and all necessary action has been taken to authorise the execution, delivery and performance of the same by it;
- (b) this Contract constitutes its legally valid, binding and enforceable obligations;
- (c) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not contravene or conflict with:
 - (i) any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
 - (ii) any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
- (d) there has been no Material Adverse Change since 13 October 2020;
- (e) no event or circumstance which constitutes a Prepayment Event or an Event of Default has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it any unsatisfied judgement or award;
- (g) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Sub-Projects and all such Authorisations are in full force and effect and admissible in evidence;

- (h) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (i) it is in compliance with all undertakings under this Article 6 and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental or Social Claim has been commenced or is threatened against it;
- (j) to the best of its knowledge, no funds invested in the Sub-Projects by the Borrower, the Promoter or the Financial Intermediaries are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism. The Borrower shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds;
- (k) it complies with the requirements and conditions contained in the Side Letter;
- (l) neither the Borrower, its public officials nor any other person acting on its or their behalf or under its or their control has committed nor will commit:
 - (i) any Prohibited Conduct in connection with the Sub-Projects or any transaction contemplated by this Contract; or
 - (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;
- (m) the Sub-Projects (including without limitation, the negotiation, award and performance of the On-Lending Agreement, the Intermediated Loan Agreements, the Sub-Loans Agreements and contracts financed or to be financed by the Loan) have not involved or given rise to, any Prohibited Conduct; and
- (n) it applies and complies with the Recommendations of the Financial Action Task Force and the sanctions imposed by the United Nations, the European Union and the United States of America.

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

ARTICLE 7 SECURITY

The undertakings in this Article 7 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

7.1 Pari passu ranking

The Borrower shall ensure that its payment obligations under this Contract rank, and will rank, not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally.

7.2 Security

Should the Borrower grant to a third party any Security for the performance of any debt instrument or any preference or priority in respect thereof, the Borrower shall promptly inform the Bank thereof and shall, if so required by the Bank, provide to the Bank equivalent Security for the performance of its obligations under this Contract or grant to the Bank equivalent preference or priority.

7.3 Clauses by inclusion

If the Borrower concludes with any other financial creditor a financing agreement that includes a loss-of-rating clause or a covenant or other provision regarding its financial ratios, if applicable, that is not provided for in this Contract or is more favourable to the relevant

financial creditor than any equivalent provision of this Contract is to the Bank, the Borrower shall promptly inform the Bank and shall provide a copy of the more favourable provision to the Bank. The Bank may request that the Borrower promptly executes an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

ARTICLE 8 INFORMATION AND VISITS

8.1

Information concerning Sub-Projects, Financial Intermediaries and Final Beneficiaries

The Borrower shall, and shall procure that the Promoter and each Financial Intermediary will, to the extent not prohibited by law and in a form and substance satisfactory to the Bank:

- (a) supply to the Bank (within a reasonable time) a list of all Financial Intermediaries who have signed Intermediated Loan Agreements;
- (b) within one (1) month following the end of each Allocation Period, provide to the Bank evidence that the entire amount disbursed to the Borrower under the Tranche concerned has been allocated by the Financial Intermediaries to eligible Sub-Projects;
- (c) semi-annually as from the Disbursement Date of the first Tranche, provide to the Bank a portfolio report in the form set out in the Side Letter;
- (d) upon request from the Bank, promptly deliver to the Bank:
 - (i) all documents and information necessary to enable the Bank to verify compliance by Borrower, Promoter, any Financial Intermediary or any Final Beneficiary with Article 6.3; or
 - (ii) copies of Intermediated Loan Agreements and Sub-Loan Agreements and any addendum or amendment thereto and evidence of disbursements made thereunder;
 - (iii) any other information or further document concerning:
 - (1) the financing, procurement, implementation, operation and environmental impact of, or for, the Sub-Projects;
 - (2) customer due diligence matters of, or for, a Financial Intermediary or a Final Beneficiary; and
 - (3) any Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) customer due diligence performed by any Financial Intermediary,as the Bank may reasonably require within a reasonable time;
- (e) promptly inform the Bank of:
 - (i) any default, fact or event, which entitles, or which would with the lapse of time entitle the Promoter to demand prepayment from a Financial Intermediary pursuant to an Intermediated Loan Agreement;
 - (ii) any notice of intention to prepay given by any Financial Intermediary in accordance with an Intermediated Loan Agreement;
 - (iii) any prepayment by a Financial Intermediary or a Final Beneficiary;
 - (iv) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower, the Promoter or a Financial Intermediary or any Environmental or Social Claim that is to their knowledge commenced, pending or threatened against the Borrower, the Promoter, a Financial Intermediary or a Final Beneficiary with regard to environmental, social or other matters affecting any Sub-Project;

- (v) any fact or event known to the Borrower, the Promoter or a Financial Intermediary, which may substantially prejudice the financial condition of the Promoter or any Financial Intermediary;
- (vi) any non-compliance by the Borrower, the Promoter, any Financial Intermediary or any Final Beneficiary with any applicable Environmental and Social Standard;
- (vii) any suspension, revocation or modification of any Environmental or Social Approval applicable to the Borrower, the Promoter, any Financial Intermediary or any Final Beneficiary;
- (viii) should they become aware of any fact or information confirming or reasonably suggesting that:
 - (1) any Prohibited Conduct has occurred in connection with any Sub-Project; or
 - (2) any of the funds invested in the share capital of a Financial Intermediary or in connection with any Sub-Project was derived from an illicit origin including products of Money Laundering or linked to the Financing of Terrorism; and
 - (ix) any fact or event which results in (1) any public official of the Promoter or any member of the management bodies of any Financial Intermediary or any Final Beneficiary or (2) any of the controlling entities of any Financial Intermediary or any Final Beneficiary, being a Sanctioned Person,
 and set out the action to be taken with respect to such matters.

8.2

Information concerning the Borrower

The Borrower shall:

- (a) deliver to the Bank such further information, evidence or document concerning:
 - (i) its general financial situation; and
 - (ii) the compliance with the due diligence requirements of the Bank for the Borrower, the Promoter of any Financial Intermediary, including, but not limited to "know your customer" (KYC) or similar identification procedures,
 when requested and within a reasonable time; and
- (b) deliver to the Bank an annual report on the implementation of the Promoter's Environmental and Social Management System in content and in form as agreed from time to time with the Bank;
- (c) inform the Bank immediately of:
 - (i) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
 - (ii) any event or decision that constitutes or may result in a Prepayment Event;
 - (iii) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract;
 - (iv) any breach of the On-Lending Agreement;
 - (v) any Event of Default having occurred or being threatened or anticipated;
 - (vi) any fact or event which results in any member of its public officials being a Sanctioned Person;
 - (vii) unless prohibited by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the Borrower or its public officials in connection with a Prohibited Conduct related to the Credit, the On-Lending Agreements, the Intermediated Loan Agreements, the Sub-Loan Agreements or the Sub-Projects;

- (viii) any measure taken by the Borrower pursuant to Article 6.5 of this Contract; and
- (ix) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change.

8.3

Visits, Rights of Access and Investigations

- (a) The Borrower shall, and shall procure that the Promoter and the Financial Intermediaries will, allow persons designated by the Bank, as well as persons designated by the competent European Union Institutions including the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office to:
 - (i) visit the sites, installations and works comprising the Sub-Projects and to conduct such checks as they may wish for purposes connected with this Contract and the financing of the Sub-Projects;
 - (ii) interview representatives of the Borrower, the Promoter, any Financial Intermediary and/or any Final Beneficiary, and not obstruct contacts with any other person involved in or affected by the Loan and/or Sub-Projects; and
 - (iii) review the Borrower, Promoter, Financial Intermediary and/or any Final Beneficiary's books and records in relation to the Loan and/or the Sub-Projects and to be able to take copies of related documents to the extent permitted by the law.
- (b) The Borrower shall facilitate investigations by the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.
- (c) The Borrower acknowledges, and the Promoter and each Financial Intermediary shall be deemed, when taking benefit of the proceeds of the Loan, to acknowledge that the Bank may be obliged to communicate information relating to the Borrower, the Promoter, each Financial Intermediary and the Sub-Projects to any competent institution or body of the European Union including the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the laws of the European Union.

ARTICLE 9 CHARGES AND EXPENSES

9.1

Taxes, duties and fees

The Borrower shall pay all Taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution or implementation of this Contract or any related document and in the creation, perfection, registration or enforcement of any Security for the Loan to the extent applicable.

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

9.2

Other charges

The Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation,

enforcement and termination of this Contract or any related document, any amendment, supplement or waiver in respect of this Contract or any related document, and in the amendment, creation, management, enforcement and realisation of any security for the Loan.

9.3 Increased costs, Indemnity and set-off

- (a) The Borrower shall pay to the Bank any costs or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation which occurs after the date of signature of this Contract, in accordance with or as a result of which (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.
- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any full or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- (c) The Bank may set off any matured obligation due from the Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

ARTICLE 10
EVENTS OF DEFAULT

10.1 Right to demand repayment

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

10.1.A Immediate demand

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

- (a) if the Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless:
 - (i) its failure to pay is caused by an administrative or technical error or a Disruption Event; and
 - (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of the Borrower or any representation, warranty or statement made or deemed to be made by the Borrower in, pursuant to or for the purpose of entering into this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of the Borrower in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan:

- (i) the Borrower is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
- (ii) any financial commitment for such other loan or obligation is cancelled or suspended;
- (d) if the Borrower is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of the Promoter;
- (f) if the Borrower defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (g) if the Borrower defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (h) if any expropriation, attachment, arrestment, distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or the Promoter and is not discharged or stayed within 14 (fourteen) days;
- (i) if a Material Adverse Change occurs, as compared with the Borrower's or the Promoter's condition at the date of signature of this Contract;
- (j) if it is or becomes unlawful for the Borrower to perform any of its obligations under this Contract or this Contract is not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms.

10.1.B Demand after notice to remedy

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

- (a) if the Borrower fails to comply with any provision of this Contract (other than those referred to in Article 10.1.A; or
- (b) if any fact related to the Borrower or the Sub-Projects stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Sub-Projects,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within a reasonable period of time specified in a notice served by the Bank on the Borrower.

10.2 Other rights at law

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

10.3 Indemnity

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

- (a) the interest at the applicable Fixed Rate net of the Margin that would accrue thereafter on the amount prepaid over the period from the date of prepayment to the Maturity Date, if it were not prepaid; over

(b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

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

10.3.A General

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

10.4 Non-Waiver

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

ARTICLE 11
LAW AND JURISDICTION, MISCELLANEOUS.

11.1 Governing Law

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of Luxembourg.

11.2 Jurisdiction

(a) The courts of Luxembourg-City have exclusive jurisdiction to settle any dispute (a "Dispute") arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Contract.

(b) The parties agree that the courts of Luxembourg-City are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

11.3 Place of performance

Unless otherwise specifically agreed by the Bank in writing, the place of performance under this Contract, shall be the seat of the Bank.

11.4 Evidence of sums due

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

11.5 Entire Agreement

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

11.6 Invalidity

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

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

11.7 Amendments

Any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

11.8 Counterparts

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

ARTICLE 12
FINAL CLAUSES

12.1 Notices

12.1.A Form of Notice

- (a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter and electronic mail.
- (b) Notices and other communications for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:
 - (i) on the date of delivery in relation to a hand-delivered or registered letter;
 - (ii) in the case of any electronic mail sent by the Borrower to the Bank, only when actually received in readable form and only if it is addressed in such a manner as the Bank shall specify for this purpose; or
 - (iii) in the case of any electronic mail sent by the Bank to the Borrower, when the electronic mail is sent.
- (c) Any notice provided by the Borrower to the Bank by electronic mail shall:
 - (i) mention the Contract Number in the subject line; and
 - (ii) be in the form of a non-editable electronic image (pdf, tif or other common non editable file format agreed between the parties) of the notice signed by an Authorised Signatory with individual representation right or by two or more Authorised Signatories with joint representation right of the Borrower as appropriate, attached to the electronic mail.
- (d) Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.
- (e) Without affecting the validity of electronic mail or communication made in accordance with this Article 12.1, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:
 - (i) Disbursement Request;
 - (ii) revocation of a Disbursement Request according to Article 1.2.C(b);

- (iii) any notices and communication in respect of the deferment, cancellation and suspension of a disbursement of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment; and
- (iv) any other notice, communication or document required by the Bank.
- (f) The parties agree that any above communication (including via electronic mail) is an accepted form of communication and shall constitute admissible evidence in court.

12.1.B Addresses

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

For the Bank

Attention: OPS Global Partner
100 boulevard Konrad Adenauer
L-2950 Luxembourg
E-mail address: OPS_GP-2_SecDiv@eib.org

For the Borrower

Attention: Treasury and Debt Management Division
and Resource Mobilisation and Economic
Relations Division
Ministry of Finance of the Republic of Ghana
Finance Drive, Accra, Ghana
E-mail address: info@mofep.gov.gh

12.1.C Notification of communication details

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

12.2 English language

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

12.3 Recitals, Schedules and Annex

The Recitals and following Schedules form part of this Contract:

- Schedule A Definition of EURIBOR
- Schedule B Form of Disbursement Request (Article 1.2.B)
- Schedule C Form of Certificate from Borrower (Article 1.4.C)

The following Annex is attached hereto:

- Annex I Authorisation of signatory of the Borrower



The parties hereto have caused this Contract to be executed in 3 (three) originals in the English language and have respectively caused the undersigned or their duly authorised representatives to initial each page of this Contract on their behalf.

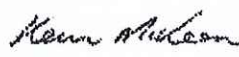
At Accra, this 23 DECEMBER 2020
At Luxembourg, this 28 December 2020

Signed for and on behalf of
REPUBLIC OF GHANA

Signed for and on behalf of
EUROPEAN INVESTMENT BANK


Ken Ofori-Atta
Minister for Finance


Diederick Zambon
Head of Division


Kevin McKeon
Legal Counsel

Definition of EURIBOR

"EURIBOR" means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the "Representative Period").

For the purposes of paragraphs (a) to (c) above:

- (i) "available" means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), or any successor to that function of EMMI, as determined by the Bank; and
- (ii) "Screen Rate" means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the "Reset Date") which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such Screen Rate is not so published, the Bank shall request the principal offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them, as at approximately 11h00, Brussels time on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations. If no sufficient quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11h00, Brussels time, on the day which falls 2 (two) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European banks for a period equal to the Representative Period. The Bank shall inform the Borrower without delay of the quotations received by the Bank.

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

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

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

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If no Screen Rate and/or the EURIBOR replacement rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

Form of Disbursement Request (Article 1.2.B)³

Disbursement Request
Ghana – DEVELOPMENT BANK GHANA

Please proceed with the following disbursement:

Date:

Loan Name (*):

Signature Date (*):

Contract Number:

Currency & amount requested	
Currency	Amount

Proposed disbursement date:

INTEREST	Int. rate basis (Art. 3.1)	<input type="text" value="Fixed"/>
	Rate (%)	<input type="text"/>
	Frequency (Art. 3.1)	<input type="text" value="Semi-annual"/> <input type="checkbox"/>
	Payment Dates (Art. 3.1)	<input type="text"/>
CAPITAL	Repayment frequency	<input type="text" value="Semi-annual"/> <input type="checkbox"/>
	Repayment methodology (Art. 4.1)	Equal instalments <input type="checkbox"/> Constant annuities <input type="checkbox"/>
	First Repayment Date	<input type="text"/>
	Last Repayment Date	<input type="text"/>

Reserved for the Bank	(contract currency)
Total Credit Amount:	<input type="text"/>
Disbursed to date:	<input type="text"/>
Balance for disbursement:	<input type="text"/>
Current disbursement:	<input type="text"/>
Balance <u>after</u> disbursement:	<input type="text"/>
Disbursement deadline:	<input type="text"/>
Max. number of disbursements:	<input type="text"/>
Minimum Tranche size:	<input type="text"/>
Conditions precedent:	Yes / No

³ To be provided on paper bearing the Borrower's letterhead.

Account to be credited:

Account N°:

Account Holder/Beneficiary:

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

Bank name and address:

Bank identification code (BIC)

Payment details to be provided:

Please transmit information relevant to:

Name(s) of the Borrower's Authorised Signatory(ies) (as defined in the Contract):
.....

Signature(s) of the Borrower's Authorised Signatory(ies) (as defined in the Contract):
.....

IMPORTANT NOTICE TO THE BORROWER:

PLEASE ENSURE THAT THE LIST OF AUTHORISED SIGNATORIES AND ACCOUNTS PROVIDED TO THE BANK HAS BEEN DULY UPDATED PRIOR TO THE SUBMISSION OF ANY DISBURSEMENT REQUEST. IN THE EVENT THAT ANY SIGNATORIES OR ACCOUNTS APPEARING IN THIS DISBURSEMENT REQUEST ARE NOT INCLUDED IN THE LATEST LIST OF AUTHORISED SIGNATORIES AND ACCOUNTS RECEIVED BY THE BANK, THIS DISBURSEMENT REQUEST SHALL BE REGARDED AS NOT HAVING BEEN MADE.

IN ADDITION, IF THIS IS THE FIRST DISBURSEMENT REQUEST UNDER THE FINANCE CONTRACT, THE CONDITIONS SET OUT IN ARTICLE 1.4.A OF THE FINANCE CONTRACT MUST HAVE BEEN MET TO THE SATISFACTION OF THE BANK PRIOR TO THE DATE HEREOF.

Form of Certificate from Borrower (Article 1.4.C)

From: Republic of Ghana
To: European Investment Bank
Date:
Subject: Finance Contract between European Investment Bank and Republic of Ghana
dated 2020 (the "Finance Contract")
Contract Number 91197 Operation Number 2019-0410

Dear Sir or Madam,

Terms defined in the Finance Contract have the same meaning when used in this letter.
For the purposes of Article 1.4 of the Finance Contract we hereby certify to you as follows:

- (a) no Prepayment Event has occurred and is continuing unremedied or unwaived;
- (b) no Security for the performance of any debt instrument or any preference or priority in respect thereof has been granted to a third party without the Bank being notified in accordance with Article 7.2;
- (c) there has been no material change to any aspect of the Sub-Project or in respect of which we are obliged to report under Article 8.1, save as previously communicated by us;
- (d) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived;
- (e) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us any unsatisfied judgement or award;
- (f) the representations and warranties to be made or repeated by us under Article 6.6 are true in all respects; and
- (g) no Material Adverse Change has occurred, as compared with the situation at the date of the Finance Contract.

Yours faithfully,

For and on behalf of Republic of Ghana

Date:

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

My Ref. No.

Your Ref. No.



REPUBLIC OF GHANA

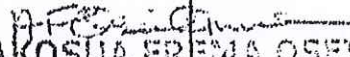
OFFICE OF THE PRESIDENT
FLAGSTAFF HOUSE
ACCRA
TEL: 0302-201000

30th January, 2017

INTRODUCTION OF THE NEW MINISTER

I write to inform you that following the investiture of H.E. Nana Addo Dankwa Akufo-Addo on 7th January, 2017 as the President of the Republic of Ghana, **Hon. Kenneth Ofori-Atta** has been appointed as the Minister for Finance.

2. Please find enclosed for your information, a specimen signature of Hon. Kenneth Ofori-Atta.
3. I would be most grateful if you could amend your records to reflect this change.


HON. AKOSUA FREMA OSEI-OPARE
CHIEF OF STAFF

SEE DISTRIBUTION LIST

cc: Hon. Kenneth Ofori-Atta
The Hon. Minister
Ministry of Finance and
Economic Planning
Accra

The Chief Director
Ministry of Finance and
Economic Planning
Accra

The Director, ERM-Bilateral
Ministry of Finance and
Economic Planning
Accra

Enclosure:

1. Specimen signature of Hon. Kenneth Ofori Atta

Authorisation of signatory of the Borrower

Annex I

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