



ADDITIONAL TERMS AND CONDITIONS

The Loan Funded in whole or in part by the funds of the European Investment Bank

DEFINITIONS

“**Affiliates**” means a Subsidiary or a Holding Company of the Borrower or any Subsidiary of that Holding Company.

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

“**EIB Statement of Environmental and Social Principles and Standards**” means the statement published on EIB website (http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf) that outlines the standards that EIB requires of the projects that it finances and the responsibilities of the various parties.

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

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

“**Environmental and Social Standards**” means:

- (a) Environmental Law and Social Law applicable to the Project or the Borrower; and
- (b) the EIB Statement of Environmental and Social Principles and Standards.

“**Environmental Law**” means:

- (a) EU law, including principles and standards;
- (b) Georgian national laws and regulations; and
- (c) international treaties and conventions signed and ratified by or otherwise applicable and binding on Georgia,

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

“**Environmental or Social Approval**” means any permit, licence, authorisation, consent or other approval required by an Environmental Law or a Social Law in connection with the construction or operation of the Project.

“**Exclusion Situation**” means the relevant entity is in any of the following situations:

- (i) it is bankrupt or being wound up, is having its affairs administered by the courts, in this context, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (ii) it or persons having powers of representation, decision-making or control over it has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*, which would affect its ability to implement this Loan;
- (iii) it or persons having powers of representation, decision-making or control over it has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, Money Laundering or any other illegal activity detrimental to the financial interests of the European Union;
- (iv) makes a misrepresentation when supplying information required for selection as a Borrower, or fails to supply this information; and
- (v) to its knowledge, having made reasonable inquiries, it is listed in the central exclusion database set up and operated by the European Commission under European Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database;

provided that items (ii) and (iii) shall not apply where the relevant entity establishes to the satisfaction of the Lender that adequate measures have been adopted against the persons having powers of representation, decision making or control over it who are subject to a judgment or conviction as referred to in points (ii) and (iii).

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

“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 Georgia, and the Core Labour Standards (as defined in the ILO Declaration on Fundamental Principles and Rights at Work).

“Money Laundering” means:

- (i) 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;
- (ii) the concealment or disguising 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;
- (iii) 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
- (iv) 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-Cooperating Jurisdiction” means any jurisdiction that does not cooperate with the European Union in relation to the application of the internationally agreed tax standard (i.e. any jurisdiction classified as “non-compliant” by the Organisation for Economic Cooperation and Development (OECD) and its Global Forum

on Transparency and Exchange of Information for Tax Purposes, from time to time, unless otherwise notified by the Lender).

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

“Prohibited Practice” means any:

- a) Coercive Practice, meaning the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- b) Collusive Practice, meaning an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- c) Corrupt Practice, meaning the offering, giving, receiving or soliciting, directly or indirectly, of anything of value by a party to influence improperly the actions of another party;
- d) Fraudulent Practice, meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation; or
- e) Obstructive Practice, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with this Loan or the 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.

“Project” means the combination of activities for which the Loan has been disbursed.

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

“Sanction Lists” means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, including but not limited to those as made available in the official EU websites http://ec.europa.eu/external_relations/cfsp/sanctions/list/version4/global/global.xml and https://eeas.europa.eu/headquarters/headquarters-homepage_en/8442/Consolidated%20list%20of%20sanctions, 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, including but not limited to those as made available in the official UN website <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>, as amended and supplemented from time to time or on any successor page; 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

<center/sanctions/Programs/Pages/Programs.aspx>, as amended and supplemented from time to time or on any successor page.

“**Social Law**” means each of:

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

“**Subsidiary**” means, with respect to any person, any company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned person; or
- (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.

1. Participation of the EIB

- 1.1. The Lender hereby informs the Borrower that monetary funds under the Loan are provided using, in whole or in part, funds of the European Investment Bank (hereinafter - “the **EIB**”).
- 1.2. Financing provided under the Loan is performed with the support of the European Union under the DCFTA Agreement Initiative East.

2. General Representations and Warranties

- 2.1. The Borrower represents and warrants to the Lender that:
 - (a) to the best of its knowledge no funds invested in the Project are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism.
 - (b) any information or document given to the Lender in connection with the Project is true and correct.
 - (c) at any time during five (5) years prior to their assessment by the Lender for purposes of the financing under the Loan, it has not been in such an Exclusion Situation.
 - (d) it is not established in a Non-Cooperating Jurisdiction.

3. Obligations of the Borrower:

- 3.1. Promptly supply to the Lender or to the EIB (whether for itself or on behalf of the European Commission) any document or report which is requested by the Lender and/or EIB in connection with the Loan or/and the Project.
- 3.2. Promptly provide to the Lender or to EIB any information (in writing) and any other assistance requested by the Lender and/or EIB in support of an evaluation of the contribution of the European Union under the DCFTA Agreement Initiative East by the European Commission or EIB.

- 3.3. Use the Loan exclusively for the financing of the Project.
- 3.4. Complete the Project within the term as defined under the Loan.
- 3.5. Implement and operate the Project in compliance with Environmental and Social Standards; obtain, maintain and comply with the requisite Environmental or Social Approvals; and as the case may be, in conformity with environmental legislation of Georgia and upon the Lender's request, supply evidence to verify the fulfilment of that obligation.
- 3.6. Execute and operate the Project in accordance with the relevant standards of EU law to the extent implemented by the laws of Georgia or specified by EIB as well as the relevant laws of Georgia.
- 3.7. Maintain in force all rights of way or use and all permits and Authorizations necessary for the execution and operation of the Project and comply with all laws to which it or the Project are subject to;
- 3.8. Request any disbursements from and any payments made to a bank account in the name of the Borrower held with a duly authorized financial institution in the jurisdiction where the Project is undertaken by the Borrower.
- 3.9. Maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order.
- 3.10. Integrity Commitment.
- 3.11. Deliver any kind of information/documents to the Lender or/and to any third person (including but not limited to European Investment Bank (having its seat at 100 boulevard Konrad Adenauer, Luxembourg, L-2950 Luxembourg) and its affiliates/contractors) in connection with the Loan or/and the Project, upon the request of the Lender.

(a) **Prohibited Conduct:**

- (i) The Borrower shall not engage in (and shall not 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 the Loan.
 - (ii) The Borrower undertakes to take such action as the Lender 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 Project.
 - (iv) The Borrower shall promptly inform the Lender if at any time it becomes aware of the illicit origins of any funds invested in the Project, including products of money laundering or linked to the financing of terrorism with respect to the Loan or the Project.
 - (v) The Borrower shall promptly inform the Lender of any genuine allegation, complaint or information relating to Prohibited Conduct in connection with any funds made available under the Loan or the Project.
- (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 Management** The Borrower undertakes 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 the Prohibited Conduct perpetrated in the course of the exercise of their professional duties,

in order to ensure that such member is suspended, dismissed or in any case excluded from any of the Borrower's activities in relation to the Loan and to the Project.
 - (d) **FATF:** The Borrower shall institute, maintain and comply with internal procedures and controls in compliance with the Financial Action Task Force recommendations and standards, as amended and supplemented from time to time.
- 3.12. Immediately inform the Lender of any breach of the Loan Agreement;
- 3.13. Immediately inform the Lender of any measure taken pursuant to the Article 3.10 (c).
- 3.14. Maintain and be able to produce all relevant information/documentation (including contracts financed with the proceeds of the Loan (including a copy of the contract itself), and material documents relating to the procurement and implementation of the contract) for the implementation of the Loan and the Project for a period of 7 (seven) years after the performance of the Loan.
- 3.15. Keep books and records of all financial transactions, expenditures and contracts financed with the proceeds of the Loan and the Project.
- 3.16. Comply with all the undertakings set in this Annex.
- 3.17. Fully cooperate in the protection of the European Union's financial interests under or in relation to this Loan.
- 3.18. Provide for the right of the European Commission to comprehensively exercise its competences;
- 3.19. Comply at all times with relevant standards and applicable legislation on the prevention of tax fraud to which it may be subject.
- 3.20. Shall not (other than as a result only of events or circumstances beyond the control of the Borrower) be established in a Non-Cooperating Jurisdiction.
- 3.21. Investigations and Information
- The Borrower undertakes:
- (a) to take such action as the Lender shall reasonably request to investigate and/or terminate any alleged or suspected act of the nature described in Article 2.12 (*Integrity commitment*) to the extent the taking of such actions will not violate any laws applicable to the Borrower;
 - (b) to inform the Lender of the measures taken to seek damages from the persons responsible for any loss resulting from any such act; and
 - (c) to facilitate any investigation that the Lender and/or EIB may make concerning any such act.
- 3.22. Visits by EIB, Rights of Access and Investigations
- (a) The Borrower shall allow persons designated by EIB, as well as persons designated by competent EU institutions including (without limitation) the Court of Auditors of the European Union, the European Commission and the European Anti-Fraud Office, and any external auditor authorised by the preceding to:
 - (i) visit the sites, installations and works comprising the Project and the premises of the Borrower and to conduct such checks as they may wish for purposes connected with this Loan and the financing of the Project,

- (ii) interview representatives of the Borrower, contractors, suppliers and consultants and not obstruct contacts with any other person involved in or affected by the Project;
 - (iii) review, and verify by examining, the Borrower's books and records in relation to the execution of the Project (and to be able to take copies of related documents to the extent permitted by the law) and verify by means of on-the-spot checks and inspections, the implementation of the Project and the execution of the contracts relating thereto in order to protect the financial interests of the European Union, with a view to establishing whether there has been any Prohibited Conduct affecting the financial interests of the European Union in connection with the any Project; and
 - (iv) conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document which is relevant to the financing of the Project. Such verifications, controls or audits may take place up to seven (7) years after the Loan repayment date.
- (b) The Borrower shall facilitate investigations by 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 this Article.
 - (c) The Borrower acknowledges that EIB may be obliged to communicate information relating to the Borrower and 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 Communities and also in accordance with the relevant mandatory provisions of European Union law.

4. Publication

The Lender hereby informs the Borrower that, the EIB is entitled to publish on their websites, or produce press releases containing information on the Borrower under this Loan. The Borrower is entitled to object to publication for the reasons set out in section [5] herein.

5. The Borrower hereby confirms that EIB shall be entitled to publish on their websites, or produce press releases containing information on the Borrower, including (x) the name and address of the Borrower, as well as indication of the amount in EUR, and (y) the name, address and country of establishment of the Borrower, and the type of financial support received, except if;

(x) the initial principal amount under the Loan does not exceed EUR 15,000, or (y) prior to receiving financial support under the loan, the Borrower informs the Lender in writing and on the basis of an adequate justification that:

- a. the publication requirement risks harming its commercial interests,
- b. it risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union; or
- c. it would be illegal under applicable laws and regulations.

6. The Borrower represents and shall ensure that (i) the Lender or any of its controlling entities does not own or control the Borrower and (ii) the Borrower is not a member of Lender's management bodies, its staff, their family or close associate.