

ADDITIONAL TERMS AND CONDITIONS

The Loan Funded in whole or in part by the funds of the EUROPEAN INVESTMENT BANK.

DEFINITIONS

“**Contract**” means the finance contract entered into by the Bank and the European Investment Bank on 30 July 2020. “**EIB Statement of Environmental and Social Principles and Standards**” means the statement published on the Bank’s website that outlines the standards that the Bank requires of the projects that it finances and the responsibilities of the various parties.

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

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

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

“**Environmental and Social 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).

“Loan” means the aggregate of the amounts disbursed from time to time by the Bank under the Contract.

“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).

"Non-Compliant Jurisdiction" means a jurisdiction

- (i) listed in the Annex I of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, adopted by the European Council at its meeting held on 12 March 2019;
- (ii) listed in the Annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies;
- (iii) rated as “partially compliant”, “provisionally partially compliant” or “non-compliant” by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes against the international standard on exchange of information on request;
- (iv) included in the Financial Action Task Force "Public Statement" (i.e. countries or jurisdictions with such serious strategic deficiencies that the Financial Action Task Force calls on its members and non-members to apply counter-measures or for which the Financial Action Task Force calls on its members to apply enhanced due diligence measures); or
- (v) included in the Financial Action Task Force statement "Improving Global AML/CFT Compliance: On-Going process" (i.e. countries or jurisdictions with strategic weaknesses in their AML/CFT measures but that have provided a high-level commitment to an action plan developed with the Financial Action Task Force),
- (vi) in each case as such statement, list, directive or annex may be amended and/or supplemented from time to time.

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

"Prohibited Practice" means any:

- (i) 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;
- (ii) 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;
- (iii) 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;
- (iv) 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
- (v) Obstructive Practice, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with this Loan or the Project, (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intending to materially impede the exercise of the contractual rights of audit or access to information.

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

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

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

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

"**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.

"**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.

1. **Participation of the EIB**

1.1. The Lender hereby informs the Borrower that the Financing provided under the Contract is performed with the support by European Investment Bank (hereinafter - "the **EIB**") with the backing of the European Union through the EU Guarantee and the NIP.

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 a relevant Borrower assessment by the Lender for purposes of the financing under the Loan Agreement, has been in an Exclusion Situation.
- (d) it is not established in a Non-Cooperating Jurisdiction.
- (e) prepay the Loan in case of non-compliance with any of the above terms and conditions.

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. 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;
- 3.3. Use the Loan exclusively to complete or carry out the Project in accordance with the Loan purpose.
- 3.4. 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.
- 3.5. Appropriately insure all insurable works and property forming part of the Project.
- 3.6. 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.
- 3.7. Request all disbursements from, and make all payments to, the Borrower under the Loan Agreement to a Lender account in the name of the Borrower held with a duly authorised and properly regulated financial institution in the Eligible Country in which the Borrower is carrying out the Project.
- 3.8. Maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order.
- 3.9. Procure all works, goods and services relating to the Project through the most economically advantageous option, following appropriate procedures in view of the circumstances and local legislation complying, to the Lender's satisfaction, with its policy described in its Guide to Procurement.
- 3.10. Where required, purchase goods, equipment, secure services and order works for each Project by open international tender, where required, or other acceptable procurement procedure complying, to the Lender's satisfaction, with its policy as described in its Guide to Procurement in force at the date of this Contract.
- 3.11. Ensure that all contracts under a Project to be procured by it after the date of this Contract (in accordance with the procurement procedures in 3.9 above) provide for:
 - (i) the requirement that the relevant contractor promptly informs the Lender of a genuine allegation, complaint or information with regard to Prohibited Conducts related to the Project;
 - (ii) the requirement that the relevant contractor keeps books and records of all financial transactions and expenditures in connection with the Project; and
 - (iii) the Lender's right, in relation to an alleged Prohibited Conduct, to review the books and records of the relevant contractor in relation to the Project and to take copies of documents to the extent permitted by law.

Prohibited Conduct:

- (i) The Borrower shall not engage in any Prohibited Conduct in connection with the Project or this Agreement, any tendering procedure, or any transaction contemplated by any Project or this Agreement.
- (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 in connection with any Project or this Agreement.
- (iii) The Borrower agrees to enable the Lender to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project or this Agreement.

Sanctions:

The Borrower shall not directly or indirectly:

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

- 3.12. Immediately inform the Lender of any breach of the Loan Agreement;
- 3.13. Provide all necessary information upon the Lenders request concerning Project and Borrower.
- 3.14. Keep books and records of all financial transactions, expenditures and contracts financed with the proceeds of the Loan and the Project.
- 3.15. Comply in all respects with all laws and regulations to which it or the Loan is subject.
- 3.16. Fully cooperate in the protection of the European Union's financial interests under or in relation to this Loan.
- 3.17. Provide for the right of the European Commission to comprehensively exercise its competences;
- 3.18. Comply at all times with relevant standards and applicable legislation on the prevention of tax fraud to which it may be subject.
- 3.19. 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 occurrence of any Prohibited Conduct in connection with any Project;

- 3.20. The Borrower is aware of the Financial Advantage received by

Participation of the European Investment Bank.

The European Investment Bank, the financing institution of the European Union established by article 308 of the Treaty on the Functioning of the European Union, participates side-by-side with local financial institutions in the financing of investment programmes, which form part of the objectives of the European Union. The present loan satisfies all eligibility criteria for financing by the European Investment Bank. The EIB grants to the Borrower a financial advantage reflected on the interest rate. Such financial advantage amounts to 0.50% (50 basis points) per annum (the "Financial Advantage") compared to the annual interest rate the Lender would charge for this loan without EIB participation”;

3.21. **Visits by EIB, Rights of Access and Investigations**

- (a) To the extent not prohibited by law, 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 Project;
 - (ii) interview representatives of the Borrower and not obstruct contacts with any other person involved in or affected by the Project;
 - (iii) review the Borrower's books and records in relation to the Project or the Loan Agreement, or in relation to any alleged Prohibited Conduct and to be able to take copies of related documents to the extent permitted by the law; and
 - (iv) facilitate investigations by the Lender and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of Prohibited Conduct and provide the Lender, or ensure that the Lender is provided, with all necessary assistance for the purposes described in this Article **Error! Reference source not found.** of the Finance Contract.
 - (v) 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 Project. Such verifications, controls or audits may take place up to seven (7) years after the Loan repayment date.
- (b) The Borrower shall ensure that contracts financed by the Loan include the necessary provisions to enable the Borrower to investigate or terminate any alleged or suspected occurrence of a Prohibited Conduct in connection with any Project;
 - (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**

a. The Lender shall be 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 this section.

b. 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;

- 1. with respect to the Borrower, prior to receiving financial support under this Contract, 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, or
 - 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 the applicable laws and regulations;

- 2. with respect to the Borrower, 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.