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**GRANT AGREEMENT
(UKRAINE PUBLIC BUILDINGS ENERGY EFFICIENCY PROJECT)**

under the

E5P PROGRAMME

between

UKRAINE

and the

EUROPEAN INVESTMENT BANK

Kyiv, 8 November 2021

Luxembourg, 28 October 2021

THIS CONTRACT IS MADE BETWEEN:

UKRAINE

(the "Beneficiary")

of the first part,

and

the EUROPEAN INVESTMENT BANK having its seat at
98-100 Blvd Konrad Adenauer, L-2950 Luxembourg,
represented by Jacopo LENSI ORLANDI, Head of Division
and Jean-Erik DE ZAGON, Head of Representation for
Ukraine,

(the "Bank")

of the second part,

and jointly referred to as the "Parties",

HAVE AGREED as follows:

Article 1 - Purpose

- 1(1) On 6 October 2020, the Beneficiary and the Bank entered into the Ukraine Public Buildings Energy Efficiency Project finance contract (the "**Finance Contract**"), pursuant to which the Bank has agreed to provide to the Beneficiary a loan in an amount of up to EUR 300,000,000 (three hundred million euros) (the "**Framework Loan**") to support energy efficiency refurbishments in public buildings (each operation a "**Sub-Project**"), as more particularly described in the technical description set out in Schedule A of the Finance Contract (the "**Technical Description**"). The Sub-Projects will be implemented in the territory of Ukraine by municipalities (local state administrations and bodies of local self-government) and communal enterprises other than private enterprises.
- 1(2) On 6 November 2020, the Assembly of Contributors of the Eastern Europe Energy Efficiency and Environment Partnership Fund (the "**E5P Fund**") approved a grant of EUR 4,000,000 (four million euros) from the resources of the E5P Fund (the "**Phase I Grant**") consisting of:
- a technical assistance grant of EUR 3,000,000 (three million euros) (the "**TA Grant**") to be used to set-up the foundation that will support the implementation of all Sub-Projects in accordance with the cooperation agreement between the MCTD and the Bank signed on 24 June 2021; and
 - an investment grant of EUR 1,000,000 (one million euros) (the "**Investment Grant**") to be used for financing Sub-Projects related to energy efficiency measures in hospitals as described in Annex I hereto and in the Technical Description set forth in Schedule A of the Finance Contract (together the "**Hospitals Project**" and each separate part of it a "**Hospitals Sub-Project**").

The purpose of this agreement (the "**Agreement**") is to set out the terms and conditions for the Investment Grant in order to support financially and technically the Hospitals Project.

A further grant of approximately EUR 4,000,000 (four million euros) from the resources of the E5P Fund to support the Project is expected to be mobilized (the "**Phase II Grant**"). Upon approval of the Phase II Grant by the Assembly of Contributors of the E5P Fund the amount of the Investment Grant will be increased.

- 1(3) The Investment Grant is provided to the Beneficiary, acting through the MCTD. The promoter of the Hospitals Project is the Ministry for Communities and Territories Development of Ukraine (or its legal successor) (the "**Promoter**") through a dedicated Programme Management Support Unit (the "**PMSU**") to be established between the representatives of the Promoter and the Bank, and, if required, the consultants supporting the implementation of the Hospitals Project and potentially other stakeholders.
- 1(4) The Hospitals Project is part of the Ukraine Public Buildings Energy Efficiency Project and is being undertaken by the Beneficiary. The Beneficiary undertakes to ensure the Investment Grant is used for the financing of the Hospitals Project in accordance with the terms and conditions set out in the Finance Contract and this Agreement.
- 1(5) The total investment cost of the Hospitals Project eligible for financing from the Investment Grant is estimated at EUR 4,000,000 (four million euros).
- 1(6) The Beneficiary, acting through the MCTD, in cooperation with the Promoter, shall make the proceeds of the Investment Grant available to the "**Recipients**" (as defined in Annex I) pursuant to a grant fund transfer agreement (the "**Grant Fund Transfer Agreement**"), on terms and conditions acceptable to the Bank from time to time.

- 1(7) On 14 June 2005 Ukraine and the Bank signed a Framework Agreement which was ratified by the Parliament of Ukraine on 7 February 2006 in the Law of Ukraine # 3392 "On Ratification of the Framework Agreement between Ukraine and the European Investment Bank" and which governs the Bank's activities in Ukraine (as superseded or re-entered from time to time, the "**Framework Agreement**"), which entered into force on 8 April 2006 and shall continue to be in full force and effect throughout the term of this Agreement. The Beneficiary has acknowledged that the Framework Loan falls within the scope of the Framework Agreement, which provides, inter alia, that the Bank shall enjoy, in respect of its activities in the territory of Ukraine, the treatment no less favourable than that which is accorded to projects or contracts financed by any other financial institution.
- 1(8) On the date of this Agreement, Ukraine is a state party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- 1(9) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data.
- 1(10) By entering into this Agreement, each Party acknowledges that the Bank is bound to comply with the Sanctions (as defined below) and that the Bank cannot, therefore, make funds available, directly or indirectly, to or for the benefit of a Sanctioned Person (as defined below).
- 1(11) It is to be understood that references herein to Articles, Recitals and Annexes are references respectively to articles of, and recitals and annexes to this Agreement.
- 1(12) In this Agreement:

"**Completion Date**" has the meaning given to it in Article 2(2).

"**Contract**" means an agreement entered into between the Beneficiary and/or the Promoter and/or the Recipient and a Contractor pursuant to a public procurement procedure, as prescribed in Article 7 (1) and under which such Contractor delivers the services, executes the works, or supplies the products.

"**Contractor**" means the natural or legal person, or an association thereof with which the Beneficiary and/or the Promoter and/or the Recipient concludes a Contract for the delivery of the services, execution of the works, or supply of the products in connection with the implementation of the Hospitals Project.

"**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 listed in the Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (as amended, replaced or re-enacted from time to time).

"**Hospitals Project**" has the meaning given to it in Recital 1(2).

"**Implementation Period**" has the meaning given to it in Article 2(1).

"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.

"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;
- (e) **Misuse of the Grant** meaning improper use of the Grant, committed either intentionally or through reckless disregard;
- (f) **Obstructive Practice**, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with the Hospitals 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; and
- (g) **Tax Crime**, meaning all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of Ukraine, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year.

"Sanctioned Persons" 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;
- (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.

Article 2 - Implementation Period of this Agreement

- 2(1) The implementation period of this Agreement (the **"Implementation Period"**) will begin on the Date of Effectiveness.
- 2(2) The Implementation Period of this Agreement will last until 31 December 2026 (the **"Completion Date"**), unless otherwise notified by the Bank to the Beneficiary in writing.

Article 3 - Amount of the Grant

- 3(1) Subject to the Bank receiving from the E5P Fund the funds pursuant to the funding agreement between the Bank and the European Bank for Reconstruction and Development as fund manager of the E5P Fund dated 7 July 2021 (the **"Funding Agreement"**), the Bank undertakes to provide the Investment Grant to the Beneficiary in an amount of up to EUR 1,000,000 (one million euros).
- 3(2) The final amount of the Investment Grant will be established as follows:
 - (a) the Investment Grant amount may not exceed the maximum amount established by Article 3(1) even if the overall actual expenditure exceeds the estimated total cost of the Hospitals Project as specified in Article 1(5); and
 - (b) if the total investment cost of the Hospitals Project at its completion is less than the estimated total cost of the Hospitals Project as specified in Article 1(5), the Investment Grant shall be pro-rated to the actual total investment cost incurred.

Article 4 - Use of the Grant

- 4(1) The Beneficiary shall use, and shall ensure that the Recipients shall use, the Investment Grant solely for the purpose of financing the Hospitals Project as defined in Annex I and in accordance with the Technical Description set forth in Schedule A of the Finance Contract. For the avoidance of doubt, the Grant shall not be used, directly or indirectly, for financing of taxes, including custom duties or similar other fees or charges in the territory of Ukraine or elsewhere, arising out of, or in connection with, the implementation of the Hospitals Project. The Beneficiary shall make the proceeds of the Investment Grant available to the Recipients pursuant to a Grant Fund Transfer Agreement on terms and conditions acceptable to the Bank, and exercise its rights under such Grant Fund Transfer Agreement in such a manner as to protect the interests of the Beneficiary and the Bank, to comply with the provisions of this Agreement and to accomplish the purposes for which the Investment Grant was made. The Beneficiary shall procure that the Promoter, the PMSU, and any Recipients uses all amounts received by the Beneficiary under this Agreement for the execution of the Hospitals Project in accordance with this Agreement.

- 4(2) The Parties hereby acknowledge and agree that the Investment Grant amount before it is disbursed to the Beneficiary, will be credited by the E5P Fund to an account opened and maintained by the Bank in its books in Euro (the "**Grant Account**"). The Beneficiary acknowledges that the Bank is obliged to (i) transfer to the E5P Fund any interest accrued in the Grant Account pending the disbursement of the Investment Grant (the "**Interest Amount**"), where positive (the "**Positive Interest Amount**"), or (ii) deduct from the Grant Account the absolute value of any negative Interest Amount (the "**Negative Interest Amount**"). Bank charges relating to transfers from and to the Grant Account shall be considered eligible costs covered by the Grant and deducted from the Grant Account.
- 4(3) The Beneficiary shall: (i) use the relevant commercial exchange rate of the relevant Servicing Bank as the basis for any conversion of the euro equivalent for the purposes of any payment in currency other than euro relating to the implementation of the Hospitals Project; and (ii) conduct the conversion on the day of such payment.
- 4(4) The proceeds of the Investment Grant shall not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, 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 or by any Sanctions. Persons or entities, or suppliers offering goods and services, covered by such prohibitions shall therefore not be eligible for the award of contracts financed with proceeds of the Investment Grant.

Article 5 - Payment arrangements

- 5(1) The Bank shall transfer the Investment Grant to an account of the Beneficiary (the "**Disbursement Account**"), maintained at either the Public Joint Stock Company "The State Export-Import Bank of Ukraine", the Public Joint Stock Company "State Savings Bank of Ukraine" or any other bank to which the Bank has agreed in writing (each a "**Servicing Bank**"). The Disbursement Account shall be separated from any other assets of the Beneficiary and denominated in euro. Payments from the Disbursement Account may only be made for the purpose of implementing the Hospitals Project.

To implement the Hospitals Project, the Beneficiary may open accounts in any currency (together with the Disbursement Account, the "**Project Bank Accounts**") as the Beneficiary shall notify the Bank in writing. Each Project Bank Account shall be opened at either the Public Joint Stock Company "The State Export-Import Bank of Ukraine", the Public Joint Stock Company "State Savings Bank of Ukraine" or at any other bank to which the Bank has agreed in writing. Each Project Bank Account shall be an account of the Beneficiary created for the purposes of the Hospitals Project and separated from any other assets of the Beneficiary. Funds available on the Disbursement Account may be transferred to any Project Bank Account. Payments from the Project Bank Accounts may only be made for the purpose of implementing the Hospitals Project.

If the Beneficiary has to make any payments in connection with the implementation of the Hospitals Project in a currency other than euro, the Beneficiary may convert the amount at the commercial exchange rate of the relevant Servicing Bank only on the day of the payment.

The Beneficiary hereby confirms that in accordance with the current policy of the National Bank of Ukraine, no interest amount, whether positive or negative, applies to the Project Bank Accounts.

The Beneficiary shall ensure that no Ukrainian legislation or regulation (including any regulations of the National Bank of Ukraine) on currency restrictions, licensing or convertibility shall apply to the proceeds of the Grant, including without limitation any payments from any Project Bank Account to Contractors duly appointed for the purposes of implementing the Hospitals Project.

5(2) Payments of the Investment Grant are conditional upon the fulfilment of the conditions established under this Article 5(2).

(a) The first payment is conditional upon the receipt by the Bank of:

- (i) original copies of this Agreement duly signed by the Parties;
- (ii) a legal opinion issued by the Ministry of Justice of the Beneficiary in the English language on the due execution of this Agreement by the Beneficiary and the legal, valid, binding and enforceable nature of this Agreement. Such opinion shall be in form and substance acceptable to the Bank and shall be supported by the relevant documents evidencing the Borrower's authority to enter into this Agreement, a confirmation that ratification of this Contract by the Parliament of Ukraine (*Verkhovna Rada of Ukraine*) is necessary for the Agreement to have effect under the laws of Ukraine as well as evidence of due ratification of this Agreement in accordance with the applicable laws of Ukraine, and a confirmation on the legal, valid, binding and enforceable nature of the Framework Agreement under Ukrainian law;
- (iii) a payment request substantially in the form of Annex II by the Bank from the Beneficiary on or before the date falling 15 (fifteen) Business Days before the scheduled payment date specified in such payment request accompanied by evidence of the authority of the person or persons authorised to sign it on behalf of the Beneficiary and the specimen signature of such person or persons;
- (iv) the entire Investment Grant amount from the European Bank for Reconstruction and Development (the "EBRD") pursuant to the Funding Agreement, on or before the date falling at least 15 (fifteen) Business Days before the scheduled payment date under Article 5(3)(a);
- (v) the Bank having made a first disbursement under the Finance Contract.

(b) Payments subsequent to the first are conditional upon:

- (i) receipt of a payment request substantially in the form of Annex II by the Bank from the Beneficiary on or before the date falling 15 (fifteen) Business Days before the scheduled payment date specified in such payment request accompanied by evidence of the authority of the person or persons authorised to sign it on behalf of the Beneficiary and the specimen signature of such person or persons unless such evidence of signing authority and specimen signature have already been provided pursuant to Article 5 (2) (a) (iv) and have not changed in which case the Beneficiary shall submit declaration that no change has occurred in relation to the authority of the person or persons authorised to sign the payment request;
- (ii) receipt of documents, from the Beneficiary, evidencing, in a manner satisfactory to the Bank, (I) that the Beneficiary and/or the Recipients have incurred eligible costs related to the Hospitals Project according to Article 8 in an amount at least equal to the aggregate of (i) 80% (eighty *per cent*) of the amount of the immediately preceding payment; and (ii) 100% (one hundred *per cent*) of the amounts of all previous payments, if any, and (II) the foreign exchange rate that was applied as the commercial exchange rate of the relevant Servicing Bank, at the time of the conversion in euro of each such expenses; and

- (iii) evidence demonstrating that, following the disbursement, the amount of the Grant together with the Framework Loan will not exceed the aggregate eligible expenditure incurred or contractually committed by the Beneficiary and, as applicable, the Recipients in respect of the Project within 6 (six) months of the relevant disbursement.
- (c) All payments (including the first and subsequent payments) are conditional upon:
- (i) the Bank being satisfied that no event or circumstance which constitutes or would, with the passage of time or giving of notice under this Agreement, constitute an event of termination under Article 15, has occurred and is continuing unremedied or unwaived;
 - (ii) documents and information required under Schedule A.2 of the Finance Contract concerning the Sub-Project to be financed and any other necessary information in sufficient detail to allow the Bank to assess the eligibility for financing of the relevant Sub-Project;
 - (iii) the Bank being satisfied that the Framework Loan has not been cancelled and that the Beneficiary remains entitled to continue drawing or maintaining loans under the Finance Contract;
 - (iv) the receipt by the Bank, to its satisfaction, of a statement by the Beneficiary confirming that the Beneficiary has not obtained or does not intend to obtain funds out of the proceeds of any other grant, credit, loan or other sources to meet the same expenditures.

For the purpose of this Agreement, "**Business Day**" means a day (other than a Saturday or Sunday) on which the Bank and the commercial banks are open for general business in Luxembourg.

5(3) Payments of the Grant will be made as follows:

- (a) Subject to the fulfilment of the conditions specified in Article 5(2), the Bank shall transfer to the Disbursement Account specified in Article 5(1) the amount specified in the relevant payment request within 15 (fifteen) days from receipt of such request;
- (b) The amount of each payment requested (except the last payment), shall not exceed 100% (one hundred *per cent*) of the expenditure forecasted to be incurred by the Beneficiary for the following 12 (twelve) months from the date of the payment request as indicated in the most recent progress report as defined in Article 9(1);
- (c) The final deadline for the last payment from the Investment Grant shall be the Completion Date.

5(4) In relation to the foregoing, the Beneficiary shall ensure and shall ensure that the Recipients shall ensure that the invoices submitted by the Contractors for payments under the Contracts include, as a minimum, the following information:

- (a) the name and address of the Contractor;
- (b) the title and any unique identification code of the Contract;
- (c) the amount requested for payment, quoting separately the amount corresponding to any taxes, customs and duties that may be payable; and
- (d) an identification of the services delivered that are covered by the payment requested or a clear identification of the payment requested as an advance payment, as applicable.

- 5(5) For any disbursement, including the first tranche, the Bank reserves the right to request any additional information or documents related to the payment as it may deem necessary for establishing the eligibility of the amounts requested. For the avoidance of doubt, the request for payment shall not be admissible if one or more of the essential requirements, as defined in this Article 5, are not met.
- 5(6) Without prejudice to its right to terminate this Agreement pursuant to Article 15, the Bank may suspend or cancel a payment where the Beneficiary fails to (a) ensure that the Recipients perform any role allocated to it under this Agreement or (b) perform any of its obligations under this Agreement or the Finance Contract and in either case such failure has continued for a period of 15 (fifteen) days after written notice thereof has been given to the Beneficiary by the Bank.

Article 6 - Warranties and Undertakings

6(1) The Beneficiary represents and warrants to the Bank that:

- (a) it has the power to execute, deliver and perform its obligations under this Agreement and all necessary actions have been taken to authorise the execution, delivery and performance of this Agreement by it;
- (b) this Agreement 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 Agreement 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 Agreement; or
 - (iii) any provision of its constitutional laws;
- (d) to the best of its knowledge, no funds invested in the Hospitals Project by the Beneficiary and/or the Recipients are of illicit origin, including the products of Money Laundering or linked to the Financing of Terrorism;
- (e) neither the Beneficiary, the Promoter, the Recipients and the Contractors, 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 Hospitals Project or any transaction contemplated by the Agreement; or
 - (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;
- (f) the Hospitals Project (including without limitation, the negotiation, award and performance of contracts financed or to be financed by the Investment Grant) has not involved or given rise to any Prohibited Conduct;

The representations and warranties set out above shall survive the execution of this Agreement and are deemed repeated on the date of each payment request made by the Beneficiary and on the date of each payment of the Investment Grant by the Bank.

6(2) The Beneficiary shall, and shall ensure that the Recipients:

- (a) keep and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Beneficiary and the Recipients including expenditures in connection with the Hospitals Project, in accordance with IFRS as in effect from time to time; and,
- (b) keep records of Contracts financed with the proceeds of the Investment Grant including a copy of the Contract itself and material documents relating to the procurement for at least 6 (six) years from of the Contract.

6(3) The Beneficiary shall inform and shall ensure that the Recipients inform the Bank immediately of:

- (i) any material alteration to any laws, statutes, by-laws, memoranda and articles of association, as relevant, with bearing on the Hospitals Project after the date of this Agreement;
- (ii) any fact which obliges it or the Recipients to prepay any financial indebtedness or any EU funding;
- (iii) any fact or event that is reasonably likely to prevent the fulfilment of any obligation of the Beneficiary under this Agreement; or
- (iv) any fact or event which results in any of the Beneficiary's, the Promoter's, the Recipients' or any Contractors' agents or representatives being a Sanctioned Person;
- (v) to the extent permitted 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 (or to the best knowledge and belief of any Contractor, the Promoter's, the Recipients that informs the Beneficiary to that effect), is current, imminent or pending against the Beneficiary, the Promoter, the Recipients or Contractor, or their controlling entities or members of their management or administrative bodies in connection with Prohibited Conduct related to the Investment Grant or the Hospitals Project;
- (vi) a genuine allegation or complaint with regard to any Prohibited Conduct related to the Hospitals Project;
- (vii) should it become aware of any fact or information confirming or reasonably suggesting that (a) any Prohibited Conduct has occurred in connection with the Hospitals Project, or (b) any of the funds invested in the Hospitals Project was derived from an illicit origin; and
- (viii) any measure taken by the Beneficiary, the Promoter, any Recipient or any Contractor pursuant to Article 13 (2) of this Agreement (*Integrity Commitment*).

6(4) The Beneficiary shall and undertakes to ensure that the Recipients shall:

- (a) keep true copies of Contracts financed with the proceeds of the Investment Grant and evidence of expenditures relating to disbursements;
- (b) take such action as the Bank shall reasonably request to investigate and/or terminate any alleged or suspected act of the nature described in Article 6;
- (c) inform the Bank of the measures taken to seek damages from the persons responsible for any loss resulting from any such act; and
- (d) facilitate any investigation that the Bank may make concerning any such act.

The Beneficiary shall bear and shall ensure that the Recipients shall bear all expenses incurred by the Bank in connection with this Article 6(4).

- 6(5) Ownership, title and industrial and intellectual property rights in the results of the implementation of the Hospitals Project and the reports and other documents relating to it shall be vested solely in the Beneficiary or each Recipient, or jointly with third parties, or as may otherwise be agreed between the Bank, the Beneficiary and the relevant Recipient. The Beneficiary shall ensure and undertakes that the Recipients ensure that each of the Bank, the EBRD and the Contributors to the E5P Fund (as defined in the Rules of the E5P Fund) is granted the right to use free of charge and as it sees fit all reports and documents prepared in relation to the implementation of the Hospitals Project, whatever their form, provided it does not thereby breach existing intellectual property rights.
- 6(6) To the extent the assets, equipment and other goods financed by the Investment Grant are not already owned by the Beneficiary or the Recipients (as applicable) on the Completion Date or upon termination of this Agreement, whichever occurs earlier, the Beneficiary shall ensure that the ownership of the assets, equipment and other goods furnished or financed from the proceeds of the Investment Grant for the implementation of the Hospitals Project shall be transferred to the Beneficiary or the Recipients (as applicable). The Final Report shall give the details of this transfer.

Article 7 - Procurement of goods, works and services

- 7(1) The Beneficiary undertakes, and shall ensure that the Promoter and the Recipients undertake to purchase equipment, secure services and order works for the Hospitals Project by acceptable procurement procedures, complying, to the Bank's satisfaction, with its policy as described in its Guide to Procurement (as published on the EIB's website).
- 7(2) The Bank can prescribe the venue for tender evaluations, the procedure as to whom bids shall be submitted and how they should be stored. The Bank is entitled to prescribe the presence of an independent observer during evaluations.
- 7(3) The Beneficiary shall and shall ensure that the Promoter and the Recipients adopt reasonable measures to ensure that potential tenderers shall be excluded from the participation in a procurement or award procedure financed by the Investment Grant, if:
- (a) they are bankrupt or being wound up, are having their affairs administered in accordance with national law, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been found guilty of an offence concerning their conduct in connection with their work or for Prohibited Conduct;
 - (c) they are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or fail to supply this information; or
 - (d) they are subject to a conflict of interest, as defined in Article 12(2); or
 - (e) otherwise requested by the Bank's Guide to Procurement.
- 7(4) The Beneficiary shall ensure that the proceeds of the Investment Grant will be used solely for the purposes of payment of any eligible costs as defined in Article 8 below, necessary to implement the Hospitals Project, including any Negative Interest Amount. For the avoidance of doubt, only such equipment purchased, services secured and works ordered shall be eligible for the financing from the Investment Grant, which were procured in accordance with the applicable rules, policies and procedures described herein.

- 7(5) The Beneficiary shall ensure (directly or through the Promoter and/or the PMSU) that the Final Beneficiaries shall request any disbursements under the Grant Fund Transfer Agreements, and any payments to the Final Beneficiaries under the Grant Fund Transfer Agreements are made in relation with the Hospitals Project to bank accounts in the name of the relevant Final Beneficiaries held with a duly authorised financial institution in Ukraine (where the relevant Final Beneficiary is incorporated and where the Hospitals Project is undertaken).
- 7(6) The Beneficiary shall if so requested by the Bank, submit to the Bank for its review and approval the template of the Grant Fund Transfer Agreements or any specific Grant Fund Transfer Agreement.
- 7(7) The Beneficiary shall ensure that the Grant Fund Transfer Agreement includes provisions that inform the Final Beneficiaries that the financing benefit from the financial support provided by the Bank with the backing of the European Union through the EU Guarantee.
- 7(8) If the Beneficiary, the Promoter and/ or the Recipients fails to comply with the above provisions, the relevant costs shall not be eligible for funding under this Agreement.

Article 8 - Eligible costs

- 8(1) To be considered as eligible costs for the Investment Grant payment under this Agreement, costs must:
- (a) be necessary for carrying out the Hospitals Project, be provided for in this Agreement and comply with the principles of sound financial management, in particular value for money and cost-effectiveness;
 - (b) have actually been incurred between the date of signature of the Funding Agreement and the end of the Implementation Period; and
 - (c) be recorded in the accounts of the Beneficiary and/or Recipients, be identifiable, backed by originals of supporting evidence (as the case may be in electronic form), and verifiable pursuant to the provisions of Article 10.
- 8(2) The following costs shall not be considered eligible:
- (a) debts and provisions for possible future losses or debts;
 - (b) maintenance and other operating costs;
 - (c) interests owed by the Bank, the Beneficiary or the Recipients to any third party (except for, the avoidance of doubt, any Negative Interest Amount) and interest during construction;
 - (d) items already financed from other sources;
 - (e) acquisition of land or building;
 - (f) currency exchange losses, or
 - (g) VAT and other taxes, duties (including custom duties), similar other fees and charges charged to the Bank, the Beneficiary and/or the Recipients or otherwise, in the territory of Ukraine or elsewhere (unless the relevant party is not able to reclaim them);
 - (h) acquisition of second-hand assets;
 - (i) purchase of licences for the use of non-generated public resources (e.g. telecom licences), patents, brands and trademarks; and
 - (j) pure financial transactions.

- 8(3) Contributions in kind made by the Bank may neither be considered as co-financing nor as eligible costs.
- 8(4) Subject to the above, the following direct costs may in particular be eligible:
- (a) the costs of staff assigned to the Hospitals Project, corresponding to actual salaries plus social security charges and other remuneration-related costs. Identifiable personnel costs arising as a direct consequence of the Hospitals Project may be included. Salaries and costs may not exceed those normally borne by the Bank;
 - (b) travel and subsistence costs for staff taking part in the Hospitals Project, provided they do not exceed those normally borne by the Bank;
 - (c) purchase costs for equipment (new or used) which are attributable to the Hospitals Project;
 - (d) purchase costs for goods and services (transport, storage and distributing, rent of equipment, etc.) which are directly attributable to the Hospitals Project;
 - (e) costs directly arising out of, or related to, accepting or distributing contributions in kind;
 - (f) costs of consumables and supplies directly attributable to the Hospitals Project;
 - (g) expenditure on contracting directly attributable to the Hospitals Project;
 - (h) costs derived directly from the requirements of this Agreement (dissemination of information, evaluation specific to the Hospitals Project, specific reporting for the needs of EBRD or the European Commission, translation, reproduction, insurance, targeted training for those involved in the Hospitals Project, etc.) including financial service costs (in particular bank fees for transfers).

Article 9 – Reporting

- 9(1) The Beneficiary shall provide the Bank with evidence of payment of the invoices, in the form of the "Justification of expenses of Grant" (Annex III) semi-annually, on 31 March and 30 September each year, starting from the Date of Effectiveness.
- 9(2) The Beneficiary shall inform the Bank, in writing without delay of any circumstances likely to hamper or delay the implementation of the Hospitals Project and the Beneficiary shall keep the Bank, informed in writing, on a regular basis, and at least semi-annually, of the progress on the implementation of the Hospitals Project.
- 9(3) The Beneficiary shall submit to the Bank by 14 February in each year, starting from the Date of Effectiveness, an annual implementation report in writing on the implementation of the Hospitals Project, in the form of the template provided in Annex IV of this Agreement and including audited financial statements of the Project Bank Accounts, covering the previous calendar year.
- 9(4) Within five (5) months of the Completion Date, the Beneficiary shall submit to the Bank a final report on the implementation of the Hospitals Project and the utilisation of the Investment Grant (the "Final Report"). The Final Report shall be prepared in the form and substance as set out in Annex IV of this Agreement and shall cover the period from the date of signature of the Funding Agreement until the end of the Implementation Period.
- 9(5) The Beneficiary shall submit to the Bank:
- (1) following the first payment of the Grant, semi-annually the unaudited financial statements of the Project Bank Accounts not later than (i) 15 July of each year, for the period between 1 January and 30 June, and (ii) 25 January of each year, for the period between 1 July and 31 December;

- (2) the final audited financial statements of the Project Bank Accounts within two (2) months of the Completion Date, covering the period from the end of the year covered by the latest annual audited financial statements of the Project Bank Accounts until the Completion Date; and
- (3) customer due diligence matters of, or for, the Beneficiary and the Recipients, to comply with "know your customer" (KYC) or similar identification procedures, as the Bank may deem necessary or may reasonably require to be provided within a reasonable time.

The financial statements of the Project Bank Accounts shall contain the information as set out in the financial statement template provided in Annex V to this Agreement. For the avoidance of doubt, external cost related to the audit will be paid by the Beneficiary and/or Recipients out of the proceeds of the Investment Grant, and will be considered as eligible costs under the Investment Grant.

- 9(6) In addition to the above mentioned reports, the Bank may, at any time, request, in writing, additional information from the Beneficiary related to the implementation of the Hospitals Project (such as, but not limited to, information related to progress and situation reports, publications, press releases, etc.). The Beneficiary shall provide and shall ensure that the Recipients provide the updated information in accordance with the Bank's request, without undue delay and in any event no later than one (1) week from such request.
- 9(7) The Beneficiary acknowledges that the Bank has the right to provide EBRD all information contained in the reports or provided as additional information in connection with this Agreement, the Beneficiary, the Promoter, the Recipients, the Contractors or otherwise related to the implementation of the Hospitals Project (such as, but not limited to, information related to progress and situation reports, publications, press releases, etc.). The Beneficiary shall make all reasonable efforts to ensure that any confidentiality undertakings assumed by it towards third parties expressly reserve the right for the Beneficiary to provide information to the Bank and EBRD under this Agreement. In the event that the Beneficiary cannot provide the information requested by the Bank due to confidentiality undertakings, notwithstanding efforts made to obtain the necessary permissions to provide such information, then the Beneficiary shall promptly inform the Bank shall consult with a view to finding a solution.

Article 10 – Visits, Right of Access and Investigation

- 10(1) The Beneficiary shall ensure and shall ensure the Recipients ensure that persons designated by the Bank, who may be accompanied by representatives of competent EU institutions including the European Court of Auditors, the European Commission and the European Anti-Fraud Office, as well as persons designated by EBRD or the Contributors to the E5P Fund to:
 - (i) visit the sites, installations and works comprising the Hospitals Project and to conduct such (including on the spot) checks and evaluation missions as they may wish for purposes connected with this Agreement and the financing of the Hospitals Project,
 - (ii) interview representatives of the Beneficiary and/or the Recipients and not obstruct contacts with any other person involved in or affected by the Hospitals Project; and
 - (iii) review the Beneficiary's, and/or the Recipients' books and records in relation to the execution of the Hospitals Project and to be able to take copies of related documents to the extent permitted by the law.

10(2) The Beneficiary shall and shall cause the Promoter, the Recipients and the Contractors 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 this Article.

10(3) The Beneficiary acknowledges and shall ensure the Recipients to acknowledge, that:

- (i) the Bank may be obliged to communicate information relating to the Beneficiary, the Recipients and the Hospitals Project to any competent institution or body of the European Union, including the European Court of Auditors, the European Commission and the European Anti-Fraud Office, or to the Contributors to the E5P Fund, as are necessary for the performance of their task; and
- (ii) the EBRD and the Bank shall not in any way be liable for any cost, damage or loss of the Beneficiary and/or the Recipients, direct or indirect, arising as result of or in connection with checks and evaluations carried out by Contributors to the E5P Fund.

Article 11 - Repayment of the Grant

11(1) Where the Hospitals Project is suspended, not carried out, or not carried out properly in the opinion of the Bank and without prejudice to its right to terminate this Agreement pursuant to Article 15, the Bank may demand repayment of the total amount of the Investment Grant or reduce the Investment Grant pro-rata to the actual implementation of the Hospitals Project.

11(2) If the Hospitals Project is not completed within the Implementation Period, any funds that remain unexpended will be repaid to the Bank.

11(3) If the Investment Grant is not used in compliance with (i) the procedures and the terms described herein and (ii) the Hospitals Project specifications set out under Annex I and the Technical Description set out in Schedule A of the Finance Contract, the Bank will be entitled to recover from the Beneficiary the proportion of Investment Grant on the value of the funds wrongly paid or incorrectly used in the Hospitals Project.

11(4) If the Grant is not made available to the Recipients pursuant to the terms and conditions of this Agreement within 6 (six) months from the date of the first payment made by the Bank to the Beneficiary under this Agreement, the Bank may demand repayment of the total amount of the Investment Grant disbursed so far. In such case Articles 15(6) and 15(7) shall apply. The amounts repaid according to this Article remain available for further requests for disbursement by the Beneficiary until the end of the Implementation Period.

11(5) Any unused, recovered or returned Investment Grant amounts shall be returned by the Beneficiary to the Bank within 30 days of the Beneficiary obtaining knowledge of such unused, recovered or returned amounts, but at the latest within 30 days of the end of the Implementation Period. The Beneficiary shall return any such Investment Grant amounts under this Article.

11(6) Any Investment Grant amount repaid, reimbursed, returned to the Bank by, or recovered by the Bank from the Beneficiary or the Recipients, shall be an amount in euro equal to the corresponding amount, in euro that was transferred by the Bank to the Beneficiary. For the avoidance of doubt, any loss of value of any such Investment Grant amount in euro shall not be borne by the Bank, but shall be borne exclusively by the Beneficiary.

Article 12 – Conflict of interests

- 12(1) The Parties undertake (and the Beneficiary shall ensure that the Recipients undertake) to take all necessary precautions to avoid conflict of interests and shall inform (and the Beneficiary shall ensure that the Recipients shall inform) the other Party without delay of any situation constituting or likely to lead to any such conflict.
- 12(2) There is a conflict of interest where the impartial and objective exercise of the functions of any person in connection with the Hospitals Project may be considered to be compromised for reasons involving family, emotional life, political or national affinity, economic interest or any shared interest with another party.

Article 13 - Visibility and Transparency, Integrity Commitment.

- 13 (1) The Beneficiary shall incorporate and undertakes to ensure that the Recipients incorporate in all their promotional material related to the activities falling within the scope of the Hospitals Project a reference to the fact that they are supported by the Bank with, if appropriate, the Bank's logo and by the E5P Fund, making express reference to the individual Contributors to the E5P Fund, in line with the requirements of the E5P Fund.

Specific reports on the implementation of the Hospitals Project prepared by consultants and/or the Beneficiary and/or the Recipients must carry the following acknowledgment: *"This document has been produced with the financial assistance of the Eastern Europe Energy Efficiency and Environment Partnership (E5P) Fund, to which the European Union is the largest contributor. The views expressed herein are those of (name of author) and can therefore in no way be taken to reflect the official opinion of the EBRD, E5P Fund or any contributor thereof."*

13 (2) Integrity Commitment

(a) Prohibited Conduct:

- (i) The Beneficiary shall not (and shall ensure that the Contractors and the Recipients will not) engage in (or authorise or permit any affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with the Hospitals Project, any tendering procedure for the Hospitals Project, or any transaction contemplated by the Agreement or the Hospitals Project documents.
- (ii) The Beneficiary undertakes (and shall ensure that all Contractors and the Recipients will undertake) to take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Hospitals Project.
- (iii) The Beneficiary shall ensure (and shall procure that all Contractors and the Recipients will undertake to ensure) that Contracts entered into by it and financed with the proceeds of the Investment Grant include the necessary provisions to enable the Beneficiary and the Recipients to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Hospitals Project.
- (iv) The Beneficiary shall take and shall ensure that the Recipients shall take actions to suspend and stop payments of Investment Grant resources to the Contractors which have been involved in Prohibited Conduct or illegal activities in connection with the implementation of the Hospitals Project and take all reasonable measures to recover Investment Grant funds unduly paid.

(b) Sanctions:

The Beneficiary shall not (and shall ensure that the Recipients will 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) Management:

The Beneficiary undertakes (and shall ensure that the Recipients and each Contractor undertake) to take within a reasonable timeframe appropriate measures in respect of any of the respective duly authorised agents and representatives of the Beneficiary, the Recipients and the relevant Contractor (as applicable) 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 person is suspended, dismissed or in any case excluded from any of the Beneficiary's and/or the Recipients' and the relevant Contractors' (as applicable) activities in relation to the Hospitals Project.

- (d) The Beneficiary shall ensure that all Contracts include the necessary provisions to enable Beneficiary, the Bank, the European Anti-Fraud Office (OLAF), the European Commission or any person authorised by the preceding to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Hospitals Project, this Agreement or the Investment Grant.

- (e) Any failure of the Beneficiary to comply with these obligations may entitle the Bank to terminate this Agreement, in accordance with Article 15.

Article 14 - Suspension of this Agreement

14(1) The Bank may suspend all or part of this Agreement if in its reasonable opinion circumstances preclude the efficient and safe implementation of the Hospitals Project. It shall inform the Beneficiary thereof without delay. Any such suspension shall continue until the Bank ends the suspension or terminates the Agreement. If this Agreement is not terminated, the Bank shall endeavour to minimise the duration of the suspension and may resume implementation of the Hospitals Project once the conditions allow, and shall inform the Beneficiary accordingly.

14(2) No indemnity will be payable upon suspension or termination by the Bank pursuant this Article.

Article 15 - Termination of this Agreement

15(1) If, at any time, any Party believes that the purposes of this Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, any Party may terminate this Agreement by serving 2 (two) months' written notice on the other Party. In this event, the Beneficiary shall be entitled to payment of the Investment Grant by the Bank only for the part of the Hospitals Project carried out.

15(2) Without prejudice to the rights and obligations set forth elsewhere in this Agreement, any Party may terminate this Agreement if the other Party fails to perform any of its obligations under the terms of this Agreement, including its annexes and such failure to perform shall have continued for a period of 30 (thirty) days after written notice thereof shall have been given to the non-performing Party by the notifying Party.

15(3) If any part of the Investment Grant becomes repayable in accordance with the terms of this Agreement, the Beneficiary shall repay all or part of the Grant forthwith within 30 (thirty) days or any other date agreed by the Parties upon written demand being made by the Bank in accordance with the following provisions.

15(4) The Bank may terminate this Agreement on 30 (thirty) days' prior written notice to the Beneficiary and may request full or partial repayment of the Grant where:

- (a) the Beneficiary and/or the Recipients has not informed the Bank of any situation giving rise to conflict of interest with negative implications for the Hospitals Project and their expected results;
- (b) the Beneficiary and/or the Recipients, have transferred or assigned this Agreement or grant funds attached to it to a third party in any manner whatsoever without prior written consent of the Bank;
- (c) if any information or document given to the Bank by or on behalf of the Beneficiary and/or the Recipients or any representation or statement made or deemed to be made by the Beneficiary in this Agreement or in any document given to the Bank under this Agreement or in connection with the negotiation of this Agreement is or proves to have been incorrect or misleading in any material respect;
- (d) the Beneficiary and/or the Recipients provide reports that are not correct in all respects in order to obtain the Investment Grant provided for in this Agreement, including the false reports or false or incomplete statements of a material nature;
- (e) transfer of the Investment Grant to the Beneficiary was caused or affected by substantial errors, financial irregularities or fraud, or breach of obligations under this Agreement by the Beneficiary;
- (f) the Beneficiary and/or the Recipients undergo legal, financial, technical or organisational change that may affect the efficacy of this Agreement;
- (g) the Beneficiary defaults in the performance of any obligation in respect of any loan or financial instrument granted by the Bank or by/to the European Union;
- (h) any Recipient defaults in the performance of any obligation in respect of any loan or financial instrument granted by the Bank or by the European Union (including any agreement entered into by such Recipients in connection with the Framework Loan) and the Beneficiary does not exclude such Recipient from the entitled Recipients of the Investment Grant within 30 days from such default and does not inform the Bank thereof within the same period;
- (i) if the Beneficiary fails to comply with any obligation under this Agreement;
- (j) the Beneficiary, or any person with powers of representation, decision-making or control in relation to the Beneficiary, commits or is found guilty of gross professional misconduct, or is subject to proceedings alleging any offence concerning its professional conduct, or has committed fraud, corruption, or is involved in a criminal organisation, Money Laundering, Financing of Terrorism or any other illegal activity detrimental to the European Union's financial interests, or is subject to an allegation (other than allegations which are, in the reasonable opinion of the Bank, frivolous or vexatious) in respect of participation in a criminal organisation, fraud, Prohibited Conduct, Money Laundering or the Financing of Terrorism.

15(5) If the Beneficiary fails to repay all or part of the Investment Grant by the due date, the sum due shall bear interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first day of the month in which payment was due, increased by three and a half

percentage points. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

15(6) Bank charges incurred by the repayment of amounts due to the Bank shall be borne entirely by the Beneficiary.

15(7) Unless this Agreement is terminated earlier, the payment obligations of the Bank hereunder shall cease on the date which is 18 (eighteen) months after the end of the Implementation Period (the "End Date"). The Bank shall notify the Beneficiary of any postponement of the End Date. The Bank shall postpone the End Date, so as to be able to fulfill its payment obligations, in all cases where the Beneficiary has filed the payment request in accordance with this Agreement or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 17. This Article shall in no way affect or extend in time the final availability date for disbursement of the Investment Grant as agreed in Article 5(3)(c).

Article 16 - Amendment

This Agreement may be amended by written agreement between the parties. Such amendments shall become effective on the terms set out in the relevant amendment instrument without the need for the Beneficiary to execute any internal procedures (being ratification and approval), if the abovementioned amendments:

- (a) do not require any increase in the financial obligations of the Beneficiary or the imposition of additional obligations on the Beneficiary under this Agreement;
- (b) do not necessitate the changing of Laws of Ukraine or the approval of new Laws of Ukraine; and
- (c) do not incorporate any other rules other than stipulated in the decrees of the President or the Cabinet of Ministers of Ukraine.

Article 17 - Settlement of Disputes and Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by public international law.

Any dispute, disagreement, controversy or claim (together referred to as a "Dispute") arising in connection with the existence, validity, interpretation, implementation or termination of this Agreement shall, to the extent possible, be settled amicably by agreement between the Bank and the Beneficiary through consultations and negotiations. If a Dispute cannot be amicably settled by the Bank and the Beneficiary within 60 (sixty) days of the notification of the Dispute by either Party, the Dispute shall be settled by final and binding arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules in effect at the date of this Agreement, which rules are deemed to be incorporated by reference into this Article.

The number of arbitrators shall be three. The language of the arbitral procedure shall be English. The arbitration proceedings shall take place in The Hague, the Netherlands.

Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the constitution of the arbitral tribunal. The tribunal shall render its decision within 60 (sixty) days following the delivery of the final submissions.

Any final award of the tribunal shall be binding from the day it is made, and the Parties hereby waive any right of appeal on the law and/or the merits to any court. Notwithstanding the UNCITRAL Arbitration Rules, the tribunal shall not take or provide and the Beneficiary shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank.

The Beneficiary shall abide by and carry out any such award in its territory without delay.

In case of failure by the Beneficiary to comply with its obligation in the preceding paragraph within 3 months from the date of the award, then, to the extent that the Beneficiary may in any jurisdiction claim for itself or its assets immunity from suit, enforcement, attachment or other legal process, the Beneficiary hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of the Bank accorded under the Treaty on European Union, the Treaty on the Functioning of the European Union, Protocol (No 7) on the Privileges and Immunities of the European Union, any applicable framework agreement, or derived from any other source.

Article 18 - Communications

18(1) Notices and other communications given under this Agreement addressed to any Party shall be made to the address or facsimile number as set out below, or to such other address or facsimile number as a party previously notifies to the others in writing:

For the Bank

European Investment Bank

Attention: Neighbouring Countries Department, Public Sector East Division

98-100 boulevard Konrad Adenauer
L-2950 Luxembourg

Phone: +352 4379 1

E-mail address: ops-nc2-projects@eib.org

For the Beneficiary

Attention: Ministry for Communities and Territories Development

9, Velyka Zhytomyrska Street
Kyiv 01601, Ukraine

Fax number: +380.44.284.06.08

E-mail address: minregion@minregion.gov.ua

18(2) Any notice or other communication given under this Agreement must be in writing.

Notices and other communications for which fixed periods are laid down in this Agreement or which themselves fix periods binding on the addressee may be made by hand delivery, registered letter or facsimile. The date of delivery, registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.

Other notices and communications may be made by hand delivery, registered letter or facsimile or, to the extent agreed by the parties by written agreement, by email or other electronic communication.

Without affecting the validity of any notice delivered by facsimile according to the paragraphs above, a copy of each notice delivered by facsimile shall also be sent by letter to the relevant party on the next following Business Day at the latest.

Notices issued by the Beneficiary pursuant to any provision of this Agreement 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 Beneficiary.

Article 19 - Entry into force

This Agreement shall become effective on the date (the "**Date of Effectiveness**") on which the Bank has confirmed in writing that it has received, in a form and substance acceptable to the Bank, the evidence required by Article 5.2(a)(ii) of this Agreement.

For the avoidance of doubt, until such time as such letter has been issued by the Bank, neither the Beneficiary nor the Bank shall have any claims against each other or have any liability whatsoever under or in connection with this Agreement.

If the Date of Effectiveness does not occur within 24 (twenty-four months) from the date of this Agreement, this Agreement shall not come into force and no further action shall be necessary or required.

Article 20 - Language

Documents, evidence, notices and communications provided or made by the Beneficiary pursuant to this Agreement shall be provided in the English language unless the original language of the document is not English, in which case the document shall be provided to the Bank in its original language together with a certified English translation thereof.

Article 21 - Entire agreement

(a) This Agreement:

- (i) represents the entire understanding and constitutes the entire agreement between the Parties in relation to its subject matter; and
- (ii) supersedes any and all previous discussions, correspondence, representations (of whatever nature) and agreements between the Parties to this Agreement, notwithstanding the existence of any provision of any such prior agreement that any rights or provisions of such prior agreement shall survive its termination.

(b) Each Party hereby acknowledges that it has not relied upon any statement or representation made by any Party other than those contained in this Agreement.

Article 22 - Counterparts

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Each counterpart is deemed an original and all counterparts together shall constitute one and the same agreement.

Article 23 - Annexes

The following documents are annexed to this Agreement and form an integral part of it:

- Annex I: Project specifications
- Annex II: Request for payment
- Annex III: Justification of expenses of Grant
- Annex IV: Reporting Template
- Annex V: Financial statement template for the Beneficiary

Reporting Template

Basic Information on the Hospitals Project

- Description of the Hospitals Project. general
- The Overall Objective – how the Overall Objective has been reached or will be reached
- Description of the Hospitals Project. investment plan

No	Investment	Cost (EUR)	Annual net income & savings (EUR/a)	Implementation period
1				
2				
3				
4				
5				
n				
	Total			

- Description of the Hospitals Project, financing plan
- Description of the Hospitals Project, institutional plan
- Description of the Hospitals Project, demand side measures
- Description of the Hospitals Project, project benefits

Procurement relating to the Hospitals Project

- Status and plan for procurement
- Problems, if any and ways to solve the problems
- Information on procured equipment or services, including identity and nationality of the supplier

Project Activities relating to the Hospitals Project

- Overall progress during the project phases and in particular the reporting period
- Planned/expected progress for the following reporting periods
- Problems, if any and ways to solve the problems

Investment Grant Rationale

Direct investment related

- Describe the energy and/or electricity consumption and other consumption of chemicals etc. that will be affected by the project. The consumption shall be described as present consumption in terms of energy supply and quantity consumed
- Describe and indicate the savings reached or planned as a result of the project and the grant, in particular the decrease of CO₂, other GHG, other commodities as raw water, chemical etc.
- For calculation purposes the savings shall be based on a lifecycle of 15 years and use a discount rate of 10%.
- The saving shall also be described in monetary terms
- Any carbon credit potential shall be specific mentioned

	Measure	Present Consumption p/a	Planned Savings p/a	Planned Savings project lifetime
Gas	M3/a			
Electricity	MWh			
Other GHG (to be specified as Nox etc)				
Use of raw water				
Coal				
n,				
Decreased CO ₂	tonnes	---		

Regulatory issues relating to the Hospitals Project

- Describe the status of the regulatory issues/investments presented and how the issues have been developed and added to the project or are planned to add to the project.
- Try to describe the savings as a result of the regulatory investments
- Describe the grant additionality to the project sustainability and how the grant has been used to target the underlying problem without being indiscriminate to the market.

Financial, Disbursements relating to the Hospitals Project

- Description of use of the grant for the reporting period as well as cumulative

	The Reporting period EUR	Cumulative EUR
Transfers received from the Fund		
Investment Grant disbursements made from the Funds 1		
Investment Grant disbursements made from the Funds 2		
Investment Grant disbursements made from the Funds 3		
Investment Grant disbursements made from the Funds n		
Balance as at the end of the period		

- Please, include also an overall disbursement schedule including bank funding, own funding etc.

Timetable relating to the Hospitals Project

- Update the presented initial timetable and include reasons for delays or ahead of schedule

Other information relating to the Hospitals Project

- Any factor which may have a material adverse effect on the Hospitals Project or the financing plan.



Financial statement template for the Beneficiary

Statement as of [DATE]

Project: "Hospitals Project"

Agreement number:

Funds: E5P

Account number:

Bank: [●]

Address: [●]

Account Currency: [●]

Account Holder: [●]

Movement on cash balance	For the period	Cumulative
	EUR	EUR
Project Bank Account balance as at start of period	x	-
Transfers received from the EIB	x	x
Disbursements made	(x)	(x)
Project Bank Account balance as at end of period*	<u>x</u>	<u>-</u>

*Attach copy of account statement showing closing balance

