

*EIB Internal Classification Level: Corporate Use*

Contract Number (FI N°) 93.828

Operation Number (Serapis N°) 2019-0128

**UKRAINE PUBLIC BUILDINGS ENERGY EFFICIENCY  
PROJECT  
INVESTMENT GRANT AGREEMENT**

*between*

**UKRAINE**

*and the*

**EUROPEAN INVESTMENT BANK**

Kyiv, 8 November 2021

Luxembourg, 28 October 2021

ARTICLE 1 Definitions and Interpretation.....	5
ARTICLE 2 Subject .....	8
ARTICLE 3 Entry into Force and Duration .....	9
ARTICLE 4 Financing of the Works .....	9
ARTICLE 5 Design and Procurement .....	10
ARTICLE 6 Changes to the Contracts .....	10
ARTICLE 7 Payment of the Grant.....	11
ARTICLE 8 Eligible Costs .....	13
ARTICLE 9 Information and Reporting.....	14
ARTICLE 10 Ownership of Results and Intellectual Property Rights .....	16
ARTICLE 11 Visibility and Transparency .....	17
ARTICLE 12 Conflict of Interests .....	18
ARTICLE 13 Confidentiality .....	19
ARTICLE 14 Monitoring and Evaluation.....	19
ARTICLE 15 Verifications, Controls and Audits .....	20
ARTICLE 16 Protection of Personal Data.....	20
ARTICLE 17 Integrity Commitment.....	21
ARTICLE 18 Force Majeure.....	21
ARTICLE 19 Suspension.....	22
ARTICLE 20 Recovery .....	22
ARTICLE 21 Amendments .....	23
ARTICLE 22 Assignment.....	23
ARTICLE 23 Termination.....	23
ARTICLE 24 Charges and Expenses .....	24
ARTICLE 25 Liability and Indemnity .....	24
ARTICLE 26 Notices and Other Communications.....	25
ARTICLE 27 Governing Law and Dispute Settlement.....	26
ARTICLE 28 Non-waiver.....	26
ARTICLE 29 Entire Agreement.....	26
ARTICLE 30 Invalidity.....	27
ARTICLE 31 English Language .....	27
ARTICLE 32 Entry into force .....	27
Annex 1 Description of the Project.....	29
Annex 2 Estimated cost of the Project .....	31
Annex 3 Model Request for Payment .....	33
Annex 4 Records .....	35
Annex 5 Progress Indicators .....	36

THIS INVESTMENT GRANT AGREEMENT IS MADE BETWEEN:

UKRAINE

(the "Beneficiary")

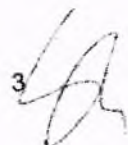
of the first part, and

the **EUROPEAN INVESTMENT BANK**, a financial institution established by the Treaty on the Functioning of the European Union, whose head office is located at 98-100, boulevard K. Adenauer, L-2950 Luxembourg, Grand Duchy of Luxembourg, duly represented for the purpose hereof

(the "Bank")

of the second part,

each individually a "Party" and together the "Parties"



WHEREAS:

- A. The Beneficiary has undertaken operations to support energy efficiency refurbishments in public buildings (each operation a "**Sub-Project**", and collectively the "**Project**"), as more particularly described in the technical description set out in Annex 1 hereto (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 (each a "**Final Beneficiary**" and together the "**Final Beneficiaries**").
- B. Pursuant to a finance contract dated 6 October 2020 entered into between the Beneficiary and the Bank (the "**Finance Contract**"), the Bank has made available to the Beneficiary, in its capacity as Borrower a loan in a maximum principal amount of EUR 300,000,000 (three hundred million euros) (the "**Loan**") in order to finance the Project.
- C. In connection with the Project, the Beneficiary requested the support of the Bank to obtain non-reimbursable funding to cover part of the costs of the Project.
- D. At the request of the Bank, the operational board of the Neighbourhood Investment Platform (the "**NIP**"), a financing instrument of the European Union aimed at supporting the European Union partner countries in the EU's neighbourhood through the provision of non-reimbursable financing from the general budget of the European Union to accompany reimbursable financing from European public finance institutions, including the Bank, in order to generate a substantial leverage effect, agreed to provide non-reimbursable funding to cover part of the costs of the Project (the "**NIP Grant**") to be used in the form of an investment grant made available through the general budget of the EU. The NIP Grant consists of:
- (1) an investment grant element up to a maximum amount of EUR 1,000,000 (one million euros) to partially finance Sub-Projects relating to the energy efficiency measures in hospitals and flagship Sub-Projects as more particularly described in the Technical Description (the "**Grant**"); and
  - (2) a (i) technical assistance grant element to ensure overall successful project implementation and (ii) an element to finance the visibility component of the Project.
- E. The Beneficiary is duly authorised to receive the Grant that will be used specifically for the implementation of the Project, represented by this Agreement on the terms and conditions set out in this Agreement.
- F. The Bank and the European Union, acting through the European Commission will enter into a contribution agreement for the management and implementation of the Grant (the "**Contribution Agreement**").
- G. The Beneficiary, shall make the Grant available to each Final Beneficiary pursuant to a grant fund transfer agreement (the "**Grant Fund Transfer Agreement**") to be entered into between the Beneficiary and the relevant Final Beneficiary.
- H. This investment grant agreement (the "**Agreement**") is entered into based on (i) the Financial and Administrative Framework Agreement dated 7 and 8 May 2014 entered into between the European Union represented by the European Commission and the Bank, as amended on 8 and 9 October 2019 (the "**FAFA**") and (ii) the Contribution Agreement.
- I. The Bank supports the implementation of international and EU standards in the field of anti-money laundering and countering the financing of terrorism and promotes tax good governance standards. It has established policies and procedures to avoid the risk of misuse of its funds for purposes, which are illegal or abusive in relation to applicable laws. The EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism is available on the Bank's website and offers further guidance to EIB contracting counterparties.<sup>1</sup>

NOW THEREFORE it is hereby agreed as follows:

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



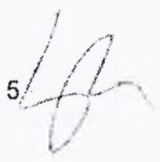
III

**ARTICLE 1**  
**Definitions and Interpretation**

1.1. Wherever used in this Agreement, the following terms shall have the meanings opposite them:

"Agreement"	has the meaning given to it in Recital H.
"Confidential Information"	means any document, information or other material, provided in connection with or pursuant to this Agreement, and which is, cumulatively, in written or other permanent (including electronic) form, and clearly and conspicuously identified as "Confidential Information".
"Contractor"	means the natural or legal person, or an association thereof – whether formal or informal – with which a Final Beneficiary concludes a Contract for the delivery of the Works.
"Contract"	means an agreement entered into between a Final Beneficiary and a Contractor pursuant to a public procurement procedure, as prescribed in Article 5 ( <i>Design and Procurement</i> ) and under which such Contractor delivers the Works.
"Contribution Agreement"	has the meaning given to it in Recital F.
"Disbursement Account"	<p>means the Euro-denominated account:</p> <ol style="list-style-type: none"><li>(1) Opened in the name of the Beneficiary,</li><li>(2) at a commercial bank agreeable to the Bank,</li><li>(3) for the purposes of receiving the proceeds of the Grant prior to such funds being used by the Beneficiary for the purposes of implementing the Project.</li></ol> <p>The Disbursement Account shall be separate from any other accounts, audited independently and separately, and not subject to any enforcement, attachment, or any similar proceedings.</p>
"Effective Date"	has the meaning given to it in Article 33.
"EU"	means the European Union.
"EU Body" or "EU Bodies"	means the Bank, the agents of the Bank, the European Court of Auditors, the European Commission, agents of the European Commission (including OLAF and external agents engaged by the European Commission), the European Public Prosecutor's Office any other European Union institution or European Union body which is entitled to verify the use of the Grant and any other duly authorised body under applicable law to carry out audit or control activities when required under applicable law.
"Execution Period"	means the period starting on the Effective Date and ending on the Termination Date.
"FAFA"	has the meaning given to it in Recital H.
"Final Beneficiary"	has the meaning given to it in Recital A.
"Finance Contract"	has the meaning given to it in Recital B.
"Force Majeure"	means any unforeseeable exceptional situation or event beyond the Parties' control, which is not attributable to error or negligence on their part or any of their agents, employees or contractors, proves insurmountable in spite of all due diligence, and prevents either of them from fulfilling any of their contractual obligations. Defects in equipment



5 

or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as Force Majeure

"FX Rate"

means the foreign exchange reference rate displayed by the European Central Bank from time to time on its website and which is based on the daily consultation procedure between central banks within and outside the European System of Central Banks or, if such rate is not or no longer available at the relevant time, the relevant foreign exchange reference rate displayed by the relevant national central bank, or if such rate is not or no longer available at the relevant time, or economically unreasonable at the relevant time as solely determined by the Bank, any replacement to such rate such as determined in a reasonable commercial manner by the Bank, or the relevant third party (as solely determined by the Bank) which may include an actionable quotation for a currency exchange rate as of the relevant day of such conversion obtained by the entity conducting the conversion from an independent leading dealer in the relevant currency selected by the latter in good faith and in a commercially reasonable manner.

"Grant"

has the meaning given to it in Recital D.

"Grant Fund Transfer Agreement"

has the meaning given to it in Recital G.

"Grant Maximum Amount"

means EUR 1,000,000 (one million euros).

"Intellectual Property Rights"

means any copyright and related rights, rights in designs, database rights, rights in computer software, domain names, trademarks, service marks, patents, trade names or any applications for any of the foregoing, rights in confidential information (including know-how and trade secrets) or similar rights or obligations, moral rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

"Loan"

has the meaning given to it in Recital B

"NIP"

has the meaning given to it in Recital D.

"NIP Grant"

has the meaning given to it in Recital D.

"Personal Data"

has the meaning given to it in Article 2 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

"Procurement Plan"

has the meaning given to it in the Guide to Procurement.

"Records"

has the meaning given to it in Annex 4 (*Records*).

"Relevant Person"

means:

- (a) with respect to the Beneficiary, any official or representative of any of its ministries, other central executive government bodies or other governmental sub-divisions, or any other person acting on its behalf or under its control, having the power to give directions and exercise control with respect to the Grant or the Project; and

- (b) with respect to each Final Beneficiary, as applicable, its mayor; or any member of its management bodies; or any official or representative or any employee or any other person acting on its behalf or under its control, having the power to give directions and exercise control with respect to the Grant or the Project.

"Technical Description" has the meaning given to it in Recital A.

"Termination Date" means the later of:

- a) the date on which the Contribution Agreement is terminated; or
- b) the date on which this Agreement is terminated.

"Union Emblem" means the logo of the European Union with the twelve yellow stars on a blue background as being used by all the institutions, bodies, offices and agencies of the European Union in accordance with *The Interinstitutional style guide* of the Publications Office of the European Union and *The Use of the EU Emblem in the Context of EU Programmes and in Non-EU Countries – Guidelines for beneficiaries and other third parties* as developed by the European Commission and as updated from time to time.

These guidelines are available at:

[http://ec.europa.eu/dgs/communication/services/visual\\_identity/pdf/us-e-emblem\\_en.pdf](http://ec.europa.eu/dgs/communication/services/visual_identity/pdf/us-e-emblem_en.pdf)

"Works" means the works and supplies relating to the Project financed by the Grant as further described in Annex 1 (*Description of the Project*).

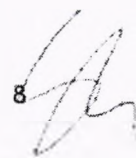
- 1.2. Unless indicated otherwise, capitalised terms used but not defined herein, shall have the respective meanings given to them in the Finance Contract.
- 1.3. In the event that a different meaning is given to a capitalized term in a particular Annex, such definition will have the meaning given to it in that Annex solely for the purposes of that Annex.
- 1.4. The headings used in this Agreement, and any references made to the said headings, are for convenience of reference only and will not be taken into consideration in the interpretation of this Agreement.
- 1.5. Except where the context requires otherwise, references to specific Recitals, Articles, Annexes, and other divisions of this Agreement are references to such Recitals, Articles, Annexes to, or divisions of this Agreement.
- 1.6. References to any law, including any statutes or legal acts specifically referred to herein, whether or not amendments or successors to such laws are referred to herein, are to be construed as references to that law as amended from time to time, or to any law covering the same or similar subject matter replacing, extending, consolidating or amending the same from time to time. They will also be deemed to include all regulations, by-laws, ordinances and orders made under or pursuant to that law.
- 1.7. References to a public organisation will include its successors, and if a public organisation ceases to exist or ceases to perform its functions without a successor, references to such public organisation will be deemed to include a reference to any public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
- 1.8. General words introduced or followed by the word "other" or "including" or "such as" or "in particular" will not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.9. Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each gender include all other genders.
- 1.10. Whenever a document is required to be "certified", such requirement will mean that the relevant document is certified as a true and complete copy of an instrument in full force and effect, and un-amended as of the date of the relevant copy.



## ARTICLE 2

### Subject

- 2.1. The purpose of this Agreement is to set out the rights and obligations of the Parties in relation to the use of the Grant for the implementation of the Works.
- 2.2. The Beneficiary shall (and, as applicable, shall procure that the Final Beneficiaries shall):
- (a) implement the Works supported by the Grant in accordance with the provisions of this Agreement, the Finance Contract, and the Grant Fund Transfer Agreements, including the time schedule and the description of the Project as per Annex 1 (*Description of the Project*) of this Agreement and the estimated budget as per Annex 2 (*Estimated cost of the Project*) of this Agreement;
  - (b) make the proceeds of the Grant available to each Final Beneficiary pursuant to a Grant Fund Transfer Agreement in each case on terms and conditions acceptable to the Bank;
  - (c) submit to the Bank for its review and approval each Grant Fund Transfer Agreement proposed to be entered into by the Beneficiary prior to the Beneficiary executing such Grant Fund Transfer Agreement (which shall specify, among other things, technical support eligible to be financed pursuant to such Grant Fund Transfer Agreement);
  - (d) obtain the Bank's prior written approval to any material changes to the Project's design, implementation schedule, cost, plans and expenditures programme;
  - (e) implement the Works and the related Contracts financed by the Grant under its responsibility and in accordance with the provisions of this Agreement, with a view to achieving the objectives laid down in Annex 1 (*Description of the Project*);
  - (f) use the Grant exclusively for the financing of the Works, and in accordance with the terms and conditions set out in this Agreement. In so doing, the Beneficiary shall fulfil its obligations with the requisite care, efficiency, transparency and diligence, in line with the principle of sound financial management and with the best practices in the field;
  - (g) comply with the applicable environmental and social legislation, including multilateral environmental and human rights agreements and treaties as appropriate, and with the Environmental and Social Standards when implementing the Contracts and the Project supported by the Grant;
  - (h) comply with the Guide to Procurement when procuring all Contracts financed by the Grant;
  - (i) fully cooperate in the protection of the European Union's financial interests;
  - (j) provide for the right of the European Commission to comprehensively exercise its competences;
  - (k) dedicate the Disbursement Account to the Project to the exclusion of any other activity of the Beneficiary;
  - (l) not create or permit to subsist any charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect over the Disbursement Account; and
  - (m) promptly inform the Bank of:
    - (i) any action or protest initiated or any objection raised by a third party or any genuine complaint received by the Beneficiary or any Environmental or Social Claim that is to its knowledge commenced, pending or threatened against it;
    - (ii) any non-compliance by it with an Environmental and Social Standard; and
    - (iii) any suspension, revocation or modification of an Environmental or Social Approval.





2.3. The Beneficiary represents, on the date of entry into force of this Agreement, that there is no of any of the following circumstances:

- (a) in the past 5 (five) years, the Relevant Persons have been convicted of an offence concerning their professional conduct by a final judgment, which would affect their ability to implement the Grant and which is for one of the following reasons:
  - (i) negligently providing misleading information that may have a material influence or fraudulently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract or an agreement;
  - (ii) entering into agreements with other persons aimed at distorting competition;
  - (iii) attempting to unduly influence the decision-making process of the contracting authority during the award procedure;
  - (iv) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure; or
- (b) the Relevant Persons have been subject to a decision on exclusion contained in the published early detection and exclusion system database set up by the European Commission; or
- (c) in the past 5 (five) years, the Relevant Persons have been the subject of a final judgment for fraud, Prohibited Conduct, participation in a criminal organisation, Money Laundering or the Financing of Terrorism, terrorist offences or offences linked to terrorist activities, or inciting, aiding, abetting or attempting to commit such offences; or child labour and other forms of trafficking in human beings;

provided that the Bank may decide not to exclude the Beneficiary if the Beneficiary can provide evidence that remedial measures have been adopted to demonstrate its reliability despite the existence of a ground for exclusion, or where it is indispensable to ensure the continuity of the service, for a limited duration and pending the adoption of remedial measures, or where an exclusion would be disproportionate taking into account the circumstances.

2.4. The Beneficiary:

- (a) confirms that all Authorisations required or desirable to lawfully enable the Beneficiary to enter into, exercise its rights and comply with its obligations in the Agreement have been obtained and are in full force and effect; and
- (b) it shall comply with the undertakings set out in paragraph 2.2 above throughout the term of this Agreement.

### ARTICLE 3 Entry into Force and Duration

- 3.1. The Agreement is effective from the Effective Date, and shall remain valid for as long as any rights, obligations or liabilities arising out of its provisions remain outstanding, unless it is otherwise terminated in accordance with the provisions of Article 23 (*Termination*).
- 3.2. The Execution Period shall end no later than the Termination Date.

**ARTICLE 4**  
**Financing of the Works**

- 4.1. The total cost of the Project is estimated to be up to is EUR 403,600,000 (four hundred and three million and six hundred thousand euros) net of any taxes, as further detailed in Annex 2 (*Estimated Cost of the Project*). The final cost of the Project shall be determined after the completion of the Works, on the basis of the final invoices submitted by the Contractors, as paid by the Beneficiary, and accepted by the Bank in accordance with Article 7 (*Payment of the Grant*).
- 4.2. Under the terms and conditions of this Agreement, the Bank undertakes to make available to the Beneficiary a Grant in a maximum amount up to the Grant Maximum Amount, to be used for financing the Works.
- 4.3. The Beneficiary acknowledges that the Grant Maximum Amount is a maximum amount which may be reduced by the Bank, at its sole discretion, by any amounts necessary to cover, among others, any additional or increased cost which is incurred or suffered by the Bank in order to fund or perform its obligations under this Agreement including, but not limited to, the management by the Bank of the Grant (including, but not limited to, any costs incurred by the Bank as a result of the mandatory investment of the Grant in the unitary funds established by the Bank in accordance with the FAFA prior to payment to the Beneficiary).
- 4.4. The Grant shall be used exclusively to cover eligible costs incurred in respect of the Works, as specified in Article 8 (*Eligible Costs*).
- 4.5. Pursuant to the provisions of the Contribution Agreement, if at the end of the Execution Period, the final amount of the eligible costs of the Works, determined in accordance with Article 8 (*Eligible Costs*), is lower than the maximum amount of the Grant specified in Article 4.2 (*Financing of the Works*), the difference shall be returned by the Bank to the European Commission.
- 4.6. The Grant shall not have the purpose or effect of producing a profit for either the Beneficiary or any Final Beneficiary.
- 4.7. For the avoidance of doubt, all equipment and assets purchased by the Beneficiary or the Final Beneficiaries using the Grant shall belong to the Final Beneficiaries.

**ARTICLE 5**  
**Design and Procurement**

- 5.1 The Beneficiary shall procure that each Final Beneficiary undertakes, to purchase equipment, secure and order the Works for the Project by acceptable procurement procedures complying, to the Bank's satisfaction, with its policy as described in the Guide to Procurement and with the terms of the Finance Contract and the Grant Fund Transfer Agreements (as applicable).
- 5.2. The Beneficiary shall include in each Grant Fund Transfer Agreement provisions requiring the Final Beneficiaries to comply with the obligations specified in Article 5 (*Design and Procurement*).

**ARTICLE 6**  
**Changes to the Contracts**

- 6.1. Before enacting any modification of a Contract, waiving any conditions stipulated in any Contract, or making any other changes to a Contract, as well as on any decisions to suspend, cancel, rescind or otherwise terminate a Contract, the Beneficiary shall inform the Bank of the proposed extension, modification, substitution, waiver, change, or decision, and the reasons thereof, at least 30 (thirty) calendar days in advance of the date when such changes are intended to become applicable.

- 6.2. If the Bank determines that the proposal is inconsistent with the provisions of this Agreement, the Finance Contract or would not be otherwise admissible in the light of the provisions of the Contribution Agreement, it shall promptly inform the Beneficiary, and state the reasons for its determination. If the proposal is deemed acceptable by the Bank, it shall communicate in writing to the Beneficiary its agreement to proceed.
- 6.3. The Beneficiary shall procure that the relevant Final Beneficiary proceeds to the signature of the relevant Contract amendment instrument or, as the case may be, to the communication to the Contractor of the notice to suspend, cancel, rescind or terminate the Contract, only after receiving the Bank's agreement to proceed, as specified in Article 6.2 (*Changes to the Contracts*).
- 6.4. A certified copy of all amendments to the Contract thus enacted or notices serviced to the relevant Contractor shall be supplied to the Bank within 30 (thirty) calendar days of their enactment or issuance.

## ARTICLE 7

### Payment of the Grant

- 7.1. The Grant supporting the Project will complement the financing package made available, amongst other, through the Loan and from investment grants and technical assistance grants under the NIP and the Eastern Europe Energy Efficiency and Environment Partnership Fund and/or other funding resources, without recourse to the Bank to finance the costs of the Project in accordance with Annex 1 (*Description of the Project*).
- 7.2. Subject to:
- (a) the provisions of Article 4 (*Financing of the Works*) above;
  - (b) the fulfilment of the conditions precedent specified in article 1.04 of the Finance Contract; and
  - (c) the fulfilment of the conditions precedent specified in Article 7.4 (*Payment of the Grant*);
- the Bank will disburse the Grant in euros into the Disbursement Account.
- 7.3. For the purpose of implementing the Contracts, the Beneficiary may carry out a conversion of any amount corresponding to the Grant. For all amounts that are not in euros, the FX Rate shall be applied for the conversion of such amounts to euros.
- 7.4. No disbursements shall be requested or made unless and until the following conditions are met, in form and substance satisfactory to the Bank:
- (a) this Agreement has been duly signed by the Parties;
  - (b) the Bank has received evidence that the execution of this Agreement by the Beneficiary has been duly authorised and that the persons signing this Agreement on behalf of the Beneficiary are duly authorised to do so, together with the specimen signature of each such persons;
  - (c) the conditions precedent in Article 1.4 of the Finance Contract have been fulfilled to the satisfaction of the Bank;
  - (d) the Beneficiary has provided the Bank with a certificate duly signed by a legal representative of the Beneficiary and confirming that the conditions specified in Article 8.1 (*Eligible Costs*) are met; and
  - (e) the Bank has received a legal opinion issued by the Ministry of Justice of Ukraine in the English language on the due execution of this Agreement by the Beneficiary and the validity, enforceability and binding nature thereof. Such legal opinion shall be in a form and substance acceptable to the Bank and shall be supported by the relevant documents evidencing the authority of the Beneficiary to enter into this Agreement, a confirmation that ratification of this Agreement by the Parliament of Ukraine is necessary for the Agreement to have effect under the laws of Ukraine as well as evidence of due ratification or approval (as applicable) 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;



- 7.5. The first tranche of the Grant shall be disbursed by the Bank within 60 (sixty) calendar days from the date on which:
- (a) the Bank has received a request in this regard from the Beneficiary, substantially in the form included as Annex 3 (*Model Request for Payment*), for approval of the request for payment and confirmation of all elements and statements contained therein; and
  - (b) the conditions specified in Article 7.4 (*Payment of the Grant*) have been duly met;
  - (c) the Beneficiary submitted and the Bank accepted all the reports which were due pursuant to Article 9 (*Information and Reporting*) prior to the date of the request for payment; and
  - (d) the Beneficiary has provided the Bank with supporting documentation, in a form and substance satisfactory to the Bank, substantiating that at least 80% (eighty percent) of the requested disbursement will be effectively employed by the Beneficiary for the implementation of Works and the payment of the forecasted expenses in accordance with Article 8 (*Eligible Costs*) within 180 (one hundred and eighty) days from the requested disbursement.
- 7.6. The disbursement of each tranche other than the first tranche, up to the Grant Maximum Amount specified in Article 4.2 (*Financing of the Works*), shall be made by the Bank within 120 (one hundred and twenty) calendar days from the date on which:
- (a) the Bank has received a request in this regard from the Beneficiary, substantially in the form included as Annex 3 (*Model Request for Payment*), for approval of the request for payment and confirmation of all elements and statements contained therein; and
  - (b) the conditions specified in Article 7.4 (*Payment of the Grant*) continue to be met, and
  - (c) the Beneficiary has provided the Bank with supporting documentation, in a form and substance satisfactory to the Bank, substantiating that:
    - (i) at least 80% (eighty percent) of the immediately preceding disbursement; and
    - (ii) 100% (one hundred percent) of all other disbursements;have been effectively employed by the Beneficiary for the financing of the Works or are subject to a legal commitment with Contractors.
- 7.7. If the final amount of the eligible costs incurred by the Beneficiary, or the Final Beneficiaries (as applicable) under the Contracts is lower than the total amount of the Grant already disbursed by the Bank in accordance with this Article 7 (*Payment of the Grant*), the amount of the Grant disbursed in excess of the final amount of eligible costs incurred by the Beneficiary, or the Final Beneficiaries (as applicable) shall be recovered by the Bank pursuant to Article 20 (*Recovery*) and shall be returned to the European Commission.
- 7.8. In relation to the foregoing, the Beneficiary shall and shall procure that the Final Beneficiaries shall:
- (a) ensure that the invoices submitted by the Contractors for payments under the Contracts include, as a minimum, the following information:
    - (i) the name and address of the Contractor;
    - (ii) the title and any unique identification code of the Contract;
    - (iii) the amount requested for payment, in euros equivalent applying the FX Rate, quoting separately the amount corresponding to any taxes, customs and duties that may be payable;
    - (iv) an identification of the Works delivered that are covered by the payment requested or a clear identification of the payment requested as an advance payment, as applicable.
  - (b) ensure, and include terms to this effect in each Contract, that if the terms and conditions for payment of the Contractor agreed in the Contract include categories or items of expenditure that are paid to the Contractor at actual cost, when such expenditure is incurred by the Contractor in a currency other than Euro the amount of such expenditure to be claimed for payment under this Article 7 (*Payment of the Grant*) shall be calculated by converting into Euro the amount actually incurred by the Contractor in a different currency, at the FX Rate applicable on the date of the relevant invoice issued to the Contractor.

- 7.9. 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 and payability 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 7 (*Payment of the Grant*), are not met.
- 7.10. The Bank may suspend the time limit for payments specified in Articles 7.5 and 7.6 (*Payment of the Grant*) by notifying in writing the Beneficiary that:
- (a) the amount indicated in the request for payment is not due, or
  - (b) supporting documents to the Bank's satisfaction have not been supplied, or
  - (c) it thinks it needs to conduct further checks, including on-the-spot checks, to make sure that the expenditure declared is eligible, or
  - (d) it is necessary to verify whether suspected or alleged substantial errors, irregularities or fraud have occurred in the award or implementation of any Contract; or
  - (e) the European Union requests the Bank to suspend all its disbursements pursuant to the FAFA or the Contribution Agreement; or
  - (f) the European Commission deliver a recovery notice to the Bank pursuant to the FAFA or the Contribution Agreement; or
  - (g) the Agreement is terminated pursuant to the FAFA or the Contribution Agreement; or
  - (h) the European Union requests the Bank to reimburse part or all amounts already disbursed to the Beneficiary pursuant to the FAFA.

Such suspension shall take effect on the date when the notification is sent by the Bank to the Beneficiary. Without prejudice to Article 23 (*Termination*), the time limit for the payment shall start running again on the date on which the reason for suspension of payments is addressed to the satisfaction of the Bank.

- 7.11. The Beneficiary shall, and shall ensure that the Final Beneficiaries shall, grant the Bank or its authorised representatives the assistance and access rights specified in Article 15.2 (*Verifications, Controls and Audits*) for the purposes of undertaking the verifications and controls referred to in Article 7.9 (*Payment of the Grant*).
- 7.12. The disbursements made by the Bank pursuant to this Article 7 (*Payment of the Grant*) shall not imply recognition of the regularity, or of the authenticity, completeness and correctness of the documents and information provided by the Beneficiary or the Final Beneficiaries, as applicable, in support of the requests for payments it submits to the Bank.

## ARTICLE 8 Eligible Costs

- 8.1. In order to be considered eligible for payment under the Grant, the costs covered by the requests for disbursement submitted by the Beneficiary pursuant to Article 7 (*Payment of the Grant*) must:
- (a) relate to the Works actually provided by a Contractor in accordance with the terms of the relevant Contract. For the avoidance of doubt, the following costs are eligible: (i) the costs of any ancillary services strictly linked to the Works (such as testing, commissioning, end-user training, etc.) and procured as part of the Contracts and (ii) the costs incurred by the Beneficiary for the expenditure verification certificates to be provided to the Bank pursuant to Article 9.4 of this Agreement;
  - (b) be incurred by the Beneficiary or the Final Beneficiaries (as applicable), during the Execution Period and necessary for the implementation of the Works. For the purposes of this Agreement, a cost shall be considered as "incurred" by the Beneficiary, or the Final Beneficiaries (as applicable), when the Works, or part thereof, to which it corresponds are implemented by a Contractor during the Execution Period and accepted by the Beneficiary, or the Final Beneficiaries (as applicable), and considered eligible by the Bank, after approval of relevant operational and financial reports submitted to the Bank by the Beneficiary on the implementation of the Works financed by the Grant, thus excluding any payments to a



Contractor made in the form of advances (1) before the Execution Period, when the Works, or part thereof, to which it corresponds are implemented by a Contractor during the Execution Period and accepted by the Beneficiary, or the Final Beneficiaries (as applicable), and considered eligible by the Bank, after approval of relevant operational and financial reports submitted to the Bank by the Beneficiary on the implementation of the Works financed by the Grant; and (2) during the Execution Period, when the Works, or part thereof, to which it corresponds are not implemented by a Contractor during the Execution Period and accepted by the Beneficiary, or the Final Beneficiaries (as applicable), and considered eligible by the Bank, after approval of relevant operational and financial reports submitted to the Bank by the Beneficiary on the implementation of the Works financed by the Grant;

- (c) comply with the requirements of applicable tax and social legislation;
  - (d) be necessary and comply with the principle of sound financial management, in particular regarding value for money and cost-effectiveness and be included in the estimated budget for the Project agreed between the Parties; and
  - (e) be identifiable and verifiable, and in particular be recorded in the accounting records of the Beneficiary or the Final Beneficiaries (as applicable), and be determined according to the applicable accounting standards of Ukraine and to the usual cost accounting practices of the Beneficiary or the Final Beneficiaries (as applicable).
- 8.2. The Beneficiary shall, and shall ensure that the Final Beneficiaries shall, comply with the conditions specified in Article 8.1 (*Eligible Costs*) before submitting any request for payment to the Bank.
- For the avoidance of doubt, in relation to Article 8.1 (*Eligible Costs*), point (b), the relevant Final Beneficiary, may have commenced the procurement procedure to award a Contract, and such Contract with the relevant Contractor may have been signed by the relevant Final Beneficiary, before the start of the Execution Period, provided that the Works for which costs are claimed for payment from the Grant are delivered to and accepted by the relevant Final Beneficiary, during the Execution Period (thus excluding any Works which may be delivered before the start, or after the end of the Execution Period).
- 8.3. The Beneficiary shall, and shall ensure that the Final Beneficiaries shall, keep full, accurate and systematic Records on the implementation of each Contract and the use of the Grant, in such form and detail as is necessary and sufficient to establish accurately that the activities have been carried out and the cost identified in its reports to the Bank have been duly incurred for the implementation of the Works and in accordance with the provisions of this Agreement.
- Such Records shall enable the income and expenditure related to the Works to be easily traced, identified and verified, and shall be kept by the Beneficiary and/or the Final Beneficiaries (as applicable) for a period of six (6) years following the Termination Date and in any case until any ongoing audit, verification, appeal, litigation or pursuit of claim, arising out of or in connection with this Agreement or a Contract has been disposed of. They shall be easily accessible and filed so as to facilitate their examination.
- 8.4. The Beneficiary shall, and shall ensure that the Final Beneficiaries shall, provide the Bank with all necessary verifiable information and supporting documentation including, the audited financial statement of expenditure referred to in Article 9.6 (*Information and Reporting*) for the Bank to satisfy itself that any Works which are co-financed by the Grant have been delivered, and that expenditure declared by the Beneficiary in connection with the Works has actually been paid and complies with the conditions for the award and use of the Grant.
- 8.5. For the avoidance of doubt, all bank charges related to the use of the Disbursement Account are not considered eligible for payment under the Grant and shall be borne by the Beneficiary.

## ARTICLE 9

### Information and Reporting

- 9.1. The Beneficiary shall, and shall ensure that each Final Beneficiary shall, cooperate at all times with the Bank and the Contractors in relation to the provision of the Works. In particular, the Beneficiary shall, and shall ensure that the Final Beneficiaries shall, use their best endeavours to ensure that the Contractors' employees and their dependants obtain the visas and permits, including work and residence permits, required in accordance with the applicable laws of Ukraine, it being understood



that the Beneficiary and the Final Beneficiaries (as applicable) shall have no obligation to cover the costs thereof, and that the responsibility for submitting a visa application, with associated supporting documents, to the visa issuing authority of Ukraine rests solely with the Contractors.

- 9.2. The Beneficiary shall, and shall ensure that the Final Beneficiaries shall, provide the Bank with full information on the implementation of this Agreement and the Works. To this end, the Beneficiary shall, and shall ensure that the Final Beneficiaries shall, provide annual progress reports and a final implementation report, consisting of a narrative section and a financial section. The reports shall be drafted in English and financial information shall be consolidated in euros. Each report shall be in form and substance satisfactory to the Bank.
- 9.3. Each annual progress report must provide a full account of the achievements of the Project within the twelve (12) months reporting period and the status at end of that period.

The narrative section shall consist of, at least:

- (a) the status of any ongoing procurement activities;
- (b) progress of Works and Contracts;
- (c) an update on environmental and social aspects;
- (d) an update on ongoing sector reforms, if any;
- (e) any particular operational challenges faced and measures taken to overcome them, any changes in the implementation of the Project;
- (f) any communication activities and measures undertaken to ensure the visibility of the EU's contribution to the Project;
- (g) an overview of the use of the Grant broken down by components of the Works;
- (h) the work plan and cash flow forecast for the next twelve (12) months;
- (i) an update on the overall Project completion date and estimated Project final cost; and
- (j) an update on progress indicators, if measurable at that stage; the main indicators that will be monitored at the Project level are listed in Annex 5 (*Progress Indicators*).

The financial section shall consist of:

- (i) an updated financing plan (including the latest figures available);
- (ii) an updated disbursement forecast; and
- (iii) an overview of expenditure, listing eligible costs, determined in accordance with Article 8 (*Eligible Costs*), incurred in the period covered by the report and claimed for payment from the Grant, in the currency of expenditure and in its equivalent Euro amount, calculated in accordance with Article 7.7 (*Payment of the Grant*), and indicating for each item of expenditure its title, amount, relevant category of expenditure specified in Annex 2 (*Estimated cost of the Project*), and the reference of the document evidencing it.

Should the disbursement forecast change substantially, the Beneficiary shall send an updated forecast to the Bank. If the Beneficiary determines that the forecast budget and, on its basis, the amount of pre-financing already paid by the Bank for any twelve (12) month period may be insufficient to cover the needs of the Project for the remaining part of that twelve (12) month period, this updated forecast shall be accompanied by a financial statement which shall demonstrate the necessity for further pre-financing (by demonstrating that 80% of the immediately preceding disbursement and 100% of all other disbursements have been effectively employed by the Beneficiary for the implementation of the Project or are subject to a legal commitment with Contractors).

- 9.4. The final implementation report shall provide a detailed description of the activities carried out, the results and impact of the Project covering the whole implementation period.

The narrative section shall consist of an overview of at least:

- (i) the procurement activities;
- (ii) Works and Contracts;
- (iii) environmental and social aspects;
- (iv) the status of any ongoing sector reforms;

- (v) any particular operational challenges faced and measures taken to overcome them, any changes in the implementation of the Project;
- (vi) communication activities and measures undertaken to ensure the visibility of the EU's contribution to the Project;
- (vii) the use of the Grant and other project financing sources broken down by components of the Works;
- (viii) Achievement of progress indicators (see Article 9.3).

The financial section shall consist of:

- (i) final financing plan;
  - (ii) an overview of expenditure, listing eligible costs, determined in accordance with Article 8 (*Eligible Costs*), incurred in the project period and claimed for payment from the Grant, in the currency of expenditure and in its equivalent Euro amount, calculated in accordance with Article 7.7 (*Payment of the Grant*), and indicating for each item of expenditure its title, amount, relevant category of expenditure specified in Annex 2 (*Estimated cost of the Project*), and the reference of the document evidencing it.
- 9.5. The annual progress reports must be submitted to the Bank no later than 15<sup>th</sup> January of each year. The final implementation report must be submitted to the Bank no later than 5 (five) months after the end of the Execution Period.
- 9.6. The Beneficiary shall provide annually an externally audited financial statement of expenditure of the previous calendar year. Such financial statement shall be audited by an independent external auditor, the selection of which requires the prior written approval of the Bank in accordance with terms of reference provided by the Bank to the Beneficiary and approved by the Bank. It shall be submitted no later than 31<sup>st</sup> January each year and for the first time by 31<sup>st</sup> January 2022 at the latest. The auditor shall examine whether the costs declared and claimed for payment from the Grant pursuant to Article 7 (*Payment of the Grant*) are real, accurately recorded and eligible according to this Agreement. The Beneficiary shall fully cooperate with such external auditor and facilitate its work.
- 9.7. All reports shall be provided by the Beneficiary to the Bank in paper and electronic format.
- 9.8. If the Beneficiary fails to submit to the Bank, by the deadlines indicated in Article 9.3 (*Information and Reporting*), any of the reports due, and fails to furnish an acceptable and sufficient written explanation of the reasons why it is unable to comply with this obligation, the Bank may terminate the Agreement, in accordance with the provisions of Article 23 (*Termination*), and recover any amounts of the Grant already disbursed under this Agreement and not substantiated, including through assigning its rights to recover to the European Commission, in accordance with Article 22 (*Assignments*).
- 9.9. The Beneficiary shall inform the Bank without delay of any circumstances likely to hamper or delay the implementation of the Works.
- 9.10. The Bank may request clarifications, alterations or additional information or documents in relation to any of the reports submitted by the Beneficiary pursuant to this Article 9 (*Information and Reporting*), which must be supplied by the Beneficiary within fifteen (15) calendar days of such request.

#### ARTICLE 10 Ownership of Results and Intellectual Property Rights

- 10.1. Subject to any pre-existing Intellectual Property Rights of any individual or legal entity, including any of the Parties, the Intellectual Property Rights in new materials compiled or prepared by the Contractors in the performance of the Contracts, including all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material, shall vest in the relevant Final Beneficiary.
- 10.2. Without prejudice to Article 10.1 (*Ownership of Results and Intellectual Property Rights*) and subject to any applicable confidentiality requirements, the Beneficiary shall and shall ensure that each Final Beneficiary shall, grant to the Bank and to the European Commission an irrevocable, non-exclusive, royalty-free, perpetual licence, with rights to grant sub-licences, in any new Intellectual Property Rights. In particular, the Bank and the European Commission shall have the right to use freely, including to store, modify, translate, display, reproduce by any technical procedure, publish or



communicate by any medium, all documents, including any reports pursuant to Article 9 (*Information and Reporting*), deriving from this Agreement and the Contracts, whatever their form. To this effect, the Beneficiary shall ensure that it and/or each Final Beneficiary (as applicable) has the right to use the relevant pre-existing Intellectual Property Rights, including granting such license as foreseen by this Article 10 (*Ownership of Results and Intellectual Property Rights*).

- 10.3. In case a recognisable individual is depicted in a photograph or film produced in connection with the implementation of this Agreement, the Beneficiary shall include in the final implementation report submitted to the Bank in accordance with Article 9 (*Information and Reporting*) a statement from such individual whereby he gives permission for such use of his image, it being understood that such requirement shall not apply in case of photographs taken or films shot in public places where random members of the public are identifiable only hypothetically, or of photographs taken or films shot of public persons acting in their public capacity.
- 10.4. The Beneficiary shall, and shall procure that each Final Beneficiary shall, include in each Contract and each Grant Fund Transfer Agreement, as applicable, provisions requiring the Final Beneficiaries and the Contractors to comply with the obligations specified in Article 10 (*Ownership of Results and Intellectual Property Rights*), as necessary.
- 10.5. The equipment and supplies paid for by the Grant shall be the property of the Final Beneficiaries. The documentary proof of such property shall be kept for verification along with the documents mentioned in Article 8.3 (*Eligible Costs*).

## ARTICLE 11

### Visibility and Transparency

- 11.1. The Beneficiary shall, and shall procure that each Final Beneficiary shall, cooperate and coordinate the communication and visibility activities planned and implemented in relation to Works at all times with the Bank and the Contractors. For this purpose, the Beneficiary will be guided by the "EU Communication and Visibility requirements in EU-financed external actions"<sup>2</sup> as well as the EIB Use of logo guide and/or any other succeeding document and/or specific communication strategy/plan developed for this Project.
- 11.2. The Beneficiary shall, and shall procure that each Final Beneficiary shall, document and report all communication and visibility activities implemented in relation to the Works.
- 11.3. The Beneficiary shall, and shall procure that each Final Beneficiary shall, take all appropriate measures to publicise the fact that the Project and the Contracts have received funding from the European Union. Information given to the press, to the Contractors, all related publicity material, official notices, reports and publications, shall acknowledge that the Project and the Contracts are carried out "*with funding by the European Union*" and shall display in an appropriate way the Union Emblem as well as the Bank's logo.
- 11.4. Where equipment or vehicles and major supplies have been purchased using funds provided by the EU, the Beneficiary shall, and shall procure that each Final Beneficiary shall, and shall require Contractors to, include appropriate acknowledgments on such vehicles, equipment and major supplies as well as ensure EU and Bank visibility through outdoor promotion (display project boards, billboards, commemorative plaques etc.)
- 11.5. The Parties agree to extend an invitation to the Bank, the European Commission and to the Delegation of the EU to Ukraine to participate in any and all events any of them may organise in relation to this Agreement, the Contracts or the Project, over the duration of this Agreement. Such events may include any regular or technical working meetings between the Parties in the context of the Project supported by the Grant.
- 11.6. Where high-level visits are planned, the Parties will inform each other and consider coordinating these visits and agreeing on joint messages.

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<sup>2</sup> [https://ec.europa.eu/international-partnerships/system/files/communication-visibility-requirements-2018\\_en.pdf](https://ec.europa.eu/international-partnerships/system/files/communication-visibility-requirements-2018_en.pdf)



- 11.7. The Beneficiary shall procure that each Final Beneficiary shall include in each Contract provisions requiring the Contractor to respect the same visibility requirements as specified in Article 11.1 (*Visibility and Transparency*), and to include the following texts in each report or any other deliverable it submits pursuant to such Contract:
- (a) *"This document has been produced with the financial assistance of the European Union in the framework of the Neighbourhood Investment Platform and through the general budget of the European Union."*
  - (b) *"Disclaimer: The authors take full responsibility for the contents of this report. The views expressed in this document are not necessarily those of the European Union or the European Investment Bank. The European Union, the European Investment Bank, their members, governing bodies, employees or agents, accept no liability whatsoever for any loss or damage arising from the interpretation or use of the information, or reliance upon views contained herein, or from the use by third parties of results or methods presented in this report."*
- 11.8. The Beneficiary shall include, in its regular reports to the Bank submitted in accordance with Article 9 (*Information and Reporting*), information on measures implemented to ensure the visibility of the European Union's financial contribution, and communicate to the Bank any other progress and situation reports, publications, press releases and updates relevant to this Agreement, as and when they are issued.
- 11.9. Subject to the applicable rules on confidentiality, security and protection of personal data, the Beneficiary authorise and shall procure that each Final Beneficiary authorises the Bank and the European Commission to publish, on an annual basis, the following information in relation to this Agreement: the title, nature and purpose of this Agreement and the Project, the name, address and country of the Beneficiary and each Final Beneficiary and the Grant Maximum Amount.
- 11.10. If the Beneficiary or the Final Beneficiaries publish on their website any information in relation to this Agreement, the Grant Fund Transfer Agreements or the Contracts, the Beneficiary shall and shall procure that each Final Beneficiary shall, provide the Bank with the address of such website and hereby authorises the publication of such address on the Bank's website.

## ARTICLE 12

### Conflict of Interests

- 12.1. The Beneficiary undertakes and shall procure that each Final Beneficiary undertakes to take all necessary precautions to prevent, mitigate or end any conflict of interests arising out of or in connection with this Agreement. There is a conflict of interest where the impartial and objective exercise of the functions of any person implementing this Agreement is compromised (i) for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another third party or (ii) by virtue of that person's duties and tasks as a member of staff towards his employer. The Beneficiary shall inform the Bank without delay of any situation constituting or likely to lead to any such conflict, during the period of validity of this Agreement.
- 12.2. The Bank reserves the right to verify that any measures put in place by the Beneficiary and the Final Beneficiaries to prevent, mitigate or end conflicts of interests are adequate, and may require additional measures to be taken if necessary.
- 12.3. If the Beneficiary or any Final Beneficiary fails to comply with the obligations set forth in this Article, the Bank may terminate this Agreement, in accordance with the provisions of Article 23 (*Termination*).
- 12.4. The Beneficiary shall, or shall procure that each Final Beneficiary shall, include in each Grant Fund Transfer Agreement and each Contract, provisions requiring each Final Beneficiary and the Contractor, as applicable, to comply with any obligations or additional measure specified in this Article 12 (*Conflict of Interests*), as necessary.

**ARTICLE 13**  
**Confidentiality**

- 13.1. The Parties warrant that they will keep Confidential Information, and all documents containing, or referring to, any Confidential Information, under their effective control and using the same standard of care they use to keep their own confidential information confidential, and that they will not use or reproduce any document containing, or referring to, any Confidential Information, nor allow any other person to use or reproduce any such document, except to the extent necessary to enable it to exercise its rights or perform its obligations in accordance with the terms and conditions of this Agreement, or with the prior agreement in writing of the owner of the Confidential Information.
- 13.2. The obligations specified in Article 13.1 (*Confidentiality*) shall not be regarded as being breached to the extent that:
- (a) disclosure of or access to Confidential Information is authorised or required by law, or any rule, regulation or treaty or by any order of a court having competent jurisdiction in the matter, which are applicable to the disclosing Party;
  - (b) the Confidential Information is disclosed by a Party in order to protect its interests in the course of any legal or arbitration proceedings to which it is a party;
  - (c) the Confidential Information is disclosed or access to Confidential Information is granted pursuant to the obligations specified in Article 15 (*Verifications, Controls and Audits*);
  - (d) the Confidential Information is disclosed by the Bank to the European Commission pursuant to the Contribution Agreement or to another EU Body;
  - (e) the information designated by the Beneficiary as confidential is, in accordance with the Bank's transparency policy (as at the time of disclosure), accessible upon request or published in summary format on the Bank's website.
- 13.3. Where any Party discloses Confidential Information to a third party pursuant to Article 13.2 (*Confidentiality*), with the exception of letter (e) therein, the disclosing Party shall notify the receiving third party that the information is Confidential Information.
- 13.4. Where a Party discloses Confidential Information to a third person pursuant to Article 13.2(c) (*Confidentiality*), that Party will give written notice to the other Party immediately upon becoming aware of any such requirement to disclose information and the other Party is entitled to argue in any such circumstances against the disclosure of any Confidential Information.
- 13.5. The Parties shall preserve the confidentiality of the Confidential Information until at least 6 (six) years after the end of the Execution Period.
- 13.6. The Beneficiary shall, and shall procure that each Final Beneficiary shall, include in each Grant Fund Transfer Agreement and each Contract, as applicable, provisions requiring each Final Beneficiary and the Contractor, as applicable, to comply with any obligations specified in this Article 13 (*Confidentiality*).

**ARTICLE 14**  
**Monitoring and Evaluation**

- 14.1. If the Bank or the European Commission carries out an evaluation of, or a monitoring mission for, the Grant or the Works, the Beneficiary shall and shall procure that each Final Beneficiary shall, provide the representatives of the Bank or the European Commission, or persons authorised by them, with any document or information which will assist with the mission, and shall grant them the access rights specified at Article 15 (*Verifications, Controls and Audits*), subject to Article 13 (*Confidentiality*).
- 14.2. If a Party carries out or commissions an evaluation of the use of the Grant or the Works, it must provide to the other Party a copy of the corresponding evaluation report. The Bank reserves the right to provide a copy of such evaluation report to the European Commission, representing the European Union as a donor.



11

**ARTICLE 15**  
**Verifications, Controls and Audits**

- 15.1. The Beneficiary shall, and shall procure that each Final Beneficiary shall, allow the relevant EU Body and any external auditor authorised by the preceding, (i) to verify, by examining the original documents (including the right to make copies thereof) and by means of on-the-spot checks, the implementation of the Works and the execution of the Contracts in order to protect the financial interests of the European Union, with a view to establishing whether there has been any Prohibited Conduct affecting the financial interests of the European Union in connection with the Works; and (ii) to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document which is relevant to the financing of the Works. Such verifications, controls or audits may take place up to six (6) years after the Termination Date.
- 15.2. Pursuant to Article 15.1 (*Verifications, Controls and Audits*), the Beneficiary shall, and shall procure that each Final Beneficiary shall, provide the relevant EU Body and any external auditor authorised by the preceding, or ensure that they are provided, with all necessary access and assistance for this purpose. Access given in accordance with this Article 15 (*Verifications, Controls and Audits*) shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public or European Union law to which these institutions or bodies and their staff, agents or authorised representatives are subject.
- 15.3. The Beneficiary shall, and shall procure that each Final Beneficiary shall, procure, including by foreseeing terms to this effect in each Grant Fund Transfer Agreement and each Contract, that the rights granted in accordance with this Article 15 (*Verifications, Controls and Audits*) shall be equally applicable to each Final Beneficiary and each Contractor, as applicable.
- 15.4. The Beneficiary acknowledges, and shall ensure that each Final Beneficiary acknowledges, that the Bank may be obliged to divulge such information relating to the Beneficiary, each Final Beneficiary, this Agreement, each Grant Fund Transfer Agreement, and the Contracts to any competent European Union institution or body, in accordance with the relevant mandatory provisions of European Union law.

**ARTICLE 16**  
**Protection of Personal Data**

- 16.1. The processing of Personal Data shall be carried out by the Bank in accordance with the FAFA and the applicable European Union legislation on the protection of individuals with regard to the processing of Personal Data by the European Union institutions and bodies and on the free movement of such data.
- 16.2. When disclosing information (other than mere contact information relating to the Beneficiary's personnel involved in the management of this Contract ("**Contact Data**")) to the Bank in connection with this Agreement, the Beneficiary shall redact or otherwise amend that information (as necessary) so that it does not contain any personal data, except where this Agreement specifically requires, or the Bank specifically in writing requests, the disclosure of that information in the form of personal data.
- 16.3. Before disclosing any personal data (other than Contact Data) to the Bank in connection with this Agreement, the Beneficiary shall ensure that each data subject of those personal data:
- (a) has been informed of the disclosure (including the categories of personal data to be disclosed); and
  - (b) has the information in (or has been provided with an appropriate link to) the Bank's privacy statement in relation to its lending and investment activities set out at the relevant time at <https://www.eib.org/en/privacy/lending> (or such other address as the Bank may notify to the Beneficiary in writing from time to time).



**ARTICLE 17**  
**Integrity Commitment**

- 17.1. The Beneficiary warrants and undertakes that it has not committed, and shall procure that each Final Beneficiary has not committed, and no person to its present knowledge has committed, and that it, and any other person with its consent or prior knowledge, shall not commit any Prohibited Conduct nor any illegal activity related to the Financing of Terrorism or Money Laundering in connection with the Project, any tendering procedure for the Project, or any transaction contemplated by this Agreement or in connection with the Grant.
- 17.2. The Beneficiary represents and warrants to the Bank that to the best of their knowledge, no funds invested in the Project by the Beneficiary are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism.
- 17.3. For this purpose, the knowledge of any official of the Beneficiary or the Final Beneficiaries will be deemed the knowledge of the Beneficiary. The Beneficiary undertakes to inform the Bank if it should become aware of any fact or information suggestive of the commission of any such act and shall facilitate any investigation that the relevant EU Body or any person authorised by the preceding may make concerning such act or behaviour.
- 17.4. The Beneficiary undertakes to, and shall procure that each Final Beneficiary shall, take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct.
- 17.5. The Beneficiary undertakes to, and shall procure that each Final Beneficiary shall, ensure that all Contracts and all Grant Fund Transfer Agreements, as applicable, include the necessary provisions as set out in article 3.6 (*Prohibited Conduct – Covenant of Integrity*) of the Guide to Procurement in order to, among others, obtain a signed covenant of integrity and enable the Beneficiary, any EU Body or any person authorised by the preceding to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project, this Agreement or the Grant.
- 17.6. The Beneficiary shall not, and shall ensure that each Final Beneficiary shall not, enter into a business relationship with any Sanctioned Person or make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person.
- 17.7. The Beneficiary undertakes, and shall procure that each Final Beneficiary undertake, to take within a reasonable timeframe appropriate measures in respect of any of their agents, officials or employees who becomes a Sanctioned Person or is the subject of a final and irrevocable court ruling in connection with Prohibited Conduct perpetrated in the course of the exercise of their professional duties in order to ensure that such member is excluded from any activity of the Beneficiary or each Final Beneficiary in relation to the Grant, this Agreement and to the Project.
- 17.8. Failure of the Beneficiary, or each Final Beneficiary, to comply with these obligations may entitle the Bank to terminate this Agreement, in accordance with Article 23 (*Termination*).

**ARTICLE 18**  
**Force Majeure**

- 18.1. The Party faced with Force Majeure will inform the other Party without delay, stating the nature, probable duration and foreseeable effects of the problem, and the measures taken or to be taken to minimise damage.
- 18.2. A Party will not be held in breach of its obligations under this Agreement if it is prevented from fulfilling them by Force Majeure.



## ARTICLE 19 Suspension

- 19.1. The Beneficiary may, and shall procure that the Final Beneficiaries may, suspend the implementation of all or part of the Contracts, and the Bank may request the Beneficiary to do so and ensure that the Final Beneficiaries do so, if circumstances (including Force Majeure) make it too difficult or dangerous to continue. If the decision to suspend implementation belongs to the Beneficiary or the Final Beneficiaries, they shall inform the Bank without delay and provide all the necessary details. If a decision to suspend implementation is taken, the Bank or the Beneficiary may terminate this Agreement in accordance with the provisions of Article 23 (*Termination*). If this Agreement is not terminated, the Beneficiary shall, and shall ensure that the Final Beneficiaries shall, take all necessary measures to minimise the time of suspension and shall resume implementation once circumstances allow, and shall inform the Bank accordingly.
- 19.2. The Bank may also suspend the implementation of this Agreement in the following cases: (i) in the event of *Force Majeure*; (ii) when necessary in order to verify if the execution of the Works, the Grant Fund Transfer Agreements, the Contracts or the Project has been affected by substantial breaches, errors, irregularities or fraud; (iii) upon the adoption by the European Union of a decision identifying a violation of human rights which prohibits the Bank from performing its obligations under this Agreement; and/or (iv) upon the European Commission suspending the implementation of the Contribution Agreement. The Beneficiary shall, and shall procure that the Final Beneficiaries shall, provide any information, clarification or document requested by the Bank in respect of the verifications referred to in point (ii) within thirty (30) calendar days of receipt of such request. If such verifications indicate that the execution of the Works or the Contracts has been affected by substantial errors, irregularities or fraud, or breach of obligations by the Beneficiary or any Final Beneficiaries or any Contractor, the Bank reserves the right to terminate this Agreement in accordance with Article 23 (*Termination*) and recover any amounts already disbursed to the extent that such disbursement was affected by such substantial errors, irregularities, fraud or breach of obligations. Article 25 (*Liability and Indemnity*) shall apply accordingly.

## ARTICLE 20 Recovery

- 20.1. If any amount of the Grant is unduly disbursed by the Bank, or if recovery is otherwise justified in accordance with this Agreement, including as a result of any verifications, controls or audits carried out pursuant to Article 7.10 (*Payment of the Grant*) or Article 15 (*Verifications, Controls and Audits*), the Beneficiary shall repay such amounts to the Bank, within thirty (30) calendar days from receiving the debit note from the Bank requesting such repayment. The Beneficiary, as the case may be, shall make payments of such amount requested by the Bank to the Bank in Euro, into the account notified by the Bank in its written request, without taking into account any FX rate applied at the time of the initial payment of the Grant by the Bank to the Beneficiary. For the avoidance of doubt, any amount unduly disbursed by the Bank, or unused or misused by the Beneficiary, as the case may be, and transferred back to the Bank shall be denominated in EUR and equal to the corresponding amount denominated in EUR initially paid by the Bank to the Beneficiary.
- For the avoidance of doubt, the Bank may, in particular, proceed to recover any amounts of the Grant it disbursed, pursuant to Article 7 (*Payment of the Grant*), in excess of the final amount of eligible costs incurred by the Beneficiary or the Final Beneficiaries as applicable, determined in accordance with Article 8 (*Eligible Costs*).
- 20.2. The written request from the Bank as to the aggregate amount due to be repaid by the Beneficiary shall, save in the case of manifest error, be conclusive evidence of the amount due, and any bank charges, any foreign exchange cost or loss or other taxes whatsoever incurred by the Beneficiary for the repayment of the amounts due to the Bank shall be borne entirely by the Beneficiary.
- 20.3. Without prejudice to the rights of the Parties to agree to repayments in instalments, if the Beneficiary fails to repay any amount by its due date, the sum 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 repayment, inclusive, up to the day of payment, exclusive. Any partial payment shall first cover the interest.

#### **ARTICLE 21** **Amendments**

- 21.1. Any amendments to this Agreement, including its Annexes, must be set out in writing in an instrument signed by the Parties, and shall become effective on the terms set out in the relevant amendment agreement. The provisions of such amendments, executed in accordance with this Article 21 (*Amendments*), shall govern and take precedence only over those specific provisions of this Agreement that are expressly amended thereby.
- 21.2. No amendments are permitted to the extent they may have the purpose or the effect of making changes to this Agreement that would call into question the award of the Grant.
- 21.3. Changes of address or of contact details may simply be notified to the other Parties in writing, in accordance with Article 26 (*Notices and Other Communications*).

#### **ARTICLE 22** **Assignment**

- 22.1. A Party may not assign or transfer to a third party, or otherwise dispose of, any of its rights or obligations under this Agreement without the prior written consent of the other Parties.
- 22.2. By exception from the preceding, the Bank may, at its sole discretion, assign to the European Commission the right to recover any amounts of the Grant unduly disbursed.

#### **ARTICLE 23** **Termination**

- 23.1. If any Party believes that the Agreement can no longer be executed effectively and appropriately, it will consult the another Party. Failing agreement on a solution, a Party may terminate the Agreement by serving a sixty (60) calendar days' written notice to another Party, without prejudice to any other rights or powers of any Party under this Agreement.
- 23.2. If for any reason whatsoever the Contribution Agreement or the Finance Contract is terminated or ceases to be valid and in full force and effect, the Bank reserves the right, upon serving a thirty (30) calendar days' written notice to the Beneficiary, to terminate this Agreement and inform the Beneficiary of the terms of such termination, without any liability for the Bank.
- 23.3. In addition to any other cause for termination foreseen in this Agreement, the Bank may, after serving a seven (7) calendar days' written notice to the Beneficiary, terminate this Agreement without any liability for the Bank, if any of the following situations occurs:
  - (a) the Beneficiary or any Final Beneficiary fails, without justification acceptable to the Bank, to fulfil any of the obligations incumbent on them and, after being given written notice to comply with those obligations, still fails to do so or to provide adequate explanations within thirty (30) calendar days of transmittal of such notice;
  - (b) the Beneficiary or any Final 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;

- (c) the Beneficiary or any Final Beneficiary provides false reports or makes false or incomplete statements of a material nature;
  - (d) the Beneficiary or any Final Beneficiary undergoes any legal, financial, technical or organisational changes that are apt to affect this Agreement substantially, or to call into question the decision of the European Union to provide the Grant;
  - (e) the Beneficiary or any Final Beneficiary fails to maintain the Records as specified in Article 8.3 (*Eligible Costs*);
  - (f) upon the termination of the Contribution Agreement.
- 23.4. Upon termination of the Agreement pursuant to this Article 23 (*Termination*), the Beneficiary shall and shall procure that the Final Beneficiaries shall, take without undue delay all steps necessary to bring the activities to a close in a prompt and orderly manner, and to reduce further costs to a minimum.
- 23.5. Without prejudice to Article 20.1 (*Recovery*) and subject to Article 8 (*Eligible Costs*), the Beneficiary shall be entitled to receive only the part of the Grant corresponding to costs incurred, in accordance with this Agreement, for Works executed up to the date of termination, thus excluding any costs relating to existing commitments that are due to be performed after such date of termination.
- 23.6. Without prejudice to Article 20.4 (*Recovery*) and subject to Article 23.4 (*Termination*), in the event of termination of the Agreement for reasons not imputable, directly or indirectly, to the Beneficiary, the Bank may agree to reimburse any unavoidable reasonable eligible costs incurred by the Beneficiary and/or the Final Beneficiaries (as applicable) during the notice period.

#### **ARTICLE 24** **Charges and Expenses**

- 24.1. The Beneficiary shall pay any taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, which may arise out of the execution or implementation of this Agreement and the Grant Fund Transfer Agreements, in accordance with the laws of Ukraine.
- 24.2. The Beneficiary shall bear any charges and expenses, including professional, banking or exchange charges, which it may incur in connection with the preparation, execution, implementation and termination of this Agreement or any related document, including any amendment thereto, in accordance with the laws of Ukraine.

#### **ARTICLE 25** **Liability and Indemnity**

- 25.1. The Bank or the European Union cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Beneficiary, the Final Beneficiaries or the Contractors while the Contracts are being executed, or as a consequence of any Contract, including when such damage or injury is the result of any act or omission of a Contractor, or of the failure of a Contractor to execute the Works in accordance with the relevant Contract.
- 25.2. The Bank shall not be liable for any loss or damage, including reasonable counsel fees and expenses, resulting from its actions or omissions to act hereunder, except for any loss or damage arising out of its own gross negligence or wilful misconduct.
- 25.3. The Beneficiary shall, and shall procure that the Final Beneficiaries shall, discharge the Bank of any and all liability arising from any claim or action brought as a result of an infringement of any applicable laws, rules or regulations by the Beneficiary, the Final Beneficiaries, their contractors, employees, or individuals for whom the Beneficiary, the Final Beneficiaries, their contractors or their employees are responsible, or as a result of a violation of a third party's rights, including Intellectual Property Rights.

- 25.4. Without prejudice to any other rights of the Bank under this Agreement, the Finance Contract or under any applicable law, the Beneficiary shall indemnify and hold the Bank harmless from and against any and all claims, demands, damages, losses, costs, expenses (including reasonable counsel fees and expenses) and liabilities of any kind which the Bank may sustain or incur as a result of any act or omission committed by the Beneficiary and/or any Final Beneficiary or from the failure of the Beneficiary and/or any Final Beneficiary as applicable to comply with any of its obligations as set out in this Agreement or in the Grant Fund Transfer Agreements, as applicable.
- 25.5. The Beneficiary shall, and shall procure that each Final Beneficiary shall, include in each Contract and each Grant Fund Transfer Agreement, as applicable, provisions requiring each Final Beneficiary and the Contractor to acknowledge and agree on the liability and indemnity provisions set out in this Article 25 (*Liability and Indemnity*).

## ARTICLE 26

### Notices and Other Communications

- 26.1. Any notice or other communication to be served under this Agreement must be in writing and shall state the identification code ("Fi N°93.828") and the title ("*Grant Agreement – UKRAINE PUBLIC BUILDINGS ENERGY EFFICIENCY PROJECT*") of this Agreement.
- 26.2. Any notice given under or in connection with this Agreement must be in English. All other documents provided under or in connection with this Agreement must be in English, or, if not in English, accompanied by its official translation into English and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other similar official document.
- 26.3. Except for notices relating to litigation whether pending or threatened, which shall be served at the addresses specified below exclusively by post through official letter with confirmation of receipt, all notices and correspondence in relation to this Agreement shall be sent by post, facsimile or, to the extent agreed by the Parties in writing, by e-mail or other means of electronic communication, to the following addresses:

For the Bank	European Investment Bank Attention: Neighbouring Countries Department, Public Sector East Division 98-100, boulevard Konrad Adenauer L-2950, Luxembourg Fax: (+352) 43 79 54899 E-mail address: ops-nc2-projects@eib.org
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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
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- 26.4. Any change made to the above communication details shall have effect only after it has been notified in writing in paper or electronic form to the other Parties at the above addresses.
- 26.5. Notices and other communications are deemed to have been made when they are received by the receiving Party.



25 

**ARTICLE 27**  
**Governing Law and Dispute Settlement**

- 27.1. This Agreement and its formation, construction and validity shall be governed by public international law. The laws of Ukraine relating to the existence or interpretation of contracts shall not apply to this Agreement.
- 27.2. 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.
- 27.3. 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.
- 27.4. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within 6 (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.
- 27.5. 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.
- 27.6. The Beneficiary shall abide by and carry out any such award in its territory without delay.
- 27.7. In case of failure by the Beneficiary to comply with its obligation in the preceding paragraph within 3 (three) 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.

**ARTICLE 28**  
**Non-waiver**

- 28.1. No failure or delay by the Bank in exercising any of its rights under this Agreement will be construed as a waiver of such right.
- 28.2. Nothing in this Agreement will be deemed to be a waiver, express or implied, of the privileges, immunities and exemptions enjoyed by the Bank, its Governors, Directors, Alternates, officers, employees or experts performing missions for the Bank.

**ARTICLE 29**  
**Entire Agreement**

This Agreement constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter, and supersedes all prior agreements between the Parties, whether express or implied, with respect to the same matter.



11

**ARTICLE 30**  
**Invalidity**

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

**ARTICLE 31**  
**English Language**

This Agreement is drawn up in the English language. If this Agreement is translated into another language, the English language text shall prevail.

**ARTICLE 32**  
**Entry into force**

This Agreement shall become effective on the date (the "**Date of Effectiveness**") on which the Bank has confirmed in writing that (i) it has received, in a form and substance acceptable to the Bank, the evidence required by Article 7.4(e) of this Agreement; and (ii) the Contribution Agreement has been signed and become effective.

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.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed on their behalf in four (4) originals in the English language, of which 2 (two) for the Bank and 2 (two) for the Beneficiary.

At Kyiv, this 8 November 2021

At Luxembourg, this 28 October 2021

Signed for and on behalf of

**UKRAINE**

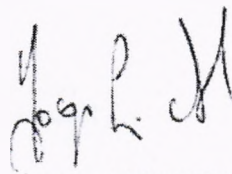


Oleksiy CHERNYSHOV

Minister for Communities and  
Territories Development

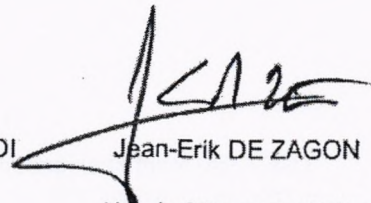
Signed for and on behalf of

**EUROPEAN INVESTMENT BANK**



Jacopo LENS ORLANDI

Head of Division



Jean-Erik DE ZAGON

Head of Representation  
for Ukraine

## Annex 1 Description of the Project

The Project is to support Ukraine in implementing a rehabilitation programme that involves comprehensive refurbishment of public buildings, including integration of renewable energy measures (RE) and integration of pandemic response measures in a large number of small and medium municipalities across the country.

### **Objectives**

The project targets the rehabilitation of approximately 1000 public buildings (ca. 2,533,000 m<sup>2</sup>) with about 253 GWh/y energy savings allowing for an increase of the life of the buildings of a minimum of 20 years.

Project's main objectives are:

- reduce the energy intensity of buildings used for essential public services for the population of Ukraine;
- permanently reduce municipal expenditures, through reduction of energy bills;
- support government's measures for energy security by reducing energy consumption and energy imports;
- reduce CO<sub>2</sub> and other GHG emissions: 1.250.000 tons of CO<sub>2</sub> saved over the project duration;
- improve medium long term pandemic resilience of the public buildings, and in particular of hospitals;
- contribute to COVID-19 response by supporting the construction sector and hence the economic growth in the country in the aftermath of the outbreak;
- apply and enforce the recently adopted legislation and in particular the transposed EU Energy Performance on Buildings Directive (EPBD) provisions;
- support the development of energy efficiency standards;
- ensure the use of modern materials for comprehensive rehabilitation, technologies and management;
- improve the quality of public services and image of public buildings;
- improve comfort for the people visiting the buildings: population of all ages, students, professors, patients, medical staff working in a safe and healthy environment;
- contribute to increased competences and skills for comprehensive energy efficient renovations;
- reinforce local governance reform in Ukraine by empowering municipalities and increasing their participation in regional and urban development: approximately 300 small and medium sized municipalities will have access to financially sustainable funding and to the support that will allow to implement the renovations. Municipalities will lead the renovation process and will be Final Beneficiaries;
- leave a legacy and a solid basis for additional financing and replication of the project in other municipalities.

### **Project Description**

The Project will support refurbishing public buildings in a large number of small and medium sized municipalities of Ukraine.

The final beneficiaries of the UPBEE will be mainly small and medium sized municipalities of Ukraine. The Project foresees that in addition to municipal buildings, also central government buildings will be refurbished.

However, legal, financial and technical conditions for the refurbishment of municipal and central government buildings are quite different. Considering that some issues (e.g. ownership) have to be ascertained prior to



the wide-scale investments in governmental buildings, at the beginning the operation will focus only on the municipal buildings and maybe a few pilot (indicatively 5) investments in governmental buildings.

The expected NIP grant amount to support the Project is EUR 15.85m and will be mobilized in two separate applications due to unavailability of funds in NIP. The first request of EUR 5.2m is subject matter of this application and the second application will be submitted in 2022 for the remaining amount of EUR 10.65m.

***The following type of works will be primarily targeted:***

The investments foresee installation of modern energy efficient equipment, such as meters and control systems, modernization of heating, ventilation and lighting systems as well as the necessary works to increase the performance of the building envelope (facade, roof, slab insulation, basement ceilings, windows and doors replacement). On a case-by-case basis, cooling systems and the integration of renewable energy sources and adequate COVID-19 response measures will be included in the Project.

The Grant is expected to support:

(i) EE measures in hospitals: modern equipment to improve energy efficiency, metering and smart energy management systems, upgrade of interior heating, ventilation and lighting systems as well as the work required to improve performance of building structures for the sake of reduced losses through enveloping (façade, roof, insulation of floor slabs and basement, replacement of roof, windows and doors). In particular, the Grant would be available mainly for the medium size health care facilities, (~10.000m<sup>2</sup>) with overnight occupation, and some operation rooms, but limited medical facilities. These hospitals usually are in the remit of municipalities but provide services to a small region around them.

(ii) flagship sub-projects which need refurbishment to secure their preservation, their high utilization and functionality which require comfort, safety and accessibility. The Grant would be used to finance the last mile to reach passive house or net zero energy consumption. These buildings would be selected in agreement with the Ukrainian Government, the EU and the EIB and would contain the state-of-art technical means to deliver heat/air/lighting supply whilst consuming much less energy. Potentially, following the Grant utilization and building retrofitting, the buildings could serve for EE education purposes and open to interested visitors for seminars for example. This practical visibility approach would showcase the EE methods, technologies and EU development intervention in EE area. The facilities would be furnished with modern teaching aids and computers for information display. The EIB is currently discussing with the Energy Efficiency Fund, as one of the sub-projects that could benefit from the investment grant could be indeed the building hosting the Fund.

*by*

*4h*

**Annex 2**  
**Estimated cost of the Project**

	Description	Amount (€M)
Investment Costs	Installation of modern energy efficient equipment such as meters and control systems, modernization of heating, ventilation and lighting systems as well as the necessary works to increase the performance of the building envelope (facade, roof, slab insulation, basement ceilings, windows and doors replacement). On a case-by-case basis, cooling systems and the integration of renewable energy sources and adequate COVID-19 response measures will be included in the project.	385
Technical Assistance	<p>The TA scope of work includes the following main components (more information on the process and budget are available in Annex VI):</p> <ul style="list-style-type: none"> <li>• Support to central level MCTD, Ministry of Finance/ Project Management Support Unit (EUR 6m)</li> <li>• Energy audits technical designs (EUR 8m)</li> <li>• Support to municipalities awareness trainings (EUR 1m)</li> <li>• Support to municipalities and PIUs during sub-project cycle (estimated at EUR 2.6m funded by the E5P):</li> </ul> <p>Pre-feasibility study and study on the borrowing capacities of the municipalities (financed by EIB TA and EPTATF) (EUR 0.15m).</p>	17.75
Communication	Visibility and communication: support with awareness raising and visibility of the project; promotion campaigns in support to the EE education and training using showcase sub-projects. Communication and visibility actions.	0.85
<b>Total Uses</b>		<b>403.60</b>

**Financing sources**

Financing	Type of financing/contribution	Main components financed	Amount (M€)
- Investment grant	NIP IG	Co-financing of building renovations	1
	E5P IG		1(+3)
-Technical assistance pre-investment phase	EIB TC, EPTATF	Pre-feasibility studies	0.15
-Technical assistance investment phase	NIP TA	Support to PMSU/Project Committee, to MCTD, MOF	2(+3)
	NIP TA	Audits, preparation of subprojects,	1(+7)
	NIP TA		1

	E5P TA E5P TA	Support to municipalities awareness trainings  Support to PMSU/Project Committee, to MCTD, MOF  Support to municipalities	1  2(+0.6)
- Other	NIP	Communication and visibility	0.85
Eligible FI 1	EIB Loan	Financing of EE renovations	300.00
Other public financier(s)	Other financing	Financing of EE renovations	80.00
<b>Total financing</b>			<b>403.60</b>

In parenthesis the expected amounts to be mobilised in 2022, related to NIP Phase II and E5P Phase II applications.

In addition to the above mentioned costs, the Project also foresees initial preparatory works (including some energy audits) and the VAT (20%), both to be funded by the municipalities' own resources.



III

**Annex 3**  
**Model Request for Payment**

**REQUEST FOR PAYMENT**  
**[ON LETTERHEAD OF THE BENEFICIARY]**

**[Beneficiary]**

Date: [●]

**European Investment Bank**  
**For the attention of: [contact person name]**  
*[Name of the relevant Services]*  
98-100 Boulevard Konrad Adenauer  
L-2950 Luxembourg

**Subject:** UKRAINE PUBLIC BUILDINGS ENERGY EFFICIENCY PROJECT under  
Neighbourhood Investment Platform Investment Grant Agreement FI No. [X] under Contribution  
Agreement No. [X]

Request for payment number: [●].

Period covered by the request for payment: [●]

Dear Sir or Madam,

We refer to the Grant Agreement in caption. In accordance with Article 7 (*Payment of the Grant*) of the Agreement, we hereby request payment no.[●] under the Agreement mentioned above, covering the cost of the Works expected to be delivered during the period from [date] to [date].

The amount requested is [EUR] [Please mention the FX Rate applied]

Please find attached the following supporting documents:

- Invoice no.[●] of [date] issued by [name of Contractor]
- [any other documents requested under Article 7 (*Payment of the Grant*)]

The payment should be made to the following bank account: [●]

We hereby certify that the information contained in this request for payment and its supporting documentation is complete, reliable and true, that the costs incurred can be considered eligible in accordance with the Agreement and the Contracts, and that this request for payment is substantiated by adequate supporting documents that can be checked.

We further certify that the conditions specified in Article 7 (*Payment of the Grant*) of the Agreement continue to be met.

[For the request for payment of last tranche: We undertake to provide the Bank, within thirty (30) calendar days after the end of the Execution Period, with all supporting evidence and documentation justifying the amount and the eligibility of the costs covered by this payment request, for the purposes of establishing the final amount of the Grant.]

Yours faithfully,


*Signatures of duly authorised signatories*

\_\_\_\_\_  
Name:

Title:

Date:

A handwritten signature in black ink, appearing to be 'B. J.' or similar, written in a cursive style.

34 

III

**Annex 4**  
**Records**

In relation to Article 8.3 (*Eligible Costs*), the **Records** may include, as applicable:

- (1) the annual progress reports and the final implementation report specified in Article 9 (*Information and Reporting*);
- (2) Accounting records (computerised or manual) from the accounting system of the Beneficiary, such as general ledger, sub-ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
- (3) Proof of procurement procedures carried out, such as tendering documents, bids from tenderers and evaluation reports, including any "no objection" or agreement of the Bank required in accordance with Article 5 (*Design and Procurement*);
- (4) Proof of legal commitments, such as Contracts;
- (5) Proof of delivery of the Works such as approved reports, time sheets, transport tickets, proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates) etc.;
- (6) Proof of purchase such as invoices and receipts;
- (7) Proof of payment such as bank statements, debit notices, proof of settlement by the Contractor;
- (8) Proof that taxes and/or VAT that have been paid cannot actually be reclaimed.

All Records shall be available either in the original form, including in electronic form, or as a certified copy.

35



**Annex 5**  
**Progress Indicators**

The main indicators that will be monitored by the Bank at the Project level are the following:

Expected Results					
Indicator	Units	Baseline value (X)	Expected value after the project (Y)	Expected result (=Y-X)	Comments and reference to methodology used, where necessary
		(Indicate year)	(Indicate year)		
Standard Outputs					
New and/or refurbished floor area	m2	0	2,533,000	2,533,000	Based on previous EIB operations, structural repair necessary for EE are expected at 25 EUR/m2 and EE investment at 90 EUR/m2. Non-EE investment are estimated at 35 EUR/m2
Standard Outcomes					
Energy efficiencies	GWh/year	481	228	253	Reduction from 190 to 90 kWh/m2/year.
Project specific indicators					
Local service providers trained or retrained for the specific operation	# of persons	0	20	20	Estimation based on the volume of buildings to be audited
Cross sector indicators (compulsory if they are main objectives - cf. Box 19)					
People benefitting from increased comfort	# of persons	0	2,533,000	2,533,000	Specific building occupancy 10m2/person
Number of municipalities or municipal companies benefiting from TA support	# of municipalities	0	150	150	Considered based on an average of 6.6 buildings per municipality.

Relative (net) Greenhouse gas emissions	CO2 eq. tonne/year	0	62,850	62,850	250 gCO2/kWh savings: gas generation including losses
Direct employment – construction phase	FTE/year	0	9,500	9,500	30% of cost are expected to be work labour. Average labour cost: 12,000 EUR/y.

#### Expected impact

The EU NIP funding, combined with the E5P grant, the municipalities own funds and the EIB framework loan, will allow implementation of the Project that will result in:

- support provided to the Government of Ukraine in terms of energy security and reduction of energy imports;
- savings of 1.250.000 tonnes of CO2 and other GHG emissions;
- enforcement of recently adopted laws on energy efficiency;
- permanently lowered energy and maintenance costs;
- tangible benefits for 2.5m inhabitants;
- savings from energy use to municipalities that can be invested in other services for the population;
- improved comfort for the building users (currently the buildings are overheated during the summer-time and under-heated during winter time);
- improved quality and image of the buildings (the old, heavily depreciated buildings will be turned to modern buildings with a substantially increased life service);
- advanced technologies introduced in building sectors (in particular related to comprehensive EE renovations);
- improved medium long term public building resilience to pandemics;
- development of construction sector, support of Ukrainian economic growth.

*[Handwritten signature]*