# **Armenia North - South Road Corridor**

## **Finance Contract**

between the

Republic of Armenia

and

European Investment Bank

Luxembourg, 18 November 2013 Yerevan, 7 November 2013



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## THIS CONTRACT IS MADE BETWEEN:

The REPUBLIC OF ARMENIA, represented by Mr. Davit Sargsyan, Minister of Finance of the Republic of Armenia,

(the "Borrower")

of the first part, and

The EUROPEAN INVESTMENT BANK having its seat at 100 boulevard Konrad Adenauer, L-2950 Luxembourg, represented by Mr Philippe Szymczak, Head of Division, and Ms Wiebke Jardet, Head of Division,

(the "Bank")

of the second part.

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#### WHEREAS:

- (1) By Decision No. 1080/2011/EU the European Parliament and the Council of the European Union have decided to grant a guarantee to the Bank against losses incurred by it under loans and loan guarantees granted from 2007 to 2013 in accordance with its own rules and procedures for projects carried out in certain countries outside the European Union listed in the said Decision (the "EC Guarantee"). The Republic of Armenia is an eligible country under Annex III of the aforementioned Decision.
- (2) On 29 February 2008, the Borrower and the Bank signed a Framework Agreement governing the Bank's activities in the Republic of Armenia (the "Framework Agreement"), which continues to be in full force and effect throughout the lifetime of this Contract.
- (3) The Borrower hereby confirms that the Project falls under the scope of the Framework Agreement, article 7 of which provides, *inter alia*, that the Bank shall enjoy, in respect of its activities in the territory of the Republic of Armenia the treatment accorded to the international institution which is most favoured in respect of any such activity, or, if that is more favourable, the treatment accorded under any international agreement covering such activities. The Bank makes the Credit, as defined herein, available to the Borrower on the basis that it is an international financial institution under the Framework Agreement and has a right to equal treatment with other international financial institutions under the Framework Agreement.
- (4) The Borrower has stated that, through its Ministry of Transport and Communication (the "Promoter") it is undertaking a project to improve and upgrade the North-South Road Corridor (the "NSRC") in Armenia. The NSRC runs 556km from the Armenian border with Georgia at Bavra via Gyumri, Talin, Ashtarak, Yerevan, Goris, and Kapan, to the border with Iran at Meghri as more particularly described in the technical description (the "Technical Description") set out in Schedule A (the "Project").
- (5) The total cost of the Project, as estimated by the Bank, is EUR 380,620,000 (three hundred and eighty million, six hundred and twenty thousand euros) and the Borrower has stated that it intends to finance the Project as follows:

Amount (EUR m)	
205	
60	
12	
103.620	
380.620	

- (6) In order to fulfil the financing plan set out in Recital (5), the Borrower has requested from the Bank a credit of EUR 60,000,000 (sixty million euros).
- (7) The Bank considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrower's request providing to it a credit in an amount of EUR 60,000,000 (sixty million euros) under this Finance Contract (the "Contract"); provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent.) of the total cost of the Project set out in Recital (5).
- (8) The Government of Armenia has authorised the borrowing of the sum of EUR 60,000,000 (sixty million euros) represented by this credit on the terms and conditions set out in this Contract.
- (9) Mr. Davit Sargsyan, Minister of Finance of the Republic of Armenia, is duly authorised to sign this Contract for and on behalf of the Borrower.

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- (10) The Asian Development Bank (the "ADB") has entered or will enter into an agreement with the Borrower (the "ADB Loan Agreement") whereby the ADB agreed or will agree to provide the Borrower with a loan in a total amount of up to EUR 205,000,000 (two hundred and five million euros) for the purpose of financing the Project. Further, the ADB has signed or will sign a project agreement with the Promoter with respect to the implementation of the Project (the project agreement and the ADB Loan Agreement collectively the "ADB Loan Documentation").
- (11) The European Commission (the "Commission") has entered or will enter into a financing agreement with the Borrower under which the Commission shall make a non-reimbursable grant contribution in the amount of up to EUR 12,000,000 (twelve million euros) for purpose of financing the implementation of the Project (the "EU Financing Agreement").
- (12) The Bank, the ADB, and the Commission (a) together with other international finance institutions entered into the "Cooperation within the framework of the Neighbourhood Investment Facility (the "NIF")" framework agreement (in force as of 21 December 2009) (the "NIF Framework Agreement") and (b) have entered or will enter into an implementation agreement setting out the terms and conditions of cooperation within the framework of the NIF for the purposes of implementation of their respective finance agreements concluded with the Borrower (the "Implementation Agreement", and together with the NIF Framework Agreement, the "NIF Documentation"). The Bank, the ADB and the Commission have agreed that the Bank will act as lead finance institution in connection with the cooperation on the Project pursuant to the NIF Documentation.
- (13) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank's loan operations must be consistent with relevant policies of the European Union.
- (14) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its Transparency policy, the purpose of which is to enhance the accountability of the EIB Group towards its stakeholders and the citizens of the European Union in general.
- (15) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.

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## NOW THEREFORE it is hereby agreed as follows:

### INTERPRETATION AND DEFINITIONS

#### (a) Interpretation

In this Contract:

- (i) References to Articles, Recitals, Schedules and Annexes (respective paragraphs of the Contract preamble) are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract.
- (ii) References to a provision of law are references to that provision as amended or re-enacted.
- (iii) References to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated.

#### (b) Definitions

In this Contract:

"Acceptance Deadline" for a notice means:

- (a) 16.00 Luxembourg time on the day of delivery, if the notice is delivered by 14.00 Luxembourg time on a Business Day; or
- (b) 11.00 Luxembourg time on the next following day which is a Business Day, if the notice is delivered after 14.00 Luxembourg time on any such day or is delivered on a day which is not a Business Day.
- "Accepted Tranche" means a Tranche in respect of a Disbursement Offer which has been duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline.
- "Authorisation" means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, notarisation or registration.
- "Business Day" means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.
- "Change-of-Law Event" has the meaning given to it in Article 4.03A(4).
- "Contract" has the meaning given to it in Recital (7).
- "Credit" has the meaning given to it in Article 1.01.
- "Criminal offence" means any of the following criminal offences as applicable: fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism.

#### "Debt Instrument" means:

- an instrument, including any receipt or statement of account, evidencing or constituting an obligation to repay a loan, deposit, advance or similar extension of credit (including without limitation any extension of credit under a refinancing or rescheduling agreement);
- (b) an obligation evidenced by a bond, debenture or similar written evidence of indebtedness; or
- (c) a guarantee of an obligation arising under a Debt Instrument of another; provided in each case that such obligation is governed by a system of law other than the law of the Borrower.
- "Deferment Indemnity" means an indemnity calculated on the amount of disbursement deferred or suspended at the percentage rate (if higher than zero) by which the interest rate that would have been applicable to such amount had it been disbursed to the Borrower on the Scheduled Disbursement Date exceeds EURIBOR (one month rate) less 0.125% (12.5 basis points), unless this value is less than zero, in which case it will be set at zero.

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

"Disbursement Acceptance" means a copy of the Disbursement Offer duly countersigned by the Borrower.

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"Disbursement Acceptance Deadline" means the date and time of expiry of a Disbursement Offer as specified therein.

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

"Disbursement Offer" means a letter substantially in the form set out in Schedule C.1.

"Disruption Event" means either or both of:

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

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

"EIB Loan Account" means an account of the Borrower to which disbursements by the Bank shall be made, which account is a separate sub-account of the treasury single account of the Republic of Armenia, separated from any other assets of the Borrower and from which account payments will only be made for the purpose of implementing the Project, in accordance with this Contract and other relevant agreements.

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

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

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

"Environmental Approval" means any Authorisation required by Environmental Law.

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

### "Environmental Law" means:

- (a) European Union law, including principles and standards;
- (b) Armenian laws and regulations; and
- (c) applicable international treaties,

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

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

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

"Event of Default" means any of the circumstances, events or occurrences specified in Article 10.01.

"Final Availability Date" means 30 September 2016.

"Fixed Rate" means an annual interest rate determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in the currency of the Tranche and bearing equivalent terms for the repayment of capital and the payment of interest.

"Fixed Rate Tranche" means a Tranche on which Fixed Rate is applied.

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"Floating Rate" means a fixed-spread floating interest rate, that is to say an annual interest rate determined by the Bank for each successive Floating Rate Reference Period equal to the EURIBOR plus the Spread.

"Floating Rate Reference Period" means each period from one Payment Date to the next relevant Payment Date; the first Floating Rate Reference Period shall commence on the date of disbursement of the Tranche.

"Floating Rate Tranche" means a Tranche on which Floating Rate is applied.

"Indemnifiable Prepayment Event" means a Prepayment Event under 4.03A.

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

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

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank's access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche;
- (c) in relation to a Tranche in respect of which interest is or would be payable at Floating Rate:
  - (i) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of EURIBOR; or
  - (ii) the Bank determines that adequate and fair means do not exist for ascertaining EURIBOR or it is not possible to determine EURIBOR in accordance with the definition contained in Schedule B.

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

- (a) the ability of the Borrower to perform its obligations under this Contract or the ability of the Promoter to perform its obligations in respect of the Project;
- (b) the financial conditions or prospects of the Borrower or the Promoter; or
- (c) the validity or enforceability of, or the effectiveness or ranking of, or the value of any security granted to the Bank, or the rights or remedies of the Bank under this Contract.

"Maturity Date" means the last repayment date of a Tranche specified pursuant to Article 4.01.

"Payment Date" means 16 April and 16 October each year until the Maturity Date save that, in case any such date is not a Relevant Business Day, it means:

- (a) for a Fixed Rate Tranche, the following Relevant Business Day, without adjustment to the interest due under Article 3.01; and
- (b) for a Floating Rate Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with corresponding adjustment to the interest due under Article 3.01.

"Prepayment Amount" means the amount of a Tranche to be prepaid by the Borrower in accordance with Article 4.02A.

"Prepayment Date" means the date, which shall be a Payment Date, on which the Borrower proposes to effect prepayment of a Prepayment Amount.

"Prepayment Event" means any of the events described in Article 4.03A.

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"Prepayment Indemnity" means in respect of any principal amount to be prepaid or cancelled, the amount communicated by the Bank to the Borrower as the present value (as of the Prepayment Date) of the excess, if any, of:

- the interest that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Maturity Date, if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

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

"Prepayment Notice" means a written notice from the Bank to the Borrower in accordance with Article 4.02C.

"Prepayment Request" means a written request from the Borrower to the Bank to prepay all or part of the Loan, in accordance with Article 4.02A.

"Project" has the meaning given to it in Recital (4).

"Redeployment Rate" means the Fixed Rate in effect on the day of the indemnity calculation for fixed-rate loans denominated in the same currency and which shall have the same terms for the payment of interest and the same repayment profile to the Maturity Date as the Tranche in respect of which a prepayment is proposed or requested to be made. For those cases where the period is shorter than 48 months (or 36 months in the absence of a repayment of principal during that period) the most closely corresponding money market rate equivalent will be used, that is EURIBOR minus 0.125% (12.5 basis points) for periods of up to 12 (twelve) months. For periods falling between 12 and 36/48 months as the case may be, the bid point on the swap rates as published by Reuters for the related currency and observed by the Bank at the time of calculation will apply.

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

"Scheduled Disbursement Date" means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.02C.

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

"Spread" means 62.3 basis points.

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

"Technical Description" has the meaning given to it in Recital (4).

"Tranche" means each disbursement made or to be made under this Contract to finance the segment of the NSRC from Lanjik to Gyumri being part of Tranche 3, below. In case no Disbursement Acceptance has been received, Tranche shall mean a Tranche as offered under Article 1.02B.

"Tranche 1" means the 11.4km NSRC segment from Yerevan/Northern outskirt to Ashtarak.

"Tranche 2" means the 41.9 km NSRC segment from Ashtarak to Talin.

"Tranche 3" means the 46.17 km NSRC segment from Talin to Gyumri.

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### ARTICLE 1

#### **Credit and Disbursements**

#### 1.01 Amount of Credit

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount of EUR 60,000,000 (sixty million euros) for the financing of the Project (the "Credit").

#### 1.02 Disbursement procedure

#### 1.02A Tranches

The Bank shall disburse the Credit in up to twelve Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall be in a minimum amount of EUR5,000,000 (five million euros).

#### 1.02B Disbursement Offer

Upon request by the Borrower, provided that no event mentioned in Article 1.06B has occurred and is continuing, the Bank shall send to the Borrower a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by the Borrower of a Disbursement Offer is 10 (ten) days before the Final Availability Date. The Disbursement Offer shall specify:

- (a) the amount of the Tranche;
- (b) the Scheduled Disbursement Date, which shall be a Relevant Business Day, falling at least 10 (ten) days after the date of the Disbursement Offer and on or before the Final Availability Date;
- (c) the interest rate basis of the Tranche, being: (i) a Fixed Rate Tranche; or (ii) a Floating Rate Tranche, in each case, pursuant to the relevant provisions of Article 3.01:
- the interest payment periodicity for the Tranche, in accordance with the provisions of Article 3.01;
- (e) the first Payment Date for the Tranche;
- the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.01;
- (g) the first and last repayment dates of principal for the Tranche;
- for a Fixed Rate Tranche, the Fixed Rate and for a Floating Rate Tranche the Spread, applicable until the Maturity Date; and
- (i) the Disbursement Acceptance Deadline.

#### 1.02C Disbursement Acceptance

The Borrower may accept a Disbursement Offer by delivering a Disbursement Acceptance to the Bank no later than the Disbursement Acceptance Deadline. The Disbursement Acceptance shall be accompanied:

- by the IBAN code (or appropriate format in line with local banking practice) and SWIFT BIC of the bank account to which disbursement of the Tranche should be made in accordance with Article 1.02D; and
- (b) by evidence of the authority of the person or persons authorised to sign the Disbursement Acceptance and the specimen signature of such person or persons.

For the avoidance of doubt, if the Borrower does not submit the evidence and documents detailed in (a) and (b) above in connection with a new disbursement, at the same time as the relevant Disbursement Acceptance, the Bank is entitled to assume that the previously submitted IBAN code, SWIFT BIC and authority of signature continue to be applicable and valid.

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If a Disbursement Offer is duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline, the Bank shall make the Accepted Tranche available to the Borrower in accordance with the relevant Disbursement Offer and subject to the terms and conditions of this Contract.

The Borrower shall be deemed to have refused any Disbursement Offer which has not been duly accepted in accordance with its terms on or before the Disbursement Acceptance Deadline.

### 1.02D Disbursement Account

Disbursement shall be made to the account as the Borrower shall notify in writing to the Bank not later than 15 (fifteen) days before the Scheduled Disbursement Date (with IBAN code or with the appropriate format in line with local banking practice). The Borrower acknowledges that payments to such account shall constitute disbursements under this Contract as if they had been made to the Borrower's own bank account.

Only one account may be specified for each Tranche.

### 1.03 Currency of disbursement

The Bank shall disburse each Tranche in EUR.

### 1.04 Conditions of disbursement

#### 1 04A First Tranche

The disbursement of the first Tranche under Article 1.02 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:

- (a) a legal opinion issued by the Ministry of Justice of the Republic of Armenia in the English language on the due execution by the Borrower of this Contract and the validity, enforceability and binding nature thereof. Such legal opinion shall be supported/accompanied by all relevant documents evidencing the Borrower's authority to enter into the Contract as well as evidence of due ratification of this Contract in accordance with the applicable laws of the Republic of Armenia;
- evidence in the English language on the authority and powers of Mr. Davit Sargsyan, Minister of Finance of the Republic of Armenia, to sign this Contract for and on behalf of the Borrower;
- evidence that the Borrower has obtained all necessary Authorisations required in connection with this Contract and the Project;
- (d) evidence of acceptance by the agent of service of its appointment;
- (e) evidence that the Borrower has, unless otherwise agreed with the Bank, ADB and the Commission (or any other co-financiers, if relevant), employed, will employ or causes to be employed and uses or will use consultants whose qualifications, experience and terms of reference are satisfactory to the Bank, including consultants to provide project implementation support;
- (f) evidence that any exchange control consents specified by the Bank or indicated in the legal opinion under paragraph (a) above as being necessary for the Borrower to receive disbursements, to repay the Loan and to pay interest and all other amounts due under this Contract have been duly obtained and are valid and enforceable;
- (g) evidence on payment of the appraisal fee in full pursuant to Article 1.08;
- (h) written confirmation from the competent authority that the provisions of the EU Habitats Directive (92/43/EEC) (or equivalent impact on protected areas) have been complied with (Form A or B or equivalent);
- environmental and building permits for Tranche 1 and Tranche 2;
- a copy of the approved Land Acquisition and Resettlement Plan (the "LARP") for each of Tranche 2 and Tranche 3;

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- (k) a copy of the independent review confirming implementation of the LARP for each of Tranche 2 and Tranche 3 ensuring that 100% of the land is made available to the contractor; and
- (I) confirmation that the recommendations of the road safety audit in accordance with the principles of the EU Directive 2008/96/EC have been included in the final design or justification where such recommendations have not been adopted for each of Tranche 2 and Tranche 3.

### 1.04B Second Tranche

Without prejudice to the conditions precedent required in respect of all Tranches set out in Article 1.04C (*All Tranches*), the disbursement of the second Tranche under Article 1.02 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:

- (a) the environmental and building permits for Tranche 3;
- (b) evidence that the civil works contract for Tranche 3 has been advertised in the OJEU; and
- (c) evidence that any necessary insurance policies have been obtained in accordance with Article 6.05.

#### 1.04C All Tranches

The disbursement of each Tranche under Article 1.02 is conditional upon:

- (a) receipt by the Bank in form and substance satisfactory to it (in its sole discretion), on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date for the proposed Tranche, of the following documents or evidence:
  - a certificate from the Borrower in the form of Schedule D signed by an authorised representative of the Borrower and dated no earlier than the date falling thirty days before the Scheduled Disbursement Date;
  - evidence of the authority of the person or persons authorised to sign Disbursement Acceptance and the authenticated specimen signature of such person or persons;
  - (iii) except in relation to the disbursement of the first Tranche, evidence that:
    - (A) the EU Financing Agreement, and the Implementation Agreement have been duly executed and delivered and all conditions precedent to their effectiveness have been fulfilled or waived;
    - (B) the Borrower has the right to make drawings the EU Financing Agreement; and
    - (C) the EU Financing Agreement and the NIF Documentation continue to be fully effective, valid and enforceable and all disbursement conditions thereto have been fulfilled;
  - (iv) evidence that the EC Guarantee is valid, binding and enforceable and that no event or circumstances have occurred which could, in the reasonable opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the EC Guarantee or the Bank's right to make a demand thereunder;
  - (v) confirmation that the Framework Agreement is valid, binding and enforceable and that no events or circumstances have occurred which could, in the reasonable opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the Framework Agreement;
  - (vi) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, the Finance Contract or the validity and enforceability of the same;

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- (vii) evidence demonstrating that, following drawdown of the relevant Tranche, the aggregate amount of the Loan will not exceed the aggregate expenditure already incurred or contractually committed for payment of such expenditure within 12 months of the date of the relevant Disbursement Offer, by the Borrower in respect of the Project, up to the date of the relevant Disbursement Offer;
- (viii) evidence that financing for Tranche 1, Tranche 2 and Tranche 3 has been agreed by the Borrower with the ADB under the ADB Loan Documentation;
- evidence that funds have been provided for the acquisition of all land necessary to be acquired in connection with the Project; and
- (ix) a procurement plan which includes details of all anticipated contracts, including their expected dates of OJEU publication and commencement, duration, type of contract (FIDIC or other), type of procedure expected, expected budget and whether international /national tendering is expected, and
- (b) that on the Disbursement Date for the proposed Tranche:
  - the representations and warranties which are repeated pursuant to Article
     6.07 are correct in all respects; and
  - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
    - (A) an Event of Default; or
    - (B) a Prepayment Event;

has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.

### 1.05 <u>Deferment of disbursement</u>

### 1.05A Grounds for deferment

Upon the written request of the Borrower, the Bank shall defer the disbursement of any Accepted Tranche in whole or in part to a date specified by the Borrower being a date falling not later than 6 (six) months from its Scheduled Disbursement Date and not later than 60 days prior to the first repayment date of the Tranche indicated in the Disbursement Offer. In such case, the Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

Any request for deferment shall have effect in respect of a Tranche only if it is made at least 5 (five) Business Days before its Scheduled Disbursement Date.

If for an Accepted Tranche any condition referred to in Article 1.04 is not fulfilled as at the specified date and at the Scheduled Disbursement Date (or the date expected for disbursement in case of a previous deferment), disbursement will be deferred to a date agreed between the Bank and the Borrower falling not earlier than 5 (five)Business Days following the fulfilment of all conditions of disbursement (without prejudice to the right of the Bank to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.06B). In such case, the Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

## 1.05B Cancellation of a disbursement deferred by 6 (six) months

The Bank may, by notice in writing to the Borrower, cancel a disbursement which has been deferred under Article 1.05A by more than 6 (six) months in aggregate. The cancelled amount shall remain available for disbursement under Article 1.02.

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### 1.06 Cancellation and suspension

### 1.06A Borrower's right to cancel

The Borrower may at any time by notice in writing to the Bank cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect in respect of an Accepted Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice.

### 1.06B Bank's right to suspend and cancel

- (a) The Bank may, by notice in writing to the Borrower, suspend and/or cancel the undisbursed portion of the Credit in whole or in part at any time and with immediate effect upon the occurrence of a Prepayment Event or an Event of Default or an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event or an Event of Default.
- (b) The Bank may also suspend the portion of the Credit in respect of which it has not received a Disbursement Acceptance with immediate effect in the case that a Market Disruption Event occurs.
- (c) Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

## 1.06C Indemnity for suspension and cancellation of a Tranche

### 1.06C(1) SUSPENSION

If the Bank suspends an Accepted Tranche, whether upon an Indemnifiable Prepayment Event or an Event of Default, the Borrower shall pay to the Bank the Deferment Indemnity calculated on the amount of disbursement suspended.

### 1.06C(2) CANCELLATION

- (a) If pursuant to Article 1.06A, the Borrower cancels:
  - a Fixed Rate Tranche which is an Accepted Tranche, it shall indemnify the Bank under Article 4.02B; and
  - a Floating Rate which is an Accepted Tranche or any part of the Credit other than an Accepted Tranche, no indemnity is payable.
- (b) If the Bank cancels:
  - a Fixed Rate Tranche which is an Accepted Tranche upon an Indemnifiable Prepayment Event or pursuant to Article 1.05B, the Borrower shall pay to the Bank the Prepayment Indemnity; and
  - (ii) an Accepted Tranche upon an Event of Default, the Borrower shall indemnify the Bank under Article 10.03.

Save in these cases, no indemnity is payable upon cancellation of a Tranche by the Bank.

The indemnity shall be calculated as if the cancelled amount had been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.

## 1.07 Cancellation after expiry of the Credit

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, the part of the Credit in respect of which no Disbursement Acceptance has been made in accordance with Article 1.02C shall be automatically cancelled, without any notice being served by the Bank to the Borrower and without liability arising on the part of either party.

### 1.08 Appraisal fee

The Borrower shall pay or cause to be paid to the Bank within 15 days of the Date of Effectiveness an appraisal fee in respect of the appraisal conducted by the Bank in relation to the Project. The amount of the appraisal fee is EUR 50,000 (fifty thousand euros).

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#### Sums due under Article 1 1.09

Sums due under Articles 1.05, 1.06 and 1.08 shall be payable in EUR. They shall be payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

### **ARTICLE 2**

#### The Loan

#### Amount of Loan 2.01

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, as confirmed by the Bank pursuant to Article 2.03.

#### Currency of repayment, interest and other charges 2.02

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

Any other payment shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

#### Confirmation by the Bank 2.03

Within 10 (ten) days after disbursement of each Tranche, the Bank shall deliver to the Borrower the amortisation table referred to in Article 4.01, if appropriate, showing the Disbursement Date, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

### ARTICLE 3

### Interest

#### Rate of interest 3.01

#### **Fixed Rate Tranches** 3.01A

The Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate semi-annually in arrears on the relevant Payment Dates as specified in the Disbursement Offer, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is thirty days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.01(a).

#### Floating Rate Tranches 3.01B

The Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate semi-annually in arrears on the relevant Payment Dates, as specified in the Disbursement Offer commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is thirty days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

The Bank shall notify the Floating Rate to the Borrower within 10 (ten) days following the commencement of each Floating Rate Reference Period.

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If pursuant to Articles 1.05 and 1.06 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date the rate of EURIBOR applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.01(b). If the Floating Rate for any Floating Rate Reference Period is below zero, it will be set at zero.

### 3.02 Interest on overdue sums

Without prejudice to Article 10 and by way of exception to Article 3.01, if the Borrower fails to pay any amount payable by it under the Contract on its due date, interest shall accrue on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to EURIBOR plus 2% (200 basis points) and shall be payable in accordance with the demand of the Bank. For the purpose of determining EURIBOR in relation to this Article 3.02, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

However, interest on any overdue sum under a Fixed Rate Tranche shall be charged at the annual rate that is the sum of the rate defined in Article 3.01A plus 0.25% (25 basis points) if that annual rate exceeds, for any given relevant period, the rate specified in the preceding paragraph.

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

### 3.03 Market Disruption Event

In relation to a specific Accepted Tranche, if at any time between the date of signature of this Contract and the date falling two Business Days prior to the Scheduled Disbursement Date a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case, the following rules shall apply: the rate of interest applicable to such Accepted Tranche until the Maturity Date, shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank. The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.02B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.

The Spread or Fixed Rate previously notified by the Bank in the Disbursement Offer and the Spread notified in this Contract shall be no longer applicable.

#### ARTICLE 4

#### Repayment

#### 4.01 Normal repayment

### 4.01 Repayment by instalments

(a) The Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Offer in accordance with the terms of the amortisation table delivered pursuant to Article 2.03.

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- (b) Each amortisation table shall be drawn up on the basis that:
  - in the case of a Fixed Rate Tranche, repayment shall be made semi-annually by equal instalments of principal or constant instalments of principal and interest;
  - in the case of a Floating Rate Tranche, repayment shall be made by equal semi-annual instalments of principal;
  - (iii) the first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 days from the Scheduled Disbursement Date and not later than the first Payment Date immediately following the fifth anniversary of the Scheduled Disbursement Date of the Tranche; and
  - (iv) the last repayment date of each Tranche shall be a Payment Date falling not earlier than four years and not later than thirty years from the Scheduled Disbursement Date.

### 4.02 Voluntary prepayment

### 4.02A Prepayment option

Subject to Articles 4.02B, 4.02C and 4.04, the Borrower may prepay all or part of any Tranche, together with accrued interest and indemnities if any, upon giving a Prepayment Request with at least one month's prior notice specifying the Prepayment Amount and the Prepayment Date.

Subject to Article 4.02C the Prepayment Request shall be binding and irrevocable.

### 4.02B Prepayment indemnity

### 4.02B(1) FIXED RATE TRANCHE

If the Borrower prepays a Fixed Rate Tranche, the Borrower shall pay to the Bank on the Prepayment Date the Prepayment Indemnity.

### 4.02B(2) FLOATING RATE TRANCHE

The Borrower may prepay a Floating Rate Tranche without indemnity on any relevant Payment Date.

### 4.02C Prepayment mechanics

The Bank shall notify the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date, of the Prepayment Amount, of the accrued interest due thereon and of the indemnity payable under Article 4.02B or, as the case may be, that no indemnity is due.

Not later than the Acceptance Deadline, the Borrower shall notify the Bank either:

- (a) that it confirms the Prepayment Notice on the terms specified by the Bank; or
- (b) that it withdraws the Prepayment Notice.

If the Borrower gives the confirmation under paragraph (a) above, it shall effect the prepayment. If the Borrower withdraws the Prepayment Notice or fails to confirm it in due time, it may not effect the prepayment. Save as aforesaid, the Prepayment Notice shall be binding and irrevocable.

The Borrower shall accompany the prepayment by the payment of accrued interest and indemnity, if any, due on the Prepayment Amount.

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#### 4.03 Compulsory prepayment

#### 4.03A Prepayment Events

### 4.03A(1) PROJECT COST REDUCTION

If the total cost of the Project falls below the figure stated in Recital (5) so that the amount of the Credit exceeds 50% (fifty per cent) of such total cost, the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan up to the amount by which the Credit exceeds 50% (fifty per cent) of the total cost of the Project. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

## 4.03A(2) PARI PASSU TO NON-EIB FINANCING

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

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

the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan. The proportion of the Loan that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

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

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

### 4.03A(3) CHANGE OF LAW

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

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

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

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#### 4.03A(4) ILLEGALITY

If it becomes unlawful in any applicable jurisdiction for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan, the Bank shall promptly notify the Borrower and may immediately:

- (a) suspend or cancel the undisbursed portion of the Credit and/or
- (b) demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract on the date indicated by the Bank in its notice to the Borrower.

## 4.03A(5) CHANGES TO THE BANK'S AUTHORITY TO LEND

The Borrower shall, within seven days of receiving notice from the Bank to do so, prepay to the Bank the Loan and all accrued interest and fees due under this Contract if:

- it becomes unlawful in any relevant jurisdiction for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan;
- (b) any obligation assumed by Armenia as stated in the Framework Agreement ceases to be fulfilled as regards any loan made to any borrower in the territory of Armenia from the resources of the Bank, or the European Union; or
- (c) the conditions for cover under the EC Guarantee are not fulfilled or if the EC Guarantee ceases to be valid, in full force and effect or enforceable in accordance with its terms,

### 4.03B Prepayment mechanics

Any sum demanded by the Bank pursuant to Article 4.03A, together with any interest or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.03C shall be paid on the date indicated by the Bank in its notice of demand.

### 4.03C Prepayment indemnity

In the case of an Indemnifiable Prepayment Event, the indemnity, if any, shall be determined in accordance with Article 4.02B.

If, moreover, pursuant to any provision of Article 4.03A the Borrower prepays a Tranche on a date other than a relevant Payment Date, the Borrower shall indemnify the Bank in such amount as the Bank shall certify is required to compensate it for receipt of funds otherwise than on a relevant Payment Date.

#### 4.04 General

A repaid or prepaid amount may not be reborrowed. This Article 4 shall not prejudice Article 10.

#### ARTICLE 5

### <u>Payments</u>

### 5.01 Day count convention

Any amount due by way of interest, indemnity or fee from the Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on the following respective conventions:

- in respect of interest and indemnities due under a Fixed Rate Tranche, a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days;
- in respect of interest and indemnities due under a Floating Rate Tranche, a year of 360 (three hundred and sixty) days and the number of days elapsed; and
- (c) in respect of fees, a year of 360 (three hundred and sixty) days and the number of days elapsed.

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### 5.02 Time and place of payment

Unless otherwise specified, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand.

Each sum payable by the Borrower under this Contract shall be paid to the relevant account notified by the Bank to the Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.

A sum due from the Borrower shall be deemed paid when the Bank receives it.

### 5.03 No set-off by the Borrower

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

## 5.04 <u>Disruption to Payment Systems</u>

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

- (a) the Bank may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Contract as the Bank may deem necessary in the circumstances;
- (b) the Bank shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.04.

## 5.05 Application of sums received

(a) General

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

(b) Partial payments

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

- first, in or towards payment pro rata of any unpaid fees, costs, indemnities and expenses due under this Contract;
- (ii) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;
- (iii) thirdly, in or towards payment of any principal due but unpaid under this Contract; and
- (iv) fourthly, in or towards payment of any other sum due but unpaid under this Contract.
- (c) Allocation of sums related to Tranches
  - (i) In case of:
    - A) a partial voluntary prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied pro rata to each outstanding instalment, or, at the request of the Borrower, in inverse order of maturity, and

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- (B) a partial compulsory prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.
- (ii) Sums received by the Bank following a demand under Article 10.01 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.
- (iii) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Borrower on their application, the Bank may apply these between Tranches at its discretion.

#### ARTICLE 6

## Borrower undertakings and representations

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

## 6.01 Use of Loan and availability of other funds

The Borrower shall use all amounts borrowed by it under the Loan for the execution of the Project.

The Borrower shall ensure that it has available to it the other funds listed in Recital (5) and that such funds are expended, to the extent required, on the financing of the Project.

The Borrower shall ensure that it has available to it the other funds listed in Recital (5) and that such funds are expended, to the extent required, on the financing of the Project.

### 6.02 Completion of Project

The Borrower shall carry out the Project in accordance with the Technical Description as may be modified from time to time with the approval of the Bank, and complete it by the final date specified therein.

### 6.03 Increased cost of Project

If the total cost of the Project exceeds the estimated figure set out in Recital (5), the Borrower shall obtain the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

### 6.04 Procurement procedure

The Borrower shall purchase equipment, secure services and order works for the Project (a) in so far as European Union Directives apply to it or to the Project, in accordance with the Bank's Guide to Procurement and European Union law in general and in particular with the relevant European Union Directives and (b) in so far as European Union Directives do not apply, by procurement procedures which, to the satisfaction of the Bank, respect the criteria of economy and efficiency and, in case of public contracts, the principles of transparency, equal treatment and non-discrimination on the basis of nationality.

## 6.05 Continuing Project undertakings

The Borrower shall:

 (a) Maintenance: maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order;

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- (b) **Project assets**: unless the Bank has given its prior consent in writing retain title to and possession of all or substantially all the assets comprising the Project or, as appropriate, replace and renew such assets and maintain the Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
- (c) Insurance: from the date the second disbursement is made under this Contract, insure all works and property forming part of the Project with first class insurance companies in accordance with the most comprehensive relevant industry practice;
- (d) Rights and Permits: maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Project; and

### (e) Environment:

- (i) implement and operate the Project in compliance with Environmental Law;
- (ii) obtain and maintain requisite Environmental Approvals for the Project; and
- (iii) comply with any such Environmental Approvals;
- (f) EU law: execute and operate the Project in accordance with the relevant standards of EU law to the extent implemented by the laws of the Republic of Armenia or specified by the Bank prior to the date of this Contract.

### 6.06 Compliance with laws

The Borrower shall comply in all respects with all laws and regulations to which it or the Project is subject.

## 6.07 General Representations and Warranties

The Borrower represents and warrants to the Bank that:

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

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- (h) its payment obligations under this Contract rank not less than pari passu in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- it is in compliance with Article 6.05(e) and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it; and
- (j) it is in compliance with all undertakings under this Article 6.

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

## 6.08 Requirements and Restrictions by the IMF

The Borrower shall comply with all restrictions on its ability to incur financial indebtedness including, without limitation, limitations agreed with the International Monetary Fund (IMF) under the IMF Concessionality Agreement with Armenia or any other instrument of the IMF.

### 6.09 Maintenance of Project

The Borrower shall develop a programme of maintenance for each road segment constituting the Project in form and substance acceptable to the Bank. Such programme shall include necessary budget commitments for the first year of operation and routine and periodic maintenance activities for the first five years of operation and, in each case, shall be submitted to the Bank prior to 31 March 2017. The Borrower shall, within a timeframe acceptable to the Bank, follow up with an agreed form reporting format.

#### 6.10 LARPs

The Borrower shall budget and secure adequate resources for the implementation of the LARPs.

### 6.11 Reporting requirements

The Borrower shall include in the semi-annual progress reports under the environmental section, a report of environmental and social monitoring, including adequate references to labour standards, occupational health and safety as well as evidence of the progress in implementing the LARPs.

### 6.12 Integrity Commitment

The Borrower warrants and undertakes that it has not committed, and no person to its present knowledge has committed, any of the following acts and that it will not commit, and no person, with its consent or prior knowledge, will commit any such act, that is to say:

- (a) the offering, giving, receiving or soliciting of any improper advantage to influence the action of a person holding a public office or function or a director or employee of a public authority or public enterprise or a director or official of a public international organisation in connection with any procurement process or in the execution of any contract in connection with those elements of the Project described in the Technical Description, or
- (b) any act which improperly influences or aims improperly to influence the procurement process or the implementation of the Project to the detriment of the Borrower, including collusion between tenderers.

For this purpose, the knowledge of any officer mentioned in Article 12.01 and each senior officer of the Borrower above shall be deemed the knowledge of the Borrower. The Borrower undertakes to inform the Bank if it should become aware of any fact or information suggestive of the commission of any such act and to adopt the necessary redress measures.

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The Borrower shall institute, maintain and comply with internal procedures and controls in compliance with applicable national laws and best practices, for the purpose of ensuring that no transaction is entered into with, or for the benefit of, any of the individuals or institutions named on updated lists of sanctioned persons promulgated by the United Nations Security Council or its committees pursuant to Security Council Resolutions 1267 (1999), 1373 (2001) () and/or by the Council of the EU pursuant to its Common Positions 2001/931/CFSP and 2002/402/CFSP and their related or successor resolutions and/or implementing acts in connection with Money Laundering or Financing of Terrorism matters.

### 6.13 Project Management Unit

In order to coordinate, manage, monitor and evaluate all aspects of Project implementation, including the procurement of goods, works and services for the Project, the Borrower shall, unless otherwise agreed with the Bank, continue at all times during execution of the Project, to maintain in place the equivalent of a project management unit with adequate resources and suitably qualified personnel under terms of reference acceptable to the Bank.

### 6.14 EIB Loan Account

The Borrower undertakes to designate the EIB Loan Account for the purposes or receiving disbursements of the Loan from the Bank. The Borrower undertakes to separate the EIB Loan Account from any other of its assets and ensure that payments from such account will only be made for the purposes of implementing the Project in accordance with this Contract and the EU Financing Agreement and the NIF Implementation Agreement and other relevant agreements, if any. The Borrower also undertakes to ensure that the EIB Loan Account shall at all times be insolvency remote and that no other creditor of the Borrower shall have any access to or rights to receive monies from such account.

## 6.15 Plan of Operation, Measures to Eliminate Corruption

The Borrower undertakes to provide to the Bank a detailed plan of the first two years of operation (including financing and maintenance of the Project) no later than 31 December 2014.

Further, the Borrower shall provide a clarification to the Bank, to its satisfaction, on measures taken and being taken to eliminate reported corruption at the borders of Armenia, no later than 31 December 2014.

### ARTICLE 7

#### Security

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

### 7.01 Pari passu ranking

The Borrower shall ensure that its payment obligations under this Contract rank, and will rank, not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its Debt Instruments.

In particular, if the Bank makes a demand under Article 10.01 or if an event or potential event of default under any unsecured and unsubordinated Debt Instrument of the Borrower or of any of its agencies or instrumentalities has occurred and is continuing, the Borrower shall not make (or authorise) any payment in respect of any other such Debt Instrument (whether regularly scheduled or otherwise) without simultaneously paying, or setting aside in a designated account for payment on the next Payment Date a sum equal to, the same proportion of the debt outstanding under this Contract as the proportion that the payment under such Debt Instrument bears to the total debt outstanding under that Instrument. For this purpose, any payment of a Debt Instrument that is made out of the proceeds of the issue of another instrument, to which substantially the same persons as hold claims under the Debt Instrument have subscribed, shall be disregarded.

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### 7.02 Additional security

Should the Borrower grant to a third party any security for the performance of any Debt Instrument or any preference or priority in respect thereof, the Borrower shall, if so required by the Bank, provide to the Bank equivalent security for the performance of its obligations under this Contract or grant to the Bank equivalent preference or priority.

#### 7.03 Clauses by inclusion

If the Borrower concludes with any other creditor a medium or long term financing agreement that includes a loss-of-rating clause or a covenant or other provision regarding pari passu ranking or cross default, if applicable, that is stricter than any equivalent provision of this Contract, the Borrower shall immediately inform the Bank thereof and shall, at the request of the Bank, execute an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

# ARTICLE 8 Information and Visits

### 8.01 Information concerning the Project

The Borrower shall:

- (a) deliver to the Bank:
  - the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract;
  - (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time;

provided always that if such information or document is not delivered to the Bank on time, and the Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Borrower's expense and the Borrower shall provide such persons with all assistance necessary for the purpose;

- (b) submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;
- (c) promptly inform the Bank of:
  - any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower or any Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project;
  - (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
  - (iii) a genuine allegation, complaint or information with regard to Criminal Offences related to the Project;
  - (iv) any non-compliance by it with any applicable Environmental Law; and
  - (v) any suspension, revocation or modification of any Environmental Approval, and set out the action to be taken with respect to such matters;

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- (d) provide to the Bank, if so requested:
  - a certificate of its insurers showing fulfilment of the requirements of Article 6.05(c);
  - (ii) annually, a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums.

### 8.02 <u>Information concerning the Borrower</u>

The Borrower shall:

- (a) deliver to the Bank annually, within one month after the approval of the Borrower's annual budget, a summary of the Borrower's annual budget in tabular form; and
- (b) inform the Bank immediately of:
  - any fact which obliges the Borrower to prepay any financial indebtedness or any EU funding;
  - (ii) any event or decision that constitutes or may result in the events described in Article 4.03A;
  - (iii) any intention on its part to grant any security over any of its assets (respectively) in favour of a third party;
  - (iv) any intention on its part to relinquish ownership of any material component of the Project;
  - any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract;
  - (vi) any event listed in Article 10.01 having occurred or being threatened or anticipated;
  - (vii) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending which might if adversely determined result in a Material Adverse Change.

### 8.03 <u>Investigations and Information</u>

The Borrower undertakes:

- (a) to take such action as the Bank shall reasonably request to investigate and/or terminate any alleged or suspected act of the nature described in Article 6.12 (Integrity commitment);
- (b) to inform the Bank of the measures taken to seek damages from the persons responsible for any loss resulting from any such act; and
- (c) to facilitate any investigation that the Bank may make concerning any such act.

#### 8.04 Visits by the Bank

The Borrower shall allow persons designated by the Bank, as well as persons designated by other institutions or bodies of the European Union when so required by the relevant mandatory provisions of European Union law:

- (a) to visit the sites, installations and works comprising the Project;
- to interview representatives of the Borrower and not obstruct contacts with any other person involved in or affected by the Project; and
- (c) to review the Borrower's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.

The Borrower shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.

The Borrower acknowledges that the Bank may be obliged to communicate information relating to the Borrower and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law.

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#### ARTICLE 9

### Charges and expenses

### 9.01 Taxes, duties and fees

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

The Borrower shall pay all principal, interest, indemnities and other amounts due under this Contract gross without deduction of any national or local impositions whatsoever; provided that, if the Borrower is obliged to make any such deduction, it will gross up the payment to the Bank so that after deduction, the net amount received by the Bank is equivalent to the sum due.

#### 9.02 Other charges

The Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation, enforcement and termination of this Contract or any related document, any amendment, supplement or waiver in respect of this Contract or any related document, and in the amendment, creation, management, enforcement and realisation of any security for the Loan.

## 9.03 Increased costs, indemnity and set-off

- (a) The Borrower shall pay to the Bank any sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation made after the date of signature of this Contract, in accordance with or as a result of which:
  - the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract; or
  - (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.
- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- The Bank may set off any matured obligation due from the Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation owed by the Bank to the Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

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### ARTICLE 10

### **Events of Default**

#### Right to demand repayment 10.01

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

#### Immediate demand 10.01A

The Bank may make such demand immediately:

- if the Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless:
  - its failure to pay is caused by an administrative or technical error or a Disruption Event; and
  - payment is made within 3 Business Days of its due date;
- if any information or document given to the Bank by or on behalf of the Borrower or any representation, warranty or statement made or deemed to be made by the (b) Borrower in or pursuant to this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;
- if, following any default of the Borrower in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan:
  - the Borrower is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
  - any financial commitment for such other loan or obligation is cancelled or (ii) suspended:
- if the Borrower is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors; (d)
- if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of (e) competent jurisdiction or by any competent administrative authority or by any person, of or over any property forming part of the Project;
- if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not (f) discharged or stayed within 14 (fourteen) days;
- if a Material Adverse Change occurs, as compared with the Borrower's or the (g) Promoter's condition at the date of this Contract;
- if it is or becomes unlawful for the Borrower to perform any of its obligations under this Contract or this Contract is not effective in accordance with its terms or is alleged (h) by the Borrower to be ineffective in accordance with its terms;
- if any obligation assumed by the Borrower as stated in the Framework Agreement ceases to be fulfilled as regards any loan made to any borrower in the Borrower's (i) territory from the resources of the Bank, or the European Union;
- if the Borrower defaults in the performance of any of its obligations under the ADB Loan Documentation or the EU Financing Agreement; or (j)
- if the Borrower defaults in the performance of any obligation in respect of any other loan or financial instrument granted by the Bank or the EU or to the Bank or any (k) other obligation to be fulfilled in connection with the receipt of any funds by the Borrower from the European Union.

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#### 10.01B Demand after notice to remedy

The Bank may also make such demand:

- if the Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.01A; or
- (b) if any fact stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project or any such obligation is not or ceases to be legally valid and binding,

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

#### 10.02 Other rights at law

Article 10.01 shall not restrict any other right of the Bank at law to require prepayment of the Loan.

#### 10.03 Indemnity

#### 10.03A Fixed Rate Tranches

In case of demand under Article 10.01 in respect of any Fixed Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with the Prepayment Indemnity on any amount of principal due to be prepaid. Such Prepayment Indemnity shall accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified.

#### 10.03B Floating Rate Tranches

In case of demand under Article 10.01 in respect of any Floating Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the original amortisation schedule of the Tranche, until the Maturity Date.

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

#### 10.03C General

Amounts due by the Borrower pursuant to this Article 10.03 shall be payable on the date of prepayment specified in the Bank's demand.

#### 10.04 Non-Waiver

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

#### ARTICLE 11

#### Law and jurisdiction, miscellaneous

#### 11.01 Governing Law

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

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#### 11.02 Jurisdiction

All disputes concerning this Contract shall be submitted to the jurisdiction of the Court of Justice of the European Union (the "Court") and the parties hereby submit to the jurisdiction of the Court.

The parties to this Contract hereby waive any immunity from or right to object to the jurisdiction of the Court. A decision of the Court given pursuant to this Article shall be conclusive and binding on each party without restriction or reservation.

### 11.03 Place of performance

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

### 11.04 Evidence of sums due

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

#### 11.05 Third party rights

A person who is not a party to this Contract may not enforce or enjoy the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999 and the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Contract.

#### 11.06 Entire Agreement

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

### 11.07 Invalidity

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

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

#### 11.08 Amendments

Changes and supplements can be made to this Contract by mutual agreement of the Parties, which agreement shall be documented in a separate protocol (the "Amendment Protocol"). Such protocol shall be conditional upon and shall become effective only following the Bank's acceptance of a legal opinion issued by the Ministry of Justice of the Republic of Armenia in the English language on the due execution by the Borrower of such Amendment Protocol and the validity, enforceability and binding nature thereof. Such legal opinion shall be supported/accompanied by all relevant documents evidencing the Borrower's authority to enter into such Amendment Protocol, as well as evidence of due ratification of such Amendment Protocol in accordance with the applicable laws of the Republic of Armenia.

Any Amendment Protocol shall not become effective until the Bank sends to the Borrower a letter confirming its acceptance of the above mentioned evidence and providing the date that the relevant Amendment Protocol becomes effective, and such letter shall be conclusive evidence that the relevant Amendment Protocol has become effective.

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

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#### 11.09 Counterparts

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

#### **ARTICLE 12**

#### Final clauses

#### 12.01 Notices to either party

Notices and other communications given under this Contract addressed to either party to this Contract shall be made to the address or facsimile number as set out below, or to such other address or facsimile number as a party previously notifies to the other in writing:

For the Bank

Attention: Ops B

100 boulevard Konrad Adenauer

L-2950 Luxembourg

Facsimile no: (+352) 4379 47495

For the Borrower

Attention: Ministry of Finance of the Republic of Armenia

0010 Yerevan, 1 Melik-Adamyan str. Facsimile no.: (+37410) 52 42 82

#### 12.02 Form of notice

Any notice or other communication given under this Contract must be in writing.

Notices and other communications, for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter or facsimile. Such notices and communications shall be deemed to have been received by the other party on the date of delivery in relation to a hand-delivered or registered letter or on receipt of transmission in relation to a facsimile.

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

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

Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.

#### 12.03 Changes to parties

The Borrower may not assign or transfer any of its rights or obligations under this Contract without the prior written consent of the Bank.

The Bank may assign all or part of its rights and benefits or transfer (by way of novation, sub-participation or otherwise) all or part of its rights, benefits and obligations under this Contract.

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### 12.04 Language

All documents and information to be provided by the Borrower to the Bank, or procured by the Borrower to be provided to the Bank by any other entity including without limitation the Promoter, shall be provided in the English language.

## 12.05 Effectiveness of this Contract

This Contract is conditional upon and shall become effective only following the Bank's acceptance of the evidence required by Article 1.04A(a) of this Contract.

This Contract shall not become effective until the Bank sends to the Borrower a letter confirming its acceptance of the above mentioned evidence and providing the date that this Contract becomes effective (the "Date of Effectiveness"), and such letter shall be conclusive evidence that this Contract has become effective.

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

## 12.06 Recitals, Schedules and Annexes

The Recitals and following Schedules form part of this Contract:

Schedule A

Project Specification and Reporting

Schedule B

Definition of EURIBOR

Schedule C

Forms for Borrower

Schedule D

Certificate from the Borrower

The following Annex is attached hereto:

Annex I

Authorisation of signatory

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed in four originals in the English language and have each caused the heart Beglacyan, first Deputy Minister, and Ms Kinga Soltész, legal counsel, to initial each page of this Contract on their behalf.

At Luxembourg, this 18 November 2013 At Yerevan, this OxNovember 2013

Signed for and on behalf of

THE REPUBLIC OF ARMENIA

Signed for and on behalf of

EUROPEAN INVESTMENT BANK

Davit Sargsyan

Minister of Finance

P. Szymczak

Head of Division

W. Jardet

Head of Division



### A.1. TECHNICAL DESCRIPTION

### Purpose, Location

The project is part of an overall Programme aimed at improving and upgrading the North-South Road Corridor (NSRC) in Armenia. The NSRC runs 556km from the border with Georgia at Bavra via Gyumri, Ashtarak, Yerevan, Goris, and Kapan, to the border with Iran at Meghri (in the South). The project aims to improve some 145km (of which 11km are 2x2, 87km are 2x1 to be widened to 2x2, and the remainder is and will remain 2X1) of the northern part of the corridor between Yerevan and Bavra. Works will be executed in 4 Tranches.

#### Description

# Tranche 1 Yerevan - Ashtarak (Km 18+370 to 29+600)

The project includes the following:

- Renovation of the existing 4 lane dual carriageway from Km 18+370 (Yerevan) to Km 29+600 (Ashtarak) with a total length of 11.4 km.
- Replacement of the pavement with a new concrete pavement 26 cm deep. ii.
- Demolition and replacement of 1 No. existing overbridge (Km 25.4) iii.
- Rehabilitation and repair of existing culverts and drainage structures, including cleaning and iv. rehabilitation of the existing drainage ditches and culverts;
- Renovation and repairs to existing bridges and underpasses ٧.
- Road signs and road markings, traffic safety and motorway security elements with continuous vi. metal guardrail in the median and as required along road edge.
- Planning, design, supervision, environmental/other monitoring, auditing, legal, and testing vii. services plus insurance; and
- Relocation/reinstatement of utilities as necessary (carried out by the Grantor, co-ordinated by viii. the Contractor).

The project is to be implemented in accordance with conditions imposed in the applicable Environmental Decisions and Construction Permits.

## Tranche 2 Ashtarak - Talin (Km 29+600 to 71+500)

The project includes the following:

- New Highway construction to convert the existing 2-lane single carriageway to a 4-lane dual carriageway (as an extension of the existing Tranche 1 highway) from Km 29+600 (Ashtarak) to km 71+500 (Talin) with a total length of 41.9 km.
- Upgrading of the entire technical infrastructure in conformity with motorway construction;
- Construction of 147 No. bridges/structures
  - a. 6 No. Field Connector Overpasses,
  - b. 18 No. Field Connector Underpasses (8 No. at 3m high x 5m wide for pedestrians and animals and 10 No. at 4.5m high x 6m wide for machinery and animals).
  - c. 121 No. Gully Underpasses / Box Culverts, (generally 1.5m x 1.5m box culverts),
  - d. 2 No. River Underpasses (6m x 10 m.)

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- e. Continuous metal guardrail in the median and as required along road edge.
- Road lighting at each of the grade-separated interchanges, and new road signs and international quality road markings
- iv. Construction of 9 No. interchanges at the following locations to provide access to
  - g. Km 32.1 Agarak
  - h. Km 38.1 Ujan (Underpass)
  - i. Km 43 Kosh
  - j. Km 48.7 Shamiram (Underpass)
  - k. Km 51 Aruch / Shamiram
  - I. Km 55.3 N. Bazmaberd (Underpass)
  - m. Km 60.2 V. Bazmaberd (Underpass)
  - n. Km 65.2 Katnaghbiur (Underpass)
  - o. Km 69.9 Talin (Underpass)
- Construction of a drainage system (of all facilities), including cleaning and rehabilitation of the existing drainage ditches and culverts;
- vi. Landscaping and other environmental protection facilities to mitigate adverse impacts on the environment; It is anticipated that all of the culverts and underpasses will also environmental structures allowing the passage of fauna / small animals under the new road.
- vii. Lighting and power including: road signs and road markings, traffic safety and motorway security elements.
- viii. Planning, design, supervision, environmental/other monitoring, auditing, legal, and testing services plus insurance; and
- ix. Relocation/reinstatement of utilities as necessary (carried out by the Grantor, co-ordinated by the Contractor).

The project is to be implemented in accordance with conditions imposed in the applicable Environmental Decisions and Construction Permits.

## Tranche 3 Talin - Gyumri (Km 71+500 to Km 117+670)

The project includes the following:

- New Highway construction to convert the existing 2-lane single carriageway to a 4-lane dual carriageway (as an extension of the Tranche 2 highway) from Km 71+500 (Talin) to km 117+670 (Gyumri) with a total length of 46.17km., where Lanjik-Gyumri (from km90+200 to km 117+670) section will be financed under the loan provided by this Contract.
- ii. Upgrading of the entire technical infrastructure in conformity with motorway construction;
- iii. Construction of 152 No. bridges/structures
  - p. 6 No. Field Connector Overpasses,
  - q. 10 No. Field Connector Underpasses (4 No. at 3m high x 5m wide for pedestrians and animals and 6 No. at 4.5m high x 6m wide for machinery and animals).
  - r. 132 No. Gully Underpasses / Box Culverts, (generally 1.5m x 1.5m box culverts),
  - 3 No. River Underpasses,
  - t. 1 No. Railway Underpass,
- iv. The 3 No. River underpasses include the construction of 1 No large bridge structure, 36 m long, at the Karkachan River with 2x2 lanes.

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- v. Construction of 10 No. grade separated interchanges at the following locations to provide access to
  - a. Km 78 Mastara
  - b. Km 87.5 Lanjik
  - c. Km 94 Dzorakap and Sarnaghbyur
  - d. Km 96 Artik & Maralik
  - e. Km 98.5 Maralik
  - f. Km 104 Hayranyats
  - g. Km 106.5 Horom
  - h. Km 107.5 Lusakert
  - i. Km 110 Beniyamin
  - i. Km 113.5 Azatan / Aravik

Each interchange includes 1 No. overbridge, (2 x 18m = 36 m long)

- vi. Construction of a drainage system (of all facilities), including cleaning and rehabilitation of the existing drainage ditches and culverts;
- vii. Landscaping and other environmental protection facilities to mitigate adverse impacts on the environment; It is anticipated that all of the culverts and underpasses will also environmental structures allowing the passage of small animals under the new road.
- viii. Lighting and power including: road signs and road markings, traffic safety and motorway security elements.
- ix. Planning, design, supervision, environmental/other monitoring, auditing, legal, and testing services plus insurance; and
- x. Relocation/reinstatement of utilities as necessary (carried out by the Grantor, co-ordinated by the Contractor).

The project is to be implemented in accordance with conditions imposed in the applicable Environmental Decisions

# Tranche 4 : Gyumri to the Georgian Border at Bavra improvement of some 70 km 2-lane road, including Gyumri Bypass

To be further appraised in a subsequent operation, after EIB gest a formal request for financing of Tranche 4 from the Government of the RA.

#### Calendar

The project has already started with Tranche 1 and Tranche 2 (ADB financed), which are expected to be completed by the end of 2016. Tranche 3 is expected to start by the end of 2013 and run until the end of 2018 (ADB & EIB financed). Tranche 4 needs preparatory/design work and is expected to be implemented between 2015 and 2019 (possibly EIB financed in a subsequent operation).

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### A.2. PROJECT INFORMATION TO BE SENT TO THE BANK AND METHOD OF TRANSMISSION

1. <u>Dispatch of information: designation of the person responsible</u> The information below has to be sent to the Bank under the responsibility of:

Company	Ministry of Transport and Communications
Contact person	Artur Sargsyan
Title	CEO
Function / Department	North-South Road Corridor Investment Program
Address	38 Tumanian Street, Yerevan 0002, Republic of Armenia
Phone	374 60 506870
Fax	
Email	

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being. The Borrower shall inform the EIB immediately in case of any change.

2. Information on specific subjects

The Borrower shall deliver to the Bank the following information at the latest by the deadline indicated below.

Document / information	Deadline	
Written confirmation from the competent authority that the provisions of the EU Habitats Directive (92/43/EEC) (or equivalent impact on protected areas) have been complied with (Form A or B or equivalent).	Prior to the first disbursement under the finance contract.	
Environmental and building permits for Tranche 1 and Tranche 2.	•	
A copy of the approved Land Acquisition and Resettlement Plan for each of Tranche 2 and Tranche 3.		
A copy of the independent review confirming implementation of the Land Acquisition and Resettlement Plan for each of Tranche 2 and Tranche 3 ensuring that 100% of the land is made available to the contractor.		
Confirmation that the recommendations of the road safety audit in accordance with the principles of the EU Directive 2008/96/EC have been included in the final design or justification where such recommendations have not been adopted for each of Tranche 2 and Tranche 3.		
The environmental and building permits for Tranche 3.  Evidence that the civil works contract for Tranche 3 has been advertised in the OJEU.	Prior to the second disbursemen under the finance contract.	





Document / information	Deadline
The Borrower shall comply with all restrictions on its ability to incur financial indebtedness including, without limitation, limitations agreed with the International Monetary Fund ("IMF") under the IMF Concessionality Agreement with Armenia or any other instrument of the IMF.	During the term of the finance contract
The Borrower shall develop a programme of maintenance for each road segment constituting the Project in form and substance acceptable to the Bank. Such programme shall include necessary budget commitments for the first year of operation and routine and periodic maintenance activities for the first five years of operation and, in each case, shall be submitted to the Bank prior to 31 March 2017. The Borrower shall, within a timeframe acceptable to the Bank, follow up with an agreed form reporting format.  The Borrower shall budget and secure adequate resources for the implementation of the LARPs.	
The Borrower shall include in the semi-annual progress reports under the environmental section, a report of environmental and social monitoring, including adequate references to labour standards, occupational health and safety as well as evidence of the progress in implementing the LARPs.	

Information on the project's implementation
 The Borrower shall deliver to the Bank the following information on project progress during implementation at the latest by the deadline indicated below.

Document / information	Deadline Frequency reporting
Project Progress Report  A brief update on the technical description, explaining the reasons for significant changes vs. initial scope;  Update on the date of completion of each of the main project's components, explaining reasons for any possible delay;  Update on the cost of the project, explaining reasons for any possible cost increases vs. initial budgeted cost;  A description of any major issue with impact on the environment;  Update on procurement procedures (outside EU);  Update on the project's demand or usage and comments;  Inclusion of Results Measurement (REM) sheet with updated indicators (outside EU and CPC countries);  Any significant issue that has occurred and any significant risk that may affect the project's operation;  Any legal action concerning the project that may be ongoing.	• Semi-annua

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Information on the end of works and first year of operation
 The Borrower shall deliver to the Bank the following information on project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank	
Project Completion Report, including:  A brief description of the technical characteristics of the project as completed, explaining the reasons for any significant change;  The date of completion of each of the main project's components, explaining reasons for any possible delay;  The final cost of the project, explaining reasons for any possible cost increases vs. initial budgeted cost;  The number of new jobs created by the project: both jobs during implementation and permanent new jobs created;  A description of any major issue with impact on the environment;  Update on procurement procedures (outside EU);  Update on the project's demand or usage and comments;  Any significant issue that has occurred and any significant risk that may affect the project's operation;  Any legal action concerning the project that may be ongoing.	March 2020	
Language of reports	English	



### **Definitions of EURIBOR**

#### A. EURIBOR

#### "EURIBOR" means:

- in respect of a relevant period of less than one month, the rate of interest for deposits in EUR for a term of one month;
- in respect of a relevant period of one or more whole months, the rate of interest for deposits in EUR for a term for the corresponding number of whole months; and
- in respect of a relevant period of more than one month (but not whole months), the rate resulting from a linear interpolation by reference to two rates for deposits in EUR, one of which is applicable for a period of whole months next shorter and the other for a period of whole months next longer than the length of the relevant period, (the period for which the rate is taken or from which the rates are interpolated being the "Representative Period"), as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the "Reset Date") which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such rate is not so published, the Bank shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11h00, Brussels time, on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than 2 (two) quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11h00, Brussels time, on the day which falls 2 (two) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European Banks for a period equal to the Representative Period.

If the rate resulting from the above is below zero, EURIBOR will be deemed to be zero.

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

#### B. General

For the purposes of the foregoing definitions:

- (a) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with halves being rounded up.
- (b) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (c) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EURIBOR FBE and EURIBOR ACI in respect of EURIBOR, the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.

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Schedule C1

### Forms for Borrower

C.1 Form of Disbursement Offer/Acceptance (Articles 1.02B and 1.02C)

To: The Republic of Armenia

From: European Investment Bank

Date:

Subject: Disbursement Offer/Acceptance for the Finance Contract between the Republic of Armenia and the European Investment Bank dated ...... (the "Finance Contract")

FI number 82.634 Serapis number 2010-0130

Dear Sirs,

We refer to the Finance Contract. Terms defined in the Finance Contract have the same meaning when used in this letter.

Following your request for a Disbursement Offer from the Bank, in accordance with Article 1.02B of the Finance Contract, we hereby offer to make available to you the following Tranche:

- (a) the amount to be disbursed:
- (b) Scheduled Disbursement Date:
- (c) Interest rate basis:
- (d) Interest payment periodicity:
- (e) Payment Dates:
- (f) Terms for repayment of principal:
- (g) The first and last principal repayment dates:
- (h) The Fixed Rate or Spread, applicable until the Maturity Date.

To make the Tranche available subject to the terms and conditions of the Finance Contract, the Bank must receive a Disbursement Acceptance in the form of a copy of this Disbursement Offer duly signed on your behalf, to the following fax number [\_\_] no later than the Disbursement Acceptance Deadline of [time], Luxembourg time, on [date].

The Disbursement Acceptance must be accompanied (if it has not been previously supplied) by:

- the indication of the bank account (with IBAN code in case of disbursements in EUR or the appropriate format for the relevant currency) where disbursement of the Tranche should be made; and
- (ii) evidence of the authority of the person or persons authorised to sign it on behalf of the Borrower and the specimen signature of such person or persons.

If not accepted by the above stated time, the offer contained in this document shall be deemed to have been refused and shall automatically lapse.

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<sup>&</sup>lt;sup>1</sup> To be provided on paper bearing the Borrower's letterhead.



If you do accept the Tranche as described in this Disbursement Offer, all the related terms and conditions of the Finance Contract shall apply, in particular, the provisions of Article 1.04. Yours faithfully,

EUROPEAN INVESTMENT BANK

We hereby accept the above Disbursement Offer:

For and behalf of [Borrower]

Date:

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#### Schedule D

#### Form of Certificate from Borrower (Article 1.04B)

To: European Investment Bank

From: The Republic of Armenia

Date:

Subject: Finance Contract between the Republic of Armenia and the European Investment Bank

dated ..... (the "Finance Contract")

FI number 82.634

Serapis number 2010-0130

Dear Sirs.

Terms defined in the Finance Contract have the same meaning when used in this letter.

For the purposes of Article 1.04 of the Finance Contract we hereby certify to you as follows:

- (a) no Prepayment Event has occurred and is continuing unremedied;
- (b) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.01, save as previously communicated by us;
- (c) we have sufficient funds available to ensure the timely completion and implementation of the Project in accordance with Schedule A.1;
- (d) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived;
- (e) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us any unsatisfied judgement or award;
- (f) the representations and warranties to be made or repeated by us under Article 6.07 are true in all respects; and
- (g) no Material Adverse Change has occurred, as compared with the situation at the date of the Finance Contract.

Yours faithfully,

For and on behalf of the Republic of Armenia

Date:

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Annex I

**Authorisation of signatory** 

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## PRESIDENT OF THE REPUBLIC OF ARMENIA

### **FULL POWERS**

This is to certify, that Mr. Davit SARGSYAN, Minister of Finance of the Republic of Armenia is authorized to sign "Armenia "North-South" Road Corridor" Finance Contract between the Republic of Armenia and the European Investment Bank.

**SERJ SARGSYAN** 

HN - 1888 31 October 2013



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Հայաստանի Հանրապետության ֆինանսների նախարար Դավիթ ՍԱՐԳՍՅԱՆԻՆ լիազորում եմ ստորագրելու Հայաստանի Հանրապետության և Եվրոպական ներդրումային բանկի միջն «Հայաստանի «Հյուսիս-հարավ» ձանապարհային միջանցք» ֆինանսական պայմանագիրը։

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