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# **FRUIT GARDEN OF MOLDOVA**

## **Finance Contract**

between the

**Republic of Moldova**

and the

**European Investment Bank**

Chisinau, 31 July 2014

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**THIS CONTRACT IS MADE BETWEEN:**

The Republic of Moldova, represented by the Ministry of Finance, having its address at 7, Cosmonautilor Street, MD – 2005, Chisinau, Republic of Moldova and, for the signing of this contract, by Anatol Arapu, Minister of Finance of the Republic of Moldova.

(the "**Borrower**")

of the first part.

The European Investment Bank having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg, represented by Ms Marion Hoenicke, Head of Division, and Mr Garth Grisbrook, Legal Counsel,

(the "**Bank**")

of the second part.

## WHEREAS:

- (1) On 1 November 2006 the Republic of Moldova and the Bank signed a Framework Agreement governing the Bank's activities in the Republic of Moldova (the "**Framework Agreement**") which is in full force and effect and shall continue to be in full force and effect during the term of this Contract. Moldova is a state party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (the "**New York Convention**").
- (2) Article 7 of the Framework Agreement provides, *inter alia*, that the Bank shall enjoy, in respect of its activities in the territory of the Republic of Moldova 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 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. In a letter dated 28 October 2013, the Borrower requested to the Bank financing of the Project (as defined below). By entering into this Contract, the Borrower confirms that the Project and each Sub-Project, each as defined below, fall within the scope of the Framework Agreement and as at the date of this Contract, the Bank has not received any notification that the Framework Agreement has ceased to be valid, binding and enforceable.
- (3) The Borrower has stated that it is undertaking a project to provide medium to long term finance to private and public sector operators along Moldova's horticultural value chain (the "**Project**") as more particularly described in the technical description set out in Schedule A. The proceeds of the Loan are to be used exclusively for the purposes of the Project. The Project shall be implemented exclusively in the territory of the Republic of Moldova. Ministry of Agriculture and Food Industry (the "**Promoter**") will have general supervision of and responsibility for the implementation of the Project, including the establishment of a central Project Implementation Unit (the "**PIU**") at the level of, and co-ordinated by, the Promoter. Selection of eligible Intermediary Banks and on-lending operations of the proceeds of the Loan through the Intermediary Banks to each Final Beneficiary shall be made by the Credit Line Directorate (as defined below), a subordinated division of the Borrower, and shall in all cases remain subject to the prior written consent and on-going review and approval of the Bank. The Borrower shall make available to the Promoter the proceeds of the Credit.
- (4) The Borrower has requested from the Bank a credit of EUR 120,000,000 (one hundred and twenty million euros) to finance a portfolio of individual investment schemes (each a "**Sub-Project**") undertaken either by or on behalf of the Borrower or by eligible final beneficiaries (each a "**Final Beneficiary**") to enhance the whole Moldovan horticultural sector throughout its value chain in accordance with the Project. Where any part of the Loan is not used for direct investments in the horticultural value chain by the Borrower, that part of the Loan will be passed through to a Final Beneficiary by way of an allocation mechanism which permits, *inter alia*, making loans through Intermediary Banks acceptable to the Bank to a Final Beneficiary or equipment leasing schemes by independent/non-captive leasing companies. The eligibility criteria and details of allocation procedures for the Sub-Projects shall be established in one or more side-letters to be delivered by the Bank to the Borrower and which may be subsequently modified by the Bank, according to its policy in force from time to time, with prior notice to the Borrower (the "**Side-Letter**").
- (5) The Borrower shall finance each Sub-Project, which it does not implement or finance directly, by means of (a) a sub-financing (each a "**Sub-Financing**") pursuant to sub-financing agreements (each such agreement a "**Sub-Financing Agreement**") between the Borrower and the Intermediary Bank and (b) an on-lending agreement or other type of agreement approved by the Bank (each an "**On-Lending Agreement**") passing the proceeds of the Loan by way of eligible mechanisms (including, without limitation, leasing agreements) from the Intermediary Bank to the Final Beneficiary promoting a Sub-Project. The Bank's financing under this Project shall not exceed 50% (fifty *per cent.*) of the investment cost of each Sub-Project.
- (6) At appraisal the total cost of the Project was estimated by the Bank to be EUR 300,000,000 (three hundred million euros). The Borrower has stated that it intends to finance the Project in a way that a maximum of 40% (forty *per cent.*) of the cost of the Project would be financed by the Loan and the remaining 60% (sixty *per cent.*) of the cost of the Project would be financed from each Final Beneficiary's own funds, commercial bank loans to a Final Beneficiary, by other international financial institutions, possibly by grants from various donors and/or from the own resources of the Borrower.

- (7) In order to fulfil the financing plan set out in Recital (6), the Borrower has requested from the Bank a credit in the amount of EUR 120,000,000 (one hundred and twenty million euros) to be made available from the Bank's own resources and pursuant to the 2014 – 2020 external lending mandate for Eastern Europe, Southern Caucasus and Russia of Decision No.466/2014/EU of the European Council and the European Parliament (the "**Mandate**").
- (8) The Bank considering that the financing of the Project falls within the scope of its functions and is consistent with the objectives of the Mandate, 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 120,000,000 (one hundred and twenty 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).
- (9) The Government of Moldova has authorised the borrowing of the sum of EUR 120,000,000 (one hundred and twenty million euros) represented by this credit on the terms and conditions set out in this Contract and in the Annexes hereto, and by signing this Contract confirms that the Project falls within the scope of the Framework Agreement. In accordance with the legal opinion to be issued substantially in the form set out in Annex I, and pursuant to the evidence to be provided under Article 1.04A(b) hereof, Mr Anatol Arapu, Minister of Finance, is duly authorised to sign this Contract for and on behalf of the Borrower.
- (10) 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 ("**EU**").
- (11) In accordance with Decision No. 466/2014/EU on granting an EU guarantee to the Bank against losses under financing operations supporting investment projects outside the European Union (the "**Decision**") and the agreement entered into between the European Union represented by the European Commission and the Bank implementing such decision, in the event of non-payment, the European Union, by a guarantee, covers payments not received by the Bank and due to the Bank in relation to the Bank's financing operations entered into with, *inter alios*, the Borrower (the "**EU Guarantee**"). As of the date of this Contract, the Republic of Moldova is an Eligible Country (as defined below).
- (12) 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. The Bank has therefore established its transparency policy, the purpose of which is to enhance the accountability of the EIB Group towards its stakeholders and the EU citizens in general, by giving access to the information that will enable them to understand its governance, strategy, policies, activities and practices.
- (13) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data.

NOW THEREFORE it is hereby agreed as follows:

## INTERPRETATION AND DEFINITIONS

### (a) Interpretation

In this Contract,

- (i) References to Articles, Recitals, Schedules and Annexes 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.
- (iv) A reference to a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

### (b) Definitions

In this Contract:

"**Acceptance Deadline**" for a notice under this Contract means:

- (i) 16h00 Luxembourg time on the day of delivery, if the notice is delivered by 14h00 Luxembourg time on a Business Day; or
- (ii) 11h00 Luxembourg time on the next following day which is a Business Day, if the notice is delivered after 14h00 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.

"**Allocation**" has the meaning given to it in Article 1.10B.

"**Allocation Letter**" has the meaning given to it in Article 1.10B.

"**Allocation Period**" has the meaning given to it in Article 1.10A.

"**Allocation Request**" has the meaning given to it in Article 1.10A.

"**Amortisation Table**" has the meaning given to it in Article 2.03.

"**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(3).

"**Contract**" has the meaning given to it in Recital (8).

"**Credit**" has the meaning given to it in Article 1.01.

"**Credit Line Directorate**" means the directorate established for the on-lending of external loan resources for private sector development pursuant to the National Bank of Moldova Resolution No 29, dated October 25, 1995 and which directorate:

- (a) is located within the Ministry of Finance pursuant to Government of Moldova Decree No 953, dated September 7, 2001, with modifications of the Government Decree No 672, dated June 19, 2006;
- (b) is responsible for the management and administration of the on-lending operations of the Loan proceeds to the final Beneficiaries through Intermediary Banks acceptable to the Bank and the management of the reflows, qualification and monitoring of Intermediary Banks and Sub-projects; and
- (c) acts on behalf of the Borrower and the Ministry of Finance of the Borrower and will be the recipient of all repayments made by Intermediary Banks related to the Loan.

"**Decision**" has the meaning given to it in Recital (11).

"**Deferment Indemnity**" means an indemnity calculated on the amount of disbursement deferred or suspended at the percentage rate (if higher than zero) by which:

- (a) the interest rate that would have been applicable to such amount had it been disbursed to the Borrower on the Scheduled Disbursement Date; exceeds
- (b) the Relevant Interbank Rate (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.

"**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 Bank.

"**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 systems-related nature) to the treasury or payments operations of either the Bank or the Borrower, preventing that party:
  - (i) 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 Allocation Report**" has the meaning given to it in Article 1.14.

"**Eligible Country**" means any country specified in Annex III to the Decision, as may be amended from time to time by the Commission in accordance with Articles 4(2) and 18 of the Decision, or any other country in respect of which the European Parliament and the Council have adopted a decision pursuant to Article 4(1) of the Decision.

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

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

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

"**Environmental Impact Assessment**" and "**EIA**" has the meaning given to it in Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended or replaced from time to time.

"**Environmental Law**" means:

- (a) EU law, standards and principles to the extent implemented by the law of the Republic of Moldova or specified by the Bank prior to the date of this Contract);
- (b) Moldovan national laws and regulations; and

(c) international treaties and conventions signed and ratified by or otherwise applicable and binding on the Republic of Moldova,

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

**EU Guarantee** has the meaning given to it in Recital (11).

**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 (5) five years from the Date of Effectiveness.

**Final Beneficiary** has the meaning given to it in Recital (4).

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

**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.

**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 Relevant Interbank Rate 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 Disbursement Date.

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

**Framework Agreement** has the meaning given in Recital (1).

**GBP** means the lawful currency of the United Kingdom.

**Guide to Procurement** means the Guide to Procurement published on the Bank's website that informs the promoters of projects financed in whole or in part by the Bank of the arrangements to be made for procuring works, goods and services required for the Project.

**Indemnifiable Prepayment Event** means a Prepayment Event other than those specified in paragraphs 4.03A(2) or 4.03A(6).

**Intermediary Bank** means a local eligible financial institution acceptable to the Borrower and to the Bank, as indicated by the Bank to the Borrower in writing from time to time, which bank will act as financial intermediary to borrow the proceeds of the Loan from the Borrower and pass them on at its own credit risk to a Final Beneficiary for the implementation of a Sub-Project. The acceptability of each intermediary bank to the Bank is subject to on-going review and may be changed from time to time.

**LIBOR** has the meaning given to it in Schedule B.

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

**Mandate** has the meaning given to it in Recital (7).

**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 reasonable 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 the applicable Relevant Interbank Rate; or
  - (ii) the Bank determines that adequate and fair means do not exist for ascertaining the applicable Relevant Interbank Rate for the relevant currency of such Tranche or it is not possible to determine the Relevant Interbank Rate in accordance with the definition contained in Schedule A.

**"Material Adverse Change"** means, in relation to the Borrower or the Promoter any event or change of condition affecting the Borrower or the Promoter, respectively, which, in the reasonable opinion of the Bank:

- (a) materially impairs the ability of the Borrower or of the Promoter to perform any of its obligations under this Contract;
- (b) materially impairs the business, prospects or financial condition of the Borrower or the Promoter; or
- (c) adversely affects any security provided by the Borrower or the Promoter.

**"Maturity Date"** means the last repayment date of a Tranche specified pursuant to Article 4.01A(b)(iii).

**"Money Laundering"** means:

- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- (b) the concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; or
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

**"New York Convention"** has the meaning given to it in Recital (1).

**"On-Lending Agreement"** has the meaning given to it in Recital (5).

**"Payment Date"** means the semi-annual dates specified in the Disbursement Offer 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.

**"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:

- (a) 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.

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

**"Prohibited Practice"** means any:

- (a) **Coercive Practice:** meaning the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- (b) **Collusive Practice:** meaning an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (c) **Corrupt Practice:** meaning the offering, giving, receiving or soliciting, directly or indirectly, of anything of value by a party to influence improperly the actions of another party;
- (d) **Fraudulent Practice:** meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation; or
- (e) **Obstructive Practice:** meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with this Loan or the Project:
  - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (ii) acts intending to materially impede the exercise of the contractual rights of audit or access to information.

**"Project"** has the meaning given to it in Recital (3).

**"Promoter"** has the meaning given to it in Recital (3).

**"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 the most closely corresponding money market rate equivalent will be used, that is the Relevant Interbank Rate minus 0.125% (12.5 basis points) for periods of up to 12 months. For periods falling between 12 and 48 months as the case may be, the bid point on the swap rates as published in Reuters for the related currency and observed by the Bank at the time of calculation will apply.

**"Relevant Business Day"** means:

- (a) for EUR, 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; and
- (b) for any other currency, a day on which banks are open for general business in the principal domestic financial centre of the relevant currency.

"**Relevant Interbank Rate**" means:

- (i) EURIBOR for a Tranche denominated in EUR; and
- (ii) LIBOR for a Tranche denominated in GBP or USD.

"**Sanctioned Person**" means any individual or entity listed in one or more Sanction Lists

"**Sanction Lists**" means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, as available in the official EU websites [http://ec.europa.eu/external\\_relations/cfsp/sanctions/consolid\\_en.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/consolid_en.htm) and [http://eeas.europa.eu/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf), as amended and supplemented from time to time or on any successor page; or,
- (b) any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to Article 41 of the UN Charter as available in the official UN website <http://www.un.org/Docs/sc/committees/INTRO.htm>, as amended and supplemented from time to time or on any successor page.

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

"**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.

"**Side-Letter**" has the meaning given to it in Recital (4).

"**Spread**" means the fixed spread to the Relevant Interbank Rate (being plus or minus) determined by the Bank and notified to the Borrower in the relevant Disbursement Offer.

"**Sub-Financing**" has the meaning given to it in Recital (5).

"**Sub-Financing Agreement**" has the meaning given to it in Recital (5).

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

"**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).

"**Tranche**" means each disbursement made or to be made under this Contract. In case no Disbursement Acceptance has been received, Tranche shall mean a Tranche as offered under Article 1.02B.

"**USD**" means the lawful currency of the United States of America.

**NOW THEREFORE** it is hereby agreed as follows:

**ARTICLE 1**  
**Credit and disbursement**

**1.01 Amount of Credit**

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, the credit in an amount equivalent to EUR 120,000,000 (one hundred and twenty 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 25 (twenty-five) Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall be in a minimum amount of (or equivalent to) EUR 1,000,000 (one million euros). The amount of the first Tranche shall not exceed EUR 24,000,000 (twenty-four million euros) (or its equivalent) and the Bank shall not send the Borrower more than one Disbursement Offer per calendar month and there shall not be more than one disbursement of a Tranche per calendar month under this Finance Contract.

**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, currency and EUR equivalent 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;
- (d) the interest payment periodicity for the Tranche, in accordance with the provisions of Article 3.01;
- (e) the first Payment Date for the Tranche;
- (f) 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;
- (h) 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:

- (a) 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) if not previously provided, 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.

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 such 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 of the Borrower as the Borrower shall notify in writing to the Bank not later than 10 (ten) days before the Scheduled Disbursement Date (with IBAN code or with the appropriate format in line with local banking practice). The account shall be maintained with a bank acceptable to the Bank.

Only one account may be specified for each Tranche.

**1.03 Currency of disbursement**

Subject to availability, disbursement of each Tranche shall be made in EUR, GBP or USD.

For the calculation of the sums available to be disbursed in currencies other than EUR, and to determine their equivalent in EUR, the Bank shall apply the rate published by the European Central Bank in Frankfurt, available on or shortly before submission of the Disbursement Offer as the Bank shall decide.

**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 7 (seven) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:

- (a) a legal opinion issued by the Minister of Justice of the Republic of Moldova:
  - (i) in the English language, substantially in the form set out in Annex I, such opinion to be supported by a resolution authorising the entry into the Contract by the Borrower; and
  - (ii) confirming due ratification of this Contract by the Parliament of the Republic of Moldova in accordance with the applicable laws of the Republic of Moldova;
- (b) evidence that the execution of this Contract by the Borrower has been duly authorised and that the person or persons signing the Contract on its behalf are duly authorised to do so together with the specimen signature of each such person(s);
- (c) evidence that the Borrower and/or the Promoter have obtained all necessary Authorisations required in connection with this Contract or, if none is required, a declaration from the Borrower, signed by a person or persons duly authorised to act on behalf of the Borrower, that no Authorisation is required in connection with this Contract;
- (d) evidence that the PIU continues to be established and operated by the Promoter under the finance contract between the Bank and the Borrower dated 23 November 2010 for the Filiere du Vin Upgrading project and that the PIU will or will continue to co-ordinate, manage, monitor and evaluate all aspects of the implementation of the Project in parallel with the Filiere du Vin Project, as provided for in Article 6.08, has been established to the satisfaction of the Bank and which is fully operational to the satisfaction of the Bank
- (e) evidence that all exchange control consents specified by the Bank or indicated in the legal opinion given under paragraph (a) above as being necessary have been obtained to permit the Borrower to receive disbursements as provided in this Contract, to repay the Loan and to pay interest and all other amounts due hereunder;
- (f) detailed procedures for financing under the On-Lending Agreements to the satisfaction of the Bank;
- (g) evidence that model Sub-Financing Agreements and On-Lending Agreements for Intermediary Banks and Final Beneficiaries respectively have been agreed to the satisfaction of the Bank;

- (h) the duly executed Side-Letter; and
- (i) evidence of the payment of any fees due to the Bank under this Contract.

**1.04B Subsequent Tranches**

The disbursement of each Tranche under Article 1.02 following the first, is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days before the Scheduled Disbursement Date, evidence demonstrating that at least 80% (eighty *per cent.*) of the proceeds of the last Tranche and 100% (one hundred *per cent.*) of the proceeds of all previous Tranches have been effectively allocated to eligible Sub-Projects before requesting a new disbursement.

**1.04C All Tranches**

The disbursement of each Tranche under Article 1.02 following the first, is conditional upon:

- (a) receipt by the Bank in form and substance satisfactory to it, on or before the date falling 7 (seven) Business Days prior to date of presentation of the Disbursement Offer for the proposed Tranche, of the following documents or evidence:
  - (i) a certificate from the Borrower in the form of Schedule C.2;
  - (ii) a copy of any other Authorisation or other document, opinion or assurance which the Bank has notified the Borrower and/or the Promoter is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, the Contract or the security or the validity and enforceability of the same;
  - (iii) evidence of the authority of the person or persons authorised to sign Disbursement Acceptance and the authenticated specimen signature of such person or persons, unless it has been previously provided;
  - (iv) evidence from the Promoter that all investments are in line with the Project description and have been duly checked by the PIU; and
  - (v) evidence that the PIU continues to:
    - (A) be adequately staffed and operational to the Bank's satisfaction; and
    - (B) operate in accordance with terms of reference and the detailed procedures provided to the Bank, both in a way acceptable for the Bank; and
- (b) that on the Scheduled Disbursement Date for the proposed Tranche:
  - (i) the representations and warranties which are repeated pursuant to Article 6.10 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 an Event of Default, or Prepayment Event has occurred and is continuing unremedied or unwaived or would result from a disbursement of the proposed Tranche; and
- (c) the Bank being satisfied by the Scheduled Disbursement Date for the proposed Tranche that:
  - (i) all facts and information contained in the Recitals continue to be true, correct and applicable in all material respects;
  - (ii) the EU Guarantee is valid, binding and enforceable and that no events or circumstances have occurred which could, in the opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the EU Guarantee or the Bank's right to make a demand thereunder;
  - (iii) the Republic of Moldova continues to be an Eligible Country; and
  - (iv) the Framework Agreement is valid, binding and enforceable and that no events or circumstances have occurred which could, in the opinion of the Bank, adversely affect the legal, valid, binding and enforceable nature of the Framework Agreement.

**1.05 Deferment of disbursement**

**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.

**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:
  - (i) 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; or
  - (ii) if the Republic of Moldova is no longer an Eligible Country.
- (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; or
- (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

If pursuant to Article 1.06A, the Borrower cancels:

- (a) a Fixed Rate Tranche which is an Accepted Tranche, it shall indemnify the Bank under Article 4.02B; or
- (b) a Floating Rate Tranche which is an Accepted Tranche or any part of the Credit other than an Accepted Tranche, no indemnity is payable.

If the Bank cancels:

- (i) 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; or
- (ii) an Accepted Tranche upon an Event of Default, the Borrower shall indemnify the Bank under Article 10.03.

Other than 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 Fees

### 1.08A **Appraisal fee**

The Borrower shall pay or cause to be paid to the Bank within fifteen (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).

### 1.08B **Commitment fee**

The Borrower shall pay to the Bank a commitment fee at a rate of 0.10% (10 basis points) *per annum*:

- (a) from the later of:
  - (i) the Date of Effectiveness; and
  - (ii) 12 months from the date of this Contract,until 31 December 2016, EUR40,000,000 less the amount of the Loan; and
- (b) from the earlier of:
  - (i) 1 January 2017; and
  - (ii) the date on which the amount of the Loan equals or exceeds EUR40,000,000,until 31 December 2017, EUR80,000,000 minus the amount of the Loan; and
- (c) from the earlier of:
  - (i) 1 January 2018; and
  - (ii) the date on which the Loan equals or exceeds EUR80,000,000,EUR120,000,000 minus the amount of the Loan.

The accrued commitment fee being payable in arrears:

- (A) each 20 May and 20 November of each year until the Final Availability Date;
- (B) on the Final Availability Date; and
- (C) on the date of any earlier cancellation of the Credit under Article 1.05 and 1.06 "

If the date on which the commitment fee is due to be paid is not a Relevant Business Day, payment shall be made on 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 a corresponding adjustment to the amount of commitment fee due.

**1.09 Sums due under Article 1**

Sums due under either Article 1.05 or 1.06 shall be payable in the currency of the Tranche concerned. They shall be payable within 7 (seven) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

**1.10 Allocation Procedure**

**1.10A Submission of Sub-Projects**

Between the date of this Contract and 24 (twenty-four) months thereafter (the "**Allocation Period**"), the Borrower shall submit for approval to the Bank one or more allocation requests prepared by it (each, an "**Allocation Request**"). The Sub-Projects shall be eligible for loan financing from the Bank pursuant to this Contract, and the Bank's criteria as established from time to time in accordance with the Bank's then prevailing policies and as specified in the Side-Letter from time to time. Such criteria shall be subject to revision on the basis of the parameters applied by the Bank to the type of Sub-Project concerned, provided that such revision may take place only in respect of the funds still to be allocated.

All investments under the Sub-Projects shall be made in the horticulture sector, mainly (but without limitation) for orchards, table grape vineyards, post-harvesting infrastructure, processing and related industries with the purpose of the production of quality fruits and processed products, laboratories, education, training and development of food security.

The Loan has to be, to the satisfaction of the Bank, distributed to Final Beneficiaries and for Sub-Projects in accordance with the following table:

<ul style="list-style-type: none"> <li>for investments in post-harvest infrastructure including initial on-farm cooling, cold transportation, refrigeration units, grading and sorting units, and trading platforms</li> </ul>	up to 60% (sixty <i>per cent.</i> ) of the Loan;
<ul style="list-style-type: none"> <li>for planting, replanting and/or restructuring orchards and table grape vineyards, including associated nurseries</li> </ul>	up to 35% (thirty-five <i>per cent.</i> ) of the Loan;
<ul style="list-style-type: none"> <li>for processing plants and related industries</li> </ul>	up to 10% (ten <i>per cent.</i> ) of the Loan;
<ul style="list-style-type: none"> <li>for laboratories, education, training and development of food security</li> </ul>	minimum 5% (five <i>per cent.</i> ) of the Loan

The eligible costs for orchards and table grape vineyards are based on predetermined levels per hectare of EUR 1,000 (one thousand euros) for grubbing-up and EUR 10,000 (ten thousand euros) for planting, replanting and/or restructuring. If a Final Beneficiary chooses not to submit to the EUR 10,000 unit cost principle, that Final Beneficiary shall provide to the PIU a detailed investment cost analysis over the implementation period, in line with the Bank's direct project financing standards. The analysis shall be based on *pro forma* bills from third parties/internal transfer invoices, for ex-ante screening and approval by the Bank's services, and followed by full disclosure of all bills and costs in total and per hectare, for monitoring the use of the funds. The maximum eligible cost to establish an intensive plantation is set at EUR 30,000 (thirty thousand euro) per hectare, of which 50% (fifty *per cent.*) is eligible for EIB financing.

For the first ten allocations, each Allocation Request shall be supported by the submission of full project fiches to the Bank. After the first ten allocations, if performance is satisfactory to the Bank, each Allocation Request shall be supported by a list of Sub-Projects, containing the information in content and form which the Bank shall notify from time to time to the Borrower. The Bank may undertake sample checks and request full project fiches for the purpose of sample checking.

#### 1.10B **Allocation**

If an Allocation Request for a Sub-Project submitted to the Bank pursuant to Article 1.10A is approved by it, the Bank shall notify the Borrower by way of a letter of allocation (hereafter each an "**Allocation Letter**") stating:

- (a) which Sub-Projects are approved; and
- (b) the portion of the Credit which the Bank allocates to the Sub-Projects (each such portion being hereafter called an "**Allocation**", which term shall include a re-employment of funds under Article 6.01).

#### 1.11 **Amount of Allocations**

The Loan has to be allocated to Final Beneficiaries and for Sub-Projects in accordance with the following provisions:

- (a) the amount of each Allocation for any Sub-Project shall not exceed 100% (one hundred *per cent.*) of the relevant Sub-Financing amount;
- (b) Sub-Projects with a project cost of more than EUR 5,000,000 (five million euros) are eligible, subject to *ex ante* approval by the Bank;
- (c) the maximum cumulative allocation per Final Beneficiary operating or creating nurseries, orchards and table grape vineyard planting, replanting and/or restructuring shall not exceed EUR 1,000,000 (one million euros).
- (d) the maximum cumulative allocation per Final Beneficiary (including all of that Final Beneficiary's investments in the value chain) shall not exceed EUR 5,000,000 (five million euros).
- (e) the minimum allocation amount for any individual investment shall be at least EUR 5,000 (five thousand euros).

#### 1.12 **Reallocation**

The Borrower may at its discretion, at any time until 30 (thirty) months after the date of signature of the Contract reallocate in accordance with Article 1.10 any part of such Tranche already allocated but in respect of which no disbursement has been made by the Borrower to the Final Beneficiary.

#### 1.13 **Failure to Allocate**

In the event that the Borrower, having received a disbursement under this Contract, does not advance the amount received to the relevant Final Beneficiary through the relevant On-Lending Agreement within 6 (six) months of receipt of the relevant Allocation Letter in respect of each Sub-Financing, it shall immediately inform the Bank thereof.

The Bank, in consultation with the Borrower, may agree to an extension of the term above or may by notice to the Borrower require the repayment of the amount not advanced to the Final Beneficiaries in accordance with Article 4.03A(6) (*Non-performance by Final Beneficiary*), subject to the right of the Borrower to re-allocate pursuant to Article 1.12 (*Reallocation*).

#### 1.14 **EIB Allocation Report**

- (a) The Borrower acting through the Promoter shall establish and maintain an internal reporting system for the monitoring of the Allocations (the "**EIB Allocation Report**").
- (b) The EIB Allocation Report shall contain the name of each Final Beneficiary, the dates and amounts of disbursements by the Borrower to the respective Final Beneficiary as well as their interest rate (or equivalent) and duration and any other information in tabular form specified in the Side-Letter.
- (c) The Borrower acting through the Promoter or the PIU shall provide the Bank with the EIB Allocation Report for each disbursed Tranche, including evidence of the average financial advantage transferred to the Final Beneficiaries as well as information on all Sub-Projects to which allocations have been made under this Contract, at the Bank's request and in any case at prior to the disbursement of any subsequent Tranche.

**ARTICLE 2**  
**The Loan**

**2.01**     **Amount of Loan**

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.

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

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrower in the currency in which the Tranche is disbursed.

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.

**2.03**     **Confirmation by the Bank**

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 showing the Disbursement Date, currency, the amount disbursed, the repayment terms and the interest rate of and for that Tranche (with respect to each Tranche, an "**Amortisation Table**").

**ARTICLE 3**  
**Interest**

**3.01**     **Rate of interest**

**3.01A**   **Fixed Rate Tranches**

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. If the period from the Disbursement Date to the first Payment Date is 30 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).

**3.01B**   **Floating Rate Tranches**

The Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate quarterly, semi-annually or 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 30 (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.

If pursuant to Articles 1.05 and 1.06 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date the Relevant Interbank Rate 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:

- (a) for overdue sums related to Floating Rate Tranches, the applicable Floating Rate plus 2% (200 basis points);
- (b) for overdue sums related to Fixed Rate Tranches, the higher of:
  - (i) the applicable Fixed Rate plus 2% (200 basis points); and
  - (ii) the Relevant Interbank Rate plus 2% (200 basis points);
- (c) for overdue sums other than under (i) or (ii) above, the Relevant Interbank Rate plus 2% (200 basis points)

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the Relevant Interbank Rate 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.

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**

If at any time from the receipt by the Bank of a Disbursement Acceptance in respect of a Tranche until the date falling two (2) 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:

- (a) the rate of interest applicable to such Accepted Tranche until the Maturity Date, shall be 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; and
- (b) the Spread or Fixed Rate previously notified by the Bank in the Disbursement Offer shall no longer be applicable.

## **ARTICLE 4 Repayment**

### 4.01 **Normal repayment**

#### 4.01A **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.

- (b) Each Amortisation Table shall be drawn up on the basis that:
- (i) 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;
  - (ii) 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 fourth 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 4 (four) years and not later than 12 (twelve) 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:

- (a) the Prepayment Amount;
- (b) the Prepayment Date;
- (c) if applicable, the choice of application method of the Prepayment amount in line with Article 5.05C(i); and
- (d) the contract number ("FI nr.") mentioned on the cover page of this Contract.

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 in respect of the Fixed Rate Tranche which is being prepaid.

###### **4.02B(2) FLOATING RATE TRANCHE**

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

##### **4.02C Prepayment mechanism**

Upon presentation by the Borrower to the Bank of a Prepayment Request, the Bank shall issue a Prepayment Notice to the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date. The Prepayment Notice shall specify the Prepayment Amount, the accrued interest due thereon, the Prepayment Indemnity payable under Article 4.02B or, as the case may be, that no indemnity is due, the method of application of the Prepayment Amount and the Acceptance Deadline.

If the Borrower accepts the Prepayment Notice no later than by the Acceptance Deadline, it shall effect the prepayment. In any other case, the Borrower may not effect the prepayment.

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

### 4.03 **Compulsory prepayment**

#### 4.03A **Grounds for prepayment**

##### 4.03A(1) PROJECT COST REDUCTION

If the total cost of the Project should be reduced from the figure stated in Recital (6) to a level at which the amount of the Credit exceeds 50% (fifty *per cent*) of such cost, the Bank may in proportion to the reduction forthwith, by notice to the Borrower, cancel the Credit and/or demand prepayment of the Loan. 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:

- (a) such prepayment is not made within a revolving credit facility (save for the cancellation of the revolving credit facility); or
- (b) such prepayment is not made out of the proceeds of a loan or other indebtedness 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 respect to the Borrower. 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. After the earlier of (a) the lapse of 30 (thirty) days from the date of such request for consultation and (b) the occurrence of the anticipated Change-of-Law Event, the Bank may, by notice to the Borrower, cancel the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued and 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.

##### 4.03A(4) NON-PERFORMANCE BY FINAL BENEFICIARY

If the Bank determines that a Final Beneficiary has failed to comply with any obligation envisaged under Article 6.03 in respect of a Sub-Project, it may give notice thereof to the Borrower. Within a period of 30 (thirty) days following the giving of such notice, the Borrower shall, at its option, either (a) reallocate the relevant portion of the Loan to another Sub-Project, or (b) prepay to the Bank the amount on lent to the respective Final Beneficiary.

#### 4.03A(5) NON-PERFORMANCE BY INTERMEDIARY BANK OR OTHER INTERMEDIARY ENTITY

If the Bank determines that an Intermediary Bank or any other intermediary entity, as the case may be, has failed to comply with any obligation envisaged under Article 6.02 in respect of a Sub-Project, it may give notice thereof to the Borrower. Within a period of 30 (thirty) days following the giving of such notice, the Borrower shall, at its option, either (a) re-allocate the relevant portion of the Loan to another Sub-Project, or (b) prepay to the Bank the amount on lent to the respective Intermediary Bank or any other intermediary entity.

#### 4.03A(6) ILLEGALITY

If:

- (a) it becomes unlawful in any EU jurisdiction or in the Republic of Moldova for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan; or
- (b) the Framework Agreement is or is likely to be:
  - (i) repudiated by the Republic of Moldova or not binding on the Republic of Moldova in any respect; or
  - (ii) not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms; or
  - (iii) breached, in that any obligation assumed by the Republic of Moldova under the Framework Agreement ceases to be fulfilled as regards any loan made to any borrower in the territory of Moldova from the resources of the Bank, or the EU.
- (c) in relation to the EU Guarantee:
  - (i) it is no longer valid or in full force and effect;
  - (ii) the conditions for cover thereunder are not fulfilled; or
  - (iii) it is not effective in accordance with its terms or is alleged to be ineffective in accordance with its terms;

the Bank may, by notice to the Borrower, immediately (i) suspend or cancel the undisbursed portion of the Credit and/or (ii) 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(7) OTHER COMPULSORY PREPAYMENT

The Borrower shall prepay immediately to the Bank the part of the Loan that has not been allocated or re-allocated or which has been allocated or re-allocated but which has not been disbursed by the Borrower to a Final Beneficiary within 24 months after the Disbursement Date.

#### 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 and Article 4.04 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.

#### 4.04 **General**

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

If 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.

## **ARTICLE 5 Payments**

### **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 in accordance with the following conventions:

- (a) for a Fixed Rate Tranche, a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days;
- (b) for a Floating Rate Tranche, a year of 360 (three hundred and sixty) days (but 365 (three hundred and sixty five) days (invariable) for GBP) and the number of days elapsed; and
- (c) in respect of fees, a year of 360 (three hundred and sixty) days (but 365 (three hundred and sixty five) days (invariable) for fees due in GBP) and the number of days elapsed.

### **5.02 Time and place of payment**

Unless otherwise specified in this Contract or in the Bank's demand, all sums other than sums of interest, indemnity and principal are payable within 7 (seven) 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.

The Borrower shall indicate in each payment made hereunder the contract number ("FI nr") found on the cover page of this Contract.

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

Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank.

### **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 Disruption to Payment Systems**

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; and
- (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:

- (i) 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
  - (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.

A *Project undertakings*

**6.01 Use of Loan and availability of other funds**

- (a) The Borrower undertakes to the Bank to transfer a financial advantage conferred by this Contract to the Final Beneficiaries in an effective and transparent manner and to provide the Bank with all such information and documentation as the Bank may reasonably request in order to verify compliance by the Borrower with this Article 6.01.
- (b) The Borrower shall make the proceeds of the Loan available to the Promoter or Intermediary Bank or other intermediary entity, as the case may be, on terms and conditions acceptable to the Bank.
- (c) The Borrower shall ensure that it has available to it the funds referred to in Recital (6) to provide the funding to complete the public sector components of the Project and that such funds are expended, to the extent required, on the financing of the Project.
- (d) The Borrower shall, and shall ensure that the Promoter shall, use the proceeds of the Loan all amounts borrowed by the Borrower under this Contract, solely for the purpose of financing Sub-Projects to which allocations have been made under Articles 1.11 to 1.12.

- (e) If:
- (i) a Sub-Financing is prepaid by a Final Beneficiary;
  - (ii) monies made available to a Final Beneficiary under an On-Lending Agreement are paid or repaid by the relevant Final Beneficiary;
  - (iii) the eligible Sub-Project costs as defined in the Side-Letter are substantially reduced, to the extent that the funds provided by the Bank for the relevant Sub-Project exceed the eligible amount provided in the Side-Letter; or
  - (iv) a Final Beneficiary is not in compliance with the provisions of the relevant On-Lending Agreement implementing Article 6.03.

a corresponding part of the Loan shall be used by the Borrower for the purpose of financing other Sub-Projects which satisfy the criteria set out in the Side-Letter referred to in the Recitals, save to the extent that the Borrower voluntarily prepays the sum in question under Article 4.02.

In the case of such re-employment of funds, the allocation provisions of Article 1.11 are not applicable. The Bank reserves the right to request from the Borrower a list of such re-employments of funds in a form corresponding to the EIB Allocation Report.

- (f) If monies, made available to a Final Beneficiary under an On-Lending Agreement in the form of subloans/subleases with a term not exceeding the term of the Loan, are paid or repaid by the relevant Final Beneficiary, a corresponding part of the Loan shall be used by the Borrower for the purpose of financing other Sub-Projects which satisfy the criteria set out in the Side-Letter referred to in the Recitals and with a term not exceeding the term of the Loan, save to the extent that the Borrower voluntarily prepays the sum in question under Article 4.02. In the case of such re-employment of funds, the allocation provisions of Article 1.11 shall be applicable.
- (g) Each sub-project financed by such re-employment of funds shall be deemed to be a Sub-Project.

## 6.02 Sub-Financing Agreements

The Borrower shall, and shall procure that the Promoter shall:

- (a) ensure that each Sub-Financing Agreement with an Intermediary Bank is substantially the same as the model Sub-Financing Agreement approved under Article 1.04A;
- (b) ensure that the amount of financing by the Bank may not exceed 50% (fifty *per cent.*) of the relevant Sub-Project cost;
- (c) ensure that each Intermediary Bank or other intermediary entity is informed within each Sub-Financing Agreement of the origin of the funds or investments placed at the latter's disposal under this Contract;
- (d) ensure, to the satisfaction of the Bank, appropriate product labelling by including a reference to the Bank in the product name or product documentation;
- (e) insert on its website an information page on the Bank's activity in favour of the Project, including eligibility criteria and a reference to the advantageous conditions of the Bank;
- (f) ensure that the financial conditions applied to each Sub-Financing Agreement reflect the advantage of the Bank's funding and that such advantage (to be determined from time to time by the Bank for each Intermediary Bank or other intermediary entity) is clearly estimated and transparently indicated to the respective Final Beneficiary by including in each Sub-Financing Agreement the following clause:

***"Participation of the European Investment Bank.***

*The European Investment Bank, the financing institution of the European Union established by article 308 of the Treaty on the Functioning of the European Union, participates side-by-side with local financial institutions in the financing of investment programmes which form part of the objectives of the European Union. The present loan satisfies all eligibility criteria for financing by the European Investment Bank. The [#] grants to the [e] a financial advantage reflected on the interest rate. Such financial advantage amounts to a minimum of 25 bps (twenty five basis points) per annum compared to the annual interest rate the [#] would charge for this loan without EIB participation"*

- (g) ensure that in each Sub-Financing Agreement the Intermediary Bank or other intermediary entity undertakes to:
- (i) use the Sub-Financing solely for the implementation of the Sub-Project concerned;
  - (ii) conform with terms accurately reflecting the requirements of the Bank applicable to the Sub-Project each as notified in writing to the Borrower by the date of the relevant Letter of Allocation or, as the case may be, by the time of the relevant re-employment decision pursuant to Article 6.01;
  - (iii) permit persons designated by the Bank, including representatives of the European Court of Auditors, to visit the offices of the Intermediary Bank or other intermediary entity and to conduct such checks as they may wish, and provide them, or ensure that they are provided, with all necessary information and assistance for this purpose;
  - (iv) prepay the Sub-Financing in case of non-compliance with the above terms and conditions;
  - (v) ensure that its books and accounting records fully reflect the operations relating to the financing, execution and operation of the Sub-Project;
  - (vi) represent that to the best of its knowledge no funds invested in the Sub-Project are of illicit origin, including products of money laundering or linked to the financing of terrorism, as well as to promptly inform the Borrower if at any time it becomes aware of the illicit origins of any such funds;
  - (vii) not to engage in (and not to authorise or permit any affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with the Sub-Project, any tendering procedure for the Sub-Project, or any transaction contemplated by the Sub-Financing Agreement;
  - (viii) take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct;
  - (ix) not to enter into a business relationship with any Sanctioned Person;
  - (x) not to make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;
  - (xi)
    - (i) take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies, who has become a Sanctioned Person or has been convicted by a final and irrevocable court ruling for Prohibited Conduct perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such Intermediary Bank or other intermediary entity (and/or any such member of its management bodies) is excluded from any activity in relation to any funds made available by the Borrower under the relevant Sub-Financing Agreement or in relation to the relevant Sub-Project; and
    - (ii) promptly inform the Borrower of any measure taken pursuant to this Article 6.02(g)(xi)(i) above;
  - (h) use its rights under each Sub-Financing Agreement also in the interest of the Bank;
  - (i) ensure that each Sub-Financing Agreement contains terms and conditions consistent with this Contract;
  - (j) request any disbursements from, and make any payments to, the Borrower under a Sub-Financing Agreement to a bank account in the name of such Intermediary Bank held with a duly authorised financial institution in Moldova; and
  - (k) reflect the financial conditions of the relevant provisioning from the Bank to the Borrower in the relevant Sub-Financing Agreements.

### 6.03 On-Lending Agreements

The Borrower shall, and shall ensure that the Promoter shall, ensure that each Intermediary Bank shall:

- (a) ensure that each On-Lending Agreement with a Final Beneficiary is substantially the same as the model On-Lending Agreement approved under Article 1.04A;
- (b) ensure that the amount of financing by the Bank does not exceed 50% (fifty *per cent.*) of the relevant Sub-Project cost;
- (c) ensure that each Final Beneficiary is informed in each On-Lending Agreement of the origin of the funds or investments placed at the latter's disposal under this Contract;
- (d) ensure, to the satisfaction of the Bank, appropriate product labelling by including a reference to the Bank in the product name or product documentation;
- (e) insert on its website an information page on the Bank's activity in favour of the Project, including eligibility criteria and a reference to the advantageous conditions of the Bank;
- (f) ensure that the financial conditions applied to each On-Lending Agreement reflect the advantage of the Bank's funding and that such advantage (to be determined from time to time by the Bank for each intermediary) is clearly estimated and transparently indicated to the respective Final Beneficiary by including in each On-Lending Agreement the following clause:

***Participation of the European Investment Bank.***

*The European Investment Bank, the financing institution of the European Union established by Article 308 of the Treaty on the Functioning of the European Union, participates side-by-side with local financial institutions in the financing of investment programmes which form part of the objectives of the European Union. The present loan satisfies all eligibility criteria for financing by the European Investment Bank. The [#] grants to the [#] a financial advantage reflected on the interest rate. Such financial advantage amounts to a [#] bps ([#] basis points) per annum compared to the annual interest rate the [#] would charge for this loan without EIB participation".*

- (g) ensure that in each On-Lending Agreement the Final Beneficiary undertakes to:
  - (i) use the Sub-Financing solely for the implementation of the Sub-Project concerned;
  - (ii) complete the Sub-Project within a period specified in the Allocation Request made by the Borrower;
  - (iii) conform with terms accurately reflecting the requirements of the Bank applicable to the Sub-Project, each as notified in writing to the Borrower by the date of the relevant Letter of Allocation or, as the case may be, by the time of the relevant re-employment decision pursuant to Article 6.01;
  - (iv) purchase equipment, secure services and order works for the Sub-Project by open international tender or other acceptable procurement procedure complying, to the Bank's satisfaction, with its policy as described in its Guide to Procurement in force at the date of this Contract;
  - (v) maintain, repair, overhaul and renew all property forming part of the Sub-Project as required to keep it in good working order;
  - (vi) unless the Bank has given its prior written consent, retain title to and possession of all or substantially all the assets comprising the Sub-Project or, as appropriate, replace and renew such assets and maintain the Sub-Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the Sub-Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
  - (vii) permit persons designated by the Bank, including representatives of the European Court of Auditors, to visit the sites, installations and works comprising the Sub-Project and to conduct such checks as they may wish, and provide them, or ensure that they are provided, with all necessary information and assistance for this purpose;

- (vii) insure all works and property forming part of the Project with insurance companies acceptable to the Bank in accordance with the most comprehensive relevant industry practice for similar works of public interest;
- (ix) maintain in force all rights of way or use and all permits necessary for the execution and operation of the Sub-Project;
- (x) execute and operate the Sub-Project in accordance with the relevant standards of EU law to the extent implemented by the laws of the Republic of Moldova or specified by the Bank prior to the date of this Contract, as well as the relevant laws of the Republic of Moldova;
- (xi) confirm, upon request, that they have obtained all relevant Authorisations (for construction and operation) to comply with national laws on environment and competition;
- (xii) prepay the Sub-Financing in case of non-compliance with the above terms and conditions;
- (xiii) ensure that its books and accounting records fully reflect the operations relating to the financing, execution and operation of the Sub-Project;
- (xiv) take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct;
- (xv) not to enter into a business relationship with any Sanctioned Person;
- (xvi) not to make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person;
- (xvii) (i) take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies, who has become a Sanctioned Person or has been convicted by a final and irrevocable court ruling for Prohibited Conduct perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such Final Beneficiary (and/or any such member of its management bodies) is excluded from any activity in relation to any funds made available by the Borrower under the relevant Sub-Financing Agreement or in relation to the relevant Sub-Project;
- (ii) promptly inform the Borrower of any measure taken by such Final Beneficiary pursuant to this Article 6.03(g)(xvii).above; and
- (xviii) represent to the Intermediary Bank that to the best of its knowledge no funds invested in the Sub-Project by such Final Beneficiary are of illicit origin, including products of money laundering or linked to the financing of terrorism as well as to promptly inform the Intermediary Bank if at any time it becomes aware of the illicit origins of any such funds;
- (xix) not to engage in (and not to authorise or permit any affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with the Sub-Project, any tendering procedure for the Sub-Project, or any transaction contemplated by the On-Lending Agreement; and
- (xx) request any disbursements from, and make any payments to, the Intermediary Bank under an On-Lending Agreement to a bank account in the name of such Final Beneficiary held with a duly authorised financial institution in Moldova
- (h) use its rights under each On-Lending Agreement also in the interest of the Bank;
- (i) shall ensure that each On-Lending Agreement contains terms and conditions consistent with this Contract; and
- (j) reflect the financial conditions of the relevant provisioning from the Bank to the Borrower in the relevant On-Lending Agreement.

**6.04 Increased cost of Project**

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

**6.05 Procurement procedure**

For Sub-Projects directly financed and implemented by the Borrower or the Promoter or any other public sector entity or entity having received an equity injection from the Republic of Moldova under the Loan, the Borrower undertakes to, and to procure that the Promoter or other such entity shall, purchase equipment, secure services and order works for the Project by open international tender, where required, or other acceptable procurement procedure complying, to the Bank's satisfaction, with its policy as described in its Guide to Procurement in force at the date of this Contract.

**6.06 Continuing Project undertakings**

- (a) The Borrower shall, and shall procure that the Promoter will:
- (i) **Products:** procure that all investments under the Sub-Projects in orchards, table grape vineyards, post-harvesting infrastructure, processing and related industries are made with the purpose of the production of fruits and processed products;
  - (ii) **Business Plans:** procure that all investments under the Sub-Projects in orchards, table grape vineyards, post-harvesting infrastructure, processing and related industries are supported by pluri-annual business plans satisfactory to the PIU and to the Bank;
  - (iii) **EIA:** procure that no funds will be allocated to Final Beneficiaries for Sub-Projects requiring an EIA until the respective EIA is submitted to the satisfaction of the Bank;
  - (iv) **Eligible Costs:** acknowledge and agree that under this Contract the eligible costs for orchards and table grape vineyards are based on predetermined levels per hectare of EUR 1,000 (one thousand euros) for grubbing-up and EUR 10,000 (ten thousand euros) for planting, replanting and/or restructuring.
- (b) The Borrower shall, for Sub-Projects directly financed and implemented by the Borrower, and shall procure that the Promoter and the Final Beneficiaries (as applicable) will, for Sub-Projects implemented by the Promoter and the Final Beneficiaries (as applicable):
- (i) **Maintenance:** maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order;
  - (ii) **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 relevant Sub-Project or, as appropriate, replace and renew such assets and maintain the relevant Sub-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 relevant Sub-Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
  - (iii) **Rights and Permits:** maintain in force all rights of way or use and all permits necessary for the execution and operation of the relevant Sub-Project;
  - (iv) **Environment:** implement and operate the relevant Sub-Project in conformity with Environmental Law; and
  - (v) **EU law:** execute and operate the relevant Sub-Project in accordance with the relevant standards of EU law to the extent implemented by the laws of the Republic of Moldova or specified by the Bank prior to the date of this Contract.

6.07 **Integrity Commitment**

(a) **Prohibited Conduct:**

- (i) The Borrower shall not (and shall ensure that the Promoter shall not) engage in (and shall not authorise or permit any affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with the Project, any tendering procedure for the Project, or any transaction contemplated by the Contract.
- (ii) The Borrower undertakes (and shall procure that the Promoter shall undertake) to take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct.
- (iii) The Borrower undertakes (and shall procure that the Promoter shall undertake) to ensure that contracts financed by this Loan include the necessary provisions to enable the Borrower and/or the Promoter to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project.

(b) **Sanctions:**

The Borrower shall not (and shall ensure that the Promoter shall not):

- (i) enter into a business relationship with any Sanctioned Person; or
- (ii) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person.

(c) **Management:**

The Borrower undertakes (and shall procure that the Promoter shall undertake) to take within a reasonable timeframe appropriate measures in respect of any duly authorised agents, representatives of the Borrower and/or the Promoter (as applicable) having direct decision and control powers in relation to the Loan and to the Project who:

- (i) becomes a Sanctioned Person; or
- (ii) is the subject of a final and irrevocable court ruling in connection with the Prohibited Conduct perpetrated in the course of the exercise of their professional duties,

in order to ensure that such person is suspended, dismissed or in any case excluded from any of the Borrower's and/ or Promoter's activities (as applicable) in relation to the Loan and to the Project.

(d) **FATF:**

The Borrower shall ensure (and shall procure that the Promoter ensures) that each Intermediary Bank or other intermediary shall institute, maintain and comply with internal procedures and controls in compliance with the Financial Action Task Force recommendations and standards, as amended and supplemented from time to time.

6.08 **Project Implementation Unit**

In order to co-ordinate, manage, monitor and evaluate all aspects of Project implementation, including the procurement of goods, works and services for the Project, the Borrower shall procure that the Promoter, unless otherwise agreed with the Bank, establishes or enhances the capacity of the existing PIU and at all times during execution of the Project operates a PIU with adequate resources and suitably qualified personnel as well as an international consultant as referred to in Article 1.04A(I), under terms of reference acceptable to the Bank. The Borrower shall procure that the Promoter entrusts the PIU with the overall co-ordination of the Project and the responsibility for the implementation of the Project. The PIU shall act as the Bank's counterpart in all technical, financial, investment selection, disbursement facilitation, accounting/auditing, reporting, procurement and administration matters.

The Borrower, through the Promoter, undertakes to ensure that the Bank can, at the sole discretion of the Bank, directly access any international consultant working on the Project at any time.

B. *General undertakings*

**6.09 Compliance with laws**

The Borrower shall, and shall ensure that the Promoter shall, comply in all respects with all laws to which it, the Project or the Sub-Projects are subject where failure to do so results or is reasonably likely to result in a Material Adverse Change.

**6.10 General Representations and Warranties**

The Borrower represents and warrants to the Bank that:

- (a) 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:
  - (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
  - (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;
- (e) 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 or any of its subsidiaries any unsatisfied judgement or award;
- (g) it has obtained all necessary consents, Authorisations in connection with this Contract and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (h) neither the Borrower, nor the Promoter, nor any other person acting on its or their behalf or under its or their control has committed nor will commit:
  - (i) any Prohibited Conduct in connection with the Project or any transaction contemplated by the Contract, or
  - (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;
- (i) the Project (including, without limitation, the negotiation, award and performance of contracts financed or to be financed by the Loan) has not involved or given rise to, any Prohibited Conduct;
- (j) it shall comply with the requirements and conditions contained in the Side-Letter;
- (k) the Borrower is a state party to the New York Convention and any arbitral award or judgment obtained in accordance with the terms of this Contract will be recognised and enforced under the laws of Moldova;
- (l) to the best of its knowledge having made all reasonable enquiries, no funds invested in the Project are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism; and
- (m) 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.

The representations and warranties set out above shall survive the execution of this Contract and are deemed repeated on each Scheduled Disbursement Date and each Payment Date.

## 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 External Debt Instruments except for obligations mandatorily preferred by laws of general application.

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 External 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 External 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 External Debt Instrument bears to the total debt outstanding under that Instrument. For this purpose, any payment of an External 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 External Debt Instrument have subscribed, shall be disregarded.

In this Contract, "**External Debt Instrument**" means (a) 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 granted by the Borrower for an obligation of a third party; provided in each case that such obligation is: (i) governed by a system of law other than the law of the Borrower; or (ii) payable in a currency other than the currency of the Borrower's country; or (iii) payable to a person incorporated, domiciled, resident or with its head office or principal place of business outside the Borrower's country.

### 7.02 Additional Security

Should the Borrower grant to a third party any security for the performance of any External 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 medium or long term financial creditor a financing agreement that includes a loss-of-rating clause and/or a cross default clause and/or a *pari passu* clause, if applicable, that is stricter than any equivalent provision of this Contract, the Borrower shall so inform the Bank 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 and the Sub-Projects**

The Borrower shall (and shall ensure that the Promoter shall):

(a) deliver to the Bank:

- (i) the information in content and in form, and at the times, specified in Schedule A or otherwise as agreed from time to time by the parties to this Contract; and
- (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental impact of or for the Project and/or a Sub-Project, and/or any Allocation Request, 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, including, *inter alia*, in respect of the price, design, plans, timetable or to the expenditure programme or financing plan for the Project, in relation to the disclosures made to the Bank prior to the signing of this Contract;
- (c) if so requested by the Bank, provide to or procure for the Bank promptly all documents and information necessary to enable the Bank to follow the physical and financial progress of each Sub-Project and the financial condition of each Final Beneficiary;
- (d) if so requested, deliver to the Bank a copy of any Sub-Financing Agreement, On-Lending Agreement or any or analogous agreement or instrument and any addendum or amendment thereto;
- (e) promptly inform the Bank of:
  - (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower or any material litigation that is commenced or threatened against it with regard to environmental or other matters affecting the Project; and
  - (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project; and
- (f) immediately inform the Bank in writing of the occurrence of the due ratification of this Contract in accordance with the applicable laws of the Republic of Moldova;
- (g) at the end of each Allocation Period, provide to the Bank evidence of the average funding advantage transferred to the Final Beneficiaries;
- (h) generally inform the Bank of any fact or event known to it which, in the Borrower's reasonable opinion, might materially prejudice or affect the conditions of execution or operation of any Sub-Project or the general condition of any Final Beneficiary;
- (i) deliver to the Bank all documents and information that may be reasonably requested by the Bank concerning the financing, implementation and operation of each Sub-Project and the activities and financial condition of each Final Beneficiary;
- (j) ensure that in each Sub-Financing Agreement each Intermediary Bank and in each On-Lending Agreement each Final Beneficiary undertakes to inform the Borrower of any genuine allegation, complaint or information relating to Prohibited Conduct in connection with any funds made available under the Sub-Financing or any Sub-Project;

- (k) as soon as it becomes aware thereof with respect to a Sub-Financing, or as soon as it is informed thereof by the Final Beneficiary under the terms of the On-Lending Agreement or an Intermediary Bank under the terms of a Sub-Financing Agreement, promptly inform the Bank of a genuine allegation, complaint or information with regard to Prohibited Conduct related to any funds made available under the Sub-Financing or any Sub-Project;
- (l) as soon as it becomes aware thereof, or as soon as it is informed thereof by the Final Beneficiary under the terms of the On-Lending Agreement or an Intermediary Bank under the terms of a Sub-Financing Agreement, promptly inform the Bank if at any time it becomes aware of the illicit origin, including products of money laundering or linked to the financing of terrorism with respect to a Sub-Financing or a Sub-Project; and
- (m) as soon as it becomes aware thereof, or as soon as it is informed thereof by the Final Beneficiary under the terms of the On-Lending Agreement or by an Intermediary Bank under the terms of a Sub-Financing Agreement, promptly inform the Bank of any measure taken by the Intermediary Bank or Final Beneficiary pursuant to Article 6.02 or 6.03;
- (n) promptly inform the Bank a genuine allegation or complaint with regard to any Prohibited Conduct related to the Sub-Project; and
- (o) promptly inform the Bank should it become aware of any fact or information confirming or reasonably suggesting that a) any Prohibited Conduct has occurred in connection with the Sub-Project or b) any of the funds invested in its share capital or in the Sub-Project was derived from illicit origin

**8.02 Information concerning the Borrower, the Intermediary Banks or other intermediary entity and/or the Final Beneficiaries**

The Borrower shall (and shall ensure that the Promoter shall):

- (a) deliver to the Bank:
  - (i) each year, within one month after the approval of the State Budget, a summary of it in tabular form;
  - (ii) annually audited financial statements of the PIU and, at the Bank's request, of the Intermediary Banks or other intermediary entities prepared in accordance with IFRS or general accounting standards used in the Republic of Moldova;
  - (iii) from time to time, such further information on its or the Promoter's, the Intermediary Bank's or other intermediary entity's or a Final Beneficiary's general financial situation as the Bank may reasonably require;
- (b) ensure that its accounting records fully reflect the operations relating to the financing, execution and operation of the Project; and
- (c) inform the Bank immediately of:
  - (i) any material alteration to the statutes or shareholding structure of any Intermediary Bank or other intermediary entity after the date of its incorporation;
  - (ii) any fact which obliges it to prepay any financial indebtedness or any EU funding;
  - (iii) any event or decision that constitutes or may result in the events described in Article 4.03A;
  - (iv) any intention on its part or the part of the Promoter to grant any security over any of its assets in favour of a third party;
  - (v) any intention on its part or the part of the Promoter or a Final Beneficiary to relinquish ownership of any material component of the Project or a Sub-Project;
  - (vi) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract;
  - (vii) any fact or event which results in any of its duly authorised agents, representatives of the Borrower and/or the Promoter (as applicable) having direct decision and control powers in relation to the Loan and to the Project being a Sanctioned Person;

- (viii) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the Borrower, the Promoter or its duly authorised agents, representatives of the Borrower and/or the Promoter (as applicable) having direct decision and control powers in relation to the Loan and to the Project in connection with Prohibited Conduct related to the Loan or the Project;
- (ix) any measure taken by the Borrower or the Promoter pursuant to Article 6.07 of this Contract (including measures taken to seek damages from the persons responsible for any loss resulting from any act of the nature described in Article 6.07);
- (x) any event listed in Article 10.01 having occurred or being threatened or anticipated; or
- (xi) 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 Visits, Rights of Access and Investigations**

- (a) The Borrower shall (and shall ensure that the Promoter shall and in each Sub-Financing Agreement each Intermediary Bank and in each On-Lending Agreement each Final Beneficiary shall) allow, and shall procure that, persons designated by the Bank, as well as persons designated by competent EU institutions including (without limitation) the Court of Auditors of the European Communities, the European Commission and the European Anti-Fraud Office to:
  - (i) visit the sites, installations and works comprising the Project, and to conduct such checks as they may wish for purposes connected with this Contract and the financing of the Project;
  - (ii) interview representatives of the Borrower, the Promoter, each Intermediary Bank and each Final Beneficiary and not obstruct contacts with any other person involved in or affected by the Project; and
  - (iii) review the 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.
- (b) The Borrower shall (and shall ensure that the Promoter and in each Sub-Financing Agreement each Intermediary Bank and in each On-Lending Agreement each Final Beneficiary shall) facilitate investigations by the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.
- (c) The Borrower shall (and shall ensure that the Promoter and in each Sub-Financing Agreement each Intermediary Bank and in each On-Lending Agreement each Final Beneficiary shall) acknowledge that the Bank may be obliged to communicate information relating to the Borrower, the Promoter and/or the Project to any competent institution or body of the European Union including the Court of Auditors of the European Communities, the European Commission and the European Anti-Fraud Office as are necessary for the performance of their task in accordance with the laws of the European Communities and also in accordance with the relevant mandatory provisions of European Union law.

### **8.04 Language**

Documents (other than constitutional documents, statutory and other official documents, internal Borrower and/or Promoter's regulation and documents related to the Final Beneficiaries other than the Sub-Financing Agreements), evidence, notices and communications provided or made by the Borrower and/or the Promoter pursuant to this Contract shall be provided in the English language. Where documents are not provided in the English language, the Borrower or the Promoter shall simultaneously provide a certified translation thereof into the English language.

**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 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 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 (i) 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.
- (c) 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.

**ARTICLE 10**  
**Events of default**

**10.01 Right to demand repayment**

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.

#### 10.01A Immediate demand

The Bank may make such demand immediately:

- (a) 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 (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within 3 Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of the Borrower or the Promoter or any representation or statement made or deemed to be made by the Borrower in this Contract or in connection with the negotiation of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of the Borrower in relation to any loan, or any obligation arising out of any financial transaction, other than this Loan granted by the Bank:
  - (i) 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
  - (ii) any financial commitment for such other loan or obligation is cancelled or suspended.
- (d) if the Borrower or the Promoter is unable to pay its debts as they fall due, or suspends its debts, or makes or, without prior written notice to the Bank, seeks to make a composition with its creditors;
- (e) if the Borrower or the Promoter defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (f) if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or the Promoter or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (g) if a Material Adverse Change occurs, as compared with the Borrower or the Promoter's condition at the date of this Contract;
- (h) 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 by the Borrower to be ineffective in accordance with its terms;
- (i) 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 territory from the resources of the Bank, or the EU;
- (j) if the conditions for cover under the EU Guarantee are not fulfilled or if the EU Guarantee ceases to be valid, effective or enforceable in accordance with its terms; or
- (k) if the Borrower or the Promoter 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 other obligation to be fulfilled in connection with the receipt of any funds by the Borrower or the Promoter from the EU.

#### 10.01B Demand after notice to remedy

The Bank may also make such demand:

- (a) if the Borrower fails to comply with any obligation related to the Borrower or the Project 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,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied 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 law.

**ARTICLE 11  
Law and jurisdiction**

**11.01 Governing Law**

This Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by English law.

**11.02 Arbitration**

Any dispute arising out of or connected with this Contract, including a dispute as to the validity or existence of this Contract and/or this Article 11.02, shall be resolved by arbitration in The Hague conducted in the English language by three arbitrators pursuant to the rules of the United Nations Commission on International Trade Law ("**UNCITRAL**"). save that, unless the parties agree otherwise:

- (a) the third arbitrator, who shall act as chairman of the tribunal, shall be chosen by the two arbitrators appointed one each by or on behalf of the Borrower and the Bank. If he is not chosen by the two arbitrators within 30 days of the date of appointment of the later of the two party-appointed arbitrators to be appointed, he shall be appointed by the London Court of International Arbitration (the "**LCIA**");
- (b) no arbitrator shall be of the same nationality as any party (and for the purposes of this Article, the nationality of the Bank shall be deemed to be Luxembourg);
- (c) neither party shall be required to give general discovery of documents, but may be required only to produce specific, identified documents which are relevant to the dispute;

- (d) the tribunal shall not take or provide and the Borrower shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank; and
- (e) the parties agree to waive any right of appeal against the arbitration award.

The appointing authority shall be the LCIA.

**11.03 Recourse to courts**

This Article 11.02 (*Arbitration*) is governed by English law. The Parties exclude the jurisdiction of all courts to the extent permitted by any applicable law.

**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 Waiver of immunity**

To the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, enforcement, attachment or other legal process, the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

**11.06 Contracts (Rights of Third Parties) Act 1999**

No term of this Contract is intended to be enforceable by any third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded and shall not apply.

**11.07 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.

**11.08 Entire Agreement**

- (a) This Contract and any Side-Letter entered into in connection therewith:
  - (i) represents the entire understanding and constitutes the entire agreement between the Parties in relation to its subject matter; and
  - (ii) supersedes any and all previous discussions, correspondence, representations (of whatever nature) and agreements between the Parties with respect thereto, notwithstanding the existence of any provision of any such prior agreement that any rights or provisions of such prior agreement shall survive its termination.
- (b) Each Party hereby acknowledges that it has not relied upon any statement or representation made by any Party other than those contained herein in agreeing to enter into this Contract.

**11.09 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.

**11.10 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.

- (a) 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.

**11.11 Amendments**

Any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

**11.12 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 98-100 boulevard Konrad Adenauer L-2950 Luxembourg Facsimile no.: +352 4379 67495
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For the Borrower	Attention: Ministry of Finance of the Republic of Moldova. Public Debt Department 7, Cosmonautilor Street MD-2005 Chisinau Republic of Moldova Facsimile no.: +373 2222-5393
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**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 and 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 Effectiveness of this Contract**

This Contract is conditional upon and shall become effective only after receipt by the Bank, in a form and substance acceptable to the Bank, of:

- (a) the legal opinion of the Minister of Justice of the Borrower pursuant to Article 1.04A(a), and
- (b) a favourable opinion of the European Commission in respect of the Credit in accordance with Statute of the Bank.

This Contract shall not become effective until the Bank sends to the Borrower a letter confirming fulfilment of the above mentioned condition 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.

**12.04 Recitals, Schedules and Annex**

The Recitals and following Schedules form part of this Contract:

Schedule A	Technical Description
Schedule B	Definition of EURIBOR and LIBOR
Schedule C	Forms for Borrower

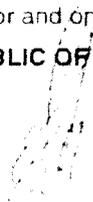
The following Annex is attached hereto:

Annex I	Form of Legal Opinion
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**IN WITNESS WHEREOF** the parties hereto have caused this Contract to be executed in four originals in the English language and have caused Vlad Loghin and Julien Brusau Cuello to initial each page of this Contract on their behalf.

At **CHISINAU**, this 31 day of July 2014

Signed for and on behalf of the  
**REPUBLIC OF MOLDOVA**



by H.E. Anatol Arapu  
Minister of Finance

Signed for and on behalf of the  
**EUROPEAN INVESTMENT BANK**



by M. Hoenicke  
Head of Division

G. Grisbrook  
Legal Counsel

CHISINAU, 27 July 2014

## A.1. TECHNICAL DESCRIPTION

### **Purpose, Location**

The project addresses the structural weaknesses in the Moldovan horticulture sector, comprising almost exclusively small and medium enterprises, by (a) developing holistically the entire horticulture value chain, (b) improving the quality of the fresh and processed produce from the nurseries to the final packaging and dispatch of products, (c) reducing the losses along the horticulture value chain by providing a safe and reliable environment for the produce, and (d) diversifying the country's export markets by ensuring that large quantities of consistent quality produce are made available to the customers.

The location of the project is the Republic of Moldova.

### **Description**

The loan will consist of three windows:

- Term loans – mainly for orchards, table grapes vineyards and associated nurseries development, regional and central trading platforms; to be intermediated through the local financial sector;
- Leasing of plant and equipment – mainly for the post-harvesting activities, including on-farm initial cooling, refrigerator trucks, cooling and storage units, grading and sorting equipment, processing equipment – through local independent/non captive leasing sector operators;
- Investments in infrastructure, e.g. testing laboratories, phyto-sanitary and quality controls, and the provision of human capital, comprising education and training facilities.

### **Calendar**

The project is expected to be implemented within 5 years from the Date of Effectiveness.

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

1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

	<b>Financial Contact</b>	<b>Technical Contact</b>
Company	<i>PIU / Ministry of Agriculture and Food Industry</i>	
Contact person	<i>Iurie BRUMAREL</i>	
Title	<i>Head of the Consolidated Unit for Implementing and Monitoring the Wine Sector Restructuring Program – PIU</i>	
Function / Department financial and technical	<i>Executive Director</i>	
Address	<i>18, Calea Basarabiei street, Chisinau, Moldova, MD-2023</i>	
Phone	<i>+373 22 260901</i>	
Fax	<i>+373 22 260901</i>	
Email	<i>Iurie.brumarel@winemoldova.md</i>	

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 procure that the Promoter shall deliver to the Bank the following information at the latest by the deadline indicated below.

<b>Document / information</b>	<b>Deadline</b>
<i>Detailed fiches for different tree plantations</i>	<i>October 1, 2014</i>
...	

### 3. 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 of reporting
Project Progress Report <ul style="list-style-type: none"> <li>- <i>A brief update on the technical description, explaining the reasons for significant changes vs. initial scope;</i></li> <li>- <i>Update on the date of completion of each of the main project's components, explaining reasons for any possible delay;</i></li> <li>- <i>Update on the cost of the project, explaining reasons for any possible cost increases vs. initial budgeted cost;</i></li> <li>- <i>A description of any major issue with impact on the environment;</i></li> <li>- <i>Update on procurement procedures (outside EU);</i></li> <li>- <i>Update on the project's demand or usage and comments;</i></li> <li>- <i>Any significant issue that has occurred and any significant risk that may affect the project's operation;</i></li> <li>- <i>Any legal action concerning the project that may be on-going.</i></li> </ul>	31 January for the preceding year	Annually

### 4. 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: <ul style="list-style-type: none"> <li>- <i>A brief description of the technical characteristics of the project as completed, explaining the reasons for any significant change;</i></li> <li>- <i>The date of completion of each of the main project's components, explaining reasons for any possible delay;</i></li> <li>- <i>The final cost of the project, explaining reasons for any possible cost increases vs. initial budgeted cost;</i></li> <li>- <i>The number of new jobs created by the project: both jobs during implementation and permanent new jobs created;</i></li> <li>- <i>A description of any major issue with impact on the environment;</i></li> <li>- <i>Update on procurement procedures (outside EU);</i></li> <li>- <i>Update on the project's demand or usage and comments;</i></li> <li>- <i>Any significant issue that has occurred and any significant risk that may affect the project's operation;</i></li> <li>- <i>Any legal action concerning the project that may be on-going.</i></li> </ul>	Within five years of the Date of Effectiveness

5. Information required 3 years after the Project Completion Report

The Borrower shall deliver to the Bank the following information 3 years after the project completion report at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank																												
<p>3 year plus report, including:</p> <table border="1" data-bbox="347 546 1059 1249"> <thead> <tr> <th data-bbox="347 546 815 573">Outputs</th> <th data-bbox="815 546 1059 573">Units</th> </tr> </thead> <tbody> <tr> <td data-bbox="347 573 815 622">Area planted/management improved</td> <td data-bbox="815 573 1059 622">Ha</td> </tr> <tr> <td data-bbox="347 622 815 672">Laboratories built and upgraded</td> <td data-bbox="815 622 1059 672">Number</td> </tr> <tr> <td data-bbox="347 672 815 721">Seedling capacity improved/increased</td> <td data-bbox="815 672 1059 721">Number of trees</td> </tr> <tr> <td data-bbox="347 721 815 784">Refrigerators, storage and grading/sorting capacity improved/built</td> <td data-bbox="815 721 1059 784">Metric tonnes</td> </tr> <tr> <td data-bbox="347 784 815 833">Processing capacity improved/built</td> <td data-bbox="815 784 1059 833">Metric tonnes</td> </tr> <tr> <td data-bbox="347 833 815 882">Cold transportation capacity built</td> <td data-bbox="815 833 1059 882">Number of units</td> </tr> <tr> <td data-bbox="347 882 815 945">Regional and central trading platforms improved/built</td> <td data-bbox="815 882 1059 945">Number</td> </tr> <tr> <th colspan="2" data-bbox="347 967 1059 994">Outcomes</th> </tr> <tr> <td data-bbox="347 994 815 1043">Small stakeholders reached by the project</td> <td data-bbox="815 994 1059 1043">Number</td> </tr> <tr> <td data-bbox="347 1043 815 1106">Production</td> <td data-bbox="815 1043 1059 1106">Metric tonnes per year</td> </tr> <tr> <th colspan="2" data-bbox="347 1128 1059 1155">Core result indicators</th> </tr> <tr> <td data-bbox="347 1155 815 1205">Employment safeguarded</td> <td data-bbox="815 1155 1059 1205">FTE</td> </tr> <tr> <td data-bbox="347 1205 815 1249">Employment created</td> <td data-bbox="815 1205 1059 1249">FTE</td> </tr> </tbody> </table>	Outputs	Units	Area planted/management improved	Ha	Laboratories built and upgraded	Number	Seedling capacity improved/increased	Number of trees	Refrigerators, storage and grading/sorting capacity improved/built	Metric tonnes	Processing capacity improved/built	Metric tonnes	Cold transportation capacity built	Number of units	Regional and central trading platforms improved/built	Number	Outcomes		Small stakeholders reached by the project	Number	Production	Metric tonnes per year	Core result indicators		Employment safeguarded	FTE	Employment created	FTE	31/01/2022
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<b>Language of reports</b>	<i>English</i>																												

## Definitions of EURIBOR and LIBOR

### A. EURIBOR

"EURIBOR" means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period 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**").

For the purposes of paragraphs (b) and (c) above, "available" means the rates that are calculated under the aegis of the EURIBOR EBF and EURIBOR ACI (or any successor to that function of the EURIBOR EBF and EURIBOR ACI as determined by the Bank) for given maturities.

"**Screen Rate**" means the rate of interest for deposits in EUR for the relevant 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 Screen 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. LIBOR USD

"LIBOR" means, in respect of USD:

- (a) in respect of a relevant period of less than one month, the Screen Rate for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period 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**").

For the purposes of paragraphs (b) and (c) above, "available" means "calculated and published" under the aegis of ICE Benchmark Administration Limited (or any successor to that function of ICE Benchmark Administration Limited as determined by the Bank) for given maturities.

"**Screen Rate**" means the rate of interest for deposits in USD for the relevant period as set by ICE Benchmark Administration Limited (or any successor to that function of ICE Benchmark Administration Limited as determined by the Bank) and released by financial news providers at 11h00, London time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") which falls 2 (two) London Business Days prior to the first day of the relevant period.

If such Screen Rate is not so released by any financial news provider acceptable to the Bank, the Bank shall request the principal London offices of 4 (four) major banks in the London interbank market selected by the Bank to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, London time, on the Reset Date, to prime banks in the London interbank market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If fewer than 2 (two) quotations are provided as requested, the Bank shall request the principal New York City offices of 4 (four) major banks in the New York City interbank market, selected by the Bank, to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, New York City time, on the day falling 2 (two) New York Business Days after the Reset Date, to prime banks in the European market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

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

If no rate is available as provided above, LIBOR 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.

### C. LIBOR GBP

"LIBOR" means, in respect of GBP:

- (a) in respect of a relevant period of less than one month, the Screen Rate for a term of one month;
- (b) in respect of a relevant period or of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period, (the period for which the Screen Rate is taken or from which the Screen Rates are interpolated being the "**Representative Period**")

For the purposes of paragraphs (b) and (c) above, "available" means "calculated and published" under the aegis of ICE Benchmark Administration Limited (or any successor to that function of ICE Benchmark Administration Limited as determined by the Bank) for given maturities.

"**Screen Rate**" means the rate of interest for deposits in GBP for the relevant period as set by ICE Benchmark Administration Limited (or any successor to that function of ICE Benchmark Administration Limited as determined by the Bank) and released by financial news providers at 11h00, London time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") on which the relevant period starts or, if that day is not a Business Day in London, on the next following day which is such a Business Day.

If such Screen Rate is not so released by any financial news provider acceptable to the Bank, the Bank shall request the principal London offices of 4 (four) major banks in the London interbank market, selected by the Bank, to quote the rate at which GBP deposits in a comparable amount are offered by each of them at approximately 11h00, London time, on the Reset Date, to prime banks in the London interbank market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If fewer than 2 (two) quotations are provided as requested, the rate will be the arithmetic mean of the rates quoted at approximately 11h00, London time, on the Reset Date by major banks in London (selected by the Bank) for loans in GBP 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, LIBOR will be deemed to be zero.

If no rate is available as provided above, LIBOR 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.

#### **D. General**

For the purposes of the foregoing definitions:

- (a) "**London Business Day**" means a day on which banks are open for normal business in London and "**New York Business Day**" means a day on which banks are open for normal business in New York.
- (b) 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.
- (c) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (d) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EURIBOR EBF and EURIBOR ACI in respect of EURIBOR (or any successor to that function of the of EURIBOR EBF and EURIBOR ACI as determined by the Bank) or of the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) in respect of LIBOR, the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.



**C.2 Form of Certificate from Borrower (Article 1.04C)**

To: European Investment Bank

From: Republic of Moldova

Date:

Subject: Finance Contract between the Republic of Moldova and the European Investment Bank dated .....2014 (the "**Finance Contract**")

FI number 83.887 Serapis number 2014-0041

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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 event described in Article 4.03 (*Compulsory prepayment*) 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 under Article 10.01 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 or any of our subsidiaries any unsatisfied judgement or award;
- (f) the representations and warranties to be made or repeated by us under Article 6.09 are true in all respects; and
- (g) no Material Adverse Change has occurred, as compared with our condition at the date of the Finance Contract.

Yours faithfully,

For and on behalf of the **REPUBLIC OF MOLDOVA**

Date:

Form of Legal Opinion

**European Investment Bank**

98-100 Bd. Konrad Adenauer

L-2950 Luxembourg

Luxembourg

To the attention of the Legal Directorate

[date]

Re: **Fruit Garden of Moldova Finance Contract** made between the Republic of Moldova and the European Investment Bank (FI number 83.887; Serapis number 2014-0041)

Dear Sirs,

I, the undersigned, Minister of Justice of the Republic of Moldova, am giving this opinion pursuant to Article 1.04 A(i) of the Finance Contract (the "**Finance Contract**") for the Fruit Garden of Moldova Project in an amount equivalent to EUR 120,000,000, made on [to be confirmed] between the Republic of Moldova as borrower (the "**Borrower**") and the European Investment Bank (the "**Bank**"). All terms used herein and not otherwise defined shall have the same meaning as in the Finance Contract.

I have examined an original of the Finance Contract and I have examined such laws, documents and other matters, as I have deemed necessary or appropriate for the purpose of giving this opinion.

1. Subject to the foregoing, I am of the opinion that:
  - (a) the Finance Contract has been duly executed and delivered on behalf of the Borrower by Anatol Arapu, Minister of Finance of the Republic of Moldova as lawful representative of the Borrower; and
  - (b) the execution of the Finance Contract by Anatol Arapu, Minister of Finance of the Republic of Moldova as lawful representative of the Borrower has been made upon the provisions of **[INSERT DETAILS OF RELEVANT LAW]**.
2. No provision exists in the Republic of Moldova, which would make it necessary that the Finance Contract be filed, recorded or enrolled with any court or authority in order to ensure its legality, validity or enforceability.
3. The choice of English law as the law governing the Finance Contract is valid and enforceable.
4. None of the entry into and performance by the Borrower of, and the transactions contemplated by, the Finance Contract, the acceptance of the Credit, the signing of a Disbursement Offer, the submission of a Disbursement Request or the acceptance of a disbursement of a Tranche under the Finance Contract in any way conflicts with or breaches any restrictions on the incurring of financial indebtedness by the Borrower imposed by any international financial institution or international bank.
5. By virtue of the provisions of the Finance Contract, any dispute between the parties shall be settled by final and binding arbitration in accordance with the UNCITRAL Arbitration Rules. Any award of such tribunal of arbitration against the Borrower and/or the Promoter in relation to the Finance Contract may be enforced in the Republic of Moldova.
6. No taxes, duties, fees or other charges, including, without limitation, any registration or transfer tax, stamp duty or similar levy, imposed by the Republic of Moldova, the ['] or any political subdivision or taxing authority thereof or therein are payable in connection with the execution and delivery of the Finance Contract, nor in connection with any payment to be made by the Borrower to the Bank pursuant to the same Finance Contract.
7. All necessary exchange control consents, which may be necessary to receive disbursements, to repay the same and to pay interest and all other amounts due under the Finance Contract are in effect.

8. The waiver of immunity under Article 11.05 of the Finance Contract is a legally valid and binding obligation of the Borrower.
9. The Finance Contract has been duly ratified by the Parliament of the Republic of Moldova in accordance with the laws of the Republic of Moldova

Based on the foregoing, I am of the opinion that all requirements currently applicable to the Borrower, the Promoter, and/or governing the Finance Contract in relation to the laws of the Republic of Moldova have been complied with, and that the Finance Contract constitutes valid and binding obligations of the Borrower, enforceable in accordance with their terms.

Yours faithfully,

.....  
Oleg Efrim

Minister of Justice of the Republic of Moldova