

# OFFICIAL DOCUMENTS

EXECUTION VERSION

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NUMBER G-2440-UA

## INDEMNITY AGREEMENT

(Ukraine Gas Supply Security Facility Project)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Dated December 30, 2016

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## INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** (this "*Agreement*"), dated December 30, 2016, between:

- (1) **UKRAINE** (the "*Member Country*"); and
- (2) **INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT** (the "*Bank*" or "*IBRD*").

**WHEREAS:**

(A) Public Joint Stock Company "National Joint-Stock Company "Naftogaz of Ukraine", a state-owned company incorporated under the laws of Ukraine ("*Naftogaz*"), requires a financing facility to support its purchase and importation of natural gas from various suppliers with which Naftogaz has concluded, or will conclude, Eligible Gas Supply Agreements (as defined in the Appendix to this Agreement) in order to increase the stabilization (reserve) energy fund pursuant to paragraph 2 of Article 6 of the Budget Law 2016 and the Budget Code Amendment Law;

(B) Naftogaz has entered into a credit agreement (the "*Credit Agreement*") dated December 30, 2016 with Citibank Europe PLC, UK Branch, in its capacity as agent (the "*Agent*") for and on behalf of participating lenders listed therein, including Citibank, N.A., London Branch, and Deutsche Bank AG, London Branch, for the project described in the Schedule 1 to this Agreement (the "*Project*") and pursuant to which (i) the Agent agrees to issue certain Guaranteed Letters of Credit and to disburse Direct Loans, in each case, in favor of certain Eligible Gas Suppliers (and in certain instances, to disburse Accrued Interest Loans), all on behalf of or for Naftogaz, to fund purchases of natural gas from certain Eligible Gas Suppliers; and (ii) Naftogaz agrees to repay to the Agent each loan arising from a draw on a Guaranteed Letter of Credit, each Direct Loan and (any Accrued Interest Loan), including accrued interest thereon, in accordance with the terms and conditions of the Credit Agreement;

(C) at the request of Ukraine, the IBRD has agreed to establish a guarantee facility in the Euro equivalent of five hundred million Dollars (US\$500,000,000) pursuant to which the IBRD will guarantee to the Agent, on the conditions set forth in a guarantee agreement dated December 30, 2016 between the Agent and IBRD (the "*Guarantee Agreement*") repayment by Naftogaz of (i) any loan arising from a draw made on a Guaranteed Letter of Credit, (ii) any Direct Loan, and (iii) any Accrued Interest Loan made to Naftogaz; in each case together with accrued interest thereon; and

(D) IBRD and Naftogaz have entered into a cooperation agreement (the "*Cooperation Agreement*") dated December 30, 2016 pursuant to which Naftogaz makes certain undertakings, including an obligation to pay certain fees and expenses due to IBRD.

**IT IS AGREED AS FOLLOWS:**

## **ARTICLE I**

### **General Conditions; Definitions**

**Section 1.01.** (a) The provisions of the General Conditions (as defined in the Appendix to this Agreement) set forth in Section II of the Appendix to this Agreement constitute an integral part of this Agreement.

**Section 1.02.** Unless the context otherwise requires, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in Section I of the Appendix to this Agreement.

**Section 1.03.** In this Agreement:

- (i) headings are inserted for convenience of reference only and shall not be taken into account in the application or interpretation of this Agreement;
- (ii) words importing the singular include the plural and vice versa;
- (iii) the terms “include” and “including” mean without limitation;
- (iv) all Schedules to this Agreement are an integral part of this Agreement with the same force and effect as if they were fully set out herein; and references to this Agreement shall include references to both this Agreement and its Schedules;
- (v) references to an agreement (other than this Agreement) or an instrument include that agreement or instrument as amended, supplemented, novated or replaced from time to time (provided that, where consent is required by this Agreement to amend, supplement, novate or replace, such consent has been obtained), and shall include any document that amends, supplements or replaces it; provided, however, that any term in this Agreement defined by reference to another agreement shall refer to that agreement as of its date of execution without regard to any subsequent amendments); and
- (vi) unless a contrary indication appears, a reference in this Agreement to the Bank, the Agent, Naftogaz, an Eligible Gas Supplier or any other legal entity shall be construed so as to include such legal entity’s successors in title, permitted assigns and permitted transferees.

## **ARTICLE II**

### **Indemnity by Member Country to the Bank; Opinion**

**Section 2.01.** In consideration of the Bank providing the Guarantee on the terms and conditions set out in the Guarantee Agreement, the Member Country hereby irrevocably and unconditionally agrees:

- (a) to reimburse the Bank immediately on demand or as the Bank may otherwise direct in writing for any amount paid by the Bank under the Guarantee Agreement together with interest thereon at the rate per annum determined by the Bank and notified to the Member Country (which rate shall not exceed the Bank’s highest prevailing lending rate for loans with a fixed spread denominated in the Payment Currency, as may be shown from time to time on the Bank’s external website) from the date such payment is made by the Bank until such amount is reimbursed in full;

(b) to indemnify the Bank on demand and hold the Bank harmless against all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Bank directly or indirectly under the Guarantee Agreement (except as otherwise provided in Section 8.04(i) of the General Conditions); and

(c) that the obligations of the Member Country under this Agreement will not be affected by any act, omission, matter or thing which, but for this Section, would reduce, release or prejudice any of its obligations under this Agreement; and

(d) in the event that the Bank receives funds from the Member Country pursuant to Section 2.01(a) and, in respect of the same amounts, the Bank receives a refund of funds from the Agent pursuant to the Guarantee Agreement or receives funds as a result of the exercise of the Bank's subrogation rights under the Guarantee Agreement (the "**Double Payment**"), then the Bank shall promptly refund to the Member Country the amount of the Double Payment together with any interest payments received pursuant to the Guarantee Agreement by the Bank from the Agent in respect of such Double Payment.

**Section 2.02.** Any payment required to be made by the Member Country pursuant to the terms of this Agreement shall be applied first, to pay all interest and other charges due to the Bank and, second, after such interest and other charges are paid, to pay all other amounts then due to the Bank under this Agreement.

**Section 2.03.** The Member Country shall furnish to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank or, if the Bank so requests, an opinion satisfactory to the Bank of a competent official of the Member Country, showing the following matters: (a) that this Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Member Country and is legally binding upon the Member Country in accordance with its terms; and (b) any other matter reasonably requested by the Bank in connection with this Agreement. The Member Country acknowledges that the receipt by the Bank of such opinion or opinions will be a condition to the effectiveness of the Guarantee Agreement.

### ARTICLE III

#### Project

**Section 3.01.** The Member Country declares its commitment to the objective of the Project.

**Section 3.02.** Without prejudice to Section 3.01 of this Agreement, the Member Country shall undertake the obligations with respect to the Project set forth in Schedule 2 to this Agreement.

### ARTICLE IV

#### Remedies

**Section 4.01.** In addition to the other remedies available to the Bank under loan and financing agreements between the Bank and the Member Country, in the event that:

(a) (i) the Member Country has failed to perform any of its obligations under Article III of this Agreement, or (ii) Naftogaz or any relevant Public Sector Entity has failed to perform any of its obligations under the Relevant Project Document(s) to which it is a party and the Member Country has failed to cause Naftogaz or such Public Sector Entity to perform such obligations and, in either case,

such Member Country failure has continued and remained uncured in the opinion of the Bank for sixty (60) days or more after notice thereof shall have been given to the Member Country by the Bank; or

(b) any representation made by the Member Country in or pursuant to this Agreement, or any representation or statement furnished by the Member Country and intended to be relied on by the Bank in providing the Guarantee, shall, in the opinion of the Bank, have been incorrect in any material respect;

then the Bank may suspend or cancel in whole or in part the Member Country's right to make withdrawals under any loan agreement or financing agreement between the Bank and the Member Country, or declare the outstanding principal and interest of any such loan due and payable immediately.

## **ARTICLE V**

### **Effective Date**

**Section 5.01.** This Agreement shall come into force and effect upon signature by the parties.

**Section 5.02.** Any amendment to this Agreement shall be executed by agreement of the parties hereto in accordance with provisions of Section 10.02 of the General Conditions. Such amendment shall come into force as set forth in the amending agreement.

## **ARTICLE VI**

### **Representative; Addresses**

**Section 6.01.** The Member Country's Representative is the Minister of finance of Ukraine.

**Section 6.02.** The Member Country's Address is:

Address: Ministry of Finance  
12/2 Hrushevsky St.  
Kyiv, 01008  
Ukraine

Attention: Minister of Finance of Ukraine

Facsimile: (380-44) 425-90-26

With a copy to: Head of IFI Cooperation Department  
Ministry of Finance of Ukraine

Facsimile: (380-44) 277-54-82

**Section 6.04.** The Bank's Address is:

International Bank for Reconstruction and Development  
1818 H Street, N.W.

Washington, D.C. 20433  
United States of America

Attention: Vice President, Europe and Central Asia

Facsimile: +1-202-477-6391

With a copy to: Practice Manager, Guarantees (Financial Solutions)  
Energy & Extractives Global Practice

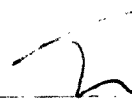
Facsimile: +1-202-522-0761

Name (printed): ALEXANDR VANSLIUK

Title: MINISTER OF FINANCE

Signature Page for Indemnity Agreement

**INTERNATIONAL BANK FOR RECONSTRUCTION AND  
DEVELOPMENT**

By:  \_\_\_\_\_  
Authorized Representative

Name (printed): SATU KÄHKÖNEN



## **SCHEDULE 1**

### **Project Description**

The objective of the Project is to enhance Naftogaz's ability to increase the Member Country's security of gas supply, by facilitating access to cost-effective financing and improving the terms of certain gas supply contracts supported under this Project.

The Project consists of the Guarantee that backstops certain loans under the Credit Agreement, which in turn are intended to improve the commercial terms on which Naftogaz purchases gas from eligible gas suppliers in the regional gas market through the provision of a credit enhancement feature to Naftogaz's gas supply contracts.

## SCHEDULE 2

### Project Undertakings

#### Part I. Credit Reimbursement Support

1. Promptly following receipt by the Bank of a Naftogaz Loan Repayment Failure Notice, and in any event not later than five (5) Business Days thereafter, the Bank may send a Mandatory Indemnity Agreement Payment Request to the Member Country.

2. Promptly following the Member Country's receipt of a Mandatory Indemnity Agreement Payment Request, and in any event not later than five (5) Business Days thereafter, the Member Country shall pay to such bank account as the Bank shall specify in such Mandatory Indemnity Agreement Payment Request, an amount in Euros equal to the principal amount specified in the relevant Naftogaz Loan Repayment Failure Notice, together with any accrued interest thereon at the applicable rate per annum determined in accordance with the Credit Agreement ("*Mandatory Indemnity Agreement Payment*").

3. Following the Member Country's receipt of a Naftogaz Credit Reimbursement Schedule Failure Notice, it shall have the right, but not the obligation, to pay to such bank account as the Bank shall indicate to the Member Country within ten (10) Business Days following its receipt of a written notice from the Member Country that it wishes to make an Optional Indemnity Agreement Payment, an amount in Euros equal to the principal amount specified in the relevant Naftogaz Credit Reimbursement Schedule Failure Notice, together with any accrued interest thereon at the applicable rate per annum determined in accordance with the Credit Agreement.

4. For greater certainty and for the avoidance of doubt, the Member Country and the Bank agree that:

(i) the arrangements set forth above in this Part I of Schedule 2 to this Agreement:

(a) are in addition and without prejudice to the rights of the Bank and the obligations of the Member Country under Article II of this Agreement; and

(b) are intended only to apply for the period prior to any amount paid by the Bank under the Guarantee Agreement, following which the Bank shall be entitled to exercise its rights under Article II of this Agreement; and

(ii) if any Anticipatory Indemnity Agreement Payment would be effected, the maximum principal amount of the commitment available to Naftogaz under the Credit Agreement shall be reduced accordingly, as will the Maximum Guaranteed Amount under the Guarantee Agreement which shall similarly be reduced.

#### Part II. General Covenants

1. The Member Country hereby undertakes to the Bank to punctually perform all of its obligations under the Relevant Project Documents to which it is party and to take all lawful action within its power to cause Naftogaz and each other relevant Public Sector Entity to punctually perform all of their respective

obligations under the Relevant Project Documents to which Naftogaz and such other Public Sector Entity is a party.

2. The Member Country shall notify the Bank prior to agreeing to any material amendment, waiver, termination or other change to the Relevant Project Documents to which the Member Country is a party, and shall obtain the written consent of the Bank prior to agreeing to any amendment, waiver, termination or other change to such agreement or undertaking which would or could in the opinion of the Bank materially affect the rights or obligations of the Bank under the Guarantee Agreement or any Relevant Project Document (including any assignment, transfer, novation, abrogation, granting of security over or other disposition of any rights or obligations under such agreements) to which the Member Country is a party.

3. The Member Country shall promptly: (i) notify and provide to the Bank copies of any notices, claims, demands, reimbursements or recoveries received under the Relevant Project Documents to which the Member Country is a party, and any other notices issued or received by the Member Country under the other Relevant Project Documents that could result or relate to actions to enforce the payment of the Guaranteed Amount; and (ii) notify the Bank of any event or circumstance which would or could adversely affect the Member Country's ability to perform its obligations or exercise its rights under the Relevant Project Documents to which the Member Country is a party.

4. The Member Country shall take all lawful actions within its power to remedy and cure any event within the Member Country's control or responsibility that would or could result in the breach or termination of any of the Relevant Project Documents to which the Member Country is a party.

5. The Member Country shall not create or permit to exist or occur and shall take all lawful actions within its power to ensure that no Public Sector Entity shall create or permit to exist or occur, any circumstance, or change in the laws or regulations in effect in the Member Country after the date of this Agreement that would render obligations under any of Relevant Project Documents illegal, invalid, unenforceable, ineffective or void in whole or in part. If such circumstance or change exists or occurs, the Member Country shall take all lawful actions within its power to remedy and cure or to procure that the appropriate Public Sector Entity remedies and cures, the adverse effect on the Project of such circumstance or change in law or regulation.

6. The Member Country shall:

(a) take all actions that shall be necessary on its part and take all lawful actions within its power to procure that Naftogaz and any other Public Sector Entity take all actions necessary on its part to enable the relevant Project Company: (i) to obtain any Authorization for the Project required under the Relevant Project Documents; and (ii) to perform all of its obligations under the Relevant Project Documents;

(b) carry out promptly, or cause to be carried out promptly, and take all lawful actions within its power to cause Naftogaz and any other Public Sector Entity to carry out promptly, or as may otherwise be agreed between the Member Country and the Bank, any action required to be performed by it or Naftogaz or such other Public Sector Entity to enable it, Naftogaz or such other Public Sector Entity to comply with relevant Environmental and Social Laws and with the requirements of the Relevant Project Documents, including the Performance Standards and the Environmental and Social Action Plan;

(c) not take, nor cause or permit Naftogaz or any other Public Sector Entity to take, and shall take all lawful actions within its power not to cause or permit Naftogaz or any other Public Sector

Entity to take, any action that would prevent or interfere with the performance by the relevant Project Company of any of its obligations in connection with the Project or under the Relevant Project Documents or any other agreement related to the Project;

- (d) not, without the Bank's prior written consent:
  - (i) dissolve, disestablish, or suspend the operations of Naftogaz; or
  - (ii) change its ownership or control of Naftogaz from that existing at the date of this Agreement (except, for the avoidance of doubt, any sale, transfer or assignment by the Member Country of any voting interest in Naftogaz's share capital that would not result, directly or indirectly, in the Member Country's loss of its power or ability (1) to elect or appoint a majority of Naftogaz's board of directors (or equivalent body), or (2) to direct the management or policies of Naftogaz; and

(e) without prejudice to Sections 5.10 (*Cooperation and Consultation*) and 6.01 (*Financial and Economic Data*) of the General Conditions, upon request, promptly provide (and cause Naftogaz and all other relevant Public Sector Entities to provide) the Bank with all information necessary, in the reasonable opinion of the Bank, for the Bank's review of the Member Country's performance of its obligations under this Schedule 2.

7. The Member Country: (i) affirms to the Bank that no Sanctionable Practices have been engaged in by any official or representative of the Member Country or Naftogaz or any other Public Sector Entity in connection with the Project, and (ii) covenants that neither it nor Naftogaz or any other Public Sector Entity shall engage in any Sanctionable Practices during and with respect to the performance of any contract or activity related to the Project.

8. The Member Country shall inform the Bank, and afford the Bank an opportunity to exchange views with it, prior to making any changes to the Naftogaz Related Gas Sector Reforms.

9. The Member Country acknowledges and confirms that the Bank has informed it that the ability of the Bank to provide the Guarantee Agreement for this Project is made possible by a guarantee agreement (the "***EIB Guarantee Agreement***"), dated October 9, 2015, between the European Investment Bank ("***EIB***") and the Bank, pursuant to which the EIB has agreed to guarantee certain obligations of the Member Country under each of the transactions specified in Schedule 4 of this Agreement (each, an "***EIB Guaranteed Transaction***", and each instrument documenting a EIB Guaranteed Transaction an "***EIB Guaranteed Transaction Document***"), subject to the terms and conditions set forth in the EIB Guarantee Agreement. In consideration of the Bank providing the Guarantee Agreement for this Project, the Member Country, by its signature of this Agreement, agrees: (i) that each EIB Guaranteed Transaction Document shall be deemed to have been amended from the date hereof, with effect from the date of the relevant EIB Guaranteed Transaction Document, to include reference to the EIB Guarantee Agreement, and (ii) that the terms and conditions of each EIB Guaranteed Transaction Document remains in full force and effect, following and notwithstanding such deemed amendment, without any other modification whatsoever.

**SCHEDULE 3**

**FORM OF MANDATORY INDEMNITY AGREEMENT PAYMENT REQUEST**

[LETTERHEAD OF IBRD]

[Date]

To: Ministry of Finance of Ukraine  
12/2 Hrushevsky St.  
Kyiv, 01008, Ukraine  
Attention: Minister of Finance of Ukraine  
Facsimile: (380-44) 425-90-26

With a copy to: Head of Debt Department  
Ministry of Finance of Ukraine  
Facsimile: (380-44) 277-54-55

Cc: Public Joint Stock Company "National Joint-Stock Company "Naftogaz of  
Ukraine"  
B. Khmel'nitskogo St., 6,  
Kyiv, 01601, Ukraine  
Attention: [\_\_\_\_\_]   
Fax No.: [\_\_\_\_\_]   
Email Address: [\_\_\_\_\_]

**MANDATORY INDEMNITY AGREEMENT PAYMENT REQUEST**

under

Indemnity Agreement dated December 30, 2016

Number G2440-UA

Ladies and Gentlemen,

We refer to the Indemnity Agreement between us dated December 30, 2016 (the "**Indemnity Agreement**") and the Naftogaz Loan Repayment Failure Notice dated [•], from the Agent to the Bank attached hereto (the "**Naftogaz Loan Repayment Failure Notice**"). Capitalized terms used and not otherwise defined herein have the meanings provided in the Indemnity Agreement.

We hereby request that you pay an amount of € [insert amount claimed] in accordance with your obligations under the Indemnity Agreement, consisting of:

- (i) € [insert amount], the outstanding principal amount of L/C Loans and Direct Loans made to Naftogaz under the Credit Agreement that remains outstanding and overdue as described in the Naftogaz Loan Repayment Failure Notice;

(ii) € [*insert amount*], the outstanding principal amount of Accrued Interest Loans made to Naftogaz under the Credit Agreement that remains outstanding and overdue as described in the Naftogaz Loan Repayment Failure Notice; and

(iii) € [*insert amount*] in accrued interest (not comprised in paragraph (ii) above) through the date hereof, calculated at the applicable rate per annum determined in accordance with the Credit Agreement).

Pursuant to paragraph 2 in Part I of Schedule 2 (*Credit Reimbursement Support*) of the Indemnity Agreement, please pay the requested amount to the following account:

- Account holder's name: [Citibank Europe plc, UK Branch as Agent]
- Account name: [*insert account name*]
- Account number: [*insert account number*]
- Account bank: Citibank Europe plc
- Account bank branch's number: [*insert bank number*]
- Account bank branch's address: [*insert bank address*]

In accordance with paragraph 2 in Part I of Schedule 2 of the Indemnity Agreement, payment must be made not later than five (5) Business Days following receipt of this Payment Request.

Sincerely,

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**SCHEDULE 4**

**LIST OF EIB GUARANTEED TRANSACTIONS**

<b>Project Name</b>	<b>IBRD Reference</b>	<b>Loan No.</b>	<b>Total IBRD commitment amount (USD)</b>	<b>Guaranteed Transaction Documents</b>
Hydropower Rehabilitation project.	P083702 / P1155 15	4795-UA / 7791-UA	166m	Loan Agreement between Ukraine and IBRD dated 19 September 2005/Loan Agreement between Ukraine and EIB dated 3 February 2010
Power Transmission Project	P096207	4868-UA	200m	Loan Agreement between Ukraine and IBRD dated 9 November 2007
Second Power Transmission Project	P146788	8462-UA	330m	Loan Agreement between Ukraine and IBRD dated 10 February 2015
Energy Efficiency Project	P096586	8064-UA	200m	Guarantee Agreement between Ukraine and IBRD dated 10 June 2011 in respect of a Loan Agreement between Joint Stock Company "The State Export-Import Bank of Ukraine" and IBRD dated 10 June 2011
Second Road and Safety Improvement Project	P127156	8195-UA	450m	Loan Agreement between Ukraine and IBRD dated 11 October 2012

## APPENDIX

### Section I. Definitions

1. “**Accrued Interest Loan**” means each outstanding loan advanced by the lenders under the Credit Agreement to Naftogaz from time to time under the revolving loan facility described therein and corresponding to the amount of any accrued interest on a loan arising from a draw on a Guaranteed Letter of Credit or on any the Direct Loan which is due and payable, and not paid, on the last day of an Interest Period (as defined in the Credit Agreement).
2. “**Agent**” has the meaning given in the recitals to this Agreement.
3. “**Anticipatory Indemnity Agreement Payment**” means a Mandatory Indemnity Agreement Payment or an Optional Indemnity Agreement Payment, as the case may be.
4. “**Anti-Corruption Guidelines**” means the “Anti-Corruption Guidelines for World Bank Guarantee and Carbon Finance Transactions” set forth in Section III of this Appendix.
5. “**Authorization**” means any consent, registration, filing, agreement, notarization, certificate, license, approval, permit, authority or exemption from, by or with any Public Sector Entity, whether given by express action or deemed given by failure to act within any specified time period.
6. “**Bank**” and “**IBRD**” mean the International Bank for Reconstruction and Development.
7. “**Budget Law 2016**” means the Law of Ukraine “On State Budget of Ukraine for 2016”, dated December 25, 2015, No. 928-VIII duly adopted by the Parliament of the Member Country (*Verkhovna Rada of Ukraine*) and published in the Official Bulletin of Ukraine on January 12, 2016, No. 2, article 59, which approved the state budget for the Member Country for calendar year 2016.
8. “**Budget Code Amendment Law 2016**” means the Law of Ukraine “On amendments to Chapter VI “Transitional Provisions” of the Budget Code of Ukraine on state guarantees” No. 937-VIII, dated January 26, 2016, duly adopted by the Parliament of the Member Country (*Verkhovna Rada of Ukraine*) following its adoption of Budget Law 2016, and published in the Official Bulletin of Ukraine on February 23, 2016, No. 13, article 533.
9. “**Cooperation Agreement**” has the meaning given in the recitals to this Agreement.
10. “**Credit Agreement**” has the meaning given in the recitals to this Agreement.
11. “**Direct Loan**” means any amount paid by the Agent pursuant to the Credit Agreement at the request of Naftogaz directly to an Eligible Gas Supplier in payment of natural gas supplied by such Eligible Gas Supplier and invoiced to Naftogaz, in each case in accordance with the applicable terms of the Credit Agreement and the relevant Eligible Gas Supply Agreement.
12. “**Double Payment**” has the meaning given in Section 2.01(d) of this Agreement.



13. “**EIB**” has the meaning given in Part II, paragraph 9 of Schedule 2 to this Agreement.
14. “**EIB Guarantee Agreement**” has the meaning given in Part II, paragraph 9 of Schedule 2 to this Agreement.
15. “**EIB Guaranteed Transaction**” has the meaning given in Part II, paragraph 9 of Schedule 2 to this Agreement.
16. “**EIB Guaranteed Transaction Document**” has the meaning given in Part II, paragraph 9 of Schedule 2 to this Agreement.
17. “**Eligible Gas Supplier**” means a supplier or potential supplier of natural gas to Naftogaz that is identified in, or otherwise satisfies the eligibility criteria set forth in the Cooperation Agreement and which has been approved in writing by the Bank for purposes of the Project.
18. “**Eligible Gas Supply Agreement**” means one or more natural gas supply agreements entered into or to be entered into between Naftogaz and an Eligible Gas Supplier, which satisfy the requirements set forth in the Cooperation Agreement and which has been approved by the Guarantor in writing for purposes of the Project.
19. “**Environmental and Social Action Plan**” means the plan or plans developed by Naftogaz setting out specific social and environmental measures to be undertaken by Naftogaz to ensure that environmental and social risks associated with the Project are effectively mitigated in compliance with the Performance Standards, as such plan(s) may be amended or supplemented from time to time.
20. “**Environmental and Social Laws**” means, collectively, the applicable statutes, laws, ordinances, rules and regulations of the Member Country, including licenses, permits or other Authorizations setting standards concerning environmental, social, labor, health and safety or security risks of the type contemplated by the Performance Standards or imposing liability for the breach thereof.
21. “**Euros**” or “**€**” means the lawful currency of the member states of the European Union that have adopted and retained a common single currency through monetary union in accordance with European Union treaty law, as amended from time to time.
22. “**General Conditions**” means the “International Bank for Reconstruction and Development General Conditions for Loans”, dated March 12, 2012, with the modifications set forth in Section II of this Appendix.
23. “**Guarantee**” means the guarantee provided by the Bank to the Agent pursuant to the Guarantee Agreement.
24. “**Guarantee Agreement**” has the meaning given in the recitals to this Agreement.
25. “**Guaranteed Letter of Credit**” means a letter of credit established and issued by the Agent pursuant to the Credit Agreement at the request of Naftogaz in favor of an Eligible Gas Supplier as payment security for purchases of natural gas by Naftogaz from the relevant Eligible Gas Supplier under an Eligible Gas Supply Agreement.

26. “**IBRD Offshore Revenue Account Agreement**” means the account bank agreement to be entered into among IBRD, Naftogaz, and Citibank, N.A., London Branch governing, among other matters, the receipt and application of transfers from the IBRD Onshore Revenue Account governed by IBRD Onshore Revenue Account Agreement.
27. “**IBRD Onshore Revenue Account Agreement**” means the IBRD onshore revenue account agreement to be entered into among Naftogaz, IBRD, and Oschadbank, governing the mechanics and segregation of payments under, as well as the flow of funds into and from, IBRD Onshore Revenue Account.
28. “**IBRD Onshore Revenue Account**” means the bank account in the name of Naftogaz established with Oschadbank and specified in the IBRD Onshore Revenue Account Agreement.
29. “**Mandatory Indemnity Agreement Payment**” has the meaning given in paragraph 2 of Part I of Schedule 2 of this Indemnity Agreement.
30. “**Mandatory Indemnity Agreement Payment Request**” means any notice delivered from the Bank to the Member Country, copied to Naftogaz, pursuant to paragraph 2 of Part I of Schedule 2 of this Agreement and which is substantially in the form attached as Schedule 3 to this Agreement.
31. “**Maximum Guaranteed Amount**” has the meaning set forth in the Guarantee Agreement.
32. “**Naftogaz**” has the meaning given in the recitals to this Agreement.
33. “**Naftogaz Credit Reimbursement Schedule Failure Notice**” means any notice delivered from the Agent to the Bank, copied to Naftogaz and the Member Country, pursuant to the Guarantee Agreement notifying that an amount was due from Naftogaz under the Credit Agreement on a “Loan Repayment Date” specified therein, but was not paid.
34. “**Naftogaz Related Gas Sector Reforms**” means the Member Country’s plan of activities set out in the Resolution of the Cabinet of Ministers of Ukraine on March 25, 2015 (ref. No. 375-r) entitled “*Plan of Activities for Gas Sector Reform*” insofar as such planned activities relate to, or otherwise affect, Naftogaz.
35. “**Naftogaz Loan Repayment Failure Notice**” means any notice delivered from the Agent to the Bank, copied to Naftogaz and the Member Country, pursuant to the Guarantee Agreement and notifying that an amount was due from Naftogaz under the Credit Agreement but not paid by the expiry of the relevant “Loan Repayment Period” specified therein.
36. “**Optional Indemnity Agreement Payment**” means any payment made by the Member Country to IBRD pursuant to paragraph 3 of Part I of Schedule 2 of this Indemnity Agreement.
37. “**Performance Standards**” means the World Bank Performance Standards for Private Sector Activities as approved by the Bank’s Board of Executive Directors on June 26, 2012.
38. “**Public Sector Entity**” means:
  - (a) Naftogaz;
  - (b) the Government of the Member Country, the Parliament of the Member Country, any governmental department or ministry, agency, body (including any state-owned

company or other state-owned entity), instrumentality or public authority, whether national, regional or local (or any subdivision thereof), or any other entity subject to the overall control or direction as to matters of policy of the Government of the Member Country or which is otherwise controlled by the Government of the Member Country;

- (c) any court in the Member Country with jurisdiction over Naftogaz, any Project Company or the Project or any part thereof, including an Eligible Gas Supply Agreement; or
- (d) any other person in the Member Country having or asserting authority to issue a license, approval or consent required or necessary in connection with the Project, or otherwise having jurisdiction over any aspect of the Project, including an Eligible Gas Supply Agreement.

39. "**Project Company**" means an Eligible Gas Supplier.

40. "**Relevant Project Document**" means:

- (a) this Agreement;
- (b) the Guarantee Agreement;
- (c) the Cooperation Agreement;
- (d) the Credit Agreement;
- (e) each Guaranteed Letter of Credit;
- (f) each Eligible Gas Supply Agreement;
- (g) the memorandum of agreement entered into or to be entered into between an Eligible Gas Supplier and IBRD for purposes of the Project;
- (h) the IBRD Onshore Revenue Account Agreement;
- (i) the IBRD Offshore Revenue Account Agreement; and
- (j) any other material document related to the Project and to which the Member Country, Naftogaz or another Public Sector Entity is a party or has issued.

41. "**Sanctionable Practices**" means any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice or Obstructive Practice, as those terms are defined and interpreted in accordance with the Anti-Corruption Guidelines.

## **Section II. General Conditions**

The following provisions of the General Conditions, with the modifications set forth below, constitute an integral part of this Agreement:

1. Article I.

2. Sections 3.06, 3.07, 3.09 and 3.10.
3. Sections 5.10 (except that references therein to the term “Loan” shall be deleted and replaced by the term “Guarantee”), 5.11 and 5.12.
4. Section 6.01.
5. Section 6.02(a), modified to read as follows:
  - (a) It is the policy of the Bank, in making loans to, or with the guarantee of, its members not to seek, in normal circumstances, special security from the member concerned but to ensure that no other External Debt shall have any priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member. To that end, if any Lien is created on any Public Assets as security for any External Debt, which will or might result in a priority for the benefit of the creditor of such External Debt in the allocation, realization or distribution of foreign exchange, such Lien shall, unless the Bank shall otherwise agree, *ipso facto* and at no cost to the Bank, equally and ratably secure the amounts payable by the Member Country under this Agreement, which, for purposes of the Section only, shall be deemed to be equal to the Maximum Guaranteed Amount under the Guarantee Agreement, and the Member Country, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on assets of any or its political or administrative subdivisions, the Member Country shall promptly and at no cost to the Bank secure all amounts payable by the Member Country under this Agreement by an equivalent Lien on other Public Assets satisfactory to the Bank.”
6. Section 6.02(c).
7. Article VIII.
8. Section 10.01, modified by deleting at the beginning of the second sentence the words “Except as otherwise provided in Section 9.03(a).”
9. Section 10.02, modified by deleting the words “(and the representative designated by the Project Implementing Entity in the Project Agreement)” and “(or the Project Implementing Entity, as the case may be).”
10. Section 10.03, modified by deleting the words “and the Project Implementing Entity.”
11. Sections 10.04 and 10.05.
12. Paragraphs 6, 7, 8, 9 and 10 of the Appendix.
13. Paragraphs 12, 13, 24, 33, 38, 39 and 41 of the Appendix.
14. Paragraph 59 of the Appendix, modified to read as follows:

“Legal Agreement” means the indemnity agreement between the Member Country and the Bank pertaining to the Guarantee, as such agreement may be amended from time to time. “Legal Agreement” includes these General Conditions as applied to the Legal Agreement, and all appendices, schedules and agreements supplemental to the Legal Agreement.”

15. Paragraph 61 of the Appendix.
16. Paragraph 64 of the Appendix, modified to read as follows:

“Loan Agreement” means the Legal Agreement.”
17. Paragraph 66 of the Appendix, modified to read as follows:

“Loan Party” means the Borrower.”
18. Paragraph 75 of the Appendix, modified by deleting the words “for which the Loan is extended”.
19. Paragraph 76 of the Appendix, modified to read as follows:

“Project Agreement” means the cooperation agreement entered into or to be entered into between the Bank and Naftogaz in connection with the Guarantee, as the same may be amended from time to time in accordance with its terms. “Project Agreement” includes these General Conditions as applied to the Project Agreement, and all appendices, schedules and agreements supplemental to the Project Agreement.”
20. Paragraph 77 of the Appendix, modified to read as follows:

“Project Implementing Entity” means Naftogaz, which is a party to the Project Agreement.”
21. Paragraphs 81, 89, 90 and 97 of the Appendix.

### **Section III. Anti-Corruption Guidelines for World Bank Guarantee and Carbon Finance Transactions**

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practices,” “Fraudulent Practices,” “Coercive Practices,” “Collusive Practices” and “Obstructive Practices” in the context of World Bank project-based guarantee operations and carbon finance transactions, where the World Bank, as trustee of a carbon fund, purchases emission reductions under an emission reductions purchase agreement.

#### **1. CORRUPT PRACTICES**

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

#### **INTERPRETATION**

- A. Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.
- B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.
- C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.
- D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
- E. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

## **2. FRAUDULENT PRACTICES**

A "Fraudulent Practice" is any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

### **INTERPRETATION**

- A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of World Bank Group sanctions.
- B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in World Bank Guarantee or carbon finance operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to World Bank Guarantee or carbon finance operations.

### **3. COERCIVE PRACTICES**

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

#### **INTERPRETATION**

- A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
- B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

### **4. COLLUSIVE PRACTICES**

A “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

#### **INTERPRETATION**

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

### **5. OBSTRUCTIVE PRACTICES**

An “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, 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 intended to materially impede the exercise of the World Bank’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

#### **INTERPRETATION**

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

#### **GENERAL INTERPRETATION**

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.